



COMMONWEALTH OF AUSTRALIA

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SENATE

STANDING COMMITTEE ON EDUCATION, EMPLOYMENT AND
WORKPLACE RELATIONS

ESTIMATES

(Additional Budget Estimates)

THURSDAY, 26 FEBRUARY 2009

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**SENATE STANDING COMMITTEE ON
EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS
Thursday, 26 February 2009**

Members: Senator Marshall (*Chair*), Senator Humphries (*Deputy Chair*), Senators Arbib, Cash, Collins, Crossin, Fisher and Siewert

Participating members: Senators Abetz, Adams, Barnett, Bernardi, Bilyk, Birmingham, Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, Cameron, Colbeck, Coonan, Cormann, Eggleston, Farrell, Feeney, Fielding, Fierravanti-Wells, Fifield, Forshaw, Furner, Hanson-Young, Heffernan, Humphries, Hurley, Hutchins, Johnston, Joyce, Kroger, Ludlam, Lundy, Ian Macdonald, Mason, McEwen, McGauran, McLucas, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Pratt, Ronaldson, Ryan, Scullion, Siewert, Stephens, Sterle, Troeth, Trood, Williams, Wortley and Xenophon

Senators in attendance: Senators Brandis, Cameron, Cash, Collins, Crossin, Fisher, Humphries, Hutchins, Marshall and Sterle

Committee met at 9.00 am

EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS PORTFOLIO

Consideration resumed from 25 February 2009

In Attendance

Senator Ludwig, Minister for Human Services

Department of Education, Employment and Workplace Relations

Cross portfolio

Ms Lisa Paul, Secretary
Dr Michele Bruniges, Deputy Secretary
Mr Ewen McDonald, 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, Deputy Secretary
Mr Craig Storen, Chief Finance Officer and Group Manager, Finance Group
Mr George Kriz, Chief Legal Officer and Group Manager Procurement, Legal, Investigations and Procurement Group
Mr Jeremy O'Sullivan, General Counsel and Group Manager Investigations, Legal, Investigations and Procurement Group
Mr Aloka Sinha, Branch Manager, Procurement and Contract Manager, Legal, Investigations and Procurement Group
Mr Shayne Howard, Branch Manager, Investigations, Legal, Investigations and Procurement Group

Mr Brien Armstrong, Branch Manager, Internal Audit Group
Ms Margaret Pearce, Group Manager, Parliamentary and Communications Group
Ms Linda Hall, Acting Branch Manager, Parliamentary Branch, Parliamentary and Communications Group
Mr Brant Trim, Branch Manager, Communications Delivery Branch, Parliamentary and Communications Group
Ms Shannon Kenna, Acting Branch Manager, Strategic Communications, Parliamentary and Communications Group
Mr Ben Johnson, Group Manager, People Group
Ms Sue Saunders, Branch Manager, People Services Branch, People Group
Ms Chris Silk, Branch Manager, Remuneration and Performance, People Group
Ms Robyn Kingston, Group Manager, Delivery and Network Group
Mr Justin Mein, Branch Head, Implementation and Risk, Delivery and Network Group
Mr Glenn Archer, Group Manager, IT Services Group
Ms Helen Skrzeczek, Group Manager, Applications Systems Group

Outcome 7 – Labour market assistance

Ms Malisa Golightly, Deputy Secretary
Ms Janine Pitt, Acting Group Manager, Job Seeker Support Group
Mr Ian Sharples, Director, Job Seeker Support Group
Ms Yvonne Uren, Director, Job Seeker Support Group
Mr Stephen Moore, Group Manager, Employment Systems Group
Ms Marsha Milliken, Group Manager, Income Support and Stakeholder Group
Ms Jo Caldwell, Group Manager, General Employment Services Group
Mr Tony Waslin, Group Manager, Specialist Employment Services Group
Ms Jennifer Chadwick, Branch Manager, Disability Employment Policy and Performance, Specialist Employment Services Group
Ms Sharon Stuart, Branch Manager, Disability Employment Services Branch, Specialist Employment Services Group
Mr Michael Hynes, Director, Disability Employment Services Branch, Specialist Employment Services Group
Mr Derek Pigram, Branch Manager, Employment Pathways Branch, Specialist Employment Services Group
Ms Dianne Fletcher, Group Manager, Employment Purchasing Group
Mr Darren Hooper, Branch Manager, Tender Team 2009, Employment Purchasing Group

Outcome 8 – Workforce participation

Mr Graham Carters, Deputy Secretary
Mr Matt Davies, Acting Group Manager, Strategic Policy Group
Ms Margaret Kidd, Group Manager, Employment Reform Taskforce
Mr Ali Jalayer, Branch Manager, Employment Services Operational Policy, Employment Reform Taskforce Group
Ms Louise McSorley, Branch Manager, Migration, Employment Reform Taskforce Group
Dr Alison Morehead, Group Manager, Social Inclusion and Participation Group
Ms Sharon Rose, Branch Manager, Participation Policy - Disability and Disadvantaged, Social Inclusion and Participation Group

Ms Stephanie Bennett, Branch Manager, Social Inclusion, Social Inclusion and Participation Group
Ms Robyn Shannon, Branch Manager, Participation Policy – Families, Social Inclusion and Participation Group
Mr Bob Harvey, Group Manager, Indigenous Group
Ms Mary-Anne Sakkara, Branch Manager, Indigenous Policy, Indigenous Group
Ms Julie Polson, Branch Manager, Strategic Support, Indigenous Group
Ms Jo Wood, Branch Manager, Innovation and Partnerships, Indigenous Group
Mr Stephen Goodwin, Branch Manager, Indigenous Education Program, Indigenous Group
Ms Trish Mercer, Group Manager, Research Analysis and Evaluation Group
Mr Dennis Hart, Acting Branch Manager, Labour Supply and Skills, Research Analysis and Evaluation Group

Outcome 9 – More productive and safer workplaces

Mr John Kovacic, Deputy Secretary
Ms Sandra Parker, Group Manager, Workplace Relations Policy Group
Ms Louise McDonough, Assistant Secretary, Employee Protections Branch, Workplace Relations Policy Group
Mr Mark Roddam, Assistant Secretary, Wages Policy and Economic Analysis Branch, Workplace Relations Policy Group
Ms Colette Shelley, Assistant Secretary, Bargaining and Industry Framework Branch, Workplace Relations Policy Group
Mr Stewart Thomas, Assistant Secretary, Strategic Coordination Branch, Workplace Relations Policy Group
Ms Natalie James, Chief Counsel, Workplace Relations Legal Group
Mr David De Silva, Branch Manager, Coordination Branch, Workplace Relations Legal Group
Mr David Bohn, Branch Manager, Safety Net Branch, Workplace Relations Legal Group
Mr Peter Cully, Branch Manager, Termination, Building, Organisations and Dispute Settlement Branch, Workplace Relations Legal Group
Ms Elen Perdikogiannis, Branch Manager, Bargaining and Coverage Branch, Workplace Relations Legal Group
Mr Henry Lis, Branch Manager, Institutions, OHS and Workers Compensation Branch, Workplace Relations Legal Group
Mr Michael Maynard, Group Manager, Workplace Relations Implementation Group
Ms Jody Anderson, Branch Manager, Private Sector Branch, Workplace Relations Implementation Group
Mr Craig Johnson, Acting Branch Manager, Public Sector Branch, Workplace Relations Implementation Group
Mr Jeff Willing, Branch Manager, Building Industry Branch, Workplace Relations Implementation Group
Ms Michelle Baxter, Group Manager, Safety and Entitlements Group
Ms Helen Marshall, Branch Manager, Office of the Federal Safety Commissioner, Safety and Entitlements Group

Mr James Hart, Branch Manager, Employment Entitlements Branch, Safety and Entitlements Group

Ms Flora Carapellucci, Group Manager, Office of the Australian Safety and Compensation Council

Mr Rex Hoy, Group Manager Office of the Australian Safety and Compensation Council

Ms Amanda Grey, Branch Manager, Information Services Branch, Office of the Australian Safety and Compensation Council

Mr Wayne Creaser, Branch Manager, Policy and Research, Office of the Australian Safety and Compensation Council

Mr Drew Wagner, Branch Manager, Regulations, Office of the Australian Safety and Compensation Council

Workplace Ombudsman

Mr Nicholas Wilson, Workplace Ombudsman, Workplace Ombudsman

Mr Leigh Johns, Chief Counsel, Legal and Advice, Workplace Ombudsman

Mr Alfred Bongi, Deputy Workplace Ombudsman, Workplace Ombudsman

Mr Michael Campbell, Executive Director, External Affairs Branch, Workplace Ombudsman

Mr Bill Loizides, Executive Director, Field Operations, Workplace Ombudsman

Mr Mark Scully, Chief Financial Officer, Workplace Ombudsman

Workplace Authority

Ms Barbara Bennett, Director, Workplace Authority

Ms Penny Weir, Head of Corporate, Workplace Authority

Ms Jo Major, General Manager, Agreements and Strategy, Workplace Authority

Ms Helen Bull, General Manager, Agreements and Policy, Workplace Authority

Ms Lily Viertmann, Chief Financial Officer, Workplace Authority

Mr Craig Busing, Acting Chief Financial Officer, Workplace Authority

Australian Building and Construction Commission

The Hon John Lloyd, Commissioner, Australian Building and Construction Commissioner

Mr John Draffin, Assistant Commissioner Operations, Australian Building and Construction Commissioner

Mr Ross Dalgleish, Deputy Commissioner Legal, Australian Building and Construction Commissioner

Ms Heather Hausler, Assistant Commissioner Corporate, Australian Building and Construction Commissioner

Mr John Casey, Chief Financial Officer, Australian Building and Construction Commissioner

CHAIR (Senator Marshall)—The committee is continuing the examination of the Education, Employment and Workplace Relations portfolio, beginning with the Workplace Ombudsman. 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 Thursday, 9 April 2009 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 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 the Hon. Joe Ludwig; the Secretary of the Department of Education, Employment and Workplace Relations, Ms Lisa Paul, who is not here yet, but Mr Wilson, you are, so welcome to you; and other officers as well as observers to the public hearing. I ask all observers and participants in this inquiry to either switch their mobile phones off or to silent. Minister, would you like to make an opening statement?

Senator Ludwig—No, thank you, Chair, and welcome.

[9.02 am]

Workplace Ombudsman

CHAIR—Mr Wilson, would you like to make an opening statement?

Mr Wilson—I would, Chair, just in very brief terms. I wanted to provide some sort of context about the Workplace Ombudsman. Over the past three years we have helped more than 50,000 Australians with problems in their workplaces. In that time our 300 inspectors across the country have recovered more than \$53 million in underpaid wages for more than 31,000 of those complainants.

Most of our work is done through voluntary compliance efforts, sitting under a firm prosecution policy, and also expanding our targeted enforcement activities. We believe through the agency that the work we have done in every part of the country has had strong benefits in ensuring better workplace relations compliance outcomes and it has established the Workplace Ombudsman as a credible national regulator.

Our work sits under a rigorous and transparent litigation policy which ensures a firm compliance outcome will be a strong deterrent to other duty holders. Over the past three years we have commenced 158 civil penalty proceedings and obtained court ordered penalties of \$2.4 million. The view we hold is that there is no doubt that these actions are a deterrent to others and are driving business behaviour. Where a duty holder may have broken the criminal law, the Workplace Ombudsman also refers matters, where appropriate, to the Commonwealth Director of Public Prosecutions, and several people have been convicted because of this. We also conduct extensive targeted compliance campaigns, which daily demonstrate that audits of workplaces really do achieve better compliance outcomes. And at the high level over the past three years our workplace inspectors have conducted more than 15,000 audits of workplaces and, directly because of those audits, more than \$18 million in underpaid wages have been recovered for more than 22,000 people.

We take different approaches to the needs of industries in setting up those targeted campaigns, and I will be happy in the questions to detail how that might be constructed. Certainly we believe that the system of our inspectors is working. Over the next year or so, possibly as we integrate with other agencies to become part of Fair Work Australia, we expect demand for our services to continue to be high and that we will need to continue to ensure a robust delivery model with staff working right across the range of voluntary compliance, targeted compliance and prosecution activities. Thank you for the opportunity to make a statement. We will be more than pleased to take questions.

CHAIR—Thank you. Senator Brandis.

Senator BRANDIS—Good morning, Mr Wilson. I wanted to ask you some questions about the transitioning arrangements from the Workplace Ombudsman to the Office of the Fair Work Ombudsman under the Fair Work Bill. My understanding is that, assuming the passage of that bill, the existing Office of the Workplace Ombudsman will cease on 30 June this year and become the Office of the Fair Work Ombudsman on 1 July this year. Is that right?

Mr Wilson—In broad terms, it is. It is a bit more detailed than that. The Office of the Workplace Ombudsman will cease to exist, and a new office will be created called the Office of the Fair Work Ombudsman. That office will include, on present indications, the work of the Office of the Workplace Ombudsman but also the work of other agencies.

Senator BRANDIS—All right. Which other agencies?

Mr Wilson—My understanding, on the work that has been done so far, is parts of the Workplace Authority and, subject to later consideration by the Senate in legislation, the work of the Australian Building and Construction Commission.

Senator BRANDIS—Yes. What is going to happen to employees of the existing Workplace Ombudsman when that happens?

Mr Wilson—The government has established a Fair Work Australia Establishment Taskforce, and it would be best for the department to answer questions on that subject, about its formation and its terms of reference. The understanding I have, though, in respect of my agency is that all of our staff would move, through machinery-of-government arrangements, from the Office of the Workplace Ombudsman to the Office of the Fair Work Ombudsman.

Senator BRANDIS—Has that decision been made yet?

Mr Wilson—Not in a formal sense, as far as I am aware.

Senator BRANDIS—But that is the expectation of your office?

Senator Ludwig—Senator Brandis—

Senator BRANDIS—Sorry, Minister, do you want to say something?

Senator Ludwig—Wouldn't it hinge on the legislation having been passed?

Senator BRANDIS—I said in my earlier question 'assuming the passage of the legislation'.

Senator Ludwig—Yes, 'assuming'. That is what I just wanted to make plain. The difficulty is that you have been asking the Workplace Ombudsman to assume that as well, so I think you should at least remind him that it is an assumption that you are continuing to make.

Senator BRANDIS—I thought I had made that clear—

Senator Ludwig—Because the difficulty will be if they do not make—

Senator BRANDIS—If there is any obscurity about it, Mr Wilson, all these questions about the transitioning from the Workplace Ombudsman to the Office of the Fair Work Ombudsman are based on that assumption. Do you appreciate that?

Mr Wilson—Of course.

Senator BRANDIS—Thank you. Has that decision been made?

Mr Wilson—No, not formally.

Senator BRANDIS—When you say ‘not formally’, are the officers of your office proceeding on the footing that a decision to re-employ them in the Office of the Fair Work Ombudsman will be made?

Mr Wilson—Yes, that is the basis upon which we are proceeding.

Senator BRANDIS—All right. Have formal offers of employment with the Office of the Fair Work Ombudsman been issued?

Mr Wilson—No, they have not. Of course, the office does not exist yet, and the employment of our staff at the moment is, where necessary, ongoing. The usual arrangement would be that there would be some sort of machinery-of-government direction given under the Public Service Act at the appropriate time by the appropriate people.

Senator BRANDIS—And this is all being handled, is it, by this task force you mentioned before?

Mr Wilson—The scope of the task force in respect of this matter is to form views about the best way for that to occur from the Australian government point of view and, as things get closer to July, to start making sure that those decisions are taken at the appropriate time.

Senator BRANDIS—Does the task force, by the way, have a written remit or a written statement of its particular tasks?

Mr Wilson—I have seen terms of reference, but I am not aware of them right now. I think that is a question you would need to direct to the department who established the task force.

Senator BRANDIS—All right. I will do that. Now, Mr Wilson, there are aspects of the proposed system, such as the new unfair dismissal system, that are envisaged to start on 1 July 2009 and there are other parts of the new system, such as modernised awards, that are due to start on 1 July 2010. What instructions or directives have you given as to what system you will be enforcing as the Office of the Fair Work Ombudsman and when? Or have no such arrangements yet been made?

Mr Wilson—No such arrangements have been made at the moment. I take you to the comment you made about modern awards. My understanding is that they would commence on 1 July 2010. The way that we take our work is according to the legislation of the time. Obviously, if the legislation is yet to be passed in the ultimate sense of creating the agency, then, in terms of the modern awards, the Australian Industrial Relations Commission, under legislation passed last year, has a remit to create modern awards. It is going through the process of doing that. As far as I am aware, at the moment, the modern awards are still in a draft phase, and it will be a few months before their final state. The Australian Industrial Registry might be a better place to give you an understanding of the time frames and processes. For our own staff—without wishing to diminish the significance of the policy—an award is an award in terms of its enforcement. We say to our own workplace inspectors that the obligations which exist at whatever point in time you see them are enforced. In terms of—

Senator BRANDIS—I do not mean to cut you off but, to cut to the chase, I wonder whether you anticipate any difficulties in these transitioning arrangements due to the fact that there are some aspects of the new legislation which fall within your jurisdiction and have a later start date than other elements of the new legislation.

Mr Wilson—I see. No, I do not see any difficulties in that. The other aspect which does commence from January 2010 are the National Employment Standards. It is beneficial not to have them commence until that period so that we can draw attention in the community to the obligations which are set out in them.

Senator BRANDIS—Have you met with the minister or her advisers to determine how any transition enforcement arrangements will occur?

Mr Wilson—It is not appropriate that I detail how I interact with the minister or the office, but what I can certainly say is that we have a fairly extensive input into the transitional arrangements and that we have that through a couple of different arrangements. One is through our contributions to the task force that I have referred to. We also have a contribution to a separate process that the minister has established—referred to as COIL, the Committee on Industrial Legislation—and we are being consulted as part of that process.

Senator BRANDIS—I should indicate to you that it is reasonably well understood in these committees that questions directed to advice provided to ministers are never acceptable. I will not be asking you—or any other witnesses, for that matter—any such questions, but it is equally well understood that questions about process are perfectly proper. I am entitled to ask you whether a meeting took place and when it took place but not what was said in the meeting.

Mr Wilson—Of course.

Senator BRANDIS—On that footing—and without asking you to say what was said—have there been one or more meetings with the minister and her advisers about transitional arrangements?

Mr Wilson—Yes, there have.

Senator BRANDIS—On what dates did those meetings occur? You might need to take that one on notice.

Mr Wilson—That I most certainly will. I am not able to tell you offhand, but there certainly have been meetings—

Senator BRANDIS—There have been several?

Mr Wilson—and conversations, yes.

Senator BRANDIS—In your office, are there any plans to deal with transition issues in the event that the bill will not have passed the parliament in July 2009?

Senator Ludwig—We are confident that it will pass.

Senator BRANDIS—It may not; we do not know.

Senator Ludwig—I think we have your support.

Mr Wilson—Senator, if I can answer the question by saying that, right now, I do not foresee the need to be developing plans around that, and I can explain why that is the case. The Office of the Workplace Ombudsman has appropriation which is already set forward; it is not as if we are a terminating measure. We also have—

Senator BRANDIS—This is your general appropriation?

Mr Wilson—Yes.

Senator BRANDIS—This is not a specific appropriation for transition costs?

Mr Wilson—Correct; it is our general appropriation, which of course goes forward several years. That provides, obviously, the head of power for our workplace inspectors, and then there is the Workplace Relations Act, which defines the powers and obligations of workplace inspectors. So we would effectively continue in a business-as-usual model.

Senator BRANDIS—All right. Have employees of your office received training on the implications of the proposed new system—in other words, have your officers been trained yet or is there a proposal for them to be trained as to how to deal with the new system as opposed to the existing system?

Mr Wilson—No, they have not been trained in that respect. We have provided high-level information to all of our staff about particular features of the bill. We have not yet undertaken training and we would not expect to do that for a month or two yet, but certainly we have plans to do that to make sure that a sufficient number of our staff are very much across the intricacies of the new legislation. In addition, the task force—and you would need to direct this to the department—is considering training of a more general nature for all of the staff within the agencies to be formed.

Senator BRANDIS—You say you would expect that training in the next month or two; how well developed is the training program? Are we just waiting for it to occur, or is the training still in development?

Mr Wilson—The training is still in development. Obviously, the bill needs to be settled and the transitional consequential provisions bill, which is yet to be introduced, needs to be settled as well before we can finalise the training brief. But the project is fairly well developed and we are quite confident that we can develop it and present it to our staff before 30 June.

Senator BRANDIS—How many officers are involved in developing and delivering the training?

Mr Wilson—I would need to take that on notice. It would only be a handful, two or three.

Senator BRANDIS—Okay—that is fine.

Mr Wilson—About that, yes.

Senator BRANDIS—About two or three?

Mr Wilson—Yes.

Senator BRANDIS—That is all right. And how many of your staff will be involved in receiving the training?

Mr Wilson—I am sorry; we do not have that information with us. We would need to take that on notice. Without trying to be disingenuous, it is either a little or a lot, and it depends on the type of training. There is certain training we would direct to all of our staff and then there is certain training we would direct to only a handful.

Senator BRANDIS—I see. A decision as to the scope is yet to be made?

Mr Wilson—Those decisions have not yet been made.

Senator BRANDIS—All right. Finally, can you indicate to us the anticipated cost of this training?

Mr Wilson—Not at this stage. I would need to take that on notice as well.

Senator BRANDIS—Well, has a budget been developed?

Mr Wilson—We have had indicative costings, and I think we have set aside a budget for the amount.

Senator BRANDIS—How much is it?

Mr Scully—Senator, the training has not been fully scoped as yet and therefore the numbers are in quite a broad range, but it is somewhere between \$1 million and \$2 million, we expect.

Senator BRANDIS—Between \$1 million and \$2 million, you anticipate?

Mr Scully—Correct.

Senator BRANDIS—Are you absorbing that cost, are you?

Mr Scully—Yes, we are.

Senator BRANDIS—All right. Thank you. That is all I have for the ombudsman.

CHAIR—Mr Wilson, recently there were some press reports about an audit that you conducted, I think, in some low-paid industries which found that 41 per cent of companies audited were underpaying their staff. I am just wondering if you could tell us a little bit more about that audit and how it was conducted. I think this goes to some of the issues you introduced in your opening statement as well.

Mr Wilson—We conduct targeted compliance campaigns nationally on a rolling basis—our states and territories undertake this activity basically on a changeable basis each month. They target things quite differently according to the information that is coming up. Between March 2006 and the end of last year we conducted a very large number of audits recovering a very large amount of money. What we are consistently finding is that there is a figure of around about 41 per cent for noncompliance. That is right across the spectrum from not only failure to keep time and wages records or things considered fairly minor breaches right through to systematic noncompliance in wages.

Some examples we have undertaken that I can refer you to include a very successful national hospitality campaign which has been conducted in conjunction with the Australian Hotels Association over 2007 and 2008. That looked at a combination of pubs, taverns, bars and clubs. It was really quite a model campaign. We did it on the basis that we would work in conjunction with the employer association and the unions about the tool, get

agreement on that, provide information around that and then roll out a tougher compliance campaign. As a different type of program that we have done, which was aimed at vulnerable workers, our national trolley collectors campaign recovered about \$38,000 for over 206 workers, who were really quite severely exploited in many respects. This was a much tougher sort of campaign with unannounced visits and so on. That has been very successful we think in changing the way that behaviour in the community is actually working. It has also led to in particular Coles and Woolworths committing to assist addressing potential failings in the industry by changing their contracting practices and undertaking their own regular audits. So we do that very regularly.

Another campaign we undertook in the first six months of last year involved the south-east Queensland security industry. We recovered more than \$156,000 for 280 workers. These are not unusual results for our targeted campaigns and they really I suppose go to very severe cases of exploitation where the employers are systematically not complying with their obligations. We use that also then within the context of our litigation campaign and thereby build up a model of compliance. Over time we think that the community is responding better to these campaigns and that the results are actually starting to come through.

CHAIR—Did you say that it was 41 per cent noncompliance across all industries not just low-paid and vulnerable industries?

Mr Wilson—It is. There needs to be a bit of caution I suppose in talking about the 41 per cent. It cannot be said that 41 per cent are not paying workers correctly but it can be said that there would be a failure to undertake all of the obligations which might be cast through the relevant award or the agreement. It is certainly a figure that we see fairly regularly.

CHAIR—Again, I know it is an average figure but of that 41 per cent noncompliance what is the underpinning instrument that that 41 per cent are relying on to determine their employment conditions? Let me be more specific: are they ongoing AWAs? Are they ITEAs? Are they collective agreements? Are they awards? Are they common-law agreements? Or are they nothing?

Mr Wilson—I think it is all of the above. In a practical sense the kind of places that we are would be likely to audit more often are people who have as their only obligation the act or the award. They probably do not have collective agreement or an AWA or ITEA within their workplace. Usually we find that where there are collective agreements or individual agreements the incidence of noncompliance is a lot lower—I suppose because the relationships between the people concerned are better. But in auditing a security firm, a hairdresser or a food services company it is more often the case that they are simply reliant on the award and they are probably not aware that the wages are what they are or that there have to be penalty payments paid at night and so on.

CHAIR—When you say that they are not aware, I would like to understand how you follow up that process of when you do identify an underpayment. Do people throw their hands up and say, 'We did not understand' or, 'We did not know,' which you might expect them to say rather than, 'We did know that and we are deliberately underpaying.' I am just wondering how you actually tracked that down to find out the underlying reasons for an underpayment or noncompliance.

Mr Wilson—We do not have any detailed reports on the subject of why the noncompliance has come about, but certainly the anecdotal information we have from our inspectors is that it is usually a lack of information and, particularly in small business, it is because the business is very focused on running the business and they may not be aware that there are awards or, periodically, variations to awards.

There is another level, which is they are aware there is an award that applies in their industry but they have not then taken the action to obtain the information about that particular instrument. So that is one of the things that we try to do with these campaign—really make sure that people understand what their obligations might be. One campaign at the end of last year which comes to mind involved large regional shopping centres in Melbourne. We visited quite a number of them and conducted information campaigns and audits of a large number of shops in these places. By doing that kind of work through one of the Westfield type shopping centres, you can very quickly get to maybe 400 or 500 employers and build up their collective knowledge. They talk with each other and swap information. When you come back and audit them again, you often find there is a much better level of compliance on that occasion.

CHAIR—I am interested in the follow-up because of the average of 41 per cent of noncompliance. Have you done any campaigns where you have followed up the same group to see whether they have taken heed of their noncompliance and are now compliant employers?

Mr Wilson—We often do that, and it is part of the design of the better campaigns.

CHAIR—And what have you found? Is it once bitten, twice shy or once bitten and bad luck?

Mr Wilson—I am not quite sure which is better but, certainly, that does occur. Unfortunately, I do not have any examples here of where we have done that, but I am aware that we have, and it is a beneficial result where you can go back and establish that people really do have the information. We often say to the very small businesses that the best thing that they can do is get information on just a single wage sheet, which is very simple, with information about the classifications. That is what they need to see and they need to make sure they have that every six months either from ourselves, the Workplace Authority or their employer association.

CHAIR—What about medium to large businesses? Do you do compliance work there as well? I mean audits campaigns.

Mr Wilson—Most certainly. We conduct campaigns in all levels of organisations. I suppose it would be predominantly within businesses which have fewer than 100 employees, but we try to extend our work across the spectrum. Unfortunately, I do not have any examples of where we have worked with large business, but we are alert to the possibility that large business might not be complying as much as the small and medium businesses.

One thing I should say about why we do targeting is that we feed into the program a lot of information about where our complaints are coming from. We receive about 26,000 complaints a year from people who claim they have been underpaid. We traditionally find that they are from people who work in small or medium business, particularly in the casualised industries, the retail and service industries, and that, of course, is not a particular surprise. We

then use that to make decisions about where we put our auditing and that means that, all things considered, we probably will not be getting a lot of complaints from people, say, in the ASX 200. But, as we develop our programs, we are of the view that we need to start looking at larger companies as well as small.

CHAIR—Thanks for that. To take you to what is just about the last area, complaints, are the people who make complaints generally people who have finished employment with that employer or have been terminated? Is that the point at which they complain; and do you track that information? I am just trying to get a break-up of when people complain.

Mr Wilson—Again, unfortunately, I do not have any data on that, but anecdotally we certainly do see a very large number of people who make the complaints when they have finished. I suppose it is in several different areas, one of which is people who have been in short-term casual employment, backpackers or seasonal workers and the like, and the other area where we do see it very often is where people have been terminated for some reason. It may not be through their own fault, but they then question why that might be the case, and what they have been paid, of course, in that process.

CHAIR—Yes. We have taken evidence during the current inquiry we are doing on the Fair Work Bill that people often are too scared to make any complaint, whether or not it is anonymous—because if it is a small business it might be fairly obvious who has complained, even as it is anonymous, and if it is found out that they have complained they will simply be sacked anyway. So they do not make a complaint until they either have absolutely had enough and leave or have been terminated for other reasons anyway. So I was just wondering whether your evidence reinforced that.

Mr Wilson—We certainly do have instances of people who are apprehensive about their employment, and they will make some very tentative inquiries of us. When that occurs we try to reassure them about how we can deal with things anonymously. There are a handful of instances where it is simply not possible to deal with matters without revealing the identity of the person—if you are the only employee, by definition you will be. But there are many occasions where we can conduct a very targeted audit of a particular workplace. It might be that you include a company within the list simply because you have that anonymous complaint.

But then we also do receive a very large number of complaints from people who are still in employment—and they are quite empowered in that process and they are prepared to come forward and make the complaint.

CHAIR—Sure. Do you receive complaints against your organisation?

Mr Wilson—We do, unfortunately. We do, from time to time, get complaints from people who believe that we have not acted in the way that we should or that we have—

CHAIR—Let us break the complaints up into two. You get complaints from people who are unsatisfied with the result you have achieved for them?

Mr Wilson—Yes.

CHAIR—And the other area: do you get complaints from employers due to the fact that you are auditing them?

Mr Wilson—Complaints because we are auditing them? I suppose some people do query why they are on the list, and I think we tend to very politely say, ‘Well, you are on the list, and you are on the list,’ and we explain how we have come to choose their particular part of the state or their particular industry, and most people are quite satisfied at that point. There have been one or two instances where people felt there was some sort of personal selection. We have obviously taken that very seriously and checked why that company was involved and then gone back and explained that to the person concerned. We have also, of course, received complaints about our processes and failures, about decision making and so on, and we deal with those in accordance with internal policy and we have a review group that checks on how the workplace inspector might have undertaken a particular job. And of course we receive Commonwealth Ombudsman complaints as well.

CHAIR—Thank you. Are there further questions for the Workplace Ombudsman? Senator Fisher.

Senator FISHER—Thank you, Chair. Mr Wilson, have you detected any increase in the number of approaches or the level of complaints lodged with your office in recent months from employees who have been terminated, as opposed to those who might be complaining about a breach of an industrial instrument or laws along the way?

Mr Wilson—Senator, I was just checking what data I might have on that subject. I need to answer that in two ways. The month-on-month data for January 2009 compared with January 2008 is not appreciably different, in that the total number of complaints is sort of consistent with where you would expect it to be. It is the same with some of the preceding months as well. However, when I speak to our managers about what is occurring, they are saying to us that there are probably more inquiries from people who have been terminated than they would have expected to see. Certainly, they see more claims from people who have finished their job and are now querying what they have been paid.

Senator FISHER—When you say, ‘would have expected to see’, within what frame of reference are they putting that expectation?

Mr Wilson—Our frame of reference is actually very short. As you know, we have been in existence as a separate agency for three years. Over that time we have grown very radically both in terms of staff numbers and workload. So the frame of reference is really just that. But people are saying that the number of questions about termination has changed from what it was a year ago, for instance. As I said, that is anecdotal information; we do not have anything beyond that at the moment. When we look at the head number of complaints month on month, it is not at this stage appreciably higher or appreciably lower.

Senator FISHER—I presume you will be tracking complaints from those who were terminated in relation to termination of employment as supposed to complaints from those who have ongoing employment?

Mr Wilson—We do not particularly record that information. That is part of the problem, in that the issue we deal with is whether or not someone has been given the benefits that they are entitled to. It may be that the file records, for example, that ‘Nick was terminated from the company last month’, but that in itself is not an issue of particular note for us—unless, of course, there is a redundancy entitlement that fits into that employee as well.

Senator FISHER—The reason for my interest is just that, as a senator for South Australia, I have detected an increased number—in fact an increase from almost nil to a weekly trickle—of employees coming into my office querying: ‘I have lost my job. What can I do? Where can I go for help and advice?’. I would have thought that, if I am experiencing that in my electorate, it will be being experienced by many.

Mr Wilson—If I can just correct an answer I gave: we are actually tracking the number of calls that we are receiving about termination matters. They are telephone calls. We have a client services centre which is located in South Australia. I apologise; I have got a cold so I am not speaking very loud.

Senator FISHER—Your eloquent tones are difficult to hear.

Mr Wilson—We have a client services centre in South Australia which takes telephone calls of a general nature and we are starting to track through the number of termination inquiries that we are getting. That is part of the anecdotal information that we are starting to gather about terminations, I suppose. The information we have at the moment seems to suggest that, for whatever reason, the type of work we are getting has changed but the volume has not necessarily changed.

Senator FISHER—Let me take you back. So the nature of work has changed; the volume has not necessarily changed. You were talking about the expectations of your team and your managers. What are you doing to reassess your expectations in light of the rapidly changing economic environment and, for example, the announcement overnight by Pacific Brands?

Mr Wilson—This is not a particularly quality answer but it is the only one I can give: we are monitoring. We are tracking what is coming through in the way of information but so far there is nothing which would cause us to particularly change our processes. The volume does not require that, nor do the kinds of matters that we are dealing with. Regarding business failure, I suppose there is the capacity to see more instances where redundancy pay is simply not available at all within the assets of the company. Of course, there is then a requirement for us to work much more closely with the people in GEERS, which is administered by the department, and we do that. We have been doing that ever since we started and will continue to do so. We are also alert to the possibility that in an instance where there is looming business failure there is the potential, with some of our clients at least, for us to be dragged along while money is shifted around. We are obviously just monitoring the possibility of that. We have not seen any instances yet which would alarm us about that, but obviously we would be very careful to make sure that, if that occurred, we would get a good result very quickly.

Senator JACINTA COLLINS—Can I ask a question on the point that Mr Wilson just made?

CHAIR—Yes, you can.

Senator JACINTA COLLINS—On the comment you made about people who will not have access to redundancy now, do you have a sense of how the current situation compares to the past in terms of the changes that happened under Work Choices and the larger number of people from the workforce who will no longer have access to redundancy payments?

Mr Wilson—You are referring to the small-business exemption—No, I do not.

Senator JACINTA COLLINS—So you cannot quantify that. You sense that but you cannot quantify it.

Mr Wilson—I do not think I was even saying that I sense that. It was more to do with the fact that people will come to us and say, ‘I have been underpaid’ or ‘I have just lost my job’ and ‘I am owed some benefits and I have not been paid them.’

Senator JACINTA COLLINS—So you are talking more about the default type circumstances.

Mr Wilson—The default circumstances, yes.

Senator JACINTA COLLINS—Okay. Thank you, Senator Fisher.

Senator FISHER—Mr Wilson, your agency exists to protect the rights of workers, essentially. At the end of the day, unfortunately—particularly in the current economic environment—if a worker loses their job there may be no work for your agency to do in the sense that there may not be any breach of industrial instruments or laws in that process. It is simply a tragic and unfortunate event. That said, you will not know that unless and until you have investigated an approach made to you by your agency, be it over the telephone or by way of a written complaint. What planning is your agency able to do in the face of what is likely to be an increase in complaints—if not necessarily in the volume at this stage then certainly an increase in the nature? What proactive planning is your agency able to do? That is my first question. Secondly, have you had any discussions with the minister’s office about dealing with this change?

Mr Wilson—In relation to the last part of your question, there is no conversation that we have had with the minister’s office on that particular topic that I am aware of. That is not to say that we are not thinking about the matter, and that is in relation to the first part of your question.

Senator FISHER—But if the minister’s office has not asked you about it then it would appear that, maybe as far as you can see, they are not thinking about the issue, which is a bit surprising.

Mr Wilson—I would not say that. That is not for me to answer, obviously. In relation to the first part of your question about what planning we are doing, last Thursday or Friday our senior executive people had a presentation from Access Economics on the subject of the economy. That is really the first stage of the journey that we need to go through to actually understand the potential implications in the workplace relations space. At the same time as that is going on we are monitoring the work—and we need to start doing it more closely, I admit. But, in terms of planning, that is about it at this stage. We are going through a number of workplace rights education programs and during April we will be informing the community about their rights and obligations on termination. It is a specific program that we have blocked out, and we would be hoping to have some fairly broadbrush comments made to employers and employees about what rights and entitlements might be.

Senator FISHER—Of course that may of itself generate increase the number of approaches to your agency from distressed workers. Whilst you are saying at this stage there is no detectable increase in the volume of complaints, you are saying clearly the nature of the

complaints are changing. What capacity do you have within your budget to deal with what may well become an increased volume of approaches and indeed complaints to your agency, which requires attention in order to help Australian workers?

Mr Wilson—Our budget has us fairly well resourced. We have 400 staff and about 300 inspectors.

Senator FISHER—Did you budget on the GFC?

Mr Wilson—I think the budget was set before that.

Senator FISHER—I think so, and the kitty is pretty empty.

Mr Wilson—All I can do is talk about the budget allocated to our agency. We have the capacity to shift staff according to need. Obviously, if the workload doubles or trebles then there may well be difficulties, but we are not seeing that at this stage. If the workload increases at the margin then certainly we have the capacity to deal with that. Even if it increases substantially, I think we do.

CHAIR—Are there any further questions for the Workplace Ombudsman? Thank you, Mr Wilson and Mr Scully. The next agency is the Workplace Authority.

[9.47 am]

Workplace Authority

CHAIR—Do you have any opening remarks you would like to make to the committee?

Ms B Bennett—No, Senator.

Senator FISHER—Ms Bennett, the work of your agency, as I understand it, will be subsumed by bits and pieces of Fair Work Australia, assuming that the legislation is passed by parliament. Is that right?

Ms B Bennett—Yes, Senator.

Senator FISHER—If the Fair Work legislation is passed, when will your agency cease to operate?

Ms B Bennett—If legislation is passed, two new entities, Fair Work Australia and the Fair Work Australia Ombudsman, commence duty on 1 July. It is not clear yet, until the transition and consequential bill is introduced, for how long the Workplace Authority will remain to complete outstanding work that we would have on hand at that time.

Senator FISHER—Okay. I will go to that in a minute. What do you think will happen with the existing Workplace Authority workforce?

Ms B Bennett—That is not clear, as Mr Wilson just explained. The minister appointed an executive director to run a task force to work on those transitional issues. That work has not been completed yet.

Senator FISHER—When do you think it will be completed in so far as it applies to the employees in your agency?

Ms B Bennett—As a personal view, I think that this will take some time, as is normal practice with machinery of government. There will be some information that will come up in

the first instance and earlier and then others will take a bit of time to work out afterwards. So I think it will be a progression over the next few months once the passage of the legislation is completed and it is clear what agencies are doing, who is going where, what jobs are available, what changes need to be made and how we deal with the work that remains. I think there are still some time to take. That is a personal view.

Senator FISHER—I understand it is your personal view that it will take some time, but we have not really got some time if the government is intent on implementing by July 2009. That is only a few months away.

Ms B Bennett—The question you asked was what was happening to my workforce.

Senator FISHER—At this stage, that is what I am asking about.

Ms B Bennett—I think that the department certainly will be able to provide a much greater answer, but those staff that are set out in legislation to be passed as a direct transfer will go immediately and be ready on 1 July. It is the remaining functions that the Workplace Authority will have to complete that will take some time to work out.

Senator FISHER—You talked earlier about the transitional arrangements. Have you met with the minister or had discussions with the minister's office about transitional arrangements?

Ms B Bennett—No, I have not.

Senator FISHER—Have you asked to?

Ms B Bennett—No.

Senator FISHER—What plans do you have in process to deal with any transitional issues that might arise? First, let me ask an earlier question. What sort of transitional issues might arise? Ms Bennett, you will know. You will be a wealth of knowledge in this respect. What sort of transitional issues might arise before 1 July, which is looming pretty jolly quickly?

Ms B Bennett—Just to recap, as Mr Wilson said—

Senator FISHER—But you look after agreements, Ms Bennett, and it is a bit different from looking after complaints from employees, so I want to hear from you in respect of your organisation's work.

Ms B Bennett—I will add a little bit more to our organisation's work. We also have the info line, which answers well over a million calls a year on a whole array of issues. We provide information and advice as well as process agreements, if you want to split it in such a simplistic fashion. From the information that has been made publicly available, that provision of information and advice will move to the Workforce Ombudsman. That was in the minister's statement and is in the legislation, if it is passed. We are working with the executive director that has been appointed to ensure that the staff in the contact centre will be ready from 1 July to answer questions about the new system and be trained and skilled when the legislation is finally passed on issues that they need to be alert to. The staff that do that work are being prepared for the passage of the legislation and the establishment of the Fair Work Australia agencies.

Senator FISHER—You referred to discussions with the executive director. Are you talking about the Executive Director of Fair Work Australia, Ms Van Rooden?

Ms B Bennett—The Executive Director of the Fair Work Australia Transition Task Force, Marion van Rooden.

Senator FISHER—As far as I recall, she was appointed for 12 months.

Ms B Bennett—You will have to ask the department. I think they are on later.

Senator FISHER—That may well be, but you may well be having discussions with someone whose term does not go much beyond July 2009 herself, if indeed it does. Tell me more about the plans, which have not really been made yet, to prepare for this transition. Finish the second bit of your answer.

Senator Ludwig—I do not think that is the evidence of the witness, quite frankly, and you should not put evidence in the witness's mouth. In this instance, what you have heard to date is that there are transitional arrangements which hinge on the legislation passing. I encourage you to support that. We also heard from the Workplace Ombudsman and there is a task force in place. You have heard that and you can ask the department that. I think you are then going through some of the issues, but to date I do not think any have been identified, but we will continue in this vein.

Senator FISHER—Thank you. Ms Bennett, I interrupted the second part of your answer.

Ms B Bennett—The Public Service has a lot of experience in reacting to the changes in machinery of government as things get regularly moved around. There are some really good guides and principles that have been provided by the Public Service Commission on how to put these things in place. The government appointed Ms van Rooden to coordinate that across the agencies. I have to disagree with the view that this has not been well prepared and that an array of issues are being canvassed from my agency's perspective. Depending on the final form of the legislation and the final form of the transition and consequential bill, we will then be able to pull together those last elements in the time frame.

Senator FISHER—At this stage, what plans are you able to make for the transition in dealing with agreements—dealing with the actual work of your agency, leaving aside your staff. You have explained telephone inquiries, but what arrangements are you able to put in place at this stage to deal with transferring the work that you have on the day of, to the new for the day after?

Ms B Bennett—To answer that, there are a few components to it. I have explained to you what we are doing with the staff who are working on our information line and the people who support that. That is well progressed, both internally and through the task force, with Ms Rooden's mechanism and assistance with the department. In terms of the staff who work on agreements, the legislation before the parliament continues—as was in line with the government selection commitment—that the lodgement of individual agreements continues up to 31 December this year. So the workplace authority will continue to receive agreements that will need to be processed until the end of this year, and that may take a week or a few weeks on the close-off date for those to be finalised.

Senator FISHER—Are you envisaging at this stage that the staff of your agency will remain in place to deal with those agreements for a week or a few weeks if and after the legislation becomes operative?

Ms B Bennett—I am expecting that there will be a workforce that will still need to continue and complete that legacy work, but as I said, until we see the transitional and consequential bill, it will not be exactly clear how long that will be and how that will work.

Senator FISHER—So you are expecting that there will be a need to retain some staff to deal with what you call some ‘legacy work’ after the commencement of the fair work legislation, but you do not know whether that will indeed be the case and you do not know whether you will be supported in that approach by the government, do you? You do not know.

Ms B Bennett—It is clear from the legislation that individual agreements will continue to be lodged with the Workplace Authority until 31 December 2009, so for the rest of this year the ITEAs will be able to be lodged, accepted and assessed against the NDT. Then, depending on the form of the legislation, we will work out how long the Workplace Authority and a workforce will need to do it. Of course, the number of ITEAs being lodged is continuously and significantly reducing, so there may be a very small amount of work that needs to be done towards the latter part of this year.

Senator FISHER—There may well be, but you do not know that either at this stage. So you are quite right. The message is going out to the public that the Workplace Authority for all intents and purposes continues in operation until the end of this year, yet you have no certainty that that will be so in effect, do you?

Senator Ludwig—I think the legislation provides the certainty. Should the legislation pass, then you will have certainty, and I would encourage you to support it in that instance. But what you have also heard is that there is versatility around this in the bureaucracy. They can cope with the changes that are put in place, as they have in the past when other legislation has changed. Most bills come with both legislation and consequential and transitional arrangements. It will depend, of course, on the amount of work that is required to be dealt with. If there is, as you have indicated, a significant amount of work that needs to be done then it will be dealt with. But, as you have also indicated in your questioning, it seems that word has got out that ITEAs are dropping off. If they drop off significantly then the work will not be there, and these are matters that will be assessed closer to the time, particularly around the transitional and consequential amendments. It makes sense.

Senator FISHER—The time is getting pretty close, Minister.

Senator Ludwig—You would not put in place significant resources today to deal with what may be a small amount of work. Similarly, you would not prepare today for what could be a tail that may disappear, but you would, as the bureaucracy can do, certainly deal with the work and cope with the work that is required to be dealt with. The difficulty is that we are dealing with hypothetical questions, because we are not there yet. Most of your questions are based on the assumption that the legislation will pass—I think that is a good assumption to make and it is particularly encouraging to hear it from you, Senator, and we look forward to your support with that—

Senator FISHER—My questions have been couched in the terms of ‘if’, Minister. It is a technical possibility.

CHAIR—One at a time, Senator Fisher.

Senator Ludwig—but you are also asking the public servant to guess what the nature of the work might be. They can make plans and they can put those in place, but the plans are also contingent upon the consequential and transitional legislation. You have heard the evidence that, when that is provided, there will be greater certainty about that. That is the evidence to date, so I think it is unfair to make the sweeping comments that you have made that there are no plans. There are plans.

Senator FISHER—Minister, public servants are able to plan, but I am hearing that they are not able to plan because there have been no discussions about transitional provisions at this stage for legislation that is coming into effect in some five months time, assuming—

Senator Ludwig—That is not the evidence I have heard. I have heard that there has been work done.

Senator FISHER—Ms Bennett, have there been discussions between your agency and the department about transitional legislation?

Ms Bennett—Yes. The department would be able to explain to you the process for COIL, which is actually today as well—

Senator FISHER—So you are all busy!

Ms Bennett—So in terms of whether we have been consulted, today some of my staff will see through that consultative process what that bill looks like. So, yes, we have had a conversation to say, ‘Do you want to come and have a look at what the legislation looks like?’ and today some people are going to do that.

Senator FISHER—So your understanding is that there is a draft transitional bill?

Ms Bennett—I do not know what form that discussion will take. I have not seen it and have not been advised what it is about, but there is a consultation process occurring and we have been included in that.

Senator FISHER—What have you been told about the consultations today?

Ms Bennett—Today they will talk about some of the issues that might relate around that bill. You will have to ask the department where that is—

Senator FISHER—Is it around that transitional bill or around that Fair Work bill that parliament currently has before it?

Ms Bennett—My understanding is that it is the transitional and consequential—

Senator FISHER—Is your agency a member of COIL?

Ms Bennett—We have been invited to participate in parts of it.

Senator FISHER—Is that this afternoon?

Ms Bennett—Yes, it is—a bit of it.

Senator FISHER—I now want to ask you a bit more about the approval of agreements. Anecdotal evidence is suggesting that there has been some increase in delays experienced with the approval of agreements lodged with you. Indeed, I have constituents in South Australia who have expressed to me concerns along those lines, which I will go to when I asked some more questions. We can speculate about the number of ITEAs being lodged but it can equally be suspected that the delay is an attempt to discourage employers from taking up agreements and in particular individual agreements. So I want to test against the background of that proposition how many workplace agreements were lodged for approval with the Workplace Authority. Let us look from July 2008 until the end of December 2008. I think that is a time frame that suits your figures.

Ms Bennett—At the last hearings Senator Marshall asked me to provide copies and to regularly bring them with me concerning two issues: processing information and then broader statistics. We released in January workplace agreement statistics under the no disadvantage test from 28 March 2008 to 31 December 2008. That information was about lodgment, the nature or type of the agreement, and the employee coverage and the sectors that they are in. I can provide copies of that. It is also available to members and senators on our website.

Senator FISHER—How does that data compare with the results for 2007 for the same period?

Ms Bennett—To do a month-by-month comparison prior to the introduction of the no disadvantage test and looking at the previous fairness test arrangements, I would have to take on notice and provide that to you. But in the 11 months that the fairness test was in operation the Workplace Authority received 337,101 agreements. In the almost 11 months since the introduction of the no disadvantage test we have received 110,545.

Senator FISHER—What observation would you make as a result of that?

Ms Bennett—The lodgment of collective agreements—union and non-union and Greenfield—has remained steady. There has in fact been a slight increase over that 12-month period. The reduction of individual arrangements is a third less in its broadest terms.

Senator FISHER—The reduction of individual agreements is one-third less—are you saying the pace of reduction has slowed?

Ms B Bennett—No, I am saying that—

Senator FISHER—Can you restate that, then?

Ms B Bennett—there were almost 320,000 AWAs that were lodged during the fairness test, compared to 102,000 ITEAs—those being the individual agreements—for almost the same period.

Senator FISHER—And, of that, you are making what observation?

Ms B Bennett—That employers and employees are not using individual arrangements to the same level that they were using them previously.

Senator FISHER—That is the observation I would make.

Ms B Bennett—The other part of the information that Senator Marshall asked me to provide was the processing stats to a nearest date. I have here two handouts, one relating to

the fairness test, which was completed. We completed all actions that we could take in relation to the fairness test by about 19 December last year. A very small number of fairness test AWAs and other agreements are back with employers, requesting additional information. I also have the processing information on the no disadvantage test up to 20 February, setting out information about how many have been finalised, what passed or did not pass and what was invalid and would have been referred on. I will provide those, as well.

CHAIR—Are there other things you intend to hand out?

Ms B Bennett—No; that is it.

CHAIR—Okay. I just thought we may as well get them all on the table now; that will help with our questions.

Senator FISHER—Of the agreements lodged from, say, July 2008 to December 2008, how many agreements were lodged for assessment online versus those that your agency received in the mail?

Ms B Bennett—I would have to take that on notice.

Senator FISHER—Thank you. How many agreements—collective, individual—were assessed in total during that period?

CHAIR—This is the assessment as opposed to the lodgement?

Senator FISHER—Yes.

Ms B Bennett—The information I have available, which is on the handout I have circulated to you, is set out from the introduction of the fairness test, which was the general approach that you took at the last estimates. As at 20 February 2009, 110,545 agreements were lodged with us.

CHAIR—I do not see where that is. Is this on the second document?

Ms B Bennett—It is on page 2 of the handout. As at 20 February, 78,080 of those were finalised.

Senator FISHER—You do not have that information for the period from 1 July 2008 to 31 December 2008?

Ms B Bennett—I could take that on notice.

Senator FISHER—I am happy for you to take on notice the questions about how many of those your agency received in the mail versus electronically and how many were assessed in total during that period. Are you able to give any information today about, for example, how many of those would have been assessed within, say, 14 days after lodgement?

Ms B Bennett—I can take that on notice.

Senator FISHER—Would any have been assessed within 14 days after lodgement?

Ms B Bennett—Yes, but our KPI both in the portfolio budget statements and in our annual report is 20 working days. I do not know if we collect that information that goes to a 14-day assessment process, when we have a mechanism to count our performance against 20 days. I will take it notice.

Senator FISHER—Okay. I will place on notice a series of questions about the time it has taken your agency in that time period to assess those agreements. Would it have taken your agency longer than 12 months to have assessed any of those agreements?

Ms B Bennett—Some of the agreements from the fairness test that were lodged, particularly in that May-June-July-August-September period, took a very long time. I hope that none took 12 months, but we have always acknowledged that there was such a lack of understanding on the change—and these agreements were caught in the middle of the change for the fairness test because it was retrospective—that we had to go back to employers many, many times to obtain the information. There are certainly no ITEAs or agreements under the no disadvantage test in that sort of period, because there was a much longer lead time in the introduction and people had a much clearer understanding of what was expected from them.

Senator FISHER—When you notify an employer that their agreement has not been approved do you stipulate a time period in which they must get back to you with further information if they so wish? You do, don't you?

Ms B Bennett—Yes.

Senator FISHER—And how long is that—14 days?

Ms B Bennett—It depends what type of agreement it is and which test it is under, and it is prescribed in the legislation. But I could set that out for you very easily under a question on notice.

Senator FISHER—For an ITEA, for example, it is 14 days?

Ms B Bennett—It is 14 days. I will just go back for a moment before Ms Bull starts. Under the no disadvantage test there is a small class that are in operation, what you call the 'pass and fail assessment', which have to come back and have changes made to them if they are in operation. They are ITEAs for new workers and their greenfields agreements. They are the only type of agreements that are actually operating at the time that they are lodged. With other agreements, if we tell employers that they have not met the requirements of the no disadvantage test they may choose not to lodge them, because they are not in operation. They may, in the case of a collective agreement, take many weeks or months because employers will go back to their employees and renegotiate a new arrangement. If it is an ITEA that has not passed, they may choose not to do that and may take up an option of either using a collective agreement or doing a new agreement. So the issue about when they have to come back to us and provide additional information is only prescribed in certain circumstances.

Ms Bull—Under the fairness test, for all agreements that did not pass they had 14 days in which to come back and make a variation. Under the no disadvantage test, as Barbara has indicated, operational agreements, which were all ITEAs for new employees and greenfields agreements, need to be returned for variation within 37 days of the decision that the agreement does not pass. For non-operational agreements—that is, ITEAs for existing employees and union and employee collective agreements—there is no time limit. So because they are not operational they just continue to not be operational. They would need to make a variation agreement at some point.

Senator FISHER—In respect of agreements that are operational at the time when you are assessing them, we are talking about those that might pass the fairness test, aren't we?

Ms Bull—We are talking about the fairness test and certain agreements under the NDT—ITEAs for new employees and greenfields agreements that are operational under the NDT as well.

Senator FISHER—So are they essentially old agreements?

Ms Bull—No.

Ms B Bennett—There are no fairness test agreements requiring processing at the moment. There is a very small number—

Senator FISHER—Does that mean your agency has dealt with all of those?

Ms B Bennett—We have completed the fairness test agreements—other than a very small number where we are going back and forwards with employers on the information that they provided. I think we are talking about 2,000 or 3,000.

Ms Bull—Decisions have been made, but they may be under review for certain reasons. A 'pass' or 'does not pass' decision has been made, but for particular reasons they are going through the review process.

Senator FISHER—So 2,000 or 3,000 agreements, you said, Ms Bennett? So that is affecting the employment of 2,000 or 3,000 Australians, isn't it? Are you talking about 2,000 or 3,000 agreements?

Ms B Bennett—Yes. They have been told that it does not pass. They receive the same letter as their employer. The employer has disagreed with our assessment. The employer is providing more information, which they are required under the legislation to also provide to the employee; and, in the end, if there is some information that we did not have that makes us reconsider the information or the assessment, both parties will be informed. They are kept in the loop. If the decision is that it does not pass, they will also advise the employee that they are entitled to back pay and where to go to obtain that back pay. So they are kept in the information cycle constantly under that legislation.

Senator FISHER—But until that time both parties are in limbo, are they not, because they do not know whether the agreement is going to pass or, for example, in some cases, whether another industrial instrument, in combination with legislation, will apply. They do not know, do they?

Ms Bull—Under the fairness test, an agreement continues in operation until it ceases to operate, and it only ceases to operate after all those processes are finalised. So they are operating under that agreement that was lodged. If the agreement subsequently ceases to operate then yes, they revert to the industrial instrument that would have applied.

Senator FISHER—But there is a possible back pay situation, isn't there? So therefore the period that it has taken to finalise the assessment process can mean a lot to both employer and employee.

Ms B Bennett—That is certainly correct under the fairness test. That is a less likely situation under the no-disadvantage test, because, as we explained, many agreements are not

in operation. I have been on the public record and said that it has been regretful that it took us so long to process the fairness test. But they are completed now, except for that small number—and it is a small number when you look in proportion to 337,101, that there are 2,000 or 3,000 which we are in discussion with the employer.

Senator FISHER—When you require an employer to provide information to you within a certain time frame, what obligation do you say you have to deal with that information within a certain time frame—or not—and get back to the employer in respect of that information that they have provided you with within your stipulated time frame of, say, 14 days?

Ms B Bennett—Our portfolio budget statement and our performance criteria say that if all the information is provided and assessment able to be made, we set a benchmark for ourselves for 20 working days.

Senator FISHER—There are a fair number of ‘ifs’ in that. Is there anything in legislation that says within which time or regulation you must get back to employers?

Ms B Bennett—No, there is not. The other issue is that if we do not have the information about the hours someone works or the hours that they are paid we cannot make an assessment. When I said ‘on the fullness of the information’, it would be like lodging your tax return without saying what your income was or how many dependants you have. You cannot actually make an assessment unless you have that base information. So the clock that ticks has to be based on us having the complete information. That is a fair measure of performance for any organisation: if you have what you are required to have under the legislation to make an assessment.

Senator FISHER—Presumably in that scenario you are suggesting, where you do not have all the information you have asked for, presumably your agency will be going back to the employer and saying exactly that. So there would at least be progress and contact with the employer, would there not?

Ms B Bennett—Yes, at the lodgement of the agreement they receive a notice that the agreement has been launched. They can contact us. If we need more information from them we contact them. We call the employers when we fail an agreement in all cases.

Ms Bull—Yes, in all cases.

CHAIR—We are still talking about the fairness test here, aren’t we?

Senator FISHER—Yes we are, in large part.

Ms B Bennett—Are you talking about the fairness test? Are you talking about what we did in the past? I thought you were talking about the no-disadvantage test and what we are doing now.

CHAIR—Senator Fisher has been asking you about the fairness test and the cases that are still unresolved.

Ms Bull—Regarding the ones that are still unresolved, the 2,000 to 3,000, they know. You would look at our files and for those ones there is substantial correspondence going backwards and forwards on a variety of issues, be it on the award reference instrument and how we interpreted it or those sorts of issues. That is what we are dealing with. For example,

there is currently a Federal Court case pending; there are a few hundred agreements in that case. Like any other administrative process that happens in any other agency, where that happens, it could take many months to sort out because there are issues going backwards and forwards. But those people know what is going on.

Senator FISHER—Thank you, Ms Bull. Ms Bennett, can you continue what you were addressing with respect to the no-disadvantage test, please?

Ms B Bennett—The questions that you were asking me were leading to processing, delays and perceived delays about the no-disadvantage test. I was summarising by explaining that, if all and complete information is available, we have a KPI of 80 per cent of agreements to be completed within 20 days. We have several mechanisms in place to keep employers and employees informed on the progress of assessment. There will be incidents where that takes a bit longer, depending on the nature and the complexity of the agreement and the quality of information that is provided to us.

Senator FISHER—Thank you. Ms Bennett, regarding complaints that your authority might have received about the handling of the assessment process, how many complaints did the workplace authority receive about agreement lodgement and approval times during 2008?

Ms B Bennett—I would have to take that on notice, but my recollection is that, in comparison to the number of agreements that were lodged, the complaint ratio is less than one per cent on matters of both decisions have been made and timing. But I will take that on notice and confirm that.

Senator FISHER—I will supplement that question on notice. Can you also provide the corresponding figure for 2007 on notice?

Ms B Bennett—Yes, Senator.

Senator FISHER—Fine. Who are the complaints referred to when you receive them?

Ms B Bennett—That depends on the nature of the complaint.

Senator FISHER—What steps do you take to respond to them?

Ms B Bennett—Some complaints could come through the workplace info line, wanting to know what is happening or not understanding some advice that they have received; some come in the form of a reconsideration, which is a more formal dispute; some come in ministerials; some come in letters to me; some come in emails or faxes. They came to us in a number of ways and on a number of issues, and those can be, as I said, about a decision that has been made or about understanding the terms of a decision or changes that need to be made.

Senator FISHER—You essentially have no external umpire, do you, with respect to those complaints?

Ms B Bennett—We have established what I believe are very good administrative review arrangements and that could involve re-looking at something. If someone said, 'I don't think that's right,' and they have got a concern, we have a separate and different team looking at those reconsideration issues. We have a quality assurance program in place that revisits decisions that have been made to see that they have been made in accordance with the

legislation and we look at the quality of that decision. So we have what I would call good public service practices to monitor what we are doing, both in being able to respond to complaints but also in being proactive at looking at continuous improvement.

Senator FISHER—Thank you, Ms Bennett and Ms Bull. Chair, I will place the rest of my questions of the authority on notice.

CHAIR—I take you to page 2 of the second handout document you gave us—point 2 on the no-disadvantage test statistics as at 20 February 2009. Out of the 78,000—

Ms B Bennett—assist agreements completed. Yes.

CHAIR—There are 14,500 invalid agreements. I am not clear on this. Are these simply technical matters? What happens to those? Your definition is that an agreement was lodged but not signed; was lodged prior to a date; was lodged with an incorrect employer declaration; or was a purported AWA. Can you break those down?

Ms B Bennett—I do not think we are able to break them down. I am pretty certain that we are not. They are invalid because they did not meet an array of legislative requirements. They have been returned to the employer, advised that it is an invalid lodgement and advised of what they need to do.

CHAIR—What is that? Simply sign it?

Ms B Bennett—Relodge it and send it. The proportion of those was high. I think in the first two months it was about 13,000 and has hardly grown in the last six or seven months as people have understood their requirements. So it has almost completely dropped off.

CHAIR—Alright. With the agreements that actually fail, do we know why they fail?

Ms B Bennett—Essentially, they fail because we are not satisfied that the agreements are not going to disadvantage the employee and that is usually for a range of reasons. There are the monetary benefits they provide, for example. Many agreements may provide what we would term rolled up rates, so the person just gets paid one hourly rate and that is supposed to cover work on Saturdays, Sundays, evenings and overtime. But when we do the calculations and compare it with what the requirements are under the award and the minimum pay scale, the monetary compensation provided in the agreement may not be enough to cover that off based on the employer's working pattern.

CHAIR—I know we are able to get some information from the old Office of the Employment Advocate—I think it might have been called—which gave us some scope on how much they failed by. According to some of the information we got, some agreements were failing by an amount of \$200 a week or in excess of that. I am just wondering whether you have any assessment on how much these agreements failed by. These agreements being measured against the no disadvantage test are often very marginal. They are the worst and the lowest wages and conditions that can be paid for by law, and I am interested, when we are talking about agreements that fail, in how much they fail by.

Ms B Bennett—We provided the information under the fairness test. We did the analysis. The difference was that the fairness test applied to seven of what were then referred to as protected award conditions and so it was about overtime and penalty rates and certain allowances like meal allowances.

CHAIR—They were called protected award conditions. They were not protected. But go on.

Ms B Bennett—But they had a very clear monetary value. You could say that a meal allowance was worth this and overtime was one-and-a-half times. The no disadvantage test is a much broader and global test. It looks at things like redundancy arrangements and contingency benefits. Because the scope of those is not seven, there could be 20, 30 and, in some awards, 50 conditions. We have not been able to collect that yet. We do not have the capacity to collect that information, so we can tell you the types of things that have been removed and changed.

CHAIR—All right. If you could do that.

Ms B Bennett—It is just a general experience perspective but we cannot give you the dollar amount that we have in the past, so we will take it on notice.

CHAIR—If you can take that on notice. The ones that you indicated earlier had failed because of the money, if you are able to break that down and tell me how much they failed by as a consequence of that, it would be useful, too.

Senator HUTCHINS—Ms Bennett, with the ones that have become invalid or do not pass do you categorise them into industries like you did in that document you handed out to us about accommodation and food services. Do you have that level of information?

Ms B Bennett—There are two reports that you are referring to. This is a six-monthly statistic by industry on agreement making on the nature of agreements. It is not an industry analysis of pass and fail of agreements.

Senator HUTCHINS—Do you have that at all?

Ms B Bennett—I would have to look at that and take it on notice.

Senator HUTCHINS—If you could, that would be great.

CHAIR—As there are no further questions, we will take a break for 15 minutes and reconvene with the ABCC.

Proceedings suspended from 10.35 am to 10.50 am

Australian Building and Construction Commission

CHAIR—We will reconvene with questions to the ABCC.

Senator CASH—I would like to start on the topic of the Wilcox inquiry and I have a series of questions in relation to that. The first relates to the discussion paper. In his October discussion paper Murray Wilcox questions whether or not the building code and the guidelines should be retained. Can I ask for your opinion on that, and in particular whether or not you believe they should be retained?

CHAIR—I am not sure that is an appropriate question—

Senator Ludwig—I am quite happy for questions to be asked, but in your opening remarks, chair, you do mention that opinions and so forth should really be directed to the executive.

CHAIR—Yes. You can ask the minister that question but it is not an appropriate question for Mr Lloyd.

Senator CASH—That is fine. How about I turn then to the benefits of the code and the guidelines and whether or not you believe that they have delivered any benefits economically and culturally to the construction industry.

Senator Ludwig—It is still really asking, Chair, for an opinion to be formed by the honourable John Lloyd in this instance where he is then asked to express a view. I think we could get to the same point in a rephrased, more factually based question.

Senator CASH—That is fine. I will just confer very briefly with my colleague Senator Fisher, if that is all right. Senator Fisher will actually take over the questioning from here.

Senator FISHER—If I retrace, my apologies. I am sure the chair will keep me in order. Mr Lloyd and others, what benefits do you think that the setting up of the ABCC and your enforcement of the legislation has delivered to industry and the community generally? Let me rephrase the question. Has the ABCC seen any expert analysis of whether or not the setting up of your organisation and the work that you do has delivered benefits to the industry and the community generally?

Mr Lloyd—I commissioned a study and a report by the firm Econtech, who reported in 2007. In 2008 they updated the report to show where there had been considerable improvements in industry productivity and generally that a more efficient and productive construction industry had quite significant gains for the rest of the Australian economy. Also, at times I have indicated that statistics show a marked decline in the level of industrial disputation in recent years in the industry.

Senator FISHER—What about cost to consumers, Mr Lloyd?

Mr Lloyd—The Econtech study did indicate that there were gains made and a reduction in cost to consumers. I do not have those figures directly at my disposal, but the examination they conducted of the impact of improvements on the productivity of the building industry indicated that there were gains in inflation being reduced and economic activity being increased in some other sectors.

Senator FISHER—What about the impact on strikes and disputation generally?

Mr Lloyd—As I mentioned in my answer to your initial question, there has been a marked decline in industrial disputation. The measures that the ABS releases on this all show the graph has dropped quite considerably and on what I think is the most effective trend measurement, which is industrial days lost per thousand employees, there has been quite a stark change. Where the building industry was normally well above the national all-up figure, it has in the last few quarters fallen below that figure. The days recorded are the lowest that have ever been recorded since the stats have been kept.

Senator FISHER—That would seem to be reasonably compelling in terms of a good news story. What is the evidence, then, about what could occur in the industry in terms of disputes and productivity if the ABCC were to be abolished? What is the evidence, Mr Lloyd?

CHAIR—That is clearly a question that you cannot ask.

Senator FISHER—Can we hear from the witness?

CHAIR—No. I have said you cannot ask the question. You cannot ask the witness to give an opinion on something that may or may not happen.

Senator FISHER—I am asking him what the evidence is.

CHAIR—There is no evidence.

Senator FISHER—Can we hear his argument? You may then decide to overrule.

Senator HUTCHINS—You present the evidence and ask Mr Lloyd to comment on it.

Senator FISHER—Can we see whether he offers an opinion or cites some evidence?

CHAIR—No.

Senator FISHER—If he offers an opinion—

CHAIR—He cannot offer an opinion on speculation.

Senator FISHER—then you can rule that out of order.

CHAIR—And I have. I told you you could not ask the question.

Senator FISHER—But you are presupposing what his answer will be.

CHAIR—No. I am ruling your question out of order. You cannot ask the officer to speculate on something like that, so move on.

Senator FISHER—I have asked Mr Lloyd about the evidence, Chair, not about his opinion.

CHAIR—How can there be evidence about something that has not happened? You are asking him to speculate. Just because you put the word ‘evidence’ in there does not somehow not ask him to speculate on that issue. The question is out of order. Move on to the next one.

Senator FISHER—Think you, Chair. Mr Lloyd, what has the evidence shown about the cultural benefits that have been delivered to the industry as a result of the establishment and implementation of the ABCC and the work that you do?

Mr Lloyd—The evidence indicates that there is a greater respect for the law. One of the objects of the act was to hold people accountable who contravene the law, and the ABCC has done that on a number of occasions. Culture, of course, is a long-term thing. The extent to which the culture of the industry itself has changed is difficult to gauge, but I must say that the conduct indicates that there is greater respect for the law in the industry than there was previously.

Senator FISHER—So how would you describe the culture in the industry prior to the establishment of the ABCC

Mr Lloyd—I suppose the most compelling evidence is the findings of the Cole royal commission.

Senator FISHER—Indeed.

Mr Lloyd—It found that there was an environment of lawlessness and that the industry was singular in its disregard for the law. They were the two central findings.

Senator FISHER—What does the evidence show has been the effect of having a specialised team of investigators able to deal with complaints in the industry?

Senator CAMERON—Point of order: the word ‘evidence’ is being used continually. I am not sure—

Senator FISHER—Can we hear the witness’s response, please, Chair?

Senator CAMERON—It is a point of order. The word ‘evidence’ is being used and then we are getting opinion. I am not sure what evidentiary basis is being used here in the responses and why we keep getting this—

Senator FISHER—In the earlier set of responses Mr Lloyd referred to an Econtech report. In the more recent set of responses he has referred to the royal commission into the building and construction industry.

CHAIR—I have not invited you to speak to the point of order, Senator Fisher. When I want you to, I will ask you.

Senator FISHER—Point taken, Chair.

CHAIR—I do not require it. Mr Lloyd, you can answer the question as it is asked, which is about evidence.

Senator FISHER—Thank you. Mr Lloyd?

Mr Lloyd—The evidence is that we have quite a number of investigators. I think the number is in the order of 80. In discharging our responsibilities under the act we are very concerned to be accessible to the industry, to attend incidents quickly and to be visible. I think that has obviously had a salutary effect on the industry. I think it gives people in the industry—employers and employees and other parties—confidence that there is a regulator who is accessible. I think they probably have more confidence to stand up for their rights because they know there is an accessible regulator who is visible.

Senator FISHER—What has been the effect of specific penalties for breaches in the construction sector?

Mr Lloyd—I think penalties, as in any jurisdiction, show that contraventions of the law are treated seriously, and they should act as a deterrent for people in the future, who may consider contravening the law. If they do so then there is a considerable chance that the matter will be investigated, brought to the courts and that they will face a penalty.

Senator FISHER—So in this sector, to what use has the commission been able to put documents obtained through the use of investigators’ right-of-entry and investigation powers?

Mr Draffin—Part of the investigative process on occasions allows investigators to obtain documents relevant to the investigation. In the main they have been able to strengthen our cases, and invariably are used as evidence in courts. So those powers are important for us to be able to do our job.

Senator FISHER—Have they been able to be admitted as evidence in proceedings?

Mr Draffin—Yes, they have.

Senator FISHER—Has that assisted with the achievement of results—and if so, how?

Mr Draffin—Without a doubt. Without that power then the amount and quality of evidence that would go to form part of a brief would be considerably less. Indeed, some of the cases may not be able to be proved if you were not able to support them through documentary evidence.

Senator FISHER—How effective has your working relationship, and arrangements with the Workplace Ombudsman been?

Mr Draffin—We have a very good working relationship with the Workplace Ombudsman. We have contacts within the ABCC and within the office of the Workplace Ombudsman to make sure that the exchange of information is done as effectively as it can.

Senator FISHER—So what has that meant for employees in the building and construction sector who are alleging non-payment, under payment or breach of conditions?

Mr Draffin—It means that we can pass on that information that we gained with respect to those sorts of matters to the Workplace Ombudsman rather quickly and that it is dealt with accordingly.

Senator FISHER—So the ABCC can issue summonses requiring people to attend discussion with the ABCC, is that right?

Senator Ludwig—Are they discussions?

Senator FISHER—Interviews.

Mr Draffin—We have the ability, under section 52 of the act, to have hearings, Senator, where we can request witnesses to attend for examination. It is more of an examination rather than a discussion, I would suggest.

Senator FISHER—What effect has that ability had on your ability to bring order to the industry?

Mr Lloyd—In relation to that power for compulsory examination, it breaks down a code of silence which tended to permeate the industry and frustrate investigations by bodies prior to the ABCC. Some people choose not to voluntarily cooperate with the ABCC and others prefer to give their evidence under the shield of that power so they are spared reprisals in the industry by being seen to cooperate with the ABCC.

CHAIR—How many people fall into that category? How many people have requested you to use your coercive powers against them?

Mr Lloyd—I will just add one point to my previous answer. Regarding the powers used as a last resort, our method is to attempt to gain voluntary cooperation with an investigation first. Only if that is not forthcoming or a compulsory hearing is requested do we use that power. As to the numbers who have requested as opposed to not cooperating, I do not have that figure with me, but it is a significant proportion.

CHAIR—Can you take that on notice?

Mr Lloyd—Yes.

CHAIR—Can you tell me also whether that request is in writing or is a verbal request?

Mr Lloyd—In the voluntary stage?

CHAIR—No, a request for you to use the coercive powers against them.

Mr Lloyd—The act stipulates it must be in writing.

CHAIR—No, when they request you to use your powers against them. Please you take that on notice.

Mr Lloyd—Yes.

Senator FISHER—The ABCC can intervene in commission proceedings—is that correct?

Mr Lloyd—Yes.

Senator FISHER—To what use has this been able to be put by the ABCC?

Mr Lloyd—It is an important power and we have used it on quite a number of occasions. It mainly occurs in the context of what we call a section 496, where there is threatened or actual industrial disruption. We intervene to ensure that the parties involved and the Australian Industrial Relations Commission are aware of the impact and the obligations that arise under our act, the BCII Act. As I say, the evidence we get, particularly from contractors, is that the fact that the ABCC is there does assist in an early return to work.

Senator FISHER—What impact has this had on the industry generally?

Mr Lloyd—My sense is that it is an integral part of the package, but it reinforces that need to adhere to the law. Often an industrial dispute may involve industrial action which is not lawful—it is not part of the bargaining period and therefore often it is unlawful. It helps to get people back on the job and to adhere to normal dispute resolution procedures rather than relying on industrial action.

Senator FISHER—Have the powers of the ABCC been modelled on other agencies and, if so, which ones?

CHAIR—I do not think that is a question for these witnesses.

Senator Ludwig—It does seem a policy question.

CHAIR—They did not model the powers nor determine the powers.

Senator FISHER—Can we see if they know the answer?

CHAIR—No. It is not an appropriate question to ask the witnesses. You can ask the minister, but it is not a question for the witnesses. They did not model the powers.

Senator FISHER—Thanks, Mr Lloyd; we will leave it at that. I want to go to some of your areas of inquiry and investigation. In response to questions at previous estimates, the ABCC have indicated that approximately 24 per cent of inquiries relate to right of entry issues. Can you provide some examples of breaches related to right of entry?

Mr Draffin—Right of entry is one of the more prevalent areas that we investigate and there are many examples to choose from. But a typical one—and it is certainly not the only one—would be where a member of a union gained entry to a building site with little or no regard to complying with the—

Senator CAMERON—Chair, I raise a point of order. Is this evidence about an incident or is this a generalisation about abuse of right of entry? I am just not sure what this is about.

CHAIR—I think you need to address your answer to the question that was asked of you, Mr Draffin.

Mr Draffin—Senator, if I could ask you to repeat the question, please.

Senator FISHER—I have asked for some examples related to breaches of right of entry that the ABCC has dealt with.

Mr Draffin—There are examples we could give you. I would have to take that on notice to acquire the appropriate detail.

Senator FISHER—Thank you. Your previous answers referred to freedom of information inquiries. Can you give us an example of one of these and how freedom of information breaches have been occurring in the industry?

Mr Lloyd—Do you mean freedom of association?

Senator FISHER—Freedom of association—I am sorry.

Mr Draffin—Again, we could but I would like to take that on notice to be able to provide you with an answer.

Senator FISHER—Okay. You might also provide some examples of coercion inquiries—examples of union behaviour. They were calculated at nine per cent in terms of your previous answers.

CHAIR—I just want to clarify what you are asking. Are you asking for examples of resolved issues or examples of inquiries? I think it is a little bit problematic to ask about examples of inquiries made. I think it is quite proper to ask, if you so wish, for examples of resolved issues.

Senator FISHER—Fair point. We will confine the answer to resolved issues.

CHAIR—I think you will find them all on the website, but nonetheless—

Senator FISHER—Then it should be easy to produce.

Senator Ludwig—The only part I would add here, Chair, is that, in dealing with some of the provision of information, I suspect privacy issues are involved. Of course, this is an open hearing and any information provided here is also open. I am not sure how the legislation might frame that. There is obviously no going in camera in estimates committees either.

CHAIR—Mr Draffin, I understand the examples that are probably being asked for are available on your website. If you could just take them out of your general website and provide them to the committee on notice. I think that resolves that issue.

Senator FISHER—In 2006-07 the ABCC, as I understand it, pursued 216 investigations into suspected contraventions of workplace laws. The number pursued by the ABCC in 2007-08 increased to 225. Wherein lies the difference? Why was there an increase in the number of investigations?

Mr Lloyd—I expect it would reflect the complaints which we receive. We investigate complaints. We do not go out trolling for cases.

Senator FISHER—Of the 225, how many have been finalised and how many are ongoing for 2007-08?

CHAIR—Before you finish that answer, I am not sure that that is particularly complete. Haven't you been significantly ramping up, in terms of staff and numbers and the money made available to you by government? Surely that is part of the answer.

Senator CAMERON—They have no vacancies at the moment; none.

Mr Lloyd—I think the senator is comparing 2007 to 2008. Certainly from 2006 to 2007 you would have that effect, but I think the effect from 2007 to 2008 would be a lot less. We might have come up slight in the numbers but for most of 2007 we were reasonably close to our current figures, I think. So I do not think that would be a big impact on those figures.

Senator CAMERON—On this very point, Mr Lloyd, you gave evidence that you do not go trolling for cases, yet in your annual report you talk about inspections, onsite audits and code site visits. What are these doing then if they are not looking for breaches?

Mr Draffin—I can perhaps answer that question for you. That activity relates to the National Code of Practice to ensure that head contractors are complying with the national code.

Senator CAMERON—So, in colloquial terms, you are out trolling to see whether that is—

Mr Draffin—It is a requirement under the National Code of Practice for—

Senator CAMERON—So you are out looking for breaches. That is inconsistent with what Mr Lloyd has just told us.

Mr Draffin—It is not inconsistent. The National Code of Practice requires the ABCC to ensure that head contractors comply with the code. It is more about compliance than trolling through records looking for breaches.

Senator CAMERON—If you find a breach, do you prosecute?

Mr Draffin—Depending on what it is. On a lot of occasions they are minor breaches. They are referred back to the head contractor for rectification and the breach would be reported to the code monitoring group.

CHAIR—How many Eureka flags have you spotted in your audits?

Mr Draffin—Many.

CHAIR—They are breaches, aren't they—to have a Eureka flag onsite?

Mr Draffin—No. Not necessarily.

CHAIR—That has been the evidence given to this committee before.

Mr Draffin—It offends the code inasmuch as the code and guidelines make reference to the fact that paraphernalia, like flags, offend the code, but it does not necessarily mean that it then moves towards a breach. It is simply something that the ABCC would look at and it would be reported to the head contractor.

CHAIR—That was the line Mr Lloyd has taken with us on previous occasions, but the Deputy Commissioner, Mr Hadgkiss, overruled him. He clearly told us it was a breach, and Mr Lloyd let that go.

Senator CAMERON—Yes; and there was a zero tolerance policy.

CHAIR—Yes; on flags.

Mr Draffin—There is a zero tolerance policy inasmuch as they are always reported back to the head contractor.

Senator FISHER—Of the 225 investigations from 2007-08, how many have been completed and how many are still on foot?

Mr Lloyd—My recollection is that we have 60 investigations on foot at the moment. I would have to check on the finalised figure. These figures roll over from year to year, so it is a bit tricky.

Mr Draffin—To help you out, Senator, for the period 1 July 2008 to 31 December 2008 we finalised 53 investigations. Since the commencement of the ABCC on 1 October 2005 we have finalised 360.

Senator FISHER—Can you provide more detail on notice for 2007-08?

Mr Draffin—We can try to, Senator.

Senator FISHER—You will probably also need to take this question on notice: can you break down the subjects of the investigations and contraventions investigated?

Mr Draffin—Yes, we can.

Senator FISHER—Thank you. What about matters that are referred by the ABCC to other bodies, as you do from time to time? Do you have a breakdown of those matters referred since June 2008 and the bodies to which they were referred?

Mr Draffin—For the period October 2005 to 31 December 2008, the ABCC referred 37 matters to agencies which included the Workplace Ombudsman, the state police, the Australian Taxation Office—and the list goes on.

CHAIR—Did you say 37?

Mr Draffin—Yes, that is correct.

CHAIR—Can you give us a breakdown of which agencies dealt with which matters?

Mr Draffin—Yes, we can. Would you like that now?

CHAIR—Yes, if you could do that quickly.

Mr Draffin—There were 13 referrals to the Workplace Ombudsman, seven to state police, four to the Australian Taxation Office, four to the Commonwealth DPP, two to the ACCC, three to the Australian Federal Police, one to ASIC, one to ICAC, one to the Workplace Authority and one to WorkSafe.

CHAIR—With 13 referrals to the Workplace Ombudsman, are you suggesting that you have encountered 13 occasions on which there have been underpayments of wages or breaches of employee instruments?

Mr Draffin—They would relate to those issues.

CHAIR—But that is all there was?

Mr Draffin—No. They were formal referrals. In addition to those, there were 1,124 informal referrals. By informal referrals we simply mean when we receive a phone call, normally through our 1800 number, which does not relate to the business of the ABCC, and we would refer that to another agency.

CHAIR—It does relate to the business of the ABCC, I suspect, but it is just that you do not deal with them. You pass them on to someone else. Is that right?

Mr Draffin—It could relate to matters that are best handled by the Taxation Office. They have the capability in their set-up to handle them much more efficiently than we can.

CHAIR—Can you give us the same breakdowns for those informal referrals? In what manner does the informal referral take place? Do you just say, ‘Ring someone else’? Or, do you actually ring on their behalf and make sure that it is a registered complaint?

Mr Draffin—No. We would register the phone call as having been received and we would then help that caller by identifying the appropriate department they should ring.

CHAIR—So your informal referral is simply to tell them to go somewhere else.

Mr Draffin—Yes.

Senator FISHER—Does the Code Monitoring Group still exist?

Mr Draffin—Yes.

Senator FISHER—Which departments are part of that group these days?

Mr Draffin—The ABCC is a member of the CMG. The Department of Education, Employment and Workplace Relations provides the secretariat function. The Department of the Prime Minister and Cabinet and the Department of Defence are members, and I think the Department of Infrastructure, Transport, Regional Development and Local Government is also a member.

Senator FISHER—How often has the CMG met since June 2008?

Mr Draffin—Off the top of my head, since that date, I think the CMG met three times last year, and there is a further meeting next week, on 5 March.

Senator FISHER—So, you think?

Mr Draffin—I will take the question on notice and get you the exact dates.

Senator FISHER—Thank you. Is the ABCC still required to refer the results of its investigations to the monitoring group?

Mr Draffin—No. The only thing that is referred to the Code Monitoring Group is the result from our code activity, monitoring the National Code of Practice for the Construction Industry.

CHAIR—Senator Fisher asked whether you are ‘still’ required, so you probably need to clarify that for us.

Mr Draffin—Yes, we are still required and we still do.

Senator FISHER—Thank you. How many site visits in respect of the code has the ABCC undertaken from June 2008 until October 2008?

Mr Draffin—I have those figures, if you would just bear with me. What I can tell you is that for the financial year 1 July to 31 December 2008 there are a total of 561 national code site visits.

Senator FISHER—If you look at that period of time, then, on average has there been an increase or decrease in the number of site visits in that respect compared with the preceding 12-month period?

Mr Draffin—I would have to take that on notice, Senator.

Senator FISHER—Thank you. Does the project code monitoring group work on particular projects?

Mr Draffin—No, they examine reports which have been compiled by the ABCC—

CHAIR—Just to clarify this, is there a project code monitoring group as distinct from the code monitoring group? That is the question that has been asked.

Mr Draffin—I beg your pardon. The project code monitoring groups were set up to monitor in the main AusLink projects. I understand that they are soon to be expanded upon and reintroduced. The building industry branch within DEEWR are the focal point for that sort of activity.

Senator FISHER—I gather from your answer that you are not aware of the AusLink projects that they would have been dealing with.

Mr Draffin—I would have to take that on notice. It is something that may be best addressed by DEEWR rather than the ABCC.

Senator FISHER—Okay. How many penalty proceedings has the ABCC been involved in between June 2008 and October 2008, before the courts?

Mr Dalglish—The figures that I have are total figures that start from 1 October 2005, when the ABCC commenced. There have been 62 proceedings conducted by the ABCC in various courts and the AIRC, from 1 October 2005 to date.

CHAIR—And how much judicial criticism have you had over that period?

Mr Dalglish—In a statistic?

CHAIR—Do you keep statistics on the amount of judicial criticism the ABCC gets?

Mr Dalglish—I do not keep statistics of it, no.

CHAIR—Mr Lloyd?

Mr Lloyd—Mr Dalglish said we do not.

CHAIR—But in previous evidence to the committee you have said that every time you get some judicial criticism you actually engage with your staff about that criticism and see if it can be avoided in future. How would you do that if you do not keep track of that?

Mr Lloyd—The instances are not numerous. It would not be hard to give you the figure of the times when it has occurred.

CHAIR—Could you provide to the committee all the judicial criticism that you have received, and from the commission as well.

Mr Lloyd—The AIRC? Yes.

Senator FISHER—Does the ABCC hold industry forums?

Mr Lloyd—Yes, we do.

Senator FISHER—For what purpose?

Mr Lloyd—We hold industry forums to inform the main parties in the industry, those that engage with the ABCC, about our activities, what we are doing, what we have got planned and matters like that.

Senator FISHER—What has been the level of interest over a period of time from the industry in the forum in terms of attendance numbers?

Mr Lloyd—I convene them twice a year. It started in I think November 2005, so I have probably convened about six or so. For the last three or four, the unions have chosen not to attend, except on one occasion, but the employer parties have attended every one. The department is invited and they have attended, and the unions have chosen not to attend—three of them, perhaps four.

Senator CAMERON—Can I ask a question on this point. Given the unions are a very important part of the industry and the focus of much of your work, why do you choose not to indicate in your annual report that that major part of the industry does not attend?

Mr Lloyd—I am not too sure how much I report about the industry forum. I probably mention it in passing. I might have to check what I say in the annual report.

Senator CAMERON—You make an issue in the annual report about the industry forums.

Mr Lloyd—Yes.

Senator CAMERON—But you neglect to indicate that the forums are not a complete forum of all participants.

Mr Lloyd—I am not obliged to report on that sort of thing. Do you have the page reference for where that is reported?

Senator CAMERON—No, you can go to the report. I am just drawing your attention to it.

CHAIR—You might take that on notice.

Mr Lloyd—I will take it on notice, yes.

Senator FISHER—Has the ABCC continued to distribute the model clauses booklet to help contractors with tenders and contract documentation?

Mr Draffin—Yes, we have, Senator.

Senator FISHER—Has the content of the booklet been reviewed since January 2008 and, if so, how?

Mr Draffin—To my knowledge, the booklet that relates to model clauses came out in October last year, 2008, and that has not been reviewed.

Senator FISHER—Thank you. Chair, I do not have any further questions at this stage.

Senator CAMERON—Mr Lloyd, I want to try to take up where I left off back at the supplementary estimates on 23 October, where time ran out on us. Can you tell me when the ABCC 200708 annual report was published?

Mr Lloyd—Yes, I can give you that date. The annual report was tabled, out of session, on 23 December 2008.

Senator CAMERON—This followed the supplementary estimates and the questioning at the supplementary estimates.

Mr Lloyd—The answer was in December—23 December.

Senator CAMERON—Has any independent analysis of the ABCC and its role and achievements been undertaken, to your knowledge?

Mr Lloyd—Independent analysis?

Senator CAMERON—I mean not paid for by the ABCC itself.

Mr Lloyd—No, not to my knowledge.

Senator CAMERON—So the only analysis of the alleged effectiveness of the ABCC is a self-funded report by Econotech; is that correct?

Mr Lloyd—That is correct. There is one at the moment, I suppose—the Wilcox review. Perhaps that goes to the nature of some of what you are talking about.

Senator CAMERON—It was not quite as glowing in its report—the interim report—as Econotech, was it?

Mr Lloyd—I do not want to comment on that.

CHAIR—No. That is not an appropriate question.

Senator CAMERON—I withdraw it. I refer to the statement of requirement document for the Econotech report which was supplied in response to a question on notice. Econotech were required to identify main drivers of productivity change. It says:

2.3.7 Changes attributable to the ABCC, including its role supporting the National Code of Practice;

Another one has ‘changes attributable to the federal industrial relations reforms’ and there is ‘changes that can be attributed to normal productivity improvements’. Is that correct?

Mr Lloyd—That is correct.

Senator CAMERON—Given that you answered, in a question that I placed on notice at the last estimates, that the improvements attributable to the ABCC—and, presumably, any of the other factors—have not been separately quantified, does this mean that Econotech failed to carry out an essential requirement of its brief?

Mr Lloyd—No. I do not have the report with me, but they reached various conclusions about the impact of the ABCC and the broader industrial relations reform package on productivity. So they satisfied it, in my view.

Senator CAMERON—But you told the Senate that you could not attribute individual aspects of the ABCC’s performance.

Mr Lloyd—My understanding is that it is economically impossible to say their conclusion was, given the ABCC and the associated reforms, productivity improvement being of the order of 10 per cent. Although we asked it, I think it is just statistically impossible to differentiate or pull out what was due specifically to the ABCC and what was due to the broader reforms.

Senator CAMERON—Given what you have just said, does that mean then that you no longer stand by the claims in your annual report about the economic productivity benefits of the ABCC?

Mr Lloyd—No.

Senator CAMERON—I am confused, I must say. On one hand you tell the Senate that you cannot identify the factors of productivity. If I can take you to your annual report, on page 16 you quote the Econtech report and you say that GDP is 1½ per cent higher, CPI is 1.2 per cent lower and there is a gain in real consumption of 0.8. I mean GDP higher by 1.5 per cent? That is about \$80 billion. Do you stand by that?

Mr Lloyd—Yes.

Senator CAMERON—So how could you then tell the Senate at the last estimates that you could not quantify these things?

Mr Lloyd—They are saying the reforms and the ABCC have that impact. As I say, I do not have the actual report with me.

Senator CAMERON—Could I ask you to take on notice my question to you? Would you go back and try and provide some sense to the answers that you have given at the last Senate inquiry estimates and could you try and tell me how your answer today and your answer at the last estimates are consistent with your annual report?

Mr Lloyd—Yes, certainly.

Senator CAMERON—I am totally confused about this. You did 561 code site visits, according to the evidence you gave this morning, your annual report said you did 28 inspections and you did 15 onsite audits. Did Econtech take into account any disruption to the operation of those sites when these visits, inspections and audits took place?

Mr Lloyd—They were looking at global figures—national statistics and this sort of thing. I would think that anyhow there is very little disruption, if any, to a site when—

Senator CAMERON—Very little if any?

Mr Lloyd—an audit and an inspection are conducted. They are given notice. A lot of the time—and Mr Draffin might add to this—it is looking at documents, papers and matters like that.

CHAIR—But the ABCC has presented evidence to this committee on prior occasions that many employers are very unhappy with your audits.

Mr Lloyd—With our—sorry?

CHAIR—I think Mr Hadgkiss said that they complain bitterly about the audit process.

Mr Lloyd—I do not recall that. Obviously not everybody is happy when they are audited. But we give them notice. They know it is a part of being code compliant.

CHAIR—I am paraphrasing what I thought Mr Hadgkiss's evidence was. I am not trying to quote his words. But I thought he strongly indicated to us, very clearly, that employers, in many instances, were very unhappy with the auditing process.

Mr Draffin—I would add that, if head contractors what to comply with the code, part of that is having to go through an auditing process. But I am not aware of a great number of complaints in respect of our audits.

CHAIR—Are there any?

Mr Draffin—I would have to take it notice.

CHAIR—If you could, thank you.

Senator CAMERON—They would be pretty courageous if they did complain. As I understand it, you cannot do a site visit, you cannot do an inspection and you cannot do an on-site audit without the employer, or workers on the job, having to interrelate with the ABCC. Therefore, you are an externality on the production and the effective operation of the site. There must be an economic cost to that. You can tell us how much you add to GDP. I would also like you to tell us how much it costs in terms of these three operations. I am happy for you to take it on notice and go back and have a look and advise the Senate of the cost in lost productivity and lost time for employers to comply with these three areas of your operation. You have done everything else; let us have a look at this.

Mr Lloyd—We will take it on notice.

Senator CAMERON—Okay. Do you stand by your claim that the ABCC has contributed \$18 billion to GDP?

Mr Lloyd—I stand by what is in the Econtech report.

Senator CAMERON—Let us go to the Econtech report. I am very interested in the Econtech report. Before I that, you have a client satisfaction survey on page 27 of your report. It shows high results for the effectiveness of the ABCC. Can you provide information on the methodology of this client satisfaction survey?

Mr Lloyd—We can provide that on notice. There is a survey conducted. At the bottom of that page, under the heading 'Sample group', there is some indication as to the nature of the survey. But I can give you more information. We will take that on notice.

Senator CAMERON—I am looking at the technical strength of your survey, not the sample group. That is not technically strong in terms of a survey, is it? I have been around a few surveys, and that does not seem to tell me much. What is a 'client'?

Mr Lloyd—A client is a party in the industry with whom we engage.

Senator CAMERON—So Noel Washington would be a client?

Mr Lloyd—Potentially, like any officials, yes.

Senator CAMERON—How many union officials were surveyed in this client satisfaction survey?

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

CHAIR—Were there any?

Mr Lloyd—I would have to take that on notice. I do not know.

Senator CAMERON—You do not know?

Mr Lloyd—Not off the top of my head, no.

Senator CAMERON—I would have to say to you—

CHAIR—It is being taken on notice.

Senator CAMERON—Okay. How much did the Econtech ‘report’ cost? You have done two. How much did they cost?

Mr Lloyd—I thought I had answered that on notice. I have answered it somewhere.

Senator CAMERON—If you have, that is okay; if you have not, could you take it on notice?

Mr Lloyd—For sure, yes.

Senator CAMERON—I may have missed that. How much does ABCC spend on consultants?

Mr Lloyd—That is in our annual report. I will put that up if you will bear with me.

CHAIR—I am sure someone will put their finger on it very quickly.

Mr Lloyd—It is on page 62 of the annual report, I am told. According to the annual report, in 2007-08 we spent \$216,814 for advertising consultants.

CHAIR—Mr Casey, you can surely help us with this, can’t you?

Mr Casey—Yes. During 2007-08, we spent \$1,303 on one new consultancy contract and \$67,874 on a continuing consultancy contract.

Senator CAMERON—What is the continuing consultancy contract?

Mr Casey—That was the Econtech report.

Senator CAMERON—So what percentage—

CHAIR—Are you saying it is ongoing?

Mr Casey—No; we paid part of the money in the 2006-07 financial year and part of the money in the 2007-08 financial year.

CHAIR—But they are not still being paid after the report has been done. They are being paid for—

Mr Casey—No.

Senator CAMERON—There have been two reports, haven’t there?

Mr Casey—We actually—

Senator CAMERON—There was the flawed report—

Mr Lloyd—There was a first report—

Senator CAMERON—Which was flawed.

Mr Lloyd—and then an updated report. The money spent—

Senator CAMERON—I am asking the question: the first report was flawed, wasn't it?

Mr Lloyd—I reject that. No, it was not.

Senator CAMERON—You reject it. Okay. How much of the total consultancy payments—such as those through Econtech and the survey—have gone to promoting the ABCC as an effective body? How much within your consultancy fees goes to self promotion?

Mr Lloyd—There was nothing on self-promotion, as such?

Senator CAMERON—How would you describe it?

Mr Lloyd—That was an economic analysis and a report. The objects of the act—

Senator CAMERON—I am coming to this economic analysis.

Mr Lloyd—state that the act is created to improve efficiency and productivity—

Senator CAMERON—Okay.

Mr Lloyd—Can I just finish please, Senator?

Senator CAMERON—Yes, go on.

Mr Lloyd—Therefore it seemed to be important that we have a report by a reputable, independent firm on the impact on productivity. That is why it was done. It was not about promotion.

Senator CAMERON—You have used it to promote the ABCC in the media. You have used it to promote the ABCC in your annual report. Isn't that correct?

Mr Lloyd—It is important to outline what the study found—that there had been an improvement in productivity as a result of the ABCC.

Senator CAMERON—Let us come to this report.

Mr Lloyd—Which report?

Senator CAMERON—The Econtech report. Do you know the report that you said was a big, thick report and that there were some mistakes made? You said that the Rawlinson report was a big and thick report and that is why there were mistakes made. I am now moving to the Econtech report, which failed to properly take statistics from that big and thick report. Since the last estimates hearing has the ABCC made any attempt to quantify the magnitude of the error in the 2007 Econtech report in relation to the claimed fall in the differential between commercial and residential building costs?

Mr Lloyd—No.

Senator CAMERON—If you have not sought to quantify the magnitude of the error, isn't it the case that you are utterly indifferent to the quality of the information that it puts into the public domain?

Mr Lloyd—No.

Senator CAMERON—What then do you say to what Brad Norington reported in the *Australian* newspaper in 2008:

John Lloyd, head of the Australian Building and Construction Commission, said a report to be released today showed that productivity had improved sharply because of his authority's policing role.

Mr Lloyd will release an updated report by economic modelling firm Econtech showing labour productivity is 10.5 per cent higher than the level predicted in 2002.

The Econtech report attributes the boost in labour productivity in construction to the ABCC and associated laws that have resulted in a big fall in industrial action on building sites.

So there was a flaw in this report and you have continued to put it into the public domain—isn't that correct?

Mr Lloyd—I have continued to refer to the report publicly on what the findings of the report were.

Senator CAMERON—But it is really just spin, isn't it? It is not proper economic analysis. It really is a very poor piece of work and you have grabbed on to that despite the flaws and you continue to put it out into the public arena.

Senator Ludwig—Is there a question?

Senator CAMERON—The question is: why do you continue to put this out into the public arena when it is flawed?

Mr Lloyd—The report identified the error. The key findings of the report were still, in my view, quite compelling about the impact on labour productivity. Improved productivity was indicated under about five different measures—

Senator CAMERON—Because of ABCC?

CHAIR—Let Mr Lloyd finish, and then I think we should move on.

Ms Bennett—which went from seven per cent to 13 per cent. Therefore, that is why I continue to ensure that there is public ventilation of the report's findings.

Senator CAMERON—I have one last question on Econtech. Given that you were questioned on this issue at the last estimates and it was an issue of some controversy, can you now do some analysis of the effects of that flaw in the Econtech report and provide some answers to the Senate in relation to how that affects the outcomes?

Mr Lloyd—No.

Senator CAMERON—You will not?

Mr Lloyd—No.

Senator CAMERON—Why?

Mr Lloyd—We are not an economic analysis advising or modelling outfit.

Senator CAMERON—But it is your report, and you report to the Senate. It is your report, you have spent public money on it and you are simply saying to the Senate, 'We are not going to analyse a flaw in it.' The Senate can basically go and dance—that is what you are saying.

Senator CASH—No, that is not what the witness is saying. Can I just jump in there, Chair, and ask a question following on from Senator Cameron's diatribe?

CHAIR—Yes, you can. I wanted to let Mr Lloyd an answer. It is not uncommon for people—and it is something that does annoy me as chair, I must say—to try to restate the answer that has been given by the witnesses in new words. I just remind everybody that there is a *Hansard* record and the answers from the witnesses stand as the answers of the witnesses regardless of how others may wish to portray them. Everyone is free to come to their own conclusions. I do not want anybody getting too precious about it, because this is something that happens constantly in estimates.

Senator CAMERON—Even Senator Abetz told me that!

Senator CASH—Thank you, Chair. Mr Lloyd, just in relation to what Senator Cameron has referred to as a flaw in the previous Econtech report, can I get your comments on what action you did take to correct the flaw. Was a statement issued by the ABCC saying that there was a flaw?

Mr Lloyd—The error is identified in the report.

Senator CASH—The error is identified in the report?

Mr Lloyd—Yes. It explains—

Senator CASH—That is, I understand, the evidence you gave the last time you were before this committee.

Mr Lloyd—Yes. The error is in the report. The report is public. It is available on our website et cetera. Whatever statements I have made, the error is in the report. What I have said is that overall the report points to marked improvements in productivity on a whole range of measures, including the measure to which the error related.

CHAIR—It does seem a bit odd to me, though, Mr Lloyd. Senator Cameron was asking questions in relation to the quantification of the impact of the error on those findings. It is all right in a report to identify that there has been an error, but Senator Cameron was asking: how do you quantify the impact of the error? That is what is being asked.

Mr Lloyd—I think the report does that. You might have to look at the two reports, but the first version had an impact. Then the second report measures the same thing, but it comes out with a different figure. It was also complicated by the fact that the data had changed—how the data was assembled in the Rawlinson report changed from one year to the next and that has aggravated the situation. I do not want to go into all the statistics but—

CHAIR—I did want to see if we could finish this particular issue, because we have spent quite a considerable time on it. Do you have a final question?

Senator CAMERON—Just for the record, nowhere do the ABCC accept that there is an error. They call it an anomaly. Is that correct, Mr Lloyd?

Senator CASH—The chair has already said that your diatribe is merely that: a diatribe.

CHAIR—We should not now put words in the chair's mouth. I never said that someone's diatribe is merely a diatribe at all. I would ask all senators to simply listen to the evidence that is being given, it stands and we should discourage everyone from putting words in my mouth.

Senator CAMERON—Mr Lloyd, have you ever considered that there was an error, and is the word ‘error’ used in dealing with it or is the word ‘anomaly’ used?

Mr Lloyd—I have used the word ‘error’ here on numerous occasions.

Senator CAMERON—Not in public reports, though, have you? ‘Anomaly’ is used.

Senator Ludwig—It is used in the public forum.

Senator CAMERON—I will move on. One of the other issues in terms of this report was that you disputed at the last estimates that the EastLink analysis—and I do use that word very loosely—was included in the Econtech basis for the outcomes. Is that correct?

Mr Lloyd—I think the question was the extent to which it played into the figures put into the model. As I understand it, there are a number of elements of the report. There was a comparison of the cost data, there was national productivity type statistics and case studies. It was one of the case studies, along with others. Therefore, my sense of the report was that the numbers which Econtech put into its modelling were primarily based on the economic statistical analysis. I think the reports, if they were put in, played a much less important role. That is my sense of it.

Senator CAMERON—You do not know what the basis of the modelling is? Can I ask you again to come back and advise me whether this figure of \$295 million was used in the report.

Mr Lloyd—It was certainly in the report.

Senator CAMERON—But was it used as part of the modelling?

Mr Lloyd—That is what I just tried to explain. It may have been. It is a bit hard to pin down in the report, but I will come back to you on notice. I am not trying to mislead the committee. My understanding of the report is that it was very much a minor—

CHAIR—I am keen to move off this report.

Senator CAMERON—This is the last issue on this. It is very important. I have asked you about the qualifications of Ken Phillips. I would like you to take that on notice and advise me what qualifications Ken Phillips has—

Mr Lloyd—I do not know.

Senator CAMERON—to advise Econtech or contribute to your report. I will ask you to do that. Can I also ask you whether it is a feasible proposition in the Ken Phillips report that this—

Senator Ludwig—Just for clarity: to ask a feasible proposition—perhaps you can rephrase it. I am sure we can get to the right question. I am just worried that it is asking the witness to provide an opinion on something.

CHAIR—Obviously, this person contributed to the report. I think the question should be, ‘What qualifications did this person have to make that contribution?’ That is the way I took it.

Senator CAMERON—And to be very prominently identified in the report. I would like to know this person’s qualifications. Also, part of the Phillips report said that there would be a \$295 million advantage because of the ABCC. The \$295 million is then determined on the basis of employees working 365 days a year on the site. It says that they would work on

rostered days off, on public holidays, over the Christmas close-down and on public holidays. Is it a reasonable proposition to include that as supposedly expert evidence in your Econtech report?

Mr Lloyd—It is a context judgment as to what reports and what data they rely on in the report. As referred to earlier, they had terms of reference for the report. In my view, they did a high quality report. What reports they chose to rely on is a matter for them. On the question concerning the qualifications of Ken Phillips, I am not sure whether you are asking me to go and ask him what his qualifications are.

Senator CAMERON—I am asking whether you think it is okay to use in a prominent way—

Senator Ludwig—Perhaps the question should be whether or not the witness is aware of the qualifications. That may be a shorter way to an answer this.

CHAIR—You can only be asked things that are in your competence to answer. If those things have been involved in a report that you have commissioned, you may well be aware of them; but, if you are not, then that should be the answer.

Mr Lloyd—I do not.

Senator CAMERON—I will move on to the prosecution of Noel Washington. Why did the ABCC fail to recognise at the outset that there was no continuing enforceable requirement on Mr Washington to attend pursuant to the notice?

Senator CASH—Chair, there appears to be an assumption there that the ABCC did fail to recognise. Is that Senator Cameron's opinion?

CHAIR—No, that is a decision of the court.

Senator CAMERON—You are aware of the courts—

Senator CASH—I am. But I would not put it past you, Senator Cameron, to put your opinion on the record in terms of a question.

CHAIR—I do not mind senators asking for points of clarification—that is quite proper; however, Senator Cameron, you have the call.

Senator CAMERON—That is the question.

Mr Dalgleish—The decision to prosecute was made by the Commonwealth DPP and the decision to withdraw the charge was made by the Commonwealth DPP.

Senator CAMERON—What was the cost of the failed prosecution of Mr Washington?

Mr Dalgleish—It was conducted by the Commonwealth DPP, not by the ABCC.

Senator CAMERON—That is a cost to government. You instigated the charge and the DPP obviously moved on that. What was the cost to the public purse?

Mr Dalgleish—You would have to ask the Commonwealth DPP.

CHAIR—The question should probably be more direct. What costs to you were involved in the Noel Washington case? Can you break that down into the investigation component and the—

Mr Dalglish—No, it is not possible to break that down in terms of timing. We do not have time-costing for in-house lawyers.

CHAIR—What of your costs can you point to in the Noel Washington case?

Mr Dalglish—Counsel was engaged to respond to the subpoena which had been issued to the ABCC by the defendant.

CHAIR—That does not answer my question. Can you advise the committee of the costs you incurred in relation to the Noel Washington case?

Mr Dalglish—I can tell you on notice what the costs of responding to that subpoena were.

CHAIR—They are the only costs you can identify in relation to the Noel Washington case?

Mr Dalglish—Otherwise it is the internal time of staff.

CHAIR—Take it on notice. If that is the answer identify it in your answer.

Senator CAMERON—As part of its normal and regular processes, has the ABCC reviewed the case of Steven Lovewell v Bradley O'Carroll and Others, which was effectively thrown out of court by Justice Spender?

Mr Dalglish—Could I just clarify that: the case was discontinued. The comments were made by Mr Justice Spender after the case had been discontinued.

Senator CAMERON—Why did ABCC choose to discontinue?

Mr Dalglish—Because we were advised that we no longer had a reasonable prospect of success.

CHAIR—I think you have taken on notice that you would consider that as one of the judicial criticisms of the ABCC.

Mr Dalglish—Absolutely.

CHAIR—So that will be one of the criticisms that you will provide.

Senator CAMERON—What were the conclusions, if any, that the ABCC drew? Did you review that case?

Mr Dalglish—In the normal course, yes.

Senator CAMERON—What conclusions did you draw from that review?

Mr Dalglish—The conclusions were that the evidence that we had adduced did not stand up and the evidence that was called on behalf of the defendant was preferable. When you institute a proceeding, you do not have the benefit of cross-examination of your own witnesses, nor do you have the benefit of what the respondent's evidence is going to be. To put it bluntly, all you have is your side of the story.

Senator CAMERON—In view of the observations made by Justice Spender in relation to the taxation arrangements of the employer in the case—that employer is called 'Underground'—has the ABCC referred any of the matters in any way to the ATO?

Mr Dalglish—Yes.

Senator CAMERON—Okay.

CHAIR—Informally or formally?

Mr Dalglish—Formally.

CHAIR—That is one of how many that you have referred to the tax office?

Mr Dalglish—Four.

CHAIR—One of the four.

Senator CAMERON—Mr Lloyd, during the last estimates, you basically dismissed the criticism of Justice Spender in relation to the ABCC. Are you going to do the same thing for the critique of Justice Marshall. Justice Marshall indicated in a case, *Duffy v CFMEU*: ‘I listened in the courtroom to the inspector’s interview with Mr Douglas. I consider the interviewer’—

Senator Ludwig—Is that a quote from a transcript? Sometimes it is worth while for the witness to be provided with a copy so that it can be taken in context.

CHAIR—We will see whether it is a long quote.

Senator CAMERON—It is not a long quote. It is two small quotes.

CHAIR—And what is it from?

Senator CAMERON—It is on the public record. They are comments by Justice Marshall.

Senator Ludwig—You could ask whether or not the witnesses are familiar with those comments.

CHAIR—Are you familiar with those comments, Mr Lloyd?

Mr Lloyd—We are.

Senator CAMERON—Justice Marshall said: ‘I listened in the courtroom to the inspector’s interview with Mr Douglas. I consider the interviewer’s approach to be biased against the respondent and her tone to be avidly anti union.’ It then goes to say, ‘The interview with Mr Douglas is unsatisfactory evidence and inherently unreliable.’ This is quite an indictment of your officer and their approach. Do you still stand by evidence that you gave on 23 October to Senator Arbib when you said, ‘We are even-handed and that it is fundamental’? Do you stand by that?

Mr Lloyd—Yes, certainly.

Senator CAMERON—How do you explain this from a second senior judge? Surely, it is not going to be a matter of ‘I just don’t agree with them’. It is now an emerging pattern.

CHAIR—Just put it as a question.

Senator CAMERON—How do you explain this further severe criticism of the ABCC and its operations?

Mr Dalglish—I think your question has to be answered in this way: yes, we do take issue with Justice Marshall’s comments, and that has been raised in written submissions. A penalty hearing is coming up on 16 March at which this question will be aired, and I do not think it is appropriate to air it now.

CHAIR—If that is the case, we will move on.

Senator CAMERON—Yes. When recruiting inspectors, what selection criteria is required of applicants that would ensure that evidence they obtain intended to be used in ABCC prosecutions as free from contamination by bias and as otherwise admissible evidence in accordance with the rules of evidence?

Mr Lloyd—There are normal selection criteria for a Public Service position. Inherent in all that is the requirement to comply with the Code of Conduct. New entrants are given extensive training about how they go about their role in the position, including things like being impartial, respecting the law, respecting the Code of Conduct and respecting the people they deal with, which is integral to all that type of assessment and training.

Senator CAMERON—As a result of those criticisms by two senior judges, have you instigated any amended training, additional training, on this very question?

Mr Draffin—No so much in response to that very question but we are always reviewing the training that our investigators undertake.

Senator CAMERON—You are saying that you always review. So you have not done anything in relation to specific training arising from these two very, very strong criticisms, by senior judges, of the ABCC's operations.

Mr Draffin—We recently expanded some of our training of investigators, but that was not prompted by the comments that you are referring to.

Senator CAMERON—Have these Federal Court observations of bias and lack of even-handedness on the part of the ABCC been subjected to the ABCC executives' normal review process?

Mr Lloyd—What do you mean by 'normal review process'?

Senator CAMERON—You have an executive committee that apparently considers and decides on legal and operational strategies, according to your annual report.

Mr Dalgleish—It has been discussed in the executive.

Senator CAMERON—What conclusions did you draw?

Mr Lloyd—I think we have to be careful. One of the matters is before the court, as Mr Dalgleish indicated.

Senator CAMERON—What about the matter that has not been before the court? What conclusions did you draw from the matter that has been discontinued?

Mr Dalgleish—Are you referring to the Justice Spender case?

Senator CAMERON—Yes; that is the one that I am talking about.

Mr Dalgleish—In respect of that case, the allegations by the judge are being investigated. The tax aspects have been referred to the ATO, and the Workplace Relations Act aspects are still being investigated. That investigation is ongoing.

Senator CAMERON—But the judge made comments about bias. That is the issue I am interested in.

Mr Draffin—Perhaps I could answer it by saying this: we currently are investigating the comments made by Mr Spender.

Senator CAMERON—Justice Spender.

Mr Draffin—When that investigation is completed we will be better placed to review the entire investigation, including the first one, and make some judgment as to whether or not there has been any bias.

Senator CAMERON—When was this case discontinued?

Mr Dalglish—The case before Justice Spender?

Senator CAMERON—Yes.

Mr Dalglish—On the morning of the second day of the hearing. There had been five prosecution witnesses called and cross-examined. The respondent had given evidence and been cross-examined—

Senator CAMERON—I was just asking for a date. I am not asking for any other details of when it was discontinued.

Mr Dalglish—It was the second day of the hearing in October.

Senator CAMERON—October last year.

Mr Dalglish—Yes.

Senator CAMERON—Given that there was serious criticism, you still have not conducted a review and finalised a review.

Mr Dalglish—We are still investigating the allegations of the judge.

Senator CAMERON—The allegations of the judge.

Senator CASH—Chair, the witness has actually answered this question time and time again.

CHAIR—Sorry; I was distracted.

Senator CASH—It was raised at the last estimates hearing. They are still investigating certain aspects.

Senator CAMERON—Senator Cash, I am not asking you for any evidence—

Senator CASH—No, you are not, but you are clearly not listening to the witness and you are doing in typical style what you normally do, Senator Cameron.

Senator CAMERON—You are not a witness.

Senator CASH—No, and neither are you. Check the transcript later. Why do you think we are sitting here letting you drivel on?

Senator CAMERON—Just have an aspirin and a lie-down and don't burst a blood vessel. You will be okay if you do that.

CHAIR—There is no rule about asking questions twice. There was for quite a long period this morning questions asked again that I can recall being asked nearly every estimates by the same senator.

Senator CAMERON—Would this be a normal process, for many months to go by without taking some action on what was described as a fundamental aspect of the operation, that is a criticism by a judge of bias against the ABCC, and months later you still have not determined how you will deal with this internally?

Mr Dalglish—That is not what I said.

Senator CAMERON—That is what I am putting to you.

Mr Dalglish—We have dealt with it internally.

Senator CAMERON—What are the conclusions in terms of that internal process?

Mr Draffin—As I said before, we are still investigating the matter.

Senator CAMERON—But Mr Dalglish says that you have dealt with it. You are now saying you are still dealing with it. What is the position? Who is speaking on this one? I am not sure. Maybe Mr Lloyd, eh?

Mr Dalglish—I will answer it. One of the allegations included in Mr Justice Spender's remarks was an allegation of underpayments. That allegation is being investigated and that investigation is continuing. You are asking about a review in respect of bias.

Senator CAMERON—Within ABCC.

Mr Dalglish—That is something different from an investigation of underpayments.

Senator CAMERON—But I never mentioned underpayments.

CHAIR—I think the question is quite clear: it is about what conclusion your executive group came to in response to the allegations of bias from a judicial officer.

Mr Dalglish—We did not accept the judicial officer's conclusion.

CHAIR—So your executive group has met, considered that criticism and you have decided the criticism is unwarranted.

Mr Dalglish—Correct.

CHAIR—Okay. That is the answer. Thank you. And it is a closed matter, I suspect, now; there is no further ongoing consideration. It is the end of it.

Senator CAMERON—Depending on further evidence, I may have further questions on notice.

CHAIR—I have some. I hope we might finish before lunch. How often do you subpoena news organisations to get notes from journalists and others about interviews they have had with people?

Mr Lloyd—Very rarely.

CHAIR—How often, was my question.

Mr Lloyd—We will take it on notice. We are unaware of it happening, but we will take it on notice.

CHAIR—You are unaware of the one you are doing now? You are not aware of a subpoena to News Limited?

Mr Lloyd—Which case?

CHAIR—You are not.

Mr Dalglish—Do you know which case it is?

CHAIR—Westgate Bridge.

Mr Dalglish—Justice Jessop delivered his judgment on the interlocutory application the other day, but I am not aware of a subpoena to News Limited.

CHAIR—So the Australian Government Solicitor is not acting on your behalf in legal matters in relation to this case?

Mr Dalglish—Nick Green is the senior counsel in that case.

CHAIR—So you are not aware of a subpoena for any audio or written recording of an interview conducted—and I will not mention the people—including recordings of matters that were not referred to in a particular article?

Mr Lloyd—No, we are not, but we can take it on notice.

CHAIR—So I can take it that this action, if it is being initiated by the ABCC, is not being done with the agreement of the executive committee, because you are all here.

Mr Lloyd—Not all the executive officers are here. There are other officers; counsel are involved in the case. I do not personally get a day by day update on every case that we are doing. So I suppose we will have to take that on notice.

CHAIR—Okay.

Senator CAMERON—I want to make a clarification of one of the questions I have put on notice. I have asked for the survey methodology. Could you also provide the classification and job title of each person interviewed. I do not want names. I just want the classifications and job titles so that I can get an idea about the range of people interviewed for the client satisfaction survey.

Mr Lloyd—We will take it notice and do whatever we possibly can to give you as much information as we can. The surveys are of course confidential. For any survey to be valid, particularly when you are a regulator, it has to have a degree of confidentiality.

Senator CAMERON—I am not asking for names. The survey basically says, ‘What do you think of us?’ It would not be commercial in confidence. I am not asking for any names of anyone who has participated—

Mr Lloyd—We would not have them.

Senator CAMERON—I simply want to know their job classification and title.

Mr Lloyd—I am not sure that we can give you that. But we will see what we have got and we will give you what we can.

Senator CAMERON—That will be interesting.

CHAIR—You have told me that you are aware of the issues you are investigating at the Westgate Bridge. Have you investigated the reasons that led to the dispute?

Mr Lloyd—We have to be careful because this matter is still before the courts. But we received a complaint and we investigated it.

CHAIR—But the complaint you received was in relation to industrial action?

Mr Lloyd—It was in relation to, as I understand it, a picket at the site and disruption—

CHAIR—I do not want to go into detail. I want to separate the two parts. You are investigating, as I understand it—and correct me generally if I am wrong—the consequences of an industrial dispute, not the issues that led to the dispute?

Mr Lloyd—You cannot divorce the parts. You have to get into the issues involved.

CHAIR—That is what I am asking. Are you investigating the reasons that led to the dispute?

Mr Lloyd—If occupational health and safety is involved, you obviously have to probe—

CHAIR—No. I am asking whether you are investigating the fact that people were either sacked or threatened with sacking if they did not sign a particular agreement.

Senator Ludwig—As indicated, the matter is currently before the courts. It seems to me that we are now getting into the substance of some of those issues. So I would ask you to take that into account when posing the questions.

CHAIR—It is just that there is a long history where only one element of the issues are investigated by the ABCC while other blatant breaches of the act, or unlawful activity on behalf of employers, are either ignored or simply fobbed off to some other authority. So I am just wondering whether you are investigating all elements of this issue.

Mr Lloyd—On the general point, we investigate complaints that are made to us. As I think we have mentioned here before, unions only complain about one per cent of our complaints, but we investigate complaints made to us and follow them through thoroughly. On this case, we have to be—

CHAIR—So, where part of what you are investigating then leads to other unlawful behaviour by others, unless a complaint is made about that you ignore it?

Mr Lloyd—No, of course not.

CHAIR—I thought that was what your evidence was: that you would only investigate complaints.

Mr Lloyd—We are obliged to investigate it ourselves. If we find, as with the referrals, a breach of the tax law or whatever, we are obliged to refer it to the relevant agencies. Once we are in there, we cannot ignore possible contraventions of the law.

CHAIR—I am relieved to hear that that is your position. Mr Dalglish, in the couple of minutes we have left, you were going to tell me something more?

Mr Dalglish—His Honour Mr Justice Jessup delivered a judgment on 17 February 2009 in which he held that there was a serious question to be tried not in respect of industrial action but in respect of the picket amounting to coercion with a view to coercing contractors to make agreements with the CFMEU and the AMWU.

Senator CAMERON—Is that interlocutory?

Mr Dalglish—Yes.

Senator CAMERON—Well, here it is not.

Mr Dalglish—That is what I said—a serious question to be tried, and the substantive case will be heard later.

CHAIR—If that part of it is still before the courts we will not go there. You will take on notice my issue about the information you have subpoenaed from News Ltd? If that has happened on your behalf, you might also explain to me on notice the process that you go through internally in your organisation to make such requests and decisions. Who is not here from your executive group? Mr Draffin is the Assistant Commissioner for Operations, isn't he?

Mr Dalglish—Yes.

CHAIR—You would know, wouldn't you?

Mr Lloyd—As SES staff, we have regional directors in three regions. We have other legal officers—

CHAIR—This is central Melbourne, mate.

Mr Lloyd—We have assistant commissioners legal; we have a legal SES officer in Melbourne. We have a lot of cases on at any time, a lot of investigations. These are a senior staff who have control of these cases, and they do not report to me every day on every case.

CHAIR—I thought that it would be a little unusual—and that is why I have raised it—that you would be requesting things—and, again, I will leave the names out—like:

1. Any audio or written recording of the interview conducted with—
a person I will not mention—

including recordings of matters that were not referred to in the article—
and the same for another person—

Any audio or written recording of any interview conducted with any other person in relation to the article, other than the persons referred to—

and we can talk about who they are, which is nearly everybody—

including recordings of matters that were not referred to in the article;

Any film, electronic or digital footage or images taken in relation to the article, including footage or images that were not published by—

the relevant organisation—

Any notes taken in relation to that article, including any notes taken during any research for the purposes relating to the article, and any notes taken during the writing of the article, including drafts of the article;

Any other notes taken regarding the article, including notes taken at any interview, in preparation for any interview or following any interview relating to the article; and

Any correspondence between any persons who in connection with the article, whether by post, facsimile transmission or email.

The relevant page of any document that identifies the author or authors of the article. For the avoidance of doubt, only one document is to be produced ...

The relevant page of any document that identifies the person or persons who interviewed—said people. You talk about what ‘documents’ means:

- (a) letters, facsimiles or other correspondences, reports, e-mail, notes, memoranda, resolutions, minutes or draft documents;
- (b) anything on which there is writing;
- (c) anything on which there are marks, figures, symbols or perforations having meaning for persons qualified to interpret them;
- (d) anything from which sounds, images or writings can be reproduced with or without the aid of anything else;
- (e) a map, plan, drawing or photograph.

This is an enormous thing: to get a journalist or a news organisation to provide evidence to you because you did not like an article about you. It is a bit extraordinary, really. Anyway, take that on notice and provide us with what you can with respect to that.

Mr Lloyd—Certainly.

Senator FISHER—Mr Lloyd, with respect to staffing numbers, your annual report for 2007-08 says at page 67 that as at 30 June 2007 the ABBC had 147 staff. Do you still have that many? If not, how many do you have?

Ms Hausler—We have 147 staff as at today.

Senator FISHER—Thank you. I have no further questions.

CHAIR—Thank you to the officers for appearing before the committee today.

Proceedings suspended from 12.30 pm to 1.30 pm

CHAIR—The committee will reconvene. I welcome the departmental officers who are back again today. I have made an administrative management decision in consultation with the secretary of the department and senators participating in the estimates process. We will actually deal with outcomes seven and eight together and then conclude them both before we move to outcome nine.

Senator CASH—The first area I would like to have a look at is Job Network. I am looking for the actual figures. It might be that you do not have them and that we will have to put the questions to them on notice. What is the Job Network’s current caseload?

Ms Golightly—I might need to take on notice the exact figure, but I think it is around the 770,000 mark.

Senator CASH—If you can take that on notice.

Ms Golightly—If it is different, we will let you know.

Senator CASH—That would be fantastic. Can the department provide the figures as to how many full 13-week outcomes were paid in the period 1 January to 30 June 2007?

Ms Golightly—I think I might have the 2008 figures.

Senator CASH—Okay.

Ms Golightly—We will take that on notice, but if we can find them we will bring them back to the table.

Senator CASH—Fantastic. Can the department provide figures as to how many full 13-week outcomes were paid in the period 1 July to 31 December 2007? Same response?

Ms Golightly—Yes.

Senator CASH—The next question relates to figures for the period 1 January to 30 June 2008.

Ms Golightly—I should be able to get these.

Senator CASH—I will keep running through them.

Ms Golightly—You read them out.

Senator CASH—Can the department provide figures as to how many full 13-week outcomes were paid in the period 1 July to 31 December 2008? How many full 26-week outcomes were paid in the period 1 January to 30 June 2007, 1 July to 31 December 2007, 1 January to 30 June 2008 and 1 July to 31 December 2008?

Ms Golightly—Certainly.

Senator CASH—What was the proportion of placement outcomes for the period 1 January to 31 June 2007?

Ms Golightly—Since that one is a proportion it might take a little bit longer, but we will endeavour to get it for you.

Senator CASH—For that one I would also like you to provide figures for the period 1 July to 31 December 2007, 1 January to 30 June 2008 and 1 July to 31 December 2008.

Ms Golightly—Certainly.

Senator CASH—Are you able to provide a breakdown of job seekers aged 15 to 19 and 19 to 24, giving placement and outcome conversion rates for the following periods: 1 January to 30 June 2007; 1 July to 31 December 2007; 1 January to 30 June 2008; and 1 July to 31 December 2008?

Ms Golightly—Certainly, Senator. I might need to take that one on notice because that will involve interrogating data for age.

Senator CASH—That is not a problem. What is the current cost per employment outcome?

Ms Golightly—We are just checking.

Senator CASH—That is not a problem. I will go back to question one, which relates to the current caseload. You said it was 770,000.

Ms Golightly—Approximately.

Senator CASH—Do you know whether that represents an increase or a decrease from previous figures?

Ms Golightly—It would depend on the date of the previous figures.

Senator CASH—30 November 2008.

Ms Golightly—I believe it is an increase.

Senator CASH—Do you know by how much?

Ms Golightly—I will have to check that. We can find that out for you.

Mr Carters—We have the average cost per outcome for the duration of the activity participation models. So it is from 2003 through to 2008 and it is \$3,700 per outcome.

Senator CASH—That is \$3,700 per employment outcome.

Mr Carters—Yes.

Senator CASH—Does that current cost per employment outcome also cover those who found their own employment?

Mr Carters—That includes people who achieve that employment outcome through employment services. So that could include people who found their own employment.

Senator CASH—Are you then able to provide the cost per employment outcome for those placed by a Job Network member?

Mr Carters—We will take that on notice.

Senator CASH—Obviously this current contract will come to an end on 30 June and the new contract will commence on 1 July. What is the forecast cost per employment outcome under the new employment services contract?

Ms Golightly—We do not have those forecasts because it is a demand-driven program. It will depend on how many people get serviced to work out the cost per outcome.

Senator CASH—How much will the Job Network provider receive in service fees for the first three months for job seekers who commence at the beginning of the active participation model continuum and reach intensive support after three months of unemployment?

Ms Golightly—Is that under the current contract?

Senator CASH—Under the current contract and, if you can provide it, under the new contract.

Ms Golightly—It is not directly comparable, but we can see what we can provide.

Senator CASH—That would be great.

Ms Golightly—We will come back with that. I have the answer to your question about the increasing case load between November 2008 and the end of December 2008.

Senator CASH—From 30 November to the current?

Ms Golightly—To 13 February.

Senator CASH—What was that increase?

Ms Golightly—The increase was 81,412.

Senator CASH—That is 81,412 additional people looking for a job?

Ms Golightly—On the active case load.

Senator CASH—Can the department provide current figures for the number of job seekers in each phase the active participant model continuum?

Ms Golightly—Yes, we can get you those figures; I do not have them with me. Can I clarify your question about the fees paid to Job Network members? I think you asked about after the first three months.

Senator CASH—Yes. I was asking about job seekers who commence at the beginning of the active participation model continuum and reach intensive support after three months of unemployment. Was that the question you are referring to?

Ms Golightly—Yes. I have it in a slightly different format, so I will make sure I am reading the right thing. They get a service fee of \$688.

Senator CASH—Is that \$688 in service fee?

Ms Golightly—This is under the current contract. Of course, if anyone gains a job, at that stage the provider would be eligible for an outcome fee as well.

Senator CASH—How much is then paid in total for the first three months? Is that the \$688 plus an outcome fee?

Ms Golightly—If the person actually succeeds in getting a job they would get the outcome fee.

Senator CASH—What does the outcome fee normally come to?

Ms Golightly—I will get that figure for you.

Senator CASH—Thank you.

Ms Golightly—I am making sure I have answered your first three months question. The fee I gave you is what the Job Network member is paid at the three-month mark. Up until that point they would have been getting another service fee. Are you looking for the total over the three months or the total—

Senator CASH—How much they will receive by way of service fees for the first three months and then the total that they would actually get within the three months.

Ms Golightly—We will add all of that.

Senator CASH—Is the \$688 the correct figure?

Ms Golightly—That is a point-in-time figure; it is not the total for the three months.

Senator CASH—Okay.

Ms Golightly—We will get that.

Senator CASH—Could you explain the Australian National Audit Office recommendation regarding gross and net outcomes for full point outcomes?

Ms Golightly—Is that with regard to the recent ANAO report on the Job Network?

Senator CASH—Yes. It is on page 20 of the latest report.

Ms Golightly—I am just not recalling the gross and net description, but we will look that up. My understanding of the ANAO's concern in that general area of the report was that they

did not believe we should count outcomes for 'found own employment' jobs. There was some discussion about whether they should be counted or not.

CHAIR—Do you want to come back to that?

Senator CASH—I am happy to come back to that. I refer back to the \$688. That is not a payment covering future costs; it is a point-in-time payment. What does that figure actually represent?

Ms Caldwell—The \$688 payment is in respect of the provision of job search training. After three months an unemployed person starts intensive support services under the current contract. The first service that they are provided under the current contract is three weeks of job search training. Each job seeker attracts a fee of \$688, which in essence covers that three weeks of job search training and a portion of ongoing services.

Senator CASH—So there is a portion of ongoing services within that dollar figure?

Ms Caldwell—Yes.

Senator CASH—When you come back in relation to the ANAO recommendation, can I also get you to comment on whether in the next contract the department will be incorporating ANAO recommendations?

Mr Carters—The current result in terms of your question about the ANAO figures is that, as Ms Golightly said, they did not count part-time jobs, whereas the department did. That was the key difference. In terms of counting people who found their own employment, both the ANAO and the department did count that, so that was not an issue. The recommendation from the ANAO was not that we do not count part-time jobs but that we just include a brief overview of the methodology. In that context, there is not a recommendation that says we do need to make a difference in the future.

Senator CASH—Moving back to the current contract, what has been the average expenditure per job seeker from the job seeker account over the past 12 months? While Mr Carters is looking for the information, can you expand on whether you will include the ANAO methodology in the new contract?

Mr Carters—Can we take that one on notice?

Senator CASH—Yes.

Ms Golightly—We have the average per month spent from the job seeker account between 1 January and 31 December 2008. We will convert that in a minute.

Senator CASH—That would be great.

Ms Golightly—The average per month was \$16 million. In that same time period, 280,402 job seekers were assisted. We will just do the maths for you.

Senator CASH—That would be fantastic. Again, you might have to take this on notice. Ms Caldwell indicated that the \$688 figure that we were discussing before included some compensation for future services. Can I get you to do the calculation for the exact figure within the three-month period? I do not want a figure that relates to anything past that first three-month period in relation to the services fee.

Ms Golightly—Okay.

Senator CASH—How many job seekers have benefited from wage subsidies over the past 12 months? How does that compare with the previous 12-month period?

Ms Golightly—I have totals here. We will just look up the breakdown for wage specifics.

Senator CASH—Okay. What has been the total cost of those subsidies? Someone is doing the calculations.

Ms Golightly—Yes.

Ms Caldwell—We have the wage subsidy breakdown on a calendar year basis. For the calendar year 2008, 25,080 job seekers were assisted through the job seeker account or employer incentives—that is, wage subsidies.

Senator CASH—What the figure for the previous year?

Ms Caldwell—In the same category for the calendar year 2007 the figure was 23,367 job seekers.

Senator CASH—What was the total cost of these subsidies per calendar year for 2007 and 2008?

Ms Caldwell—In 2007, the total cost was \$58 million, and in 2008 the total cost was \$72 million.

Senator CASH—Thank you very much for that. What is the average duration of a person on the Job Network case load to gain employment?

Ms Golightly—We would need to take that question on notice.

Senator CASH—What is the expected annual expenditure for the Job Network for the current financial year?

Ms Golightly—We will do a calculation and bring that back to you as well.

Senator CASH—Has that figure been revised or do you expect to revise it?

Ms Golightly—I will check whether it has been revised.

Senator CASH—How many Job Network job seekers had a recorded failure to attend a job interview on a monthly basis for September, October, November and December 2008?

Ms Golightly—We will have some detail on that, but I am not sure that it will be those date ranges.

Senator CASH—I will read out the next three questions, because it might relate to the same or similar information. How many Job Network job seekers had a recorded failure to attend Work for the Dole in September, October, November and December 2008? How many Job Network job seekers had a recorded failure to attend a provider appointment in September, October, November and December 2008? How many Job Network job seekers had a recorded failure to attend job capacity assessment in September, October, November and December 2008?

Ms Golightly—I will have to take those last three questions on notice because it requires interrogating Centrelink and Department of Human Services staff. We will take those three on, but we should be able to answer.

Senator CASH—You should be able to provide those figures.

Ms Golightly—I think your first question was how many had—

Senator CASH—Recorded a failure to attend a job interview.

Ms Golightly—Sorry.

Senator CASH—There is the job interview, Work for the Dole, the provider appointment and the job capacity assessment.

Ms Golightly—We have only the totals of the participation failures here. So to get that break-up I will have to take it on notice.

Senator CASH—I will get the total participation failures if you have them on you. Do you do that on a monthly basis?

Ms Golightly—I will see what we have.

Senator CASH—That would be great. When you say ‘total participation failures’, what exactly does that incorporate?

Ms Golightly—It would be any participation failure that Centrelink has imposed for that job seeker.

Senator CASH—Any participation failure?

Ms Golightly—Yes.

Senator CASH—Do you have the complete list, or can you provide the complete list of any participation failure that Centrelink imposes? I want to know exactly what that figure comprises.

Ms Golightly—We can give the break-up in the categories you have asked for. I just need to get someone to do some mathematics for me, because what I have here is the number submitted. I just need to work out how many were upheld. I go back to an earlier question about the total expected expenditure on Job Network. The figure is—

Senator CASH—Is this question about the cost per employment outcome for those placed by the Job Network member?

Ms Golightly—No, it was a more recent question about the total expected expenditure for this year.

Senator CASH—It was the actual expected expenditure for the Job Network for the current financial year?

Ms Golightly—That is it. It is \$1.184 billion.

Senator CASH—Thank you for that figure.

Ms Golightly—You also asked if that was a revised figure, and the answer is yes.

Senator CASH—Has it been revised up or down?

Ms Golightly—It was revised up.

Senator CASH—What was the initial figure?

Ms Golightly—\$1.1756 billion.

Senator CASH—Do you expect to revise it again?

Ms Golightly—I am not aware of any revisions, but that is a budget related issue.

Senator CASH—I know you are still trying to get me some information in relation to the failures to attend. Do you have on you the list that is incorporated by Centrelink? My understanding that there might be about eight different types of failures to attend.

Ms Golightly—There are eight different categories, or of that order. We can get the list for you.

Senator CASH—That would be great. Thank you.

Ms Golightly—In terms of the number of participation failures in total for the period 1 July to 31 December 2008, I believe that the figure is of the order of 99,900. I can confirm that, but we are pretty sure of that.

Senator CASH—In the 2008-09 budget papers there is a reference in Budget Paper No. 2 on page 388 to \$370.2 million in savings in employment services for the 2009-10 to the 2011-12 financial years. How was this figure calculated? What assumptions were made? Was any modelling done to support this figure? What part of these savings is of an administrative nature? Are any of these savings contributing to the department's efficiency dividend? Have these savings been revised in the mid-year economic and financial outlook 2008-09? I am happy to repeat any of those questions if required.

Ms Paul—I think we have answered this to some extent in the past, although not in a response to you, Senator. It is not really possible to breakdown the componentry. We have also answered this with regard to a question on notice.

Senator CASH—That is correct, but we did not believe that the answer you provided us with gave us all of the information we required. That is why I am asking it again—that is, to see whether or not you can elaborate.

Ms Paul—We may well have to take that on notice in terms of seeing whether there is any modelling and so on.

Senator CASH—Perhaps I can break it down. How was the \$370.2 million figure calculated? Do you have that information?

Ms Paul—I do not think we would have it with us here; I think we would have to take that question on notice.

Senator CASH—Are you aware if any modelling was done to substantiate that figure?

Ms Paul—I am not aware of what we call modelling. I do not know whether Mr Carters wants to make a comment.

Mr Carters—We have answered this question before in the sense that we cannot really break down the \$350 million. However, \$20 million of that, which gets to the \$370 million, is departmental funds. That relates to the management of the new contract and so on. There are

savings because of the new streamlined model. That is the \$20 million savings from departmental funds. The \$350 million is savings from the cost of the current employment services system and the new model. But we cannot isolate specific components that are being saved because it is such a different model.

Senator CASH—Who was responsible for putting together the \$370.2 million? Someone must have been able to sit down and, I assume, calculate it. I am hoping it was not a figure plucked out of the air. I assume there is some basis for it.

Mr Carters—There was.

Senator CASH—What was that basis? We have \$20 million in savings from the department funds, the other \$350 million—

Mr Carters—The other \$350 million was the difference between when we developed the new model—with all the different streams and we brought in stream four, which was not in there under the current employment services and so on—and then calculated the cost of that model. We then compared that to the cost of the current model. It is very different in terms of how it is structured. You cannot say, ‘That part of it does not exist in the new model and therefore that is a saving and this part does so that is a cost’. It is too complex; it is too different to be able to break that down specifically.

Ms Paul—In other words, we built up cost by looking at the componentry of the new model, which is a completely different concept to the current model.

Senator CASH—I am still not sure how you get a basis for \$350 million in savings if you are unable to compare the two models if they are so fundamentally different.

Mr Carters—We can compare the two models, but we cannot isolate one component of the current model and say whether that will cost more or less in the new model because in many cases that thing might not exist in the new model or it might exist in a different way. For example, the Personal Support Program—which exists now, but it is a separate program—is easy to deal with because we know what it costs now. That disappears in the new model, but we have an extra stream called Stream Four. We cannot translate the Personal Support Program costs to Stream Four because Stream Four is in fact different. For all intents and purposes, the Personal Support Program type job seekers would now go into Stream Four in the new model. It is that sort of example. We now have a concept of work experience in the new model, whereas under the old one we had community work coordinators running a program called Work for the Dole. Work experience and Work for the Dole are still there, but it is in a different format because it is entrenched within the overarching model.

Senator CASH—That is great. I am hearing that some form of comparison has been done; even you are unable to compare. Can you take on notice to provide the details as to what actually does substantiate the \$350 million in savings?

Mr Carters—We will take on notice to see how we can demonstrate the differential.

Senator CASH—Thank you very much.

Ms Golightly—I have the information for you on the different types of participation failures.

Senator CASH—Thank you very much.

Ms Golightly—There are roughly 10. If it would be helpful, I will read them out.

Senator CASH—That would be fantastic.

Ms Golightly—Failure to attend an appointment with a provider; failure to attend a reconnection appointment with a provider; failure to attend a job capacity assessment; failure to participate in an activity or misconduct in an activity; failure to attend a job interview or inappropriate behaviour at the job interview.

Senator CASH—Is that one or two?

Ms Golightly—That is one. Failure to enter the activity agreement; failure to return a satisfactory job seeker diary; failure to participate in full-time work for the dole—and that includes failure to commence; refusal of a job offer; and voluntary unemployment or unemployment due to misconduct.

Senator CASH—Voluntary unemployment—

Ms Golightly—Or unemployment due to misconduct. That is one. I think Ms Caldwell has some information on the fees for the three months that you were asking for.

Ms Caldwell—Under the current contract, Job Network group members receive a fee equivalent to \$63 during the first three months for a fully eligible job seeker. A higher fee of \$94 is payable for highly disadvantaged job seekers. That covers resume and registration purposes with the Job Network member. That is paid not on a per capita basis but through a formula that estimates the likely caseload at any point in time throughout the year.

CHAIR—Is that reconciled at any point in time?

Ms Caldwell—No, it is not. The arrangement under the current contract is to accept a formula based estimate of caseloads based on a number of model parameters.

CHAIR—Is that formula applied differently based on the historical information from the last period?

Ms Caldwell—The formula is a quite complex mathematical model and it is quite sophisticated. It has something like 200 parameters embedded within it. The principle parameter is that it has regard to historical trend information that looks at seasonality throughout the year—that is, customary peaks and lows. It also captures and rolls forward increases over time—diminution over time. The second key element of the model is that the hypothecated fee covers not only real job seekers but also other job seekers in regular servicing. The model analyses how many job seekers would be at the two-year unemployment mark, how many of them might be at the 12-month unemployment mark and then calculates for each Job Network member a combined fee to cover registration and regular scheduled servicing of job seekers as well.

Senator CASH—I now have a point of clarification. How did that relate back to the \$688 figure?

Ms Caldwell—The quarterly payment fee is a servicing consideration of new clients who will come through the door and of scheduled regular ongoing review interviews and review appointments required under the contract. There are two other types of services that are paid

for each individual job seeker. One of these is the job search training payment of \$688 at the three-month point. The others are our customised assistance, which occurs at 12 months and 24 months.

Senator CASH—Thank you very much. How many job seekers have undertaken a Green Corps project in the last 12 months and in what areas have these project been?

Ms Golightly—The Green Corps program has around 1,700 places per year. We can dig up the list of areas. I think that is what you asked for.

Senator CASH—And what areas have these projects been in?

Ms Golightly—We might have to take that question on notice to get the full list.

Senator CASH—Under the new contract, can you confirm that the Green Corps will no longer be a specific youth development program?

Ms Golightly—Green Corps has been expanded under the new contract. Anyone of any age will be able to undertake Green Corps. But young people who perhaps are not on income support can still volunteer. It is directed in that way to young people quite specifically, but the age limit has been removed.

Senator CASH—So it will no longer be a specific youth development program.

Ms Golightly—It has been expanded to include people of all ages.

Senator CASH—How many jobs seekers are currently on the Personal Support Program? Does this figure include those currently on a suspension period? How many job seekers are on the Personal Support Program wait list?

Ms Golightly—If you give us a second, I think we probably have most of those figures to hand.

Senator CASH—Fantastic. I have an additional three questions that I will read out so you can focus the answers. Of those, how many have been on the wait list in excess of 12 months? Will these job seekers receive priority for a place in the new employment services model? How many job seekers are in the Job Placement, Employment and Training program?

Ms Paul—We could perhaps go to the philosophy of the new model first, which is the second question out of that list. The whole approach of the new model is to target the level of need for assistance rather than time served. As Mr Carters was saying a couple of minutes ago, the new concept of stream 4 goes to some of the needs that these particularly disadvantaged job seekers face. The whole concept of a waiting list changes for the better under the new system. Mr Carters or Ms Golightly might want to add something on the philosophy of the new model.

Mr Carters—The wait list will disappear under the new model. It will be demand driven, including for stream 4, which will contain clients similar to those who currently participate in the Personal Support Program. In fact, there will be no wait list under new model, except for a very short time as people transfer into the services. That is determined by the capacity of the providers to a large extent.

Ms Paul—One of the differences between the philosophy of the current model and the new model is that in the current model assistance tends to be sequential. You have to wait for

certain amounts of time to gain a higher level of assistance. In addition, the PSP has been a capped program, which has therefore produced a waiting list or a waiting time. As Mr Carters said, the new system is fundamentally or completely different. The concept of the new model is to stream people according to their need straight up, rather than their having to wait, and to uncap assistance. When Mr Carters says it is demand driven, that means rather than having only a certain number of places for PSP like now, which leads to these long waiting lists, there is no wait list concept at all. It is demand driven. If I am that disadvantaged then I will get that level of service. That is the basic philosophy.

Senator CASH—My understanding is that the new contract will have some people on the wait list waiting for up to 12 months, and that is what is outlined in your exposure draft.

Ms Golightly—In the RFT that was not in relation to PSP. The RFT says that, if people have done, for example, two sets of intensive support customised service in Job Network already, they can take up to six months to transition into the new model in recognition of the high level of assistance they already have. But it also goes on to say that if those people would like to be immediately serviced they can be. If providers want to call them in earlier they can also do that. It is not a wait list in that sense at all.

Senator CASH—How many job seekers are currently on the Personal Support Program?

Mr Waslin—We currently have 74,652 people on that program.

Senator CASH—Does the figure include those currently on a suspension period?

Mr Waslin—No, they are people actually in the program.

Senator CASH—So the answer is no?

Mr Waslin—That is correct.

Senator CASH—How many people are on the Personal Support Program wait list?

Mr Waslin—29,600.

Senator CASH—Of those, how many been on the wait list in excess of 12 months?

Mr Waslin—20.2 per cent.

Senator CASH—That is 20.2 per cent of 29,600. How many do you have currently serving a suspension?

Ms Golightly—We might need to take that on notice.

Senator CASH—We have gone through all these job seekers who receive priority for placement in the new employment services model. Ms Paul covered that.

Ms Paul—Yes.

Senator CASH—How many job seekers are in JPET?

Mr Waslin—7,640.

Senator CASH—Have any employment service providers closed sites in the last 12 months?

Ms Golightly—I would need to look that up. We may have that with us. I will let you know.

Senator CASH—I will require some additional information. I will let you know what that is.

Ms Golightly—Yes, please.

Senator CASH—If so, where have these closures occurred? Have any employment services providers requested changes to their trading hours? Have any Job Network providers handed back their contracts? Have any other providers handed back their contract—for example, Disability Employment Network, Personal Support Program, Indigenous steppers?

Ms Golightly—I think those last few questions will require us to do a bit of analysis. I might need to take them on notice.

Senator CASH—Have any providers indicated concerns to the department about the impact of the credit crunch on their being able to source funding to step up new sites?

Ms Golightly—We will take that on notice. The contract is for certain sites.

Senator CASH—I am going to move on to a separate issue. Will there be any information forthcoming in relation to those questions?

Ms Golightly—We might have the first one. In fact, we will probably need to take that one on notice as well.

Senator CASH—There are six questions that will need to go on notice.

Ms Golightly—I think I have five.

Senator CASH—Have any employment services providers closed their sites in the last 12 months? If so, where? Have any employment services providers requested changes to their trading hours? Have any Job Network providers handed back contracts? Have any other providers handed back their contracts, including Disability Employment Network, et cetera? Have any providers indicated concerns to the department about the impact of the credit crunch on their ability to be able to source funding to set up new sites?

Ms Paul—We have them now.

Senator CASH—How many vacancies are currently listed on the Australian JobSearch website?

Ms Golightly—I will look that up.

Senator CASH—I have a number of questions. I refer to job placement licence organisations. There will be questions in relation to that and to job kiosks.

Ms Golightly—It is the same area.

Senator CASH—How many vacancies are currently listed on the AJS website? How does this compare with six months ago? How does this compare with 12 months ago?

Ms Golightly—I think we have the totals here, but we probably need to take the comparisons on notice.

Senator CASH—I will try a more general question while you are looking for that information. With job placement licence organisations no longer placing vacancies on the

website from 1 July 2009, what impact does the department predict this will have on the number of vacancies advertised?

Ms Golightly—I can take that on notice and look into whether we have done any predictions. I am not aware of any. We get vacancies from all sorts of sources for the AJS website.

Senator CASH—Do you know how many hits the AJS has had in the last six months?

Ms Golightly—I think we will have that information as well.

Mr Moore—I do not have a total for the last six months, but I can give you averages per day. For instance, there are 1.29 million page accesses per day on the Australian JobSearch website.

Senator CASH—Which question are you referring to? We are now talking about hits on the website.

Mr Moore—Yes. The number of actual job searches on the website per day is 257,000.

Senator CASH—Do you have the figures for how many job placement licensed organisation vacancies have been listed over the last 12 months?

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

Senator CASH—My understanding is that job placement licensed organisations will no longer be able to place vacancies on the website from 1 July 2009.

Ms Golightly—There are two types of job placement licences. For example, all of our Job Network members hold a job placement licence. Anyone who is successful in winning a new contract will be able to place vacancies on the website.

Senator CASH—What is the change?

Ms Golightly—If you are a job placement only licence holder—that is, you do not have an employment services contract with us—you will not be able to.

Senator CASH—Do you have any figures showing how many hits those particular organisations would get daily?

Ms Golightly—It is the one website and job seekers access it regardless of who has submitted the vacancy.

Senator CASH—I refer back to question 1. Do you have the figure of how many vacancies are currently listed on the AJS website?

Mr Moore—I do not have the current figure, but the October 2008 figure for active vacancies was 45,664.

Senator CASH—Can you compare it with the previous six months?

Mr Moore—I do not think I have the figure.

Senator CASH—And the previous 12 months.

Mr Moore—I can get you that.

Ms Paul—We will take that on notice.

Senator CASH—I would also like the most current figure as opposed to the October 2008 figure. I will now turn to job placement licence organisations.

Ms Golightly—Ms Caldwell has some answers to your earlier questions.

Senator CASH—Thank you very much. Which questions were they?

Ms Caldwell—I think these were your first questions in which you asked for a breakdown of 13-week full outcomes, 26-week final outcomes and placements. We had information, but it was not broken down into the particular time frames. That has now been calculated. I will run through that, starting with 13-week full outcomes: for the period 1 January to 30 June 2007, 80,039 13-week full outcomes were recorded; for 1 July to 31 December 2007, 85,899 13-week full outcomes were recorded; for the first six months of 2008, 1 January to 30 June, there were 76,816 13-week full outcomes; and for the final six months of 2008, 1 July to 31 December, the equivalent figure was 76,876.

Senator CASH—Thank you.

Ms Caldwell—The second part of that question referred to final outcomes, which are for placements of at least 26 weeks. Over those four periods, the number of 26-week full outcomes from 1 January to 30 June 2007 was 32,842; and from 1 July to 31 December 2007, 34,919; for 1 January to 30 June 2008, it was 33,041; for 1 July to 31 December 2008, it was 32,709. For those four periods the total job placement category—which was your third question—for 1 January to 30 June 2007, there were 314,373 job placements in total recorded; for 1 July to 31 December 2007, there were 304,346; for 1 January to 30 June 2008, there were 273,326; and for 1 July to 31 December 2008, there were 249,165. We are still waiting on the calculation to see whether we can bring it back to the table this afternoon—that is, the split of placements for the specified age groups 15 to 18 and 19 to 24.

Senator CASH—Thank you very much. So the answer to the last four questions—what was the proportion of placement to outcomes for the periods that you have just outlined—

Ms Caldwell—Yes. As Ms Golightly indicated earlier, there is a proportion that will take additional analysis and we need to take that on notice.

Senator CASH—Thank very much for doing that.

Ms Golightly—I would like to ensure I was clear in my answer to your question about the changes for JPLOs—job placement licence only holders for 1 July. I had mentioned earlier that anyone can put vacancies on AJS, and that continues to be case post 1 July. I apologise if I was not clear, but the difference is that post 1 July the JPLOs will not be paid to do that. But anyone can continue to do that.

Senator CASH—Going on from that, do you predict that there will be any impact on the number of vacancies advertised with that change?

Ms Golightly—I will need to take that on notice. I am not aware that we have done any such predictions.

Senator CASH—How many job seekers were placed in employment by job placement organisations between 1 January and 30 June 2008? How many job seekers were placed in

employment by JPOs between 1 July and 31 December 2008? How many are anticipated for the period 1 January to 30 June 2009?

Ms Golightly—We will need to take that on notice for the date break-ups. We will still see if we can get that this afternoon.

Senator CASH—How many job placement licence organisations are there currently?

Ms Golightly—As at 13 January there were 306 who have a job placement licence only.

Senator CASH—So 306 have a job placement licence only?

Ms Golightly—Yes.

Senator CASH—Does the department intend to step in to assist providers to get appropriate infrastructure in place by the commencement of the new contract in terms of the changes that are going to be taking place?

Ms Golightly—Part of the funding that providers receive if they are successful in contract is to do with infrastructure for the kiosks.

Senator CASH—My understanding that the Telstra job kiosks are no longer to be provided to employment services providers.

Ms Golightly—They have not been in the current contract either. As I said, the current contract provides funding, and so does the new contract. The difference is that in the new contract a particular bit of equipment is new. It will not be the kiosks that are currently there; it will be more like a PC type configuration.

Senator CASH—Is it anticipated that the employment services providers will have these job kiosks, or the appropriate infrastructure, in place and up and running at the commencement of the new contract?

Mr Moore—That is right. They are required under the contract to have those facilities in place by 1 July. I should point out that under the current arrangement the providers lease the kiosks from the provider. It is a package with the communications networks and so on through Telstra. Under the new arrangements, the providers are open to choose whichever telecommunications provider they want. The requirement is for the facilities to have access to the internet so job seekers can use the PCs to search for jobs.

Senator CASH—What prompted the change?

Ms Golightly—It relates to advances in technology. The kiosks are now quite outdated technology. The modern PC offers much better facilities for our job seekers. As Mr Moore just mentioned, and as you can appreciate, connection to the internet is a key thing these days.

Senator CASH—My understanding is that Telstra has actually advised some providers that there will be a four-month waiting period for the appropriate cabling to be installed. If the successful tenderers are not announced until early or mid-March and there is that four-month lag, how is it anticipated that these kiosks will be up and running by 1 July?

Ms Golightly—I will start with some general comments and Mr Moore might be able to add some specifics. A couple of things should be remembered. As Mr Moore pointed out, they are no longer required to go to Telstra, although obviously some may choose Telstra.

Senator CASH—Are you talking about other providers?

Ms Golightly—As Mr Moore said, our employment service providers will be able to have the communication service provider of their choice. The other thing that should be remembered is that the outcomes of the tender are not yet known. So things about new premises, new sites, existing sites and so on are just not known as yet. Those are a couple of things to keep in mind generally. But Mr Moore might have some specific information.

Mr Moore—That concern has been raised with us and we made contact with Telstra to clarify those comments. The advice that I have back from Telstra is a little at odds with that comment. They were suggesting that they have minimum lead times of six to eight weeks. There may be some circumstances where it does take longer, depending on the local issues to do exchanges and so on. However, they have committed that they will provide an officer as a way of streamlining the process and supporting our providers who need to transition from the existing arrangements to a new Telstra arrangement. I do not have the final details of that yet because those discussions are ongoing. But their advice to me is that they will do everything in their power to make the time frames as short as possible.

Senator CASH—In the event that providers are unable to have the appropriate infrastructure in place by 1 July, will there be any penalty? What will happen to the provider?

Ms Golightly—Our approach is that we will provide whatever assistance is necessary to ensure that the services are there by 1 July.

Senator CASH—Will there be any penalties to be paid by the providers?

Ms Golightly—I am not aware that the contract provides for that. I can check if you like. That is not our intention.

Ms Paul—At this stage that is speculation, because we do not intend that to be case. We do not want that situation. There will be enough notice for any new providers that come along. In this day and age it will be a lot easier to make those ISP and other connections than it would have been four years ago, let alone eight years ago and so on.

Senator CASH—Can a person who is participating in full-time Work for the Dole also undertake literacy and numeracy training?

Ms Golightly—My understanding is that because full-time Work for the Dole fully meets their obligations they are not required to do anything else. But if they want to volunteer to do other training, which would include literacy and numeracy training, then they could do so as their own choice.

Ms Paul—Of course, the new employment services model introduces a series of new incentives for Job Network or the new employment services model providers to encourage job seekers into training in ways that are not possible under the current model or are not such great incentives. There is a shift in the new model to supporting both active job seeking and the attainment of the relevant job-ready skills.

Senator CASH—If under the new contract a stream 1 person were undertaking full-time Work for the Dole—this is a new contract—would they be able to participate in literacy and numeracy training?

Mr Carters—Under the new contract, the concept of work experience is purposely very broad. That is what Ms Paul was suggesting. It is very much about negotiation between the provider and the job seeker as to what sort of activity fits into that work experience area. The term ‘work experience’, per se, does not mean that they have to do Work for the Dole. Work for the Dole in this case is just one of the options available. They can certainly do literacy and numeracy or any other training during that period if that is what is most appropriate for them, or they can do work experience. It is really what works best for them. The important thing is that they do a certain specified amount depending on their circumstances. Those hours are set out in the request for tender. Again, if they do not negotiate to do something else then certain individuals will be expected to do Work for the Dole as the default.

Senator CASH—My understanding was that, under the new contract, if you are doing full-time Work for the Dole then you cannot do other courses.

Ms Paul—I do not think that is true.

Ms Golightly—I do not think you are required to do it, because you are fully meeting your obligation. Full-time Work for the Dole activity is full time. But, if you want to volunteer to do other activities, that is open to you.

Senator CASH—Okay. Would a stream 1 to 3 person undertaking full-time Work for the Dole be able to undertake any course addressing non-vocational barriers concurrently?

Ms Paul—I think we have just gone into that.

Senator CASH—This is stream 1 to 3.

Ms Golightly—Is this non-vocational activities of any sort?

Senator CASH—Of any sort.

Ms Golightly—In addition to Work for the Dole?

Senator CASH—Yes.

Ms Golightly—The test is whether they are meeting their employment pathway plan activities. If they have activity test requirements, they are allowed to meet those requirements in accordance with the activities that are listed on their employment pathway plan. That employment pathway plan is tailored for each individual job seeker, so it is something that is discussed and agreed upon with their provider. It could combine any number of activities, including non-vocational activities.

As Mr Carters just explained, when we get to the work experience phase, we need to work out whether there are additional requirements and whether maybe you should be doing Work for the Dole to meet those requirements. If you are meeting them, there is nothing else required of you—although, again, it is always open to somebody to volunteer to do other things if they wish.

Senator CASH—Concurrently?

Ms Golightly—Yes.

Senator CASH—What proportion of the work experience placement participants were also registered with a Job Network member?

Ms Golightly—Is this currently?

Senator CASH—Currently.

Ms Golightly—We do not have work experience currently; that is part of the new model. Are you talking unpaid work experience?

Senator CASH—Correct.

Ms Golightly—I will get the right person.

Ms Paul—There is a lot of technical language in this area.

Ms Golightly—It has a particular meaning.

Senator JACINTA COLLINS—What is the new acronym for the new model?

Ms Paul—It has not been announced yet.

Mr Moore—No decision has been made.

Ms Paul—We have been generally using the term ‘universal employment services’.

Senator JACINTA COLLINS—Universal?

Ms Paul—Yes. There may be a more elegant name in due course.

Senator JACINTA COLLINS—That helps to explain it.

Ms Paul—If someone says ‘UES’, you understand that it is the universal employment services.

Senator CASH—I will give the background information to this so we are all on the same page. A question on notice was submitted on 28 August regarding the uptake of work experience placement based on figures in the DEEWR annual report.

Ms Golightly—Yes. The figure for the work experience placement initiative from 1 July to 31 December 2008 was 927.

Senator CASH—How does that relate to what proportion of the work experience placement participants were also registered with a Job Network member?

Ms Golightly—I believe this is a program that Job Network members, Disability Employment Network providers and vocational rehabilitation providers access.

Senator CASH—So that was 927?

Ms Golightly—Yes.

Senator CASH—What proportion were registered with a Disability Employment Network provider?

Ms Golightly—I am not sure that they access this program, but we will check.

Senator CASH—Okay. What proportion were registered with a vocational rehabilitation services provider?

Ms Golightly—I have the Disability Employment Network and vocational rehabilitation service figures, but only for the total program, not the same time period that I just gave you. If

you give us a few minutes we might be able to break that up so we can give the same set of figures.

Senator CASH—Thanks very much. What percentage of the people referred to as work experience placement participants have since gone on to take up employment with a host employer?

Ms Golightly—Again, for the Job Network ones, the figure for 1 July to 31 December 2008 was 126.

Senator CASH—Thank you.

Ms Golightly—The figure we have for the Disability Employment Network and vocational rehabilitation services are for a longer time period, so I need to crunch them down.

Senator CASH—Bearing in mind the recent upward revision in the unemployment figures of an additional 300,000 by June 2010, has the department revised its costing for the new employment services model?

Mr Carters—The costings for the new employment services model have been revised in the context of the recent announcement by the Minister for Employment Participation. That was the \$298.6 million in extra funds. They are designed to enable people who are made redundant over the two-year period from 1 April 2009 to 31 March 2011 to have direct access to stream two services.

Senator CASH—So there is no other revised costing in relation to the new employment services model itself?

Mr Carters—Not that I am aware of. There have been upward revisions to the Newstart and Youth Allowance costings, which flow through into 2009-10.

Senator CASH—Can you provide us with details of those revisions?

Mr Carters—Yes. The increased cost for Newstart and Youth Allowance is \$258 million extra in 2008-09 and \$1,258 million extra in 2009-10. They will obviously have a flow-on effect to the new employment services model, but I am not aware that it has been worked through as yet.

Ms Paul—It is a demand-driven model, so we will be redoing those estimates, but not necessarily yet.

Senator CASH—When do you think you will be reviewing them?

Ms Paul—Estimates are normally reviewed on a cyclical basis through additional and other estimates and through the budget the process, so I presume it will be in the normal sort of cycle.

Senator CASH—Do you have an estimate at this stage of what you believe the approximate additional required expenditure will be?

Ms Paul—Not at this stage.

Senator CASH—Have you had any discussions in relation to that?

Ms Paul—We may have done, but I do not think so yet. There may have been discussions, but we have not reached the estimate yet.

Senator CASH—Is the department going to engage additional employment service providers to meet forecast increased demand?

Ms Golightly—The current tender is the thing that determines the employment service providers that will be engaged.

Senator CASH—Has the department revised the starting forecast caseload for each of the programs incorporated into the new universal employment services model?

Ms Kidd—Our employment services model is based on a business share. We allocate to providers based on, say, 30 per cent of the market in their area. That business share will vary as the caseload varies. So we do not need to modify estimates.

Senator CASH—On what modelling were the initial forecast savings of \$350 million for administrative funds and \$20 million for departmental funds based? I think we canvassed that earlier and you have taken that on notice. In addition to what you have taken on notice, if modelling were undertaken, what were the key factors considered to support these savings? If no modelling was undertaken, can the department be certain of the extent of the savings? You can also take that on notice when you are considering your answer.

Mr Carters—Yes.

Senator CASH—I now turn to the Australian Employment Covenant.

Ms Paul—Chair, can I seek some guidance? We can answer these questions today—I understand that they are about the Aboriginal employment covenant.

Senator CASH—Correct.

Ms Paul—I note that there is an Indigenous hearing tomorrow. I do not know if Senator Cash is aware of that. It depends on how the chair wants this handled during the week.

Senator CASH—I am happy to accept your guidance, Chair.

CHAIR—Are there many questions on this?

Senator CASH—There are 20.

CHAIR—It is probably best dealt with tomorrow morning.

Senator CASH—Yes.

Senator Ludwig—I thank the chair and Senator Cash for that. As I understand it from both the opposition and the government senators, the idea was to allow sufficient time on Friday to deal with a whole range of Indigenous issues. I stress that it would not preclude you from asking a question now if you wanted to.

CHAIR—If there were only one or two questions we might as well have dispatched them. But if there are 20-odd, I would prefer that they all be dealt with tomorrow in the Indigenous areas. Everybody will be there.

Senator CASH—Thank you, Chair. I refer to an answer given in relation to the new employment services model. When was the first time the department sat down with the minister to discuss the need for early intervention?

Ms Paul—What do you mean by ‘early intervention’?

Senator CASH—In terms of revising costs et cetera.

Ms Paul—I am not quite sure what you are getting at. If you are asking us about timing for offering advice, I am not sure what sort of advice. Of course, we have offered an enormous amount of advice on the new employment services model over a long period—more than a year now.

Senator CASH—Early intervention for job seekers, providing job search support early on.

Ms Paul—In terms of the most recent announcements?

Senator CASH—Yes.

Ms Paul—We would probably have to check. It would have been recently, but I am not sure when it would have been. We can take that on notice.

Senator Ludwig—Is that the \$298.5 million to ensure workers who are made redundant—

Senator CASH—Yes.

Ms Paul—We have offered advice on that over a period of time since the beginning of this calendar year, at least. But the first point, I could not take a stab at here. We have offered a wide range of advice over a significant period, but I could not pin it down.

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

Ms Paul—We can take it on notice.

Senator CASH—Thank you.

Ms Golightly—We some Australian JobSearch figures for you.

Senator CASH—Thank you very much.

Ms Golightly—If now is convenient—

CHAIR—Are you happy to take them now?

Senator CASH—If you are happy to provide them. Is that the Australian JobSearch figures we were talking about?

Mr Carters—Yes.

Senator CASH—We had 45,664 in October 2008. Is that where we are heading?

Mr Moore—That is right. The latest figure I have is January 2009, and that is 46,611; July 2008—which is six months earlier—93,533; and January 2008, 82,022. I can even give you July 2007.

Senator CASH—I am happy to have it.

Mr Moore—We made you wait so long. It is 93,930.

Senator CASH—Thank you very much for finding that information. I turn now to the disability employment discussion paper. I understand that an invitation will be offered to the providers who have achieved a three-star-plus rating for program B. What proportion of business do you expect will remain to be tendered for on the open market?

Mr Waslin—Around 30 per cent will be available to be put out to tender.

Senator CASH—Will providers be required to hold three-star-plus rating for just the last star ratings period, or will they need to have been three-star-plus for a 12-month period?

Mr Waslin—The star rating is an accumulated rating.

Senator CASH—Can you explain that a little better for me?

Ms Golightly—Are you asking whether it will be most recently released star rating or an earlier star rating perhaps? As Mr Waslin just mentioned, the star ratings accumulate.

Senator CASH—How will the providers who are offered the invitation to treat have achieved that three-star rating?

Ms Golightly—Mr Waslin may have further information, but my understanding is that there are many things that are still under discussion with the industry on how precisely it will work. Final decisions have not been made by the government on that yet.

Senator CASH—When will the star ratings for vocational rehabilitation services be made public?

Ms Golightly—That is currently under consideration.

Ms Paul—We are still in the consultation phase, of course. You will appreciate that it is not settled quite deliberately so that we can receive input from consultations.

Senator CASH—What will be the total duration of the contract?

Mr Waslin—The contract will run from 1 March 2010 until 30 June 2012.

Senator CASH—Have providers received copies of the star ratings for vocational rehabilitation services?

Mr Waslin—We have been consulting with the industry on developing those star ratings to provide a network that delivers vocational rehabilitation services. They have been totally involved. We have developed a draft star rating arrangement. They have seen early releases of that. Each provider has seen their own star rating, but nothing has been put out publicly yet because we are still finalising that position.

Senator CASH—Why was the decision made to have the contract for that period and not a longer period, such as a three-year period?

Ms Golightly—It is my understanding is that it was to ensure that it lined up with the end of the universal employment services contract, which is 30 June 2012.

Senator CASH—How long will providers have between the tender being announced and the closing date?

Ms Golightly—We are only at the discussion paper stage. The exposure draft for the RFT et cetera has not been finalised or released yet. That will contain the schedule when it is settled.

Senator CASH—Have the dates set for successful tenders been announced? The answer to that would be no.

Ms Golightly—Is this still for disability employment services?

Senator CASH—Yes.

Ms Golightly—That is correct.

Senator CASH—There is a current disability employment service.

Ms Golightly—Yes.

Senator CASH—Is the current contract lined up with the employment services? You said that the reason that the contract period for the new one was March 2010 to 30 June 2012 was that it lined up.

Ms Golightly—They are currently. But there was a slight difference in the contracts in that the extension clauses in the current Job Network contract—which expires on 30 June 2009—had been exhausted. So we were not able to extend it any further beyond that date under the commonwealth purchasing guidelines. However, through history of development, the contract for the disability employment services has an extension clause that allowed it to be extended beyond 30 June this year. It was the government's decision to do that so that we could undertake proper and appropriate consultations on the reform of disability employment services in the context of the national review of mental health and employment services.

Senator CASH—I understand that the proposed new model will offer uncapped services. Will additional resources be provided to ensure job capacity assessments are conducted in a timely manner?

Ms Golightly—Job capacity assessments are the responsibility of the human services portfolio. That question is probably best directed there.

Senator CASH—The discussion paper points out that a proportion of the business for program A is quarantined for CRS. Approximately what proportion of the total business share does the department expect to be held by CRS?

Mr Waslin—The decision was made that the CRS share would be equal to the revenue that it will gain in this financial year. When we do our calculations, it will be based on their expected income this year. We think it will be in the range of between 50 per cent to 60 per cent. The final calculation is still to be confirmed.

Senator CASH—If by way of example a Commonwealth Rehabilitation Service, CRS, site is performing at a two-and-a-half star average and another provider currently has a four-star rating in another employment service area and they tender for the business, would this guaranteed business share to CRS possibly mean that they would be one to keep the business for the ESA? You can see where I am going with that in terms of the lower star rating.

Ms Golightly—It depends whether there is any business to be tendered for. If there is, the successful tenderer will be determined by the tender process.

Ms Paul—We could not speculate on the outcome of a tender process.

Senator CASH—But if you have a proportion of the business being quarantined, does that not mean that you need to honour that commitment?

Ms Golightly—They would possibly have a particular part of the business, but there may well be other business in that area that is open for tender. That is just speculating.

Ms Paul—We do a very significant and sophisticated business allocation process. We could not definitively say at this stage before we had the whole picture in front of us.

Senator CASH—Would there be some ESAs where there is no tender conducted and CRS will automatically given the business because they have the quarantined proportion of the business?

Ms Golightly—That sort of analysis has not been done yet. As I said, we are still at discussion paper stage and there are quite a lot of things to be settled before final decisions of that nature can be made.

Senator CASH—What is the total proposed budget for the employment assistance fund?

Ms Golightly—For the current year?

Senator CASH—Yes.

Ms Golightly—Are you talking about the disability employment services and VRS together?

Senator CASH—Correct.

Ms Golightly—There is something that is similarly named in the discussion paper.

Senator CASH—Unfortunately I have another question about future proposed funding. Sorry about that.

Ms Golightly—We will try to work out those figures for you. They are not exactly apples and oranges. I will need to take that on notice.

Senator CASH—That is okay. What is the total proposed budget for employment assistance fund—by way of the future fund?

Ms Golightly—I will need to take that on notice.

Senator CASH—You said that you would take that question on notice. I have a few other questions, but after looking at the time I will also place them on notice. The discussion paper states that those looking for work will be able to access funds. Can you provide an example of what this funding could be used for in this instance? What does the discussion paper mean when it states, ‘Those looking for work will be able to access funds’?

Mr Waslin—Other components of the program will continue into the future. That includes aspects such as wage subsidies, workplace modifications, Auslan services, and so on. There are a number of elements that we will carry forward from the current program into the future. Those programs will provide assistance to job seekers.

Senator CASH—Will the people who have gained employment be able to use the funds to purchase safety equipment for work—for example, steel capped boots—or will it be restricted to workplace modifications?

Mr Waslin—In some instances providers may choose to assist people in their placement into employment. That would be covered in the fees that we are offering to those providers. The workplace modification arrangements generally are to adapt the workplace for the person going into that employment situation.

Senator CASH—With the proposed employment assistance fund, will the level of funding be determined in the same way in which the current job seeker account is set?

Mr Waslin—No. A total fund is available for drawdown by providers. But no set amount is given to any individual provider organisation.

Senator CASH—The proposed funding level for program B has two levels. Is it expected that those job seekers who currently have a disability for employment instrument rating 3 will be funded at the equivalent to a DPI level 4?

Mr Waslin—Yes. There is no direct correlation between the existing classification of a person that needs to be provided with assistance and how it might happen in the future. In future people will be assessed by a job capacity assessor and they will make the determination about whether they are on level 1 or level 2 funding.

Senator CASH—I now refer to new employment services, looking at some modelling that has been done that was taken from your website. As we discussed before, with newly adjusted increased unemployment forecasts showing that up to 300,000 jobs will be lost by 2010, does the department intend to update the perceived flows for each stream under the new employment services model, or will the department adjust the flows to reflect the figures in the modelling?

Mr Carters—Can we take that question on notice? The reason for that is that we have costed the extra people into stream 2, but we have not as yet discussed with the minister about updating the website that you have mentioned. We will take that question on notice and get back to you.

Senator CASH—I will also place on notice one or two additional questions.

Mr Carters—Sure.

Senator CASH—Finally, turning to the current Disability Employment Network contract, at the current funding levels, how much is paid for a DPI 1 to 4 and how much is paid for a DMI 1 to 4?

Ms Golightly—While Mr Wilson is looking that up I think we have some answers to some of your earlier questions about age breakdowns.

Ms Caldwell—I have answers relating to job seeker account expenditure. The committee asked for expenditure for the calendar year January 2008 to December 2008. The average expenditure per job seeker was \$689 per job seeker assisted. I am also in a position to be able to provide you with the answers to the third set of questions that were asked at the start of the outcomes hearing with regard to job placement outcomes for youth job seekers over the four time periods. The questions that were asked were with respect to the groups of those aged 15 to 18 and 19 to 24 and, in respect of each of the job placements, 30-week outcomes and 26-week outcomes for the four time periods. Again, I will quickly read through them. Total job placements for the first period, January 2007 to June 2007, for 15- to 18-year-olds was 28,714 and for 19- to 24-year-olds was 80,016. For the second time period, July 2007 to 31 December 2007, the total job placements recorded for the younger age group, 15- to 18-year-olds, was 25,884; for the older age group, 19- to 24-year-olds, the number of job placements was 75,293. For the third time period, January 2008 to June 2008, for the 15- to 18-year-old group it was 24,422; for the older age group of 19 to 24 years of age it was 63,908. In the

final time period, July 2008 to 31 December 2008, for the 15- to 18-year-olds there were 20,801 placements and for the older group there were 60,575.

Senator CASH—Thank you very much for that.

Ms Caldwell—I think you also asked about the 13-week and 26-week outcomes. We also have those figures. For the first time period, January 2007 to 30 June 2007, for 15- to 18-year-olds it was 6,331 and for 19- to 24-year-olds it was 23,382. For the second time period, for 15- to 18-year-olds it was 7,100 and for 19- to 24-year-olds it was 23,572. For the 13-week outcomes of third time period, January 2008 to June 2008, in the younger age group it was 5,457 and in 19- to 24-year-olds it was 18,685. For the 13-week outcomes of the final time period, 1 July 2008 to 31 December 2008, in the younger age group it was 6,033 and for 19- to 24-year-olds it was 18,261.

Senator CASH—Thank you.

Ms Caldwell—The final series were with regard to 26-week final outcomes. In the first time period, January to June 2007, for the younger group, there were 1,379, and final outcomes for the older group were 9,434. For the second time period, July 2007 to December 2007, the younger group was 1,547 and the older group was 9,465. For the time period January 2008 to 30 June 2008, the 26-week outcome for the 15- to 18-year-olds was 1,316 and for the 19- to 24-year-olds it was 8,005. For the final time period, July 2008 to 31 December 2008, the 26-week outcome for 15-year-olds to 18-year-olds was 1,413 and for 19- to 24- year-olds it was 7,359.

Senator CASH—Thank you very much for providing that explanation. I now go back to the current end contract. We are looking at current funding levels. How much is paid for a DPI 1-4 and how much is paid for a DMI 1-4?

Ms Golightly—Senator, we have here quite a matrix of fees. We could take a photocopy of it and table it for you.

Senator CASH—That would be great, thank you. With the current Disability Employment Network contract how many job seekers are currently classified as ‘employment in jeopardy’? Do you have the comparison figures for 12 months ago?

Ms Golightly—I am not sure whether we have that comparison. I think we have the figures for this year, but we can take the other part of your question on notice.

Senator CASH—Thank you.

Mr Waslin—Senator, currently it is 1,129.

Senator CASH—And that is to date?

Mr Waslin—That is the number of people currently being assisted.

Senator CASH—As at?

Mr Waslin—As at 2 January 2009.

Senator CASH—You will take on notice the figures for the previous 12-month period?

Mr Waslin—That is correct.

Ms Golightly—Yes, Senator.

Senator CASH—How many job seekers are currently in receipt of intermittent support?

Mr Waslin—The figure is 558.

Senator CASH—What is the current cost of employment outcome for DEN capped services, and what is the current cost of employment outcome for DEN uncapped services?

Mr Waslin—I would need to take that question on notice.

Senator CASH—How many remote outcomes—

Ms Golightly—Senator, can I just clarify whether you want the outcome fee that is paid?

Senator CASH—The current costs. Yes, the outcome fee.

Ms Golightly—We will probably be able to get that for you.

Senator CASH—Thank you very much. What is the average DMI rating for ‘employment in jeopardy’ job seekers?

Ms Golightly—I do not believe that the DMI ratings apply to jobs in jeopardy. Anybody whose job is in jeopardy can qualify for assistance under that program.

Mr Waslin—I go back to your previous question, Senator, in which you asked for the outcome fees. That data has been included in a table that we have photocopied for you.

Senator CASH—Thank you very much. How many remote outcomes have been achieved in the past 12 months?

Ms Golightly—In DEN services?

Senator CASH—Yes, correct, in relation to the current Disability Employment Network contract.

Ms Golightly—We will have to take that question on notice, sorry.

Senator CASH—How many DEN providers have been under the 90 per cent utilisation rate over the past 12 months?

Ms Golightly—We will also take that question on notice, Senator.

Senator CASH—Have any providers lost their business share in the past financial year as a result of not being able to maintain this utilisation?

Mr Waslin—The answer is no, Senator. No organisation has been—

Senator CASH—Are you talking about providers?

Mr Waslin—No provider has been asked to offer up business share.

Senator CASH—Can you confirm that? There seemed to be a bit of a discrepancy.

Mr Waslin—The answer is no.

Senator CASH—Can the department provide a breakdown of disability, pre-employment instrument, and disability maintenance instrument ratings of the job seekers under this contract?

Mr Waslin—By percentage?

Senator CASH—Yes, if you can do it that way.

Mr Waslin—Yes. I will need to do it by stream. In the program are what we call a capped stream and an uncapped stream.

Senator CASH—Are you able to photocopy this by any chance? Is that something that you can also provide to us to save us from writing it all down again?

Ms Golightly—Yes, we should be able to do that.

Senator CASH—Thank you very much. Has any trend data been collected relating to these levels over the past 12 months?

Ms Golightly—We will need to check that, so we will take that question on notice.

Senator CASH—I am about to wrap up. If there is any outstanding information that you have can I get that from you now?

Ms Caldwell—Yes, Senator. You also asked for the number of job placements made by job placement licensed organisations over four time periods. Very quickly, from January 2007 to June 2007, 68,355 placements were recorded by these organisations—

Senator CASH—Can I make sure that this is job placement licensed organisations?

Ms Caldwell—Yes.

Senator CASH—That figure was?

Ms Caldwell—For the period January 2007 to June 2007, for organisations that were job placement licensed only, that figure was 68,355. For 1 July 2007 to 31 December 2007, the equivalent figure was 65,233. For 1 January 2008 to 30 June 2008 the figure was 56,691, and for the period 1 July 2008 to 31 December 2008 the figure was 53,596.

Senator CASH—Can I get you to repeat that one?

Ms Caldwell—The last time period was 53,596.

Senator CASH—I have some final wrap-up questions on the current Disability Employment Network contract. We were talking about the DMI ratings. If they do not get a DMI rating, are all ‘employment in jeopardy’ job seekers paid the same service fee?

Ms Golightly—I think that is the case. I will just confirm that.

Senator CASH—Thank you. I also ask: what percentage of a caseload can a provider ‘exit’ to intermittent support?

Mr Waslin—It is not a percentage that we stipulate; it is the provider’s determination. The provider makes the call, so we do not stipulate what it should be.

Senator CASH—So the provider makes the call. What is the answer in relation to the first question?

Ms Golightly—We are still checking, Senator.

Senator CASH—That is fine. Going back to the job placement licensed organisations, do you have figures for the total cost of placements paid to job placement licensed organisations for the past 12 months or six months or for however you break up the figures?

Ms Golightly—Sorry, Senator; I only have the individual fees. I do not have the total. I might need to take that question on notice.

Senator CASH—If you could you take that question on notice it would be great and you could then get back to me.

Ms Golightly—Yes.

Mr Waslin—We have the ‘employment in jeopardy’ response, Senator. The funding recipient is entitled to claim an intake fee and a maximum of six post-placement fees—and these fees are outlined in the table that we presented today—equal to a level 1 employment assistance fee.

Senator CASH—Okay, and that is outlined, as you say.

Mr Waslin—Yes. They are all paid at the same fee and it is set at the level 1 employment assistance fee.

Senator CASH—Thank you very much for that. Thank you very much for being so helpful today; I do appreciate it. Chair, I believe that I have finished my questioning.

CHAIR—Senator Siewert had a substantial number of questions to ask but at present she is unavailable due to other estimates committee commitments, so she will put them on notice. That concludes outcomes 7 and 8. I thank all officers. We will now break for afternoon tea.

Proceedings suspended from 3.29 pm to 3.45 pm

[3.45 pm]

Outcome 9—More productive and safer workplaces

CHAIR—The committee will reconvene with questions in outcome 9. Senator Fisher.

Senator FISHER—Thank you, Mr Chairman. I wish to commence with questions about the Special Employee Entitlements Scheme and the General Employee Entitlements and Redundancy Scheme. I see that there are different personnel from last time.

Mr Kovacic—Senator Fisher, last time I think I mentioned at the estimates committee hearing that the responsibility, in a functional sense, for the GEER Scheme had moved to the Safety and Entitlements Group. That is headed by Ms Baxter and the relevant branch head is Mr Hart.

Ms Paul—Senator Fisher, could I seek your indulgence for a moment? Mr Chairman, I should have mentioned something earlier, but outcomes 7 and 8 concluded a little earlier than I had anticipated. I should have said that I note the retirement of Mr Bob Harvey, a judge in the Indigenous area. We will be appearing tomorrow but I will not be attending. I wish to place on the record that Mr Harvey retires tomorrow and he has attended these hearings for many years, particularly representing issues relating to Indigenous people. I just wanted to note that for the record.

CHAIR—Thank you Ms Paul. I am sorry that he is not here now. The committee sends him all the best for his retirement and thanks him for his contribution to the estimates over the years.

Ms Paul—Thank you very much, Senator.

Senator FISHER—Indeed. In a briefing paper dated 23 February 2009 the department has alluded to speculation about the government possibly waiving its rights as a priority creditor

under the SEESA scheme. To what speculation is the briefing note alluding? Who is the source of that speculation?

Mr Kovacic—Senator, I am not sure what document you are referring to.

Senator FISHER—A briefing provided to this committee.

Mr Kovacic—Last year?

Senator FISHER—By the department.

Mr Hart—Senator, I can answer that question. On Monday this week I met with Mr Carter.

Senator FISHER—Our Mr Carter?

Mr Hart—Yes, Mr John Carter, at his request, to provide him with an update on the status of SEESA. There is no plan to waive the Commonwealth's right of recovery.

Senator FISHER—Sorry, Mr Hart. Did the briefing note arise out of that process?

Mr Hart—That is correct.

Senator FISHER—I received it through my email I think about two days ago.

Mr Hart—I provided Mr Carter with a verbal briefing and the document that you have before you contains the subject matter that we discussed.

Senator FISHER—The speculation to which I just referred?

Mr Hart—Yes.

Senator FISHER—Mr Hart, my next question is: who, what, when and where? Who is the source of the speculation to which you refer in this briefing note?

Mr Hart—Sorry, in relation to waiving the right of recovery?

Senator FISHER—That is right.

Mr Hart—Senator, from time to time we have inquiries from Ansett employees and ministerials asking the government to pay 100 per cent of outstanding entitlements under SEESA. That was the context in which the briefing was provided. I discussed with Mr Carter some of the ministerials and inquiries that we had received along those lines.

Senator FISHER—Indeed, the briefing note refers to an individual Ansett employee who had raised an issue. It then goes on to state:

In addition, speculation about the possibility the Federal Government waiving its right as a priority creditor to enable more funding to be provided to the former employees of Ansett has emerged.

The briefing note states 'has emerged'. Is this new speculation?

Mr Hart—No, it is not. It is the subject of ministerials, when we do have them, and inquiries from former Ansett employees who have not received 100 per cent of their outstanding entitlements. Often that issue is raised.

Senator FISHER—Is the government actively considering waiving its status in that regard?

Mr Hart—Not that I am aware of.

Senator FISHER—Have you provided the government with any advice as to that issue?

Mr Hart—We have briefed the minister on issues relating to SEESA and Ansett, but not for some time.

Senator FISHER—Have you briefed the government as to the option of waiving its right as a priority creditor under SEESA?

CHAIR—Senator Fisher, you cannot go to—

Senator FISHER—I am not asking about the content of the briefing; I am asking about the provision of advice. I will not ask what the advice was.

CHAIR—Senator, the context of your question was whether this advice had been provided. Your question was specific. If the question simply is: has advice been provided, which was your first question, that question has been answered. I think you asked for specific advice. If you want to reword your question we will see how we go.

Senator FISHER—Mr Hart, can you restate the status of the discussion between DEEWR and the government in this respect?

Ms Paul—Mr Hart has answered that question, Senator. He said that advice had been offered on this matter, but not for some time.

Senator FISHER—When was the most recent advice provided in this respect?

Mr Kovacic—We will have to take that question on notice.

Senator FISHER—I thank Mr Hart, Mr Kovacic and Ms Paul. If the government were to waive its priority in this respect, what would be the cost and how would that manifest itself?

Mr Kovacic—Senator, that is speculation.

Senator FISHER—Speculation to which a DEEWR brief alluded a couple of days ago, so I think it is a fair question.

CHAIR—The government is not required to respond to speculation. The evidence is that the department is not aware whether or not the government intends to do that. I would be surprised if any work was done on speculation if they did. I think that is the answer.

Mr Kovacic—That is correct.

Senator FISHER—Would this course of action—the government waiving its priority—result in former Ansett employees being paid their full entitlements?

Mr Kovacic—Senator, again that is speculation. We are not in a position to hazard a guess at that one.

Senator FISHER—Thank you. Can I now move to the General Employee Entitlements and Redundancy Scheme?

Mr Kovacic—You certainly can.

Senator FISHER—Unions, in particular in the automotive and manufacturing sector, are calling on the government to guarantee 100 per cent of employee entitlements, and to guarantee 100 per cent of employee entitlements under the GEER Scheme. Is the government actively considering this call?

Ms Baxter—No, the government is not currently considering any changes to the GEER Scheme.

Senator FISHER—Will the government be communicating that to the unions?

Ms Baxter—That is probably a matter for the government.

Senator FISHER—Will the department be advising the government in this respect? Have you provided the government with advice in this respect?

Ms Baxter—We have provided the government with advice on a number of issues with respect to the GEER Scheme. We will do so on a continuing and ongoing basis.

Senator FISHER—What would have been the response, for example, to the calls in the news today from Dave Oliver, National Secretary of the Australian Manufacturing Workers Union, urging the federal government to guarantee redundant workers full entitlements in the wake of job cuts at Pacific Brands and the drivetrain gearbox factory? The union wants the federal government's General Employee Entitlements and Redundancy Scheme expanded to provide 100 per cent of entitlements.

CHAIR—That question can be directed to the minister but not to the officer.

Senator FISHER—Minister?

Senator McLucas—I will seek some advice on that and come back to you if there is anything further that the minister would like to add.

Senator FISHER—Thank you. Is the government considering the budgetary consequences of increased calls like this from the union movement?

Senator McLucas—I cannot answer that question, Senator Fisher. I cannot answer that question here and now. If there is any further information that the minister would like to provide to the committee I am sure she will provide it.

Senator FISHER—Thank you, Minister. Is the government considering the prospect of the likelihood of increased calls for this sort of provision, bearing in mind the global financial situation?

CHAIR—Senator, I think that question has already been answered.

Senator FISHER—Will officers take that question on notice because they do not know? I hope so.

CHAIR—This minister does not know. We will ask the minister whether any more can be added.

Senator FISHER—Thank you. I do not have any further questions about SEESA or GEERS. I thank Ms Baxter and Mr Hart. The Deputy Prime Minister promised that the Fair Work Bill will link wage increases to productivity increases. Are you aware of that promise, Mr Kovacic?

Mr Kovacic—I think the policy statement is in general terms. Productivity will be a part of the bargaining process. I cannot recall the precise words, but it is intended that there be a linkage between productivity and wage increases. That is part and parcel of collecting bargaining.

Senator FISHER—What would you say of the draft bill in that respect? I think you have said so in separate proceedings?

Mr Kovacic—That is correct. I reiterate the sorts of comments that I made in the Senate committee inquiry into the bill. It is not only the principal object of the act that emphasises the productivity considerations; that part of the bill, in dealing with the bargaining framework, has an explicit reference to productivity considerations. A point that I did not make last week, but one that is worth mentioning, is that in circumstances where a bargaining representative may not be responding to another bargaining representative, potentially there will be the capacity for a bargaining representative to seek good faith bargaining orders in the context of negotiations. That might be in circumstances where a particular bargaining representative is not responding to proposals relating to flexibility, productivity initiatives and those sorts of suggestions, as well as a range of other possible initiatives.

Senator FISHER—If you are prepared to deal with hypothetical issues, Mr Kovacic, which is what that was, how would that pan out in a practical sense to ensure that any wage increase guaranteed a productivity increase?

CHAIR—Before Mr Kovacic answers that question, he is explaining the policy intention of the bill. His statement was not hypothetical.

Mr Kovacic—In essence, at the end of the day, it is a matter for the parties to reach agreement on an agreement. Whether it is an employer or an employee bargaining representative, if the terms of the agreement are such that they are not acceptable, as the bill and Forward with Fairness policy make clear, either party can walk away from it.

Senator FISHER—In separate evidence before this committee, to which you have referred, you did not point in the fair work legislation to a provision that legislatively guarantees the requirement that a wage increase was accompanied by a productivity increase. Do you want to add to that or do you stand by your statement?

Mr Kovacic—I have nothing further to add to the answers that I have given to the questions that you have asked today.

Senator FISHER—Thank you. Aside from the general objects of the proposed act and, in particular, bargaining provisions which refer to a focus on productivity, nothing in the Fair Work Bill requires a wage increase to be accompanied by a productivity increase?

Mr Kovacic—As I indicated in the committee proceedings last week, the whole premise of enterprise bargaining since it became a feature of the Australian workplace relations system in the early 1990s has been a linkage between productivity and bargaining at the end price level.

Senator FISHER—That may well be so.

Mr Kovacic—That linkage is implicit and it is reflected in both the principal object, as I have already indicated, and also in the specific part of the act that deals with bargaining as an object.

Senator FISHER—I accept that that linkage is implicit. However, from your evidence there is nothing in the bill that makes that linkage express?

Mr Kovacic—As I said last week, Senator, it is in relation to the legislative framework governing bargaining since the 1990s. I am not aware of it having been an explicit requirement of any registrar.

Senator FISHER—That is not my question, Mr Kovacic.

Mr Kovacic—That is my answer, Senator.

Senator FISHER—My question is about the current bill.

Ms Paul—I think Mr Kovacic has answered your question, Senator.

Senator FISHER—He has not answered my question.

Ms Paul—That is not what he said. I think he has answered the question.

CHAIR—Yesterday and today he said to the committee on a number of occasions that that is the evidence as it has been given and that evidence stands. If someone else reinterprets what was said and puts it back to the witness it does not change the evidence that is in front of us.

Senator FISHER—Thank you, Mr Chairman.

CHAIR—I would rather that people did not do that, as it prolongs the proceedings.

Senator FISHER—Thank you. Mr Kovacic, you referred earlier to the government's fair work election policy.

Mr Kovacic—Yes.

Senator FISHER—However, the Deputy Prime Minister's promises and Minister Tanner's promises have changed since the election and since the writing of the election commitments in this regard. For example, on 24 January 2008 Sky News referred to the Deputy Prime Minister as stating:

Our industrial relations system is about productivity. Wage increases have to be about productivity gains.

On 8 May 2008 the Deputy Prime Minister was interviewed by *The World Today* and said:

We have designed a fair and balanced system which is all about bargaining. That is a system that does not feed into inflation because pay increases are productivity based.

On 24 January 2008 Samantha Maiden reported the following statement in the *Australian* that was attributed to the Deputy Prime Minister:

What we are saying to everyone; to employers, to trade unions, to everyone involved, is that wage increases have to be about productivity gains.

On 7 May 2008 the editorial in the *Australian* reported:

Labor has said it is wedded to productivity trade-offs for higher wage increases.

On 26 November 2008 an article in the *Australian Financial Review* written by Stephen Scott stated:

However, Acting Prime Minister Julia Gillard tried yesterday to reassure business about the economic impact of the reforms, saying the changes would ensure wage increases were tied to productivity improvements. The Government has been far more explicit and express in its promises since the

election to business and to the electorate about tying wage increases to productivity increases. Yet what it has delivered is a draft bill that is implicit only.

Is that right, Mr Kovacic?

Mr Kovacic—As I have mentioned, there are a couple of explicit references relating to productivity both in the principal objects of the act and, in particular, in that part of the act dealing with the bargaining framework related to productivity. I would argue that those references in the act to productivity that I have just mentioned are entirely consistent with the Deputy Prime Minister's public comments about the linkage between productivity and enterprise bargaining.

Senator FISHER—If the legislation is enacted, business will have little choice but to judge by results. Thank you. I wish to ask some questions about the membership of COIL, or the Committee on Industrial Relations. Last time you appeared before this committee there were questions on notice about the groups that had been represented on COIL.

Mr Kovacic—That is correct.

Senator FISHER—And the department provided an answer to which I refer. It was question No. EW893-09.

Mr Kovacic—Yes.

CHAIR—Senator Fisher, do you have more questions on the bill itself?

Senator FISHER—Yes.

CHAIR—It is just that we ran into this problem yesterday. The secretary is seeking further advice. I am less precious about these things, but given that that bill is being inquired into by the committee, I understand that this committee is running into some standing order issues. I was happy to let you go for a while, but if we are coming back to the bill later we may have to have a discussion about that. I am saying that now so that I do not surprise people later.

Senator FISHER—Thank you, Mr Chairman. We will see. Have we located the answer, Mr Kovacic? The answer talks about a total of 23 groups being represented on COIL—nine employer and employee organisations, eight state and territory government departments, and six portfolio agencies. Looking at the table that is attached, I can count eight employer organisations and one union. Is that how you get the nine?

Mr Kovacic—That is correct.

Senator FISHER—Is the answer lumped together? There are nine employer and employee organisations, and eight employers and one union have been added.

Mr Kovacic—That would be correct.

Senator FISHER—Why is it done that way, Mr Kovacic? It is an interesting way to do it.

Mr Kovacic—The employee representatives represent the ACTU. The ACTU is the member organisation representing the National Workplace Relations Consultative Council, of which COIL is a subcommittee.

Senator FISHER—That is the reason for listing every employer organisation by name—eight of them—and lumping together the employee representatives under one banner; that is, the ACTU?

Mr Kovacic—That was the logic of it.

Senator FISHER—It makes it difficult to ascertain which unions sent representatives or were invited to send representatives along to COIL, does it not?

Mr Kovacic—We asked the ACTU to nominate its representatives and it nominated the representatives.

Senator FISHER—Do you know the process they use to nominate their representatives?

Mr Kovacic—No, I do not. That is a matter for the ACTU.

Senator FISHER—Has it been controversial so far as the department is concerned?

Mr Kovacic—No.

Ms Paul—There is no particular magic to it; I think it just reflects the membership of the NWRCC, and it has for some time.

Mr Kovacic—Just as we asked ACCI to nominate its representatives, it chose its representatives and sent them along. There were no issues around those as well.

Senator FISHER—Did the ACTU representatives remain static? Were they the same 11 individuals?

Mr Kovacic—I am just checking that.

Senator FISHER—Or were they dynamic?

Mr Kovacic—It was six months ago. Given that COIL went over a period of 10 days—7 to 17 October—and given the subject matter, there was a bit of—

Senator FISHER—They needed to change their representation?

Mr Kovacic—There were changes, but it was equally true that employer organisations also changed their representation. Ten days is a fairly significant commitment for the organisations that were involved, and the representatives that they sent along varied at different stages, depending on subject matter as well as availability. That is not surprising in the context of such an extended period of consultation.

Senator FISHER—Is the department able to provide, on notice, the names of the individual unions whose employees or elected office bearers filled the 11 positions enjoyed by the ACTU on COIL over those 10 days?

Mr Kovacic—I am confident that we would certainly be able to provide the names of the organisations that participated as ACTU nominees.

Senator FISHER—Thank you. That was the membership of COIL for the 10-day consultation period leading up to the exposure draft of the Fair Work Bill, was it?

Mr Kovacic—That was certainly in October, prior to the instruction of the Fair Work Bill, yes.

Senator FISHER—What is the composition of COIL today?

Mr Kovacic—We invited the same organisations to participate in the COIL process that commenced today in relation to the transitional consequential bill.

Senator FISHER—What are they discussing today? Who is there?

Mr Kovacic—Today they are reading a draft of the bill, and tomorrow there will be discussions with officials in relation to feedback. So there is an opportunity to digest the draft bill as it is at the moment.

Senator FISHER—Is this the first time they have seen the draft bill?

Mr Kovacic—That is correct.

Senator FISHER—That is every individual represented on COIL? Is this the first time that they have seen it?

Mr Kovacic—That is correct.

Senator FISHER—Has anyone outside the COIL process and external to the department seen this draft or an earlier draft of that transitional bill?

Mr Kovacic—The department has not provided any drafts to anybody so, to the best of our knowledge, it would be the first occasion.

Senator FISHER—To whom has the department provided drafts?

Mr Kovacic—Only COIL members.

Senator FISHER—Where do the minister and her office fit into that? Is she a part of COIL?

Ms Paul—She is the minister responsible. She needs to be part of COIL. COIL represents the Deputy Prime Minister's commitment to consultation on the legislation.

Senator FISHER—Ms James, welcome.

Ms James—Thank you, Senator Fisher. The draft that COIL is considering is a draft in progress. The draft was printed yesterday evening and provided to them this morning and it was provided to the Deputy Prime Minister's office late last night.

Senator FISHER—Surely not for the first time?

Ms James—For the first time.

Senator FISHER—So that was the first time the Deputy Prime Minister sighted a draft of a transitional bill—when it was provided to her office last night? Is that right?

Ms James—We have, of course, as is the normal process, consulted with the Deputy Prime Minister and her office about a range of policy decisions that are contained in the bill.

Ms Paul—The bill naturally represents the government's position in transitional and consequential matters. It goes without saying that it is the government's bill. You are just talking about the technicalities of producing it.

Senator FISHER—What is that position?

Ms Paul—The policy that was in the bill.

Mr Kovacic—The Deputy Prime Minister wrote to the chair of the committee earlier today setting out some details relating to the transitional consequential legislation, in particular, the key elements of the legislation and also the process relating to progressing the bills and their time frames. We have some spare copies if you wish us to table them?

Senator FISHER—That would be appreciated.

CHAIR—I have circulated copies to the committee, but I think it would be useful also to table it.

Senator FISHER—Ms James, you talked about consultation in respect of the policies to be implemented by the transitional bill. With whom has the department consulted in respect of those policies and over what period?

Ms James—I think that Mr Kovacic referred in his evidence last week before the Senate committee to some consultations about representation orders. I think he referred in some detail to who was consulted in relation to that process.

Senator FISHER—Tell us again, Ms James or Mr Kovacic.

Ms James—I could perhaps read from last week's transcripts.

CHAIR—Just a moment, Ms James. Are we now back on the Fair Work Bill?

Senator FISHER—We are discussing the process leading up to the transitional bill.

Ms Paul—The answer is the same as that given last week.

Mr Kovacic—Senator, referring to the consultation on the transitional consequential bill, beyond those organisations that I mentioned in the context of representation orders last week in the Senate committee inquiry into the bill, there has been no further consultation with external organisations. The only discussions that we have had have been with the Deputy Prime Minister and her office to settle a policy. That is reflected in the draft bill.

Senator FISHER—Who were those organisations with whom the department consulted in respect of representation orders?

Mr Kovacic—We are just checking the *Hansard* from last week's committee hearing.

Ms James—Would you like to read from your own evidence?

Mr Kovacic—I have a sense of *deja vu*. The department has met with the Australian Industry Group, the Australian Chamber of Commerce and Industry, the Civil Contractors Federation, the Australian Mines and Metals Association, the Master Builders Association and the Australian Council of Trade Unions.

Senator FISHER—Allow me to clarify my understanding in respect of representational orders insofar as they are dealt with in the transitional legislation. Is that correct?

Mr Kovacic—I do not want to repeat what I said last week. To discuss input to the development of legislation providing for representation orders, particularly special criteria, if any, that might apply when making the orders.

Senator FISHER—Can you please confirm that beyond consulting with those organisations about representational orders there has been no consultation with stakeholders

about other policy aspects now reflected in the draft transitional bill that they will be seeing for the first time this afternoon? Is that right?

Ms Paul—I think Ms James just said that.

Mr Kovacic—That is what I said just a moment ago.

Senator FISHER—Good. Thank you.

Ms James—I will just mention that I think we have discussed this before. At the last COIL meeting, before the Fair Work Bill was introduced, some transitional issues were discussed in fairly broad terms. You might recall that the Deputy Prime Minister, in her second reading speech, referred to or foreshadowed some transitional issues, and some of those issues were discussed at COIL last year.

Senator BRANDIS—Ms Paul or Ms James, or whoever knows the answer: according to the copy that I have here, the Fair Work Bill was introduced into the House of Representatives on 20 November 2008—is that right? That is a couple of days later. Perhaps the copy that I have has a slightly earlier date. What date was it introduced into the House of Representatives?

Mr Kovacic—We are just checking to see whether that is the precise date.

CHAIR—While you are checking, it might be an appropriate time for me to explain to the committee that I have now been provided with advice from the Clerk. I might read it onto the *Hansard* record so that senators can attempt to work within the advice of the Clerk when asking questions relating to the Fair Work Bill. It reads:

The following advice has been given on whether questions could be asked at estimates hearings about the provisions of a bill which is before a Senate committee:

Under a resolution passed by the Senate in 1999 (adopting a report of the Procedure Committee) the Senate delineated the scope of questions at estimates hearings as “any questions going to the operations or financial positions of departments and agencies”. While this is a very wide ambit, I do not think that it extends to questions about provisions of bills, for example, questions about the meaning, purpose, intention or effect of clauses in bills. Questions about departmental operations connected with bills would be relevant, for example, whether a department engaged consultants to assist in the preparation of a bill, at what cost was it prepared, and how is it to be administered.

Where a bill is before the Senate committee, this means that the Senate has given that committee the task of conducting an inquiry specifically into that bill. This indicates an intention that any inquiry into the provisions of the bill be conducted at hearings and meetings of the committee specifically designated for that inquiry, and not pursued at estimates hearings which interested senators might not be able to attend and for which there is usually no notification of such specific subject matters of inquiries.

That concludes the advice from the Clerk of the Senate. I would just ask senators, having heard that, if they could attempt to comply with that advice, and that would assist me greatly.

Senator BRANDIS—Ms James, what is the answer to my question?

Ms James—According to the *Hansard*, the second reading speech for the Fair Work Bill was read on 25 November.

Senator BRANDIS—When was it introduced?

Ms James—I am pretty sure it was on Tuesday, 25 November. That is when the second reading speech was read onto the record.

Senator BRANDIS—Today is 26 February. You just told us that the draft of the transitional provisions bill was first shown to the relevant minister last night. Could somebody explain to me the reason for a three-month delay between the introduction of the bill and the presentation to the responsible minister of a draft of the transitional provisions bill when it cannot be the case that the issues of transition from the existing legislative scheme to the new legislative scheme were not anticipated at the time that the principal bill—that is, the Fair Work Bill—was being prepared? Why is there a delay?

Ms Paul—I think Ms James just referred to some transition issues that were raised at the first COIL meeting held in October. Of course, the transitions and consequential issues have been the subject of significant iteration, discussion and advice from the department and interaction with the minister over a long period. The draft bill represents the culmination of those efforts and is according to the plan for the production of these major pieces of legislation.

Senator BRANDIS—Ms Paul, I am sorry, but that is of no assistance to me whatsoever. None of the issues that have been the subject of what you have described as recent iteration and discussions could not have been anticipated earlier in the piece at the time that the principal bill was being prepared, could they?

Ms James—Senator, I think we have discussed—

Senator BRANDIS—Could they, Ms Paul?

Ms Paul—Ms James is answering.

Ms James—We have discussed in this Senate committee before the degree of complexity involved in the transition from one framework to another.

Senator BRANDIS—Sure.

Ms James—Many complex issues need to be worked through. That is what we have been doing. We have been doing that with the Deputy Prime Minister and her office and, to some degree, we have been doing it with stakeholders. The detail of the bill is now being considered by a large number of stakeholders and we will be taking into account that feedback. I have been involved in a lot of drafting processes—

Senator BRANDIS—Ms James, I do not mean to cut you off but what you are saying now has nothing to do with the question I asked.

Ms James—I think, Senator, you asked me to explain the reason for the delay.

CHAIR—Indeed you did, Senator.

Mr Kovacic—Senator, perhaps I can jump in here. There was no delay in the sense of the timing of this. This is consistent with the timetable that we have agreed with the Deputy Prime Minister, both in resolving the policy issues and also in the drafting of the legislation. It is entirely consistent with what we have agreed with the Deputy Prime Minister.

Senator BRANDIS—I will come back to that in a moment, Mr Kovacic. But, before I do, it should be understood that you do not need to tell us that this is a complex issue. You do not

need to tell us that the transitioning will be a complex process. That is very obvious because the principal bill is a complex bill of some 800 clauses. I want to know what event happened between 25 November 2008 and last night upon which the preparation of the transition bill depended. These discussions of which you speak could have taken place at an earlier stage in the process, along with the development of the principal bill, could they not?

Ms Paul—We have answered that question, Senator, by way of saying that the work plan for this enormously complex work over a long period of time towards the start dates for the new legislation has been consistently upheld, which is to stagger the work. That makes it not only possible in a policy sense to build sequentially on policy decisions over time, but also allows us and the drafters the capacity simply to undertake the work, which, as you would appreciate, is extensive and complex. So there is no mystery really to the time frame; it is as it was planned, and we are sticking to it.

Senator BRANDIS—Ms Paul, all that tells me is that a delay was written into the workplace.

Ms Paul—There is no delay.

Senator BRANDIS—Was it part of your work plan that the final draft of the consequential and transitional bill would not be shown to the minister before 25 February 2009?

Ms Paul—You would of course appreciate that the policy decisions reflected in the bill are the minister's. There is no doubt that it is the government's draft bill. Indeed, the sequencing of work—

Senator BRANDIS—What did you say, Ms Paul? Did you say, 'There is no doubt that it is the government's draft bill'? Of course it is the government's draft bill. What does that tell us?

Mr Kovacic—The key point, Senator, is there was no delay in the process.

Senator BRANDIS—If this process is an advertent process and everything is going according to plan, why is it, Mr Kovacic, that three months elapsed between the presentation of the principal bill in the House of Representatives and the presentation to the responsible minister of the ultimate draft of the transitional and consequential provisions bill?

Ms Paul—Just the time on the project plan that it takes to do that.

Senator BRANDIS—But why?

Ms Paul—Because that is the nature of the work.

Senator BRANDIS—Please do not keep restating the sequence; we know the sequence. The sequence is: 25 November 2008, the bill gets introduced into the House of Representatives; 25 February 2009, late in the evening, the minister is shown for the first time a draft of the consequential provisions bill. Why was that delayed or staggered, according to your work plan, by three months?

CHAIR—That question has been answered on a number of occasions now.

Senator BRANDIS—It has not been answered. All we have been told is, first, it is complex, which we knew; second, that it is the government's bill, which is self-evident; and, third, that it is in accordance with the work plan. I am inquiring why the work plan staggered this for three months.

CHAIR—And Ms Paul has detailed the issue relating to allocating the work to be done.

Mr Kovacic—The plan was always that the transitional consequential legislation would follow in the first half of 2009. I think the Deputy Prime Minister indicated that in her second reading speech and, indeed, she foreshadowed some of the elements of the transitional and consequential legislation. Might I add that it is not unusual for transitional and consequential legislation to follow a principal piece of legislation. Indeed, in a Work Choices context, transitional consequential issues were dealt with in regulations that were introduced in March 2006, with the principal bill in that instance being introduced in December 2005.

Senator BRANDIS—Mr Kovacic, I am not interested in the Work Choices bill; I am interested in the Fair Work Bill. You have told me that the plan was to have this staggering between the introduction of the Fair Work Bill and the introduction of the consequential and transitional provisions bill. I have two questions for you. First, why was this staggered arrangement decided upon? Second, and more particularly, what is it that those responsible for the prosecution of this legislation first became aware of or were alerted to in the last three months that could not have been attended to, anticipated or dealt with at the same time as the Fair Work Bill was being developed?

Ms Paul—I really do not think there is any further magic to it, Senator.

Senator BRANDIS—Just answer my questions, Ms Paul.

Ms Paul—We have already been down that road.

CHAIR—She is answering the question, Senator. You would do well to listen.

Ms Paul—It makes sense, as it did with the previous major industrial relations legislation, Work Choices, that you follow the main bill with transitional legislation later. There is probably nothing more that we can add to that.

Senator BRANDIS—You have not answered the question. Why was there a staggering of three months between the original bill and the transitional bill?

Ms Paul—I do not think that we can go any further.

Senator BRANDIS—I am sorry Ms Paul? What did you just say?

Ms Paul—I do not think we can go any further.

Senator BRANDIS—I am asking you why and you have not told me. Are you objecting to the question?

CHAIR—Ms Paul has answered that question. You have asked that question half a dozen times.

Senator BRANDIS—I ask the parliamentary secretary that question.

CHAIR—Ms McLucas, you have the call.

Senator McLucas—I think the officers have given you a very good explanation, Senator, about why there has been a substantive bill and then a consequential bill. That is normal practice. I know you are aware of that, Senator Brandis. I know you are aware of that because of your experience in a previous life and in this place. I think Mr Kovacic also made it clear when he said that in previous industrial legislation in this country—

Senator BRANDIS—I am not interested in that.

Senator McLucas—I used that as an example to show that this is normal practice. In December 2005 Work Choices came into the parliament and in March 2006 a set of consequential regulations were taken through the parliament. It is normal and ordinary and there is no delay in the process of this legislation. I think we have dealt with the matter.

CHAIR—Have you finished, Senator McLucas?

Senator McLucas—As I said, I think I have dealt with the matter.

Senator BRANDIS—Perhaps you do, but I do not. Being fatalistic about the fact that I will not get an answer to my why question, I will focus on the second question that I asked you. What took place in the last three months after the introduction of the principal bill into the House of Representatives that could not have been done prior to the introduction of the principal bill into the House of Representatives? What is the event upon which the preparation of the transitional and consequential bill had to wait in the last three months?

CHAIR—You have asked that question on a number of occasions and it has been answered.

Senator BRANDIS—It has not been answered. What event took place?

CHAIR—It has been answered. You simply may be unsatisfied with the answer.

Senator BRANDIS—Are you ruling against me, Mr Chairman?

CHAIR—No. Listen for a moment. That question has been asked. If the officers have anything further to add they may do so. If they have nothing further to add, move on.

Senator BRANDIS—What event occurred in the last three months that could not have happened in the—

Mr Kovacic—As we have indicated on a number of occasions, it was always planned. The timetable was always for the introduction of transitional and consequential legislation in the first half of 2009. That was foreshadowed in the second reading speech of the Deputy Prime Minister when she introduced the principal bill. We have always been working to that time frame. There is no delay. As Ms James said in answer to earlier questions in this sort of area, the fact of the matter is that this a complex piece of legislation. We are working through it and we have worked through those issues. We have always been consistent with the timetable agreed to by the Deputy Prime Minister.

Senator BRANDIS—With respect, Mr Kovacic, all this tells me is that this is in accordance with the program or the timetable.

Ms Paul—Yes, Senator.

Senator BRANDIS—That is not what I asked. I asked what is the event—

Ms Paul—There is not an event.

Senator BRANDIS—There is not one?

Ms Paul—There is not an event; there is workload and there is planning, and this is according to the plan.

Senator BRANDIS—So this could have been done this year but for workload reasons it was not done earlier?

Ms Paul—No, it could not have been.

Senator BRANDIS—You said there is not an event upon which the later presentation of the consequential provisions bill—

Ms Paul—You are suggesting that there was an a single event.

Senator BRANDIS—Was there more than one event?

Ms Paul—I cannot go beyond my—

Senator BRANDIS—Maybe you should go to the happiness summit.

CHAIR—I am satisfied that the officers have made every attempt to be responsive and to answer your questions. If you have something new to ask you should move on.

Senator BRANDIS—I will be satisfied with Ms Paul's answer that there was no such event, thank you.

Senator FISHER—So COIL is meeting today to consider the first draft of the transitional bill?

Mr Kovacic—That is correct.

Senator FISHER—When will the transitional bill be introduced into parliament?

Mr Kovacic—The letter that was tabled indicates—

Senator FISHER—I only just got it, so please humour us, Mr Kovacic.

CHAIR—I received it earlier.

Mr Kovacic—Look at the second page of the letter.

Senator FISHER—I do not know how, Mr Chairman.

Mr Kovacic—If you look at the second page of the letter—

CHAIR—You should have been here at the time that it was to sent to you.

Mr Kovacic—On the second page of the letter is the paragraph commencing:

My intention is then to present two separate bills to the Parliament. The first bill will be introduced in the week beginning 16 March. This bill will include transitional provisions, consequential amendments to other Commonwealth legislation considered essential to the operation of the Fair Work Bill, ie, the creation of the fair work divisions of the Federal Court and the Federal Magistrates Court, and consequential amendments related to the workplace relations portfolio, eg, the Workplace Relations Act and the Building and Construction Industry Improvement Act. A second bill would then deal with remaining consequential amendments to all other legislation which is likely to involve amendments to over 70 Commonwealth acts and amendments consequential on any state referrals of power. This bill would be introduced in the week commencing 23 May 2009. It is then anticipated that both these bills will be dealt with together in the Senate.

Senator FISHER—Thank you. That should assist those interested third parties who, no doubt, are watching these proceedings, and who have not been so privileged to have been given a copy of the Deputy Prime Minister's letter of today. The date of its introduction into

the parliament is two and a bit weeks hence. Will a copy of the draft transitional bill be released publicly by the government prior to that?

Mr Kovacic—That is a matter for government.

Senator FISHER—Have you provided the government with advice on that issue?

Mr Kovacic—That goes to the nature of advice that may or may not have been provided.

Senator BRANDIS—You have been asked whether advice was given.

CHAIR—No, the question was about advice that had been given on a very specific subject, which goes to the nature of the advice.

Senator BRANDIS—Point of order: earlier this morning during questions to the Workplace Ombudsman I asked a somewhat similar question about advice. I made the observation to the officer that it has always been the practice of these Senate committees—including this committee—that questions as to the content of advice to government are never asked.

CHAIR—Yes.

Senator BRANDIS—But questions as to process are always acceptable, and questions as to process include: the date on which advice was given and the topic of that advice, but not the nature of the advice.

CHAIR—Yes.

Senator BRANDIS—You did not demur to my observation and we proceeded with the Workplace Ombudsman on the basis that that was the position. Senator Fisher asked a perfectly commonplace question that is always asked, without objection, in these committees. As long as she does not ask what was the effect of the advice she is entitled to ask, as a process question, the date that the advice was given and the broad topic of the advice. That is all she has done.

CHAIR—In response to that, you are incorrect on number of points. Since the new government has taken over on this committee that has been the position. Up until then that was never the position of this committee. We were never able to ask about when advice was taken and to whom it was provided, and the nature of those matters. But we have moved forward significantly in relation to transparency. I welcome that and I will continue to support it. Senator Fisher was specific about when you gave this particular advice. Do you have a problem, Senator Fisher?

Senator FISHER—No, I am listening intently.

CHAIR—I thought you were having a fit.

Senator FISHER—I could be.

CHAIR—If you are going to ask about specific advice and when it was given, clearly that goes to the nature of the advice. Try to ask your question again and we will see how you go this time.

Senator FISHER—I have forgotten what the question was.

CHAIR—I must say that it must have been a very serious question. Are there further questions?

Senator BRANDIS—Thank you, by the way, Mr Chairman, for that ruling. If I may say so, I think it is correct. I assume that subsequently you will observe that if similar questions about dates and topics are asked.

CHAIR—Indeed, as we implement it.

Senator FISHER—Is the department considering the prospect of releasing to the public, in advance of parliamentary introduction, a copy of the draft transitional bill?

Mr Kovacic—As I have said, that is a matter for government.

Senator FISHER—Ms Paul suggested earlier that there is no delay in relation to the transitional bill; that this is business as planned in the government's timing of dealing with the transitional bill. Does that mean that the government is not considering and has ruled out requests by various stakeholders that implementation of the Fair Work Bill be delayed?

Mr Kovacic—I think the question that you are asking is a matter for government. I am aware of the call for the bill to be delayed, but I am not aware of what consideration may or may not be given to those sorts of issues.

Senator FISHER—Are there policy risks with delaying the implementation of the Fair Work Bill?

Mr Kovacic—The government has indicated the timetable relating to its implementation.

CHAIR—We are not going to go to the issues. As I indicated earlier after the advice that was received by the Clerk, we will not go to those issues about the Fair Work Bill.

Senator FISHER—I will recast the question and focus a little more specifically on the transitional bill itself. To the extent that industry stakeholders such as the Australian Industry Group and the Australian Chamber of Commerce and Industry have sought delayed implementation of aspects of transitional provisions, what are the risks associated with delay in that respect, and what are the advantages associated with delay in that respect?

Mr Kovacic—Clearly, to the extent that any organisation participating in the COIL process makes suggestions relating to the bill, they would be considered by the government. The government has indicated—I think I put this on the record in the committee hearing last week—that it is prepared to consider any amendments to the principal bill. Similarly, I imagine that it would be prepared to consider any suggestions that any other transitional consequential legislation could be improved. You are asking me at this stage to pre-empt feedback from the COIL members.

Senator BRANDIS—Mr Kovacic, it strikes me that one of the consequences of what I say—though you do not agree with me—about the delay in the introduction of the transitional and consequential bill is that that bill was not able to be considered by this committee, sitting as a legislative review committee, at the same time as the Fair Work Bill was considered. If the Senate wants to look at this additional bill by reference to this committee that is something that will have to happen as an additional stage in the process. If there had not been a delay it could virtually have been over and done with.

Mr Kovacic—Senator, I refer you to the penultimate paragraph in the Deputy Prime Minister's letter.

Senator BRANDIS—This is the letter that was faxed here four-and-a-half hours ago?

Mr Kovacic—She states:

I believe that the time frames I am proposing for both bills will allow sufficient time for the Parliament, including your committee, to fully examine the provisions.

Senator BRANDIS—I do not want to embarrass you by inviting you to make a political observation, Mr Kovacic, but I suppose one can read that as saying that there will be no political criticism from the government of the opposition or crossbench parties in the Senate if the Senate were to send that bill to a committee on the ground that there was a delay since the Deputy Prime Minister appears, in effect, to have invited the Senate to do that in the penultimate paragraph of her letter?

Mr Kovacic—As I was reminded by the Chair of the committee, that is a matter for the Senate.

CHAIR—I made it clear to the committee last week that it was our intention, as a committee, to inquire into the provisions of those bills, as we should.

Senator JACINTA COLLINS—If Senator Evans were here he would have understood everything you talked about for the last half an hour.

CHAIR—Yes, but do not wish that upon us as well.

Senator FISHER—Ms Paul, earlier today you talked about there having been consultations between the department and the minister's office, or the minister, about the transitional bill—consultations over a long period—and that the bill represents the culmination of those consultations. Is that correct?

Ms Paul—I do not know whether I used the word 'consultation'. The department offers the government of the day advice and that is what we have been doing in all these matters for a period. We offer advice.

Senator FISHER—Exactly. Ms James, would you clarify whether I heard you correctly when you indicated that, in the context of the provision of that advice, if we call it that, the department had, to some extent, consulted with key stakeholders. Is that correct?

Mr Kovacic—In respect of what? The point was made that there was some preliminary discussion of transitional and consequential issues at the COIL process about the substantial bill in October last year. Issues were flagged in the Deputy Prime Minister's second reading speech about the principal bill that went to transitional and consequential issues. Earlier this year consultations were held with a range of stakeholders about the issue of representational orders, which we dealt with, that go to the transitional and consequential legislation. Commencing as at this morning we have the COIL process concerning the transitional and consequential bill.

Senator FISHER—Does the department regard the Workplace Ombudsman as a stakeholder in this respect?

Mr Kovacic—That is correct, and that is why the Workplace Ombudsman, together with other portfolio agencies, was involved not only in the COIL process last year but also in the COIL process concerning the transitional and consequential bill.

Senator FISHER—Last year the COIL process did not deal with the transitional bill per se, did it? It could not have because it—

Mr Kovacic—It dealt with some issues, as I mentioned a moment ago, and as Ms James dealt with in her answer a while ago.

Senator FISHER—Does the department regard the workplace authority as a stakeholder in this respect?

Mr Kovacic—Again that is why they have been involved in both COIL processes as well as being involved in the Fair Work Australia Establishment Taskforce.

Senator FISHER—During questioning this morning it is my understanding that both the Workplace Ombudsman and the Workplace Authority were unable to predict with any confidence the operational arrangements in respect either of the staffing of their respective agencies or the work that their respective agencies are currently handling on behalf of Australian workers and Australian businesses.

CHAIR—Are we now into the task force?

Senator FISHER—I have one further question about COIL in a few minutes, but I am sure Ms James and Mr Kovacic can handle that. Why, Chair?

CHAIR—We seem to be moving on to a different topic, that is all.

Mr Kovacic—I did not hear all the evidence that both the ombudsman and the Workplace Authority gave this morning, but I heard bits of it. I apologise if I am misrepresenting them, but the inference that I drew from their evidence this morning is that these issues have been canvassed in the context of the Fair Work Australia Establishment Taskforce. As I mentioned a moment ago, both those organisations are involved in and are members of the task force.

Senator FISHER—Tell us about the work of the task force, Mr Kovacic. Ms Parker, welcome.

Mr Parker—Would you repeat the question?

Senator FISHER—Can you tell the committee about the work of the task force? Who is on it, when did it start work in respect of the transitional provisions et cetera? What is it doing?

Mr Parker—The task force was established to work through, I guess you would say, all the logistical and service delivery issues that are involved in establishing the new organisation, Fair Work Australia. We are looking at implementing machinery of government changes and service delivery infrastructure and at setting up the legislative framework for the organisations and the compliance and the accountability frameworks. It has an executive director who is employed by the department, appointed by the Deputy Prime Minister, and the task force includes each of the workplace relations agency heads. It includes two representatives of the department and obviously the executive director. So far we have had five meetings since the appointment of the executive director in October last year. As I said, it

has a range of project plans, and it is working through everything that needs to be done before Fair Work Australia opens its doors on 1 July.

Senator FISHER—What are the time frames for the deliberations of the task force?

Mr Parker—It depends on the issue. As a task force we have broken down the work into a whole range of those areas, such as financial management, and a set of time frames is attached to each of those—for the financial management side, for the ICT, for the website and for the portal arrangements. As I mentioned, there is a range of service delivery.

Senator FISHER—Do you have those in writing?

Mr Parker—I do not have them with me. We have an overarching broad plan which covers all those high-level areas I was talking about, and then for each of those more detailed areas, such as financial management, the project teams have broken them down into specific activity leading up to 1 July.

Senator FISHER—So you have that broken down leading up to 1 July yet you have not brought it with you today?

Mr Parker—I have enormous amounts of—

Mr Kovacic—It is an internal working document as it is a project to deal with establishment issues.

Senator FISHER—Sorry, Mr Kovacic. It may be standard operating procedure to you but I cannot hear what you are saying, so please speak up.

Mr Kovacic—I apologise. It is an internal working document. It is a project plan which the task forces pull together to ensure that we successfully establish Fair Work Australia on 1 July. Might I add that we are progressing in accordance with that time frame.

Senator FISHER—To what extent are you able to share the specifics of that time frame with this committee?

Mr Kovacic—We would have to take that question on notice.

Senator FISHER—Oh, goodness!

Ms Paul—I can tell you where we are up to at this stage on the broader topics. In relation to the absolute detail, a lot of paperwork is attached to that, as you can imagine.

Senator FISHER—There is, and it needs to be rolled out in advance of a forecast operative date in July this year—in five months time. Ms James talked about the complexity of all of this. I think industry and Australian workers would like to see some of it mapped in advance.

Mr Kovacic—We are on track for it to be up and running on 1 July.

Senator FISHER—That is really reassuring. It is just that we cannot see any of the tracks at the moment.

Mr Kovacic—I can assure you that we are on track for it.

Senator FISHER—Will you guarantee that?

CHAIR—Mr Kovacic, my colleague's concern and mine is not that we doubt your assurance that this will be up and running by 1 July. As you and others have been at pains to say, given the great complexity of this, business and, no doubt, trade unions and all other stakeholders, would be relieved to be given a clearer indication of how we get from today—26 February—to 1 July through the implementation phase. You took a question seeking more particularity about this on notice, but I wonder whether you might be able to be a little more helpful to the committee, and to the public, who will no doubt be hanging on your every word about this.

Mr Kovacic—We have mentioned a couple of significant developments in recent times. Firstly, the existing President of the Industrial Relations Commission has indicated that he is prepared to accept the invitation to be appointed as president of Fair Work Australia.

Senator JACINTA COLLINS—What date was that?

Mr Kovacic—The Deputy Prime Minister issued a media release on that on 13 February. The Deputy Prime Minister, in a speech at the *Australian Financial Review* workplace relations conference in 2008, mentioned a couple of issues which are particularly important. Firstly, she mentioned that all existing full-time members of the Australian Industrial Relations Commission would be offered roles in Fair Work Australia. She then went on to say—and this comes back to the question that Senator Fisher asked a moment ago:

I would also like to take this opportunity to confirm that employees of the agencies to be abolished (the Australian Industrial Registry, the Australian Fair Pay Commission Secretariat, the Workplace Authority and the Workplace Ombudsman and the Australian Building and Construction Commission from 1 February 2010) will be transferred to positions in the new Fair Work Australia institutions or other appropriate positions consistent with the Public Service Act 1999 as in any machinery of government change.

That point was reiterated in the Deputy Prime Minister's media release of 13 February. I think in early February the positions of the general manager of Fair Work Australia and the Fair Work Ombudsman were advertised in the press. The period during which interested parties can submit applications has now closed. Interviews are to be conducted for those positions early next month, consistent with the government's commitment to merit selection processes for statutory appointments, such as those will be. So there has been a significant process. The other point that I would emphasise here is that we are not starting from ground zero. We have a number of bodies and a number of institutions that have practices and processes are in place. In essence, it is about bringing those together. Clearly, a lot of the work of the establishment task force is about ensuring that that happens.

Senator BRANDIS—Thank you very much for that. That is very helpful. Following on from what you just told us, I see that in the letter this committee received at about lunchtime today the Deputy Prime Minister indicates that this meeting of COIL, the Committee on Industrial Legislation, together with officials from the state and territory governments, is happening today and tomorrow.

Mr Kovacic—That is correct.

Senator BRANDIS—She goes on to say that the principal transitional and consequential provisions bill will be introduced in the week beginning on 16 March 2009, and then a

subsequent transitional provisions bill dealing with any implications from the referral of powers under the Constitution will be introduced in the week commencing on 23 May 2009. I am not particularly worried about the second of those because presumably—

Senator FISHER—I am.

Senator BRANDIS—Senator Fisher is and she will have some questions about them, but presumably those are purely consequential on the constitutional referral, so I will let Senator Fisher deal with that. Dealing with the principal transfer of powers bill, given that the states and territories and members of the committee have been apprised of the contents of this bill today, when will the draft be published to the public generally?

Mr Kovacic—As I indicated before, that is a matter for government.

Senator BRANDIS—The parliamentary secretary is not at the table.

CHAIR—This question was asked three or four times when the parliamentary secretary was there.

Senator BRANDIS—Leave it up to the parliamentary secretary. I will ask the parliamentary secretary. Parliamentary secretary, this is the issue: today a whole pile of people have been given this draft, not members of the government but members of other governments, including the Western Australian government presumably, which is of a political persuasion other than yours, and a number of stakeholders. Given that there has been a limited publication of the meeting occurring today and tomorrow, has the government decided not to make available more widely an exposure draft of this bill prior to its introduction to the parliament on 16 March? Perhaps, if you are not able to tell me immediately, you could seek that information. If the government has made such a decision—I emphasise ‘if’—why can the public not see an exposure draft straightaway, given that it is being published to a limited range of people already today?

Senator McLucas—I will seek advice from the minister about whether the government has decided to, or decided not to. I am interested in your framing your question in the negative, implying that that is the decision of government.

Senator BRANDIS—No, I am sorry: I did not mean any implication by that, Senator.

Senator McLucas—I took it wrongly, then; I am sorry.

Senator BRANDIS—All we want to see is the bill.

Senator McLucas—Right.

Senator BRANDIS—The entire commercial and industrial community is waiting for this bill. You have it and you will not show it to us. So much for open government!

CHAIR—It is going through a consultative stage with the state parliaments, that is why.

Senator McLucas—With respect, it is being consulted on today and tomorrow.

Senator JACINTA COLLINS—The responsibility rests with the minister.

Senator McLucas—With respect, I think if you look back at the history of the substantive bill, there was a good and strong consultation process.

CHAIR—Which has been recognised by various stakeholders.

Senator McLucas—Thank you, Chair.

Senator BRANDIS—However, if the bill is eligible, at this stage the states will require a transitional bill.

CHAIR—Well, is it? We have not been told that.

Senator McLucas—Let us not presume anything. I will seek some advice from the minister's office. We will provide that, if there is something further to add.

Senator BRANDIS—Thank you very much.

Senator McLucas—But, really, the innuendo of this committee is quite heavy.

Senator FISHER—Will the stakeholders who are part of COIL be bound by the same confidentiality agreements by which they were bound in previous COIL iterations over this legislation, Minister?

Mr Kovacic—For that, Senator, yes.

Senator FISHER—Why?

Mr Kovacic—We are talking about draft legislation here. It has been not only the practice of the core committee process, which is one that has been operating since the mid-1970s and has always operated on the premise of confidentiality around draft legislation.

Senator BRANDIS—But there is a difference, is there not, Mr Kovacic? Without necessarily conceding the point, I could understand that there might be powerful reasons for confidentiality where one is dealing with the substantive bill because contestable policy choices would have to be made, and in engaging stakeholders in that process, it might very well be sensible to keep that confidential. But the transitional arrangements are surely of a purely mechanical nature. Surely the same considerations of confidentiality do not apply, or certainly do not apply nearly as strongly as they do to the substantive bill?

Mr Kovacic—As Ms James has mentioned before, there is a range of complex issues associated with the transitional and consequential bill and the provisions relating to the principal act. Against that background, the purpose of the COIL is, one, to get technical suggestions in terms of how the legislation might be improved, but also as an opportunity for stakeholders to more broadly make suggestions about how the draft legislation itself might be improved. As I have mentioned, the way the COIL has historically operated is that it is done in a confidential arrangement. There is indeed a requirement in the National Workplace Relations Consultative Council Act that the proceedings of the council itself and its subcommittees are dealt with confidentially, and that is a reflection of that provision in the principal legislation.

Senator BRANDIS—That is an appeal to custom and practice, I suppose, which I guess I can understand. But surely you accept, Mr Kovacic, that merely to say something is complex is not in itself a ground for saying it is therefore confidential. The most complicated thing in the world could, of itself for that reason, provide no justification for keeping it confidential.

Ms Paul—I do not think we can go any further now. I think we have answered the question, Senator.

Senator FISHER—What consultation will there be with stakeholders who may not be part of COIL?

Senator McLucas—I have taken the question on notice.

Senator BRANDIS—Will there be any?

Senator McLucas—I have taken Senator Brandis's question on notice, and that will answer that question.

Senator FISHER—What consultation will there be with unions who are not represented through COIL because they are not represented and therefore are not able to represent part of the ACTU contingent, for example?

Senator McLucas—It is all part of the whole process of responding to the question that Senator Brandis has asked.

Senator FISHER—Indeed, and in the last process we heard from unions who were not party to COIL discussions.

CHAIR—You can ask the same question in different ways, but it has been taken on notice.

Senator FISHER—Yes. For good reason, I would have thought.

CHAIR—No. An answer can be provided to you, Senator.

Senator FISHER—We are talking about legislation, Chair, that the Deputy Prime Minister has said will be introduced into parliament in some two and a bit weeks.

Senator BRANDIS—Yes, that is right.

CHAIR—What is the problem?

Senator FISHER—I would have thought the government might have some idea—

CHAIR—About what?

Senator FISHER—And the minister representing the Deputy Prime Minister might be able to inform the committee today about that idea.

CHAIR—What idea are you speaking about?

Senator FISHER—About the extent to which there will be consultations with stakeholders beyond the COIL committee.

CHAIR—The extent of the consultation has been detailed to you ad nauseam today—ad nauseam. The question of consultation outside of the COIL group has been taken on notice.

Senator FISHER—COIL will be gagged.

CHAIR—Move on.

Senator FISHER—At this stage we hear nothing about consultation. They will be gagged, as they were the last time.

Senator JACINTA COLLINS—Point of order.

CHAIR—This is seriously juvenile, Senator Fisher.

Senator FISHER—It is seriously serious. It is legislation that can take jobs.

CHAIR—We are responding to a point of order. Just wait a moment, please. Senator Collins?

Senator JACINTA COLLINS—I have been sitting here now for up to about half an hour, Chair, and the traditional estimates approach has gone way off track. If Senator Fisher could kindly ask questions and wait for answers to be given rather than continually resorting to statements, it would help all of us.

CHAIR—Is there a question before the committee? Does anyone want to answer the same question at this point?

Senator BRANDIS—Can I just respond to the point of order?

CHAIR—No, you cannot.

Mr Kovacic—Senator, regarding the consultation around some of the provisions in the transitional and consequential, one set of consultations that I overlooked and which we did refer to in our evidence before the Senate committee inquiring into the bill is discussions with the Textiles, Clothing and Footwear Union of Australia around outworker provisions. That is the only other thing. I just want to put that on the record so that it is not overlooked.

CHAIR—Thank you.

Ms Paul—That is already on the record.

Senator BRANDIS—Ms Paul or the parliamentary secretary, whoever: surely you appreciate that the concern we opposition senators have is when we see this COIL process described, there are some stakeholders who are in the tent, and the state and territory governments are in the tent, bound by confidentiality agreements—the rationale for which has not been satisfactorily explained to me—and there are other stakeholders, including business and some unions, who are out of the tent. Surely, parliamentary secretary, you must accept that those who are in the tent or in the know about these arrangements are advantaged in a way that those who are not consulted and not part of this confidential process are disadvantaged.

This is starting to sound very much to me like what used to be called the industrial relations club. There are some who are part of the club and get told about these things and there are those who are excluded from the club and get left in the dark. We, the parliament, know, because you told us this afternoon, that a draft bill was given to the minister last night and is being circulated around the state and territory governments and privileged preferred stakeholders in industry today while we in the parliament are being kept in the dark.

CHAIR—So you guess there is something sinister in that?

Senator BRANDIS—Is this not the industrial relations club on stilts?

Ms Paul—Senator, I will just make this comment: we have already commented, I think, that this consultation, to which the government is committed, hangs off the established consultation under the NWRCC Act. In terms of who is in and who is out, it actually just follows the provisions of the act. The subcommittee—

CHAIR—Mr Kovacic—just before you go on, Ms Paul—I am interested in the crocodile tears being expressed by Senator Brandis in relation to the consultation. Can you outline to the committee the consultation process that occurred for the Work Choice legislation?

Mr Kovacic—The bill was introduced. There was a Senate committee inquiry of five days, from memory, which was undertaken.

CHAIR—It was in five days time, for two days.

Mr Kovacic—The COIL process itself occurred—

CHAIR—You are exaggerating the consultation.

Mr Kovacic—after the legislation had been introduced.

Senator JACINTA COLLINS—What process? The COIL process?

Mr Kovacic—I am sorry?

Senator JACINTA COLLINS—What process occurred after the legislation—

Mr Kovacic—The COIL process occurred after the legislation was introduced. From memory, it took place over a day or less than a day.

Ms James—It was over a morning or an afternoon; that is my recollection.

CHAIR—A morning or an afternoon.

Mr Kovacic—Indeed, in terms of those organisations represented at the COIL process, it was much narrower than that associated with the Fair Work Bill. Indeed, there was a deliberate decision of the Deputy Prime Minister to expand the range of stakeholders that were involved in the COIL process around the Fair Work Bill and also the transitional consequential bill to include stakeholders who are beyond the traditional National Workplace Relations Consultative Council members.

CHAIR—Thank you. Senator Fisher, do you have a question?

Senator FISHER—There are a couple of issues arising out of the Deputy Prime Minister's letter to our good Chair, delivered today. Will the Deputy Prime Minister be writing to the shadow minister in similar terms?

Mr Kovacic—I cannot answer that, Senator. I can take that on notice, but I do not know.

Senator FISHER—Thank you. Can I take you to the third last paragraph of the Deputy Prime Minister's letter where she talks about a second bill? She earlier referred to the first bill, which is now the subject of COIL being introduced in the week of 16 March. Then she refers to the second bill, and she says at the end of that paragraph:

It is anticipated that both these bills would be dealt with together in the Senate.

She also says in that paragraph that the second bill will be introduced in the week commencing 23 May. That is four or five weeks after the introduction of the first bill and some five or so weeks before the roadshow starts. Is the government seriously anticipating that both those bills can be dealt with at the same time by the Senate, despite the first having been introduced to parliament some five weeks prior to the second one?

Mr Kovacic—Senator, all I can do is rely on the words that are reflected in the last sentence of that paragraph that you referred to.

Senator FISHER—You advise the Deputy Prime Minister as to process issues. The Deputy Prime Minister says that the second bill will be introduced in the week commencing 23 May, but according to my mobile phone—which I have to say is not all that reliable—it looks as if 23 May is a Saturday. Do you think she really means 23 May?

Senator BRANDIS—Maybe she meant 25 May?

Senator FISHER—Or indeed 23 March, which does happen to be a Monday. It is not a sitting week, though, according to my ever-so-reliable mobile phone!

Mr Kovacic—I will have to take that on notice. I am just checking my calendar in terms of sitting periods. I will endeavour to clarify that.

Senator FISHER—That would be helpful, Mr Kovacic. I understand that you cannot assist right now, but you will appreciate that this very much nuts-and-bolts information is critical to the stakeholder community.

Ms Paul—We can get that for you.

Senator BRANDIS—Senator McLucas, you have kindly agreed to seek information from the Deputy Prime Minister. I wonder if we could trouble you to do that over the dinner adjournment tonight so that this concern, if possible, could be expunged today?

CHAIR—It has been taken on notice.

Senator McLucas—I will seek advice. Can I say it is feigned concern, Senator.

Senator BRANDIS—It is not feigned concern by me, Senator McLucas. It might be feigned indifference by you, but it is not feigned concern by me.

CHAIR—Anyway, it has been taken on notice. Are there more questions, Senator Fisher?

Senator FISHER—Yes, Chair.

CHAIR—Well, get on with them.

Senator BRANDIS—A bit of common courtesy would not go astray.

CHAIR—When I get some, I will give some.

Senator FISHER—Diddums, Chair, diddums! I turn to the work of the Workplace Authority, in particular the work of the Workplace Authority in handling telephone inquiries and in particular in handling the process of agreement making. In the event that the Fair Work Bill is passed, what will happen on day one of the operation of that bill in respect of, firstly, telephone inquiries being made to the Workplace Authority and, secondly, the agreement assessment work?

Mr Kovacic—In terms of the Workplace Authority, clearly it is the intention for the infoline, as I think it is currently described in the Workplace Authority, to become part of the Fair Work Ombudsman. So calls will be dealt with more broadly under the umbrella of Fair Work Australia as of 1 July. In terms of agreements that are made on or after 1 July, they will be dealt with by Fair Work Australia consistent with the provisions in the bill. The issues in terms of agreements that were made prior to 1 July and/or lodged with the Workplace

Authority before 1 July are provisions that are dealt with in the transitional and consequential legislation and are ones that we will be working through as part of the establishment issues.

Senator FISHER—Which officers in Fair Work Australia will be dealing with the work that you have just outlined on day 1?

Mr Kovacic—The bill provides for agreements to be approved by members of Fair Work Australia in accordance with the provisions of the act, as it will be then. In terms of the processes, they are issues that are currently being worked through, through the establishment task force, but will also require the input of the president of Fair Work Australia.

Senator FISHER—Beyond the appointment of the president, what steps have been taken to appoint those members of Fair Work Australia? When did they take place?

Mr Kovacic—I indicated before that the Deputy Prime Minister indicated in October last year that current members of the commission would be offered roles in Fair Work Australia, but, again, these are all issues that are all dealt with in the transitional and consequential legislation.

Senator FISHER—Have any members been offered appointment?

Mr Kovacic—Senator, these are issues that are dealt with in the transitional and consequential legislation. I can only again refer you to the public statement that the Deputy Prime Minister made in her speech to the *Australian Financial Review* Workplace Relations Conference 2008. I can announce that all existing full-time AIRC members will be offered roles in Fair Work Australia.

Senator FISHER—Have any of them accepted, if any offers have been made?

Mr Kovacic—Senator, this is, as I said, an issue that is dealt with in the transitional and consequential legislation, as we have just been discussing for a while.

Senator FISHER—I look forward to seeing it.

Mr Kovacic—That bill is currently in the process of being drafted. It is scheduled to be introduced into the parliament in the week commencing 16 March.

Senator FISHER—How many primary appointees does the commission now have?

Mr Kovacic—I am sorry, Senator?

Senator FISHER—How many primary appointees does the Australian Industrial Relations Commission now have?

Mr Kovacic—Can I take that on notice? We would need to check that, Senator.

Senator FISHER—Yes.

Mr Kovacic—Senator, can I just come back to the question of the date referred to in the letter? It should be 25 May.

Senator FISHER—Thank you. In the Deputy Prime Minister's letter, it is 25 May. You just said 'my' letter. Thank you for that timely clarification. I think that is helpful. In the past couple of days, there has been publicity about the retirement from the commission of a couple of members, in particular Commissioner Lawson and Commissioner Eames. Will the government be making new appointments?

Mr Kovacic—That is a matter for government.

Senator FISHER—Or rely on secondary appointees—

Mr Kovacic—That is a matter for government, Senator.

Senator FISHER—for the operation of Fair Work Australia? It is a matter for the government.

CHAIR—It is indeed.

Senator BRANDIS—I am sorry, but by that do you mean that the decision has not yet been made?

Mr Kovacic—I said it is a matter for government, Senator.

Senator BRANDIS—I just do not understand the answer. Senator Fisher asked you whether something is going to happen. Do we take your answer to mean that the government has not decided whether or not to do that yet?

Mr Kovacic—Senator, you can take the answer any way you like, but what I am saying is that it is a matter for government.

Senator BRANDIS—Government makes these appointments.

Mr Kovacic—Yes, Senator.

Senator BRANDIS—But that was not the question. The question is whether appointments will be made.

Mr Kovacic—And I said it is a matter for government.

Senator BRANDIS—So has the decision not been made by the government whether or not to make these appointments?

Ms Paul—Mr Kovacic has answered your question, Senator.

Senator BRANDIS—No, he has not, Ms Paul—

CHAIR—Yes, he has.

Senator BRANDIS—because I do not know what the answer to Senator Fisher's question is.

Ms Paul—He is not able to take it any further, and I am not either, so I think that evidence will need to stand.

Senator FISHER—What has been the expenditure so far on the establishment of Fair Work Australia?

Ms Parker—Expenditure is in regard to staffing. At the moment, obviously we are paying for an executive director, who is working on establishing the new body.

Senator FISHER—That is Ms van Rooden?

Ms Parker—That is correct.

Senator FISHER—What is the term of her appointment, Ms Parker?

Ms Parker—She was appointed for a 12-month period commencing on 13 October 2008.

Senator FISHER—So she will run out of term in October 2009?

Ms Parker—That is correct, unless she is extended.

Senator FISHER—There is capacity to extend, is there?

Ms Parker—That is correct.

Senator FISHER—Continue.

Ms Parker—There have been a number of staff from a range of agencies seconded to assist her in her work. Each of the agencies have contributed a number of staff. In total, 11 staff who have been seconded to work directly with Ms van Rooden on the work of the task force.

Senator FISHER—From where do those secondees come?

Ms Parker—We have one staff member from the Building and Construction Commission, three from the Workplace Authority, two from the Fair Pay Commission, two from the Workplace Ombudsman and three from the Australian Industrial Registry, to total 11 staff.

Senator FISHER—Are those task force representatives bound by any confidentiality considerations in terms of the task force's considerations?

Mr Kovacic—They would be bound by their obligations as employees employed under the Public Service Act.

Senator FISHER—What does that mean in this context, Mr Kovacic?

Mr Kovacic—The precise words I do not have with me but, in essence, any information that relates to their work they are obliged to treat confidentially, as any public servant would be required to.

Senator FISHER—Are they able to discuss with others in their agency what the transitional process is beginning to look like for the agency that they are representing?

Mr Kovacic—In terms of the issue of communication with staff of the various agencies, that is something that the portfolio agency heads have taken on as a responsibility in terms of keeping their employees informed as to transitional issues to Fair Work Australia.

Senator FISHER—How will the agency heads know about that?

Mr Kovacic—They are members of the establishment task force.

Senator FISHER—So you are talking about the ones who are members of the task force.

Mr Kovacic—They are the portfolio agency heads, Senator, and they are the ones who are in essence the chief executives of the various agencies, so they have been keeping their employees informed of developments. But you would need to ask what they have been doing in that regard directly of them.

Ms Parker—Senator, just to expand: for each of the project teams that I mentioned, there are a range of people from each of the agencies on those, so there is actually quite a number of other people. The 11 I mentioned are seconded to work full time and then there are a range of other staff who are actually assisting each of the project teams. So there are quite a number of staff from the agencies involved—not all full time; some are part time.

Senator FISHER—Are you able to provide on notice the office-bearers who are members of the task force in that respect?

Ms Parker—Yes.

Senator FISHER—And the capacity in which they are members?

Ms Parker—Do you mean in terms of—

Ms Paul—Names of the staff?

Senator FISHER—I do not require any individual names, no.

Ms Paul—We can certainly give the organisation and their levels, if you wish.

Senator FISHER—And their position?

Ms Paul—Yes, but not names.

Senator FISHER—To the extent that does not necessarily identify an individual; I am not after individuals. Thank you.

Ms Paul—I understand. Thank you for that.

Senator FISHER—I will now ask some questions about a group whose title I am not sure about within the department now but who were the building and construction industry implementation group.

Mr Kovacic—The Workplace Relations Implementation Group—Michael Maynard's group.

Senator FISHER—Goody.

Mr Kovacic—They do exactly the same thing.

Senator FISHER—I am sure. Welcome, Mr Maynard and Mr Willing.

Mr Maynard—Thank you, Senator.

Senator FISHER—Are you able to provide an overview of how the Building and Construction Industry Act and the Building Code and guidelines currently interact with the existing act and how that will change in the event that the Fair Work Bill is implemented?

CHAIR—Was that a question in relation to the Fair Work Bill?

Mr Kovacic—Yes. Senator, can I deal with the second part of the question first?

Senator FISHER—Can I confine the question to the operational consequences of moving from the existing Workplace Relations Act.

CHAIR—That is fine—on the operational consequences.

Mr Kovacic—As is indicated in the Deputy Prime Minister's letter to the chair that we have been talking about, in talking about the first transitional and consequential bill in that paragraph there are three dot points. I take you to the third dot point which says that the bill will contain:

- consequential amendments related to the Workplace Relations portfolio (e.g. the Workplace Relations Act 1996 and the Building and Construction Industry Improvement Act 2005).

So, at this stage, given that the bill is still in a consultation process and being finalised, we are not in a position to provide any detail around that, Senator.

Senator FISHER—Okay. How about some general guidance? Does it mean that the code and guidelines will need to be amended?

Mr Maynard—The code and guidelines are independent of legislation. They are an administrative instrument which has as the first of its workplace relations requirements that persons subject to the code and guidelines must comply with all application legislation. As a consequence, amendments to the Workplace Relations Act by the Fair Work Bill or any other legislation would come into effect and then be a requirement of the code and guidelines.

Senator FISHER—I appreciate the administrative nature, Mr Maynard. If we can just re-examine that position in the context of the Deputy Prime Minister saying that, for example, trade union training clauses will be allowed in workplace agreements, which is a change from today, and matters that relate to the relationship between an employer and a union, for example, which is also a change from today: if that transpires to be the case, will there need to be an amendment to the code and guidelines to deal that? I just want to make this crystal clear.

CHAIR—Senator, you are really going to the consequences of the Fair Work Bill, so I am not prepared to allow it.

Senator FISHER—Righto. In respect of—

Senator BRANDIS—On a point of order, Chair.

Mr Kovacic—This is hypothetical in the sense that you do not know—

CHAIR—Just a moment, Mr Kovacic. Senator Brandis has taken a point of order.

Senator BRANDIS—Chair, in ruling out of order Senator Fisher's question, I assume you are relying on advice from the Clerk that you read into the record a little while ago.

CHAIR—I am.

Senator BRANDIS—Might I point out to you that it is perfectly clear from what the Clerk says, assuming his advice to be correct, that the only prohibition is on asking questions about the provisions of the bill. It uses the expression 'provisions of a bill' twice.

Mr Kovacic—Yes. Might I point out to you that nothing that Senator Fisher asked about relates to the provisions of a bill. If the Clerk's advice is right, you would rule that none of us can ask about the way in which a particular clause might apply, what it might mean, et cetera, or if that is a matter for the other committee. But that was not, on any view, a question about the provisions of the bill. That is not a provision of the bill.

CHAIR—I simply disagree. It is about the provisions of the bills, questions about the meaning, purpose, intention or effect of clauses, and Senator Fisher was asking, if the bill is passed, would it have this effect. I think, consistent with the Clerk's advice, I will rule that out of order. So, would you like to ask another question?

Senator FISHER—Mr Maynard, if I can take you to your answer in respect of administrative arrangements, can you please comment further on the administrative arrangements that may or may not need change in this regard?

Ms Paul—I do not think we could comment on that, either, because the bill is not settled yet.

Senator BRANDIS—I thought you said a final draft had gone to the Deputy Prime Minister.

CHAIR—I think it has not been enacted by parliament. That is the point that Ms Paul is making.

Senator BRANDIS—I do not think she would be making that point, Mr Kovacic, because that would mean that we could not ask any questions about a bill until the bill had become an act. The legislative process always operates in advance of the bill becoming an act.

Mr Kovacic—Clearly any amendments that may be presented or that the parliament may wish to make to the legislation potentially has an impact in this sort of area. Therefore we are dealing with a hypothetical.

Ms Paul—We are more than happy to try to answer, except that I do not think we are far enough advanced to be able to do so, that is all.

Senator BRANDIS—So is it the position that you do not know? Is that the answer—you do not know?

CHAIR—No, that was not the answer.

Ms Paul—No. Chair—

Senator BRANDIS—If you do know, what is the answer?

Ms Paul—I think I have just given the answer, Senator. I do not think I need to go further.

Senator BRANDIS—What is the answer to Senator Fisher's question?

CHAIR—Can I ask Senator Fisher to repeat the question?

Senator FISHER—Will there be any changes required to the administrative arrangements in respect of the Deputy Prime Minister's stated intention that there be changes in respect of the permissible subject matter of agreements in the building and construction sector?

Mr Maynard—Senator, until such time as the nature of those changes have been determined through the parliament, I would be speculating. I would note, however, that there are specific references to the existing act's clauses within the guidelines and obviously they would need to be amended to reflect whatever the new clause numbers are, following the passage of legislation.

Senator FISHER—I am struggling, Mr Maynard, because this is not a question about the Fair Work Bill, which is the subject of an inquiry before this committee, and around which there are restrictions. This is a question about transitional measures so stated in the Deputy Prime Minister's letter. Those transitional measures are not in a bill that is subject to inquiry by this committee.

Mr Maynard—Senator, perhaps you might clarify for me what your question means when you ask whether the administrative processes will change.

Senator FISHER—I am referring to the administrative instruments to which you referred in your answer, which was several answers ago.

Mr Maynard—I noted that the code and guidelines are an administrative instrument and that, first and foremost, there are requirements within the code and guidelines for compliance with all applicable legislation as a consequence such that, when you underpin legislation changes, the code and guidelines will, by their very nature, have changed.

Senator FISHER—I think that is a yes, they will have to be changed.

Mr Maynard—No. The code and guideline wording, that you comply with all applicable legislation, would not change. The applicable legislation will not change.

Senator FISHER—So they move with official legislation.

Senator BRANDIS—At last—an unequivocal answer.

Senator FISHER—Thank you.

CHAIR—Well, you had it earlier, and now you have it twice.

Senator FISHER—Is the applicable legislation in respect of the code and guidelines at the moment federal law and federal law only?

Mr Maynard—It is all legislation which applies to the business entity which is subject to the code. It would include, if you are in the federal jurisdiction, all federal legislation; if you are in a state jurisdiction, the relevant state legislation.

Senator FISHER—The code and guidelines apply, do they not, to organisations that are seeking grant of the right to undertake construction work that is in some part funded by the Commonwealth. Is that right?

Mr Maynard—Within specific criteria, in the nature of the work and the funding levels applicable, yes.

Senator FISHER—What do those administrative arrangements, that is, the code and guidelines, currently say about compliance with state laws as opposed to federal laws.

Mr Maynard—Senator, if I could read you section 8.1:

All parties must comply with the provisions of applicable:

awards and workplace arrangements which have been certified, registered or otherwise approved under the relevant industrial relations legislation; and

legislative requirements.

It then goes on to say:

... compliance with:

relevant legislation;

applicable court and tribunal orders, directions

and decisions; and

industrial instruments.

Senator FISHER—Mr Maynard, what is the practical effect at the moment if a would-be contractor complies with both federal laws and state laws, but compliance with the state laws places it in breach of the federal laws? Are they able to carry out work?

Mr Maynard—Senator, I am not sure that that is a scenario that is likely to arise.

Senator FISHER—So it does not arise from that.

Mr Maynard—People are either within a state jurisdiction or a federal jurisdiction, and therefore have to apply to the relevant legislation, depending upon the jurisdiction within which they operate.

Senator FISHER—Say, for example, the Queensland workplace relations legislation allowed the making of a workplace agreement that had a clause in it that talked about the ability to prefer employment to members of the union. Are you aware of whether or not the Queensland legislation permits that?

Mr Maynard—Senator, we are not aware of the details of the Queensland industrial relations legislation and whether it would permit that or not.

Senator BRANDIS—I am sorry? You are not?

Mr Maynard—No. I am sorry, Senator. That is state legislation.

Senator BRANDIS—But surely you must be generally aware, in preparing this comprehensive federal scheme. Surely you must have considered the implications for the legislation of each of the states.

Mr Maynard—Senator, that does not necessarily mean that I know all the details, in and out, of all state legislation in this area.

Senator BRANDIS—I cannot imagine how, as a matter of logic, it would be possible for a comprehensive Commonwealth scheme of industrial relations legislation to be put together competently without the people putting it together being well aware of the legislation bearing upon it in each of the states.

Ms Paul—The question was asked, Senator, and there was an answer given. I think that is a reasonable answer.

Senator BRANDIS—Ms Paul, I am not asking a question.

Ms Paul—Then how can he answer?

Mr Maynard—Senator, I cannot take it any further.

Senator BRANDIS—I cannot begin to imagine how you could write Commonwealth law in this area without being perfectly aware and taking account of state legislation.

Mr Kovacic—Senator, in drafting the Fair Work Bill we were seeking to give effect to the government's policies as enunciated in the Forward with Fairness.

Senator BRANDIS—Could I ask you this question, Mr Kovacic. I am sorry, can I ask this?

Senator FISHER—Yes, but first of all, can you please take that question on notice, then, Mr Kovacic, and provide the committee with whether or not, colloquially speaking, union preference clauses are permissible under Queensland legislation.

Mr Kovacic—I am happy to take a question whether those clauses are permissible under state legislation.

CHAIR—It requires legal advice.

Senator BRANDIS—Mr Kovacic, is your thinking in relation to this matter that it is not so important to be aware of the detail of state law influenced perhaps by the expectation that there will be a reference of power under the Constitution from the states, which is the subject of a second transitional provisions bill that the Deputy Prime Minister tells us will be introduced in the week commencing 25 May? Do you think that it is not all that important to know what the state legislation is because any jurisdictional gap—

CHAIR—Mr Kovacic has already said that.

Senator BRANDIS—Let me finish my question.

CHAIR—You are actually verballing the officers. I ask you not to do that. If you are going to ask questions, ask them.

Senator BRANDIS—Is your thinking influenced by the knowledge or expectation that any jurisdictional gaps or overlaps here between the Commonwealth act and the state acts will be fixed up by a reference of power by each of the states so that it does not matter?

Mr Kovacic—Senator, perhaps I can answer your question this way: in terms of the process for developing the Fair Work Bill, we have had an extensive consultation process and a stream of that consultation has been with state and territory government officials. To the extent that issues have cropped up that have necessitated looking at state legislation, we have done so. The point I made before is that in terms of the issue of union encouragement clauses in the Queensland industrial relations legislation, I am not sure of the details of what the legislation provides in that regard, if indeed it does provide for union encouragement clauses.

Senator BRANDIS—Mr Kovacic, I must say it is extraordinary that a government could write a comprehensive industrial law statute in this country, particularly given, as you must be aware, the very long history of federal-state issues in relation to industrial relations, without carefully considering the relationship between its proposed law and existing state law.

Ms Paul—Senator, I can certainly say that the department have given enormous and comprehensive consideration to a wide range of issues in offering the best possible advice we can to the government to support the drafting of the relevant legislation. Mr Kovacic was asked a specific question; he gave a specific answer, and he has now taken it on notice.

Senator BRANDIS—Thanks, Ms Paul, but I do not think that advances the discussion anywhere.

Senator McLucas—Senator, I think it does.

Senator BRANDIS—That is Sir Humphrey—speak to me.

CHAIR—And you would know.

Senator McLucas—The secretary has explained that there has been total consideration of all relevant state and territory legislation—

Senator BRANDIS—I am reassured you say that.

Senator McLucas—If you could let me finish, I would appreciate it.

Senator BRANDIS—Sir Humphrey is sure in demand.

CHAIR—Let us move on.

Senator McLucas—Chair, I would like to finish what I was saying.

CHAIR—I am sorry. I thought you had finished.

Senator McLucas—I can understand that because I was interrupted.

CHAIR—Yes.

Senator McLucas—But there has been consideration of relevant state and territory legislation. It is highly inappropriate for a senator in a Senate estimates committee to ask a question of a Commonwealth officer about state legislation.

Senator BRANDIS—Well—

Senator McLucas—I am sorry, a specific question about state legislation is not something that this officer can provide immediate advice on in this Senate estimates committee, and the officer has taken it on notice. You can make your political points, Senator Brandis and Senator Fisher.

Senator BRANDIS—It is not a political point at all, Senator McLucas.

CHAIR—Ah, well—

Senator McLucas—You can have your grade 9 debating points or we can actually answer some questions.

Senator BRANDIS—It is not a political point at all, Senator McLucas. There is no area within the jurisdiction of the Commonwealth where the issues between Commonwealth power and state power have been historically more vexed and contentious than in industrial law.

Senator McLucas—Sure.

Senator BRANDIS—You know that. So does the Chairman, who is a former union official. I make no apology for being astonished that the person responsible for writing out a comprehensive Commonwealth statute in this area has apparently paid such light regard to making himself cognisant of state law.

Senator JACINTA COLLINS—Well, Senator, that is your opinion, not this committee's opinion.

CHAIR—They are your words, and that is not the evidence before the committee.

Senator BRANDIS—The answer points to that conclusion.

CHAIR—Are there further questions?

Senator FISHER—Ms James would have assisted if she was available. Yes, Chair, there are more questions. I will move on to those.

CHAIR—Ms James is still around.

Senator FISHER—Oh, there she is. She was obscured by the minister momentarily.

CHAIR—Good pick-up, Senator. You have some questions?

Senator FISHER—I have a couple of other questions around this topic. I hope to be quick.

CHAIR—Do not be quick on my account. I am happy to be here all night!

Senator FISHER—Colloquially speaking, are union preference clauses permissible in workplace agreements under the federal system at the moment?

Mr Maynard—Freedom of association allows for a person to be a member or choose to be or not to be a member of the union. The issue of, as you call it, union preference clauses is not permissible.

Senator FISHER—I am sorry?

Mr Kovacic—Senator, my advice in relation to the legislation at the moment is that the issue of union preference clauses is prohibited content.

Senator FISHER—Thank you. So they are not allowed. The building and construction industry code and guidelines, if I understand correctly what you have said, currently require compliance with both federal and state laws in order for a—

Mr Maynard—It requires persons to comply with the relevant laws within their applicable jurisdiction.

Senator FISHER—So both state and federal, if they are a relevant jurisdiction.

Mr Maynard—Persons under state jurisdiction apply state laws. Persons in the federal jurisdiction apply the federal laws.

Senator FISHER—Currently it is the situation that compliance with either state or federal will suffice, Mr Maynard.

Mr Maynard—No, Senator. My evidence is that if you are in a state jurisdiction, then you have to apply the state legislation. If you are in a federal jurisdiction, then you have to apply the federal legislation.

Senator FISHER—Is consideration being given to allowing or considering it to be compliance with the code if a proponent for carrying out work—so a would-be contractor—complies, for example, with the laws of the state in which the work is to be carried out, even if that contractor is, as of the date of winning the work, governed by federal laws?

Mr Maynard—No, Senator. Their requirement is to apply the applicable legislation.

Senator FISHER—That is the current situation, but is there under consideration a proposition that that be changed—

Ms Paul—We cannot answer that.

Senator FISHER—as I have said?

Ms Paul—We cannot answer a question like that. It is a matter for the government.

Senator FISHER—Have you provided the government with any advice in that respect?

Senator McLucas—Is that not a question on content?

CHAIR—We are running into the same problem.

Senator FISHER—Its nature, not content.

Senator McLucas—I do not think so.

Senator BRANDIS—Will you apply your former ruling?

CHAIR—I am, but a specific question—

Senator FISHER—I will ask the next question.

CHAIR—All right. Senator Fisher will ask it again.

Senator FISHER—Are you aware of whether or not the Deputy Prime Minister has written to the state workplace relations ministers about this issue?

Mr Maynard—Yes, Senator, about the issue of persons within a particular jurisdiction having to apply the legislation that applies within that jurisdiction.

Senator FISHER—Can you expand on that?

Mr Maynard—Persons who are in a state jurisdiction must apply the state legislation. Persons who are in a federal jurisdiction must apply the federal legislation. If they do so, that will be considered to be in compliance with section 8.1 of the code and guidelines which I referred to before, which requires:

All parties must comply with the provisions of applicable:

awards and workplace arrangements which have been certified, registered or otherwise approved under the relevant industrial relations legislation; and

legislative requirements.

Senator FISHER—Is the committee able to be provided with a copy of that letter, if you have it to hand? Do you? You were reading from it.

Mr Kovacic—We will take that on notice, Senator.

Senator FISHER—It looked as though Mr Maynard was reading from it.

Mr Maynard—I have a copy, but it has annotations on it, Senator. We will be able to take that on notice.

Mr Kovacic—We will take that on notice.

Senator FISHER—The secretariat can clean it up.

Mr Kovacic—Senator, we have taken that on notice.

CHAIR—It has been taken on notice. If you want to ask another question, do so.

Senator BRANDIS—Senator McLucas, can I ask you once again to make an inquiry of the Deputy Prime Minister over the dinner adjournment to find out whether a copy of the letter requested by Senator Fisher can be provided to the committee this evening? The officer has said that he does have a copy here, but with annotations on it, which presumably could be obscured on a copy. It is highly material to the questions that the opposition wants to pursue. I can understand that you would need to take that on notice. I have no criticisms of that course being taken, but, given that the question is merely whether we can see it or not, I would ask you to make that inquiry during the dinner adjournment.

Senator McLucas—I will see what is possible.

Senator FISHER—Mr Maynard, what is the date of that letter?

Mr Maynard—On my understanding, Senator, 10 February.

Senator FISHER—To whom have those letters been written?

Mr Maynard—To the WRMC ministers.

Senator FISHER—So that is the respective state ministers.

Mr Maynard—Correct.

Senator FISHER—Thank you. What would be the practical effect of the position stated in the letter?

Mr Maynard—The practical effect, Senator, is that—

Mr Kovacic—Senator, we have taken the issue of whether we can provide a copy of the letter to the committee on notice. I think that also goes to the question of the extent to which we can canvass the details. I am quite happy to give a general sense of what the letter deals with, who it is addressed to and the date of it, but the detail of the letter is really an issue that I would like to take on notice.

CHAIR—And you have taken it on notice. Do you have any more questions, Senator Fisher?

Senator FISHER—On that issue, no, thank you, Chair, but we have further questions.

Senator BRANDIS—I have just a clarification-seeking question in relation to the issue Senator Fisher has been pursuing. Can you explain again, because I did not quite follow what you were saying, what it is that this letter from the minister to the state ministers is about? I am not asking for the content. I am just asking for a description, at whatever level of generality you are comfortable with, of what this is about.

Mr Maynard—Senator, there had been some concerns raised that small business operating within a state jurisdiction were unable to apply for Commonwealth-funded work because they were subject to state awards and agreements which contained matters which were contrary to administrative elements of the code and guidelines.

Senator BRANDIS—Does that include preference clauses in the awards?

Mr Kovacic—Senator, I think that really goes a bit more to the detail of the content of the letter. Mr Maynard has given you—

Senator BRANDIS—You used the expression ‘administrative arrangements’. I am wondering what you mean by ‘administrative arrangements’. Does that include preference clauses?

Mr Kovacic—The administrative arrangements are the code and guidelines themselves. They are administrative documents, administrative instruments, and that is what I think Mr Maynard is referring to.

Senator BRANDIS—Is that right, Mr Maynard? Is that what you are referring to?

Mr Maynard—That is correct, Senator. Under previous interpretations, small businesses were excluded if they were operating under some industrial instruments. That is unnecessary red tape, requiring them to move into the federal jurisdiction to become incorporated and to be able to apply for work. This now says that if they comply with a legislative instrument

within a state jurisdiction, they will be considered to be compliant as is the original intent of the code.

Senator BRANDIS—Does it potentially follow from that that small businesses, operating in jurisdictions under state Labor governments, which make lawful preference clauses, might still be subject to those preference clauses, notwithstanding the prohibited content provisions of the Fair Work Bill?

Ms Paul—I think it would be difficult for us to answer that, Senator. I think it is in some way hypothetical and I am not sure that we could answer it. In this instance, I am happy to take that scenario on notice, but I do not know that we could give it consideration here.

Senator BRANDIS—It is not really a scenario.

Ms Paul—We have taken on notice the question of the letter itself, which we are happy to pursue as well. I think that is probably all we can achieve at this point.

Senator BRANDIS—Ms Paul, I am not putting a hypothetical scenario. What I am asking about, or what I am exploring, is the relationship between this bill and existing state law in relation to a specific topic—namely, preference clauses—and the way the operation of this bill, were it to be enacted, would intersect with the operation of existing state law. It is not hypothetical at all. Mr Maynard, what I want to know is where, under existing state law, there is allowance for preference clauses—which, as I understand your evidence, is prohibited content under the federal bill—whether, nevertheless as a result of what you call the administrative arrangements, those preference clauses will continue to be validated under the federal scheme after the transfer of powers, which the Deputy Prime Minister has told us will be in legislation we are yet to see and which will be introduced on 25 May.

Mr Kovacic—Senator, were the employers to become part of the federal system, the provisions that would govern their workplace relations arrangements would be the provisions of the Fair Work Bill, were it to be enacted.

Senator BRANDIS—Sure. I understand that, Mr Kovacic. That is as clear as can be, I think. Perhaps I am pursuing a phantom here, but it is an important issue. As a result of the operation of the federal scheme and of the relationship between the federal scheme and existing state laws, is there a possibility that preference clauses allowed under state law could still, in this backdoor way, be regarded as valid under the Commonwealth bill?

CHAIR—Then—

Senator BRANDIS—Let him answer the question.

CHAIR—No, I will not! You are now deliberately—

Senator BRANDIS—What do you have to hide?

CHAIR—I have nothing to hide. What I am doing is trying to apply the rules.

Senator BRANDIS—Why will you not let the witness answer the question?

CHAIR—I suggest that you reword it, because you are now specifically asking about the impact of this bill—and you pointed to it three or four times—on other effects.

Senator BRANDIS—I am not asking about any provisions.

CHAIR—Well, of course you were asking about them. You were asking about the effect of provisions of the bill.

Senator BRANDIS—I am not asking about any provisions of the bill.

CHAIR—You have to be joking.

Senator BRANDIS—I am in fact asking about—

CHAIR—If you want to ask about the impact right now, that is fair; nothing changes.

Senator BRANDIS—Mr Kovacic—

CHAIR—Let me be clear. Do not ask about the impact of the bill.

Senator BRANDIS—Mr Kovacic, I think you see what I am trying to get at. I want to know whether the relationship between this bill, were it to become law, and existing state law in those states where state law allows for preference clauses may be such that those preference clauses would continue to be upheld or regarded as valid, notwithstanding the folding into of the federal scheme in those state laws under the transfer of power.

CHAIR—Let me just remind the committee of the relevant clause of the advice I read out earlier. People can choose to ignore it, but I am duty bound to uphold it. The advice states:

I do not think that it extends to questions about provisions of bills, for example, questions about the meaning, purpose, intention or effect of clauses in bills.

You were clearly—

Senator BRANDIS—I have not asked about the meaning, purpose, intention or effect of any clause in this bill. I am asking about the relationship between this bill and state law. Mr Kovacic?

CHAIR—Which has to go to the meaning and effect.

Senator BRANDIS—You could, by a process of chop logic, argue that any question about any aspect of industrial law is a question about the effect of an industrial act. Do you really want to say that?

CHAIR—No. We are talking about this bill. It is before the committee already for inquiry. We are talking about this bill. You are asking about the impact of this bill.

Senator BRANDIS—Let me make it very, very clear, Mr Kovacic. I do not want you to comment on any provision of this bill. Mr Kovacic, Mr Maynard, in responding to my question—you are as amused by the Chairman's gymnastics as I am, obviously, Mr Maynard—

Senator McLucas—No, I think he is amused by you, Senator Brandis.

Senator BRANDIS—I do not want you, in responding to my question, to address any particular provision of this bill.

CHAIR—Well, talk about gymnastics!

Senator BRANDIS—I want you to be guided by what the Chair read out before, including the Clerk's advice that questions may be asked about the operation and impact of bills. Now, this is a question about the operation and impact.

CHAIR—Well, ask it.

Senator BRANDIS—May we see a situation, as a result of this process—which plainly the Deputy Prime Minister’s letter of 10 February has in mind—in which preference clauses which would be regarded as prohibited content under this bill—

CHAIR—Provision of the bill?

Senator BRANDIS—No.

CHAIR—A clause of the bill?

Senator BRANDIS—are nevertheless validated because of the intersection of the bill, were it to be enacted, with state law. Could that be a consequence of the bill?

CHAIR—My ruling still applies.

Senator BRANDIS—May I see the Clerk’s advice on this, please?

CHAIR—Yes, of course you can.

Senator BRANDIS—Just pause for a moment. Mr Maynard, I am not asking you about any provision of this bill or the provisions of the bill in aggregate. I am asking you about the relationship of the operation of the bill, were it to be enacted, and state law. What is the answer to my question?

CHAIR—No; my ruling applies. That is about the provisions of the bills. It is about the meaning, purpose, intention or the effect of clauses of the bill, and it is out of order.

Senator BRANDIS—Mr Chairman, you, as the Australian Labor Party chairman of this committee—

Senator JACINTA COLLINS—No, I think he is a Senate chairman, as I recall.

Senator BRANDIS—are preventing this committee from being satisfied that, notwithstanding the protestations of your own Prime Minister, your Deputy Prime Minister and industrial relations minister, that by the backdoor method of validating state law, preference clauses might be part of the new Commonwealth scheme.

CHAIR—You can make all the accusations that you like—

Senator BRANDIS—Do you really want to do that, Mr Chairman, because if you are wrong about this—

CHAIR—but, as Chair of this committee, I am required to uphold the processes of the Senate. This is something that I was subjected to when the roles were reversed. It was a provision that was applied last night here, and I am applying it again today. I have allowed enormous flexibility already on this, but enough is enough. We have gone through the process. You seek to abuse the normal processes of the Senate and the rules of the Senate, and I am not going to let you continue to abuse the rules and processes of the Senate, Senator Brandis. It being just about six o’clock and given that the committee has a private meeting at six o’clock, I think we will now adjourn for the dinner break, and reconvene at 7.30.

Senator BRANDIS—Mr Chairman, before you do—

CHAIR—I have done it.

Proceedings suspended from 5.58 pm to 7.30 am

CHAIR—Order! We will reconvene this Senate estimates hearing with questions on outcome 9.

Senator BRANDIS—Mr Kovacic, you gave some evidence to the committee before dinner about the Deputy Prime Minister writing a letter of 10 February 2005 to the state and territory workplace relations ministers. Have a look at this, please. That is the letter, is it not? There will be copies provided to others. That is the letter you were referring to, is it not?

Senator Ludwig—Senator Brandis, I am only being verbally advised, but, as I understand it, you asked for the letter prior to the dinner suspension?

Senator BRANDIS—Yes.

Senator Ludwig—My advice is that the Deputy Prime Minister, in response the request for us to provide the letter, has not been able to be contacted.

Senator BRANDIS—Thank you for your courtesy in making the inquiry, but that will be unnecessary now because we have the letter.

CHAIR—I do not, so we will wait until I have it before we proceed, if you are going to ask questions about it.

Senator BRANDIS—There you are. There are copies for anyone who is interested. Now that is the letter, is it not, Mr Kovacic?

Mr Kovacic—It certainly looks like the same letter, Senator.

Senator BRANDIS—You are not disputing, are you, that that is the letter?

Mr Kovacic—No.

Senator BRANDIS—I indicate that the only part of the letter that has been obscured is the name of the addressee of the letter to protect the confidentiality of the minister, who was kind enough to furnish a copy to the opposition.

Senator JACINTA COLLINS—So it was a minister, was is Senator?

CHAIR—Was it a minister who provided the letter?

Senator BRANDIS—Yes. ‘Dear Minister’ are the first two words on the letter.

CHAIR—I do not see that, actually.

Senator BRANDIS—Don’t you? Well, it is on my copy—‘Dear Minister’.

CHAIR—We must have different copies, then.

Senator JACINTA COLLINS—Yes. It is there on mine.

Mr Kovacic—It is not on ours, Senator.

CHAIR—So we now have two versions.

Senator BRANDIS—No. Not two versions.

CHAIR—Mine does not have ‘Dear Minister’ at the top. I just want to clarify that we do in fact have the same letter.

Senator BRANDIS—Let us avoid any false issue being raised about this; I can understand why you are embarrassed about it, Senator.

CHAIR—It is not a false issue at all. You made an allegation that a minister has been kind enough to give you the letter. You have made some statements and I will respond. You have made an allegation that this was kindly given to you by a minister. You said that the letter started ‘Dear Minister’. It is quite appropriate for me just to ensure that the letter that we have in front of us is in fact the letter that you want to talk to.

Senator BRANDIS—Chair, you are running away from this at a million miles an hour and I can understand why. I have just handed you another copy; will you be good enough to confirm that it says ‘Dear Minister’.

CHAIR—Yes, this one does. I am pleased that you have now been able to provide a copy of the same letter that you want people to talk about. Do the people at the table have a copy of the letter that starts ‘Dear Minister’?

Ms Paul—No.

Senator BRANDIS—I can promise you that the text of the letter is the same because it is a copy of the same document. Just to avoid wasting time, let me deal with some uncontroversial things, please. Now you will see the letter starts off with the words:

I am writing to you in relation to the National Code of Practice for the Construction Industry...and its associated Australian Government Implementation Guidelines...and their application to entities in the state and territory industrial relations jurisdictions.

Do you see that?

Senator JACINTA COLLINS—With the code and guidelines on there as well?

Senator BRANDIS—It continues:

As you will recall, this issue was discussed at the 78th meeting of the Workplace Relations Ministers Council on 5 November 2008. At that meeting I gave my in-principle support to a proposed solution to problems associated with the application of the Code and Guidelines to state and territory industrial instruments. Further, WRMC—

in other words, Workplace Relations Ministers Council—

ministers agreed that senior officials would meet to develop the proposed solution.

Do you see that, Mr Kovacic?

Mr Kovacic—Yes, Senator.

Senator BRANDIS—The minister, Ms Gillard, goes on to say:

I can now advise that I have agreed to the proposed solution outlined in Attachment A.

You will see that there is a one-page attachment identified as attachment A. It continues:

While I note that there are still a number of issues of concern to some states in relation to the application of the Code and Guidelines, I expect these to be considered in the coming months as part of the broader work of creating a national workplace relations system.

Do you see that? I am just reading it to you because we are just waiting for an unredacted copy to be circulated. Now the paragraph I am particularly interested in, though, is the penultimate paragraph:

The practical effect and intention of the policy outlined in Attachment A is that state and territory industrial relations obligations will be considered as Code and Guidelines compliant including where these may conflict with elements of the Code and Guidelines.

That is what the Deputy Prime Minister is saying to the addressees of this letter. It continues:

Specifically the Code and Guidelines will not be seen to—

Whatever that might mean—

override state and territory industrial instruments.

Now I will just pause there. I will give you plenty of opportunity to try to explain this, Mr Kovacic, and others. I return to my question before dinner. You were aware of this letter, were you not, at the time I was asking you those questions, Mr Kovacic?

Mr Kovacic—I was aware of the letter, Senator, yes.

Senator BRANDIS—Do not take it from me—take it from your minister, the Deputy Prime Minister—that the scheme being proposed, which is summarised in outline in attachment A, is that state and territory industrial relations obligations will be considered as code and guidelines compliant, including where these may conflict with elements of the code and guidelines. What does that mean, Mr Kovacic?

Ms Paul—It is basically what we were explaining before.

Senator BRANDIS—I am asking Mr Kovacic.

Ms Paul—Either of us can answer. It is basically what we were explaining before. I am very happy for Mr Kovacic or Mr Maynard to answer.

Mr Kovacic—I have nothing to add to what Ms Paul said.

Senator BRANDIS—But what does it mean?

Mr Kovacic—It was explained to you earlier.

Senator BRANDIS—No. I am asking again because I did not think I got an answer.

CHAIR—There has been a common theme of the same question being asked several times.

Senator BRANDIS—What does this mean:

... state and territory industrial relations obligations will be considered as Code and Guidelines compliant including where these may conflict with elements of the Code and Guidelines.

How can something be compliant with a code if it conflicts with it, Mr Kovacic? Can you explain that to me, please?

Mr Kovacic—Perhaps I might take you to the third paragraph of attachment A to the letter:

Where these requirements conflicted with other elements of the Guidelines, past interpretation has given greater weight to the other requirements set out in the Guidelines thereby administratively overriding elements of State registered instruments and/or legislation.

It goes then on to give an example. The last sentence says:

Consequently, many entities that are not governed by the federal industrial relations system and are covered by the state industrial laws and/or instruments are considered to be non-compliant for the Code and Guidelines.

It is a point of clarification around that section of the guidelines, 8.1.1, which deals with or requires compliance with relevant legislation, applicable court and tribunal orders, directions and decisions and industrial instruments.

Senator BRANDIS—What might they be? Give me some examples, please, Mr Kovacic.

Mr Kovacic—An industrial instrument might be an award. It might be an agreement. ‘Relevant legislation’, I think, speaks for itself. Decisions or determinations by courts, tribunal orders—basically decisions or orders made by an industrial tribunal or indeed a court.

Senator BRANDIS—And an industrial instrument means an award or agreement, however designated. Correct?

Mr Kovacic—That is correct.

Senator JACINTA COLLINS—Since we now have this letter and we are talking about the detail of the letter, I would like to clarify something that Mr Maynard said in this discussion earlier before the dinner break.

CHAIR—Yes. Go ahead, Senator Collins.

Senator JACINTA COLLINS—Am I correct to say this was the issue that Mr Maynard said was rectifying a problem that was not consistent with the original intent of the code?

Mr Maynard—That is correct, Senator.

Senator JACINTA COLLINS—So we are talking about the original code. This difficulty arises whether we are talking about the current act or indeed the proposed bill?

Mr Maynard—It is completely independent of the version of the legislation. It merely says that all legislative requirements must be complied with and they are given primacy over any jurisdiction’s administrative arrangements.

Senator JACINTA COLLINS—And then you also said before dinner that this problem or issue is dealing with issues raised by small business and red tape and the application of the code.

Mr Maynard—Correct, Senator.

Senator JACINTA COLLINS—That was the motivation for this issue having been raised by the ministers?

Mr Maynard—That is correct.

Senator BRANDIS—Do you know, Mr Maynard? If I asked you what a minister’s motivation was, I am sure Senator Collins would stridently object that that was an improper question and I am sure the Chair would uphold her. Are you able to speak about the minister’s motivation?

Ms Paul—No. But we were reflecting there on the representations which had been received which we were aware of from small business.

Senator BRANDIS—Senator Collins started to try and draw this red herring across the path. May we can come back to my questions.

Senator JACINTA COLLINS—Can we do without the commentary, please, Senator Brandis?

Senator BRANDIS—Well, I am sorry, Senator Collins, your capacity for intellectual dishonesty is extraordinary.

Senator JACINTA COLLINS—Chair, I ask for you to deal with this matter.

Senator BRANDIS—May I continue with my questions, please?

CHAIR—Are you going to conduct yourself appropriately?

Senator BRANDIS—Yes. May I continue with my questions, please?

CHAIR—Then you may.

Senator BRANDIS—Mr Kovacic, I would like you please to expand on your answer. I am not putting words into your mouth. I want you to expand on your answer to explain how state and territory industrial relations obligations could be considered as code and guidelines compliant where they conflict with elements of the code and guidelines. You had begun to answer that question when Senator Collins interrupted. Please go on.

Mr Kovacic—The issue here is whether an administrative instrument has the capacity to override a legislative instrument. That is what this particular issue deals with. In terms of what the letter does and what it seeks to do, it is to clarify the interaction of the code and guidelines with state industrial relations legislation in circumstances where there is a potential conflict.

Senator BRANDIS—A potential conflict. In fact, I think that is really what the next sentence is elaborating on, is it not? Specifically the code and guidelines will not be seen to override state and territory industrial instruments. Rather than talk in the abstract, can I put a particular case to you? Let us say, as is the case in some states, that there were state industrial instruments—in other words, awards or agreements—that contain preference clauses. You have told us that under the broad scheme of the Fair Work Bill, a preference clause is prohibited content. Is one of the applications of the operation of the principles sanctioned by these guidelines, according to the Deputy Prime Minister, that notwithstanding a conflict between state awards and the federal scheme, state awards that permit preference clauses would be permissible?

Mr Kovacic—Senator, I would have to have a look at the details. I cannot give you a general answer around a general case without looking at the—

Senator BRANDIS—It is not a general case; it is a specific case. I am talking about preference clauses in state awards.

Mr Kovacic—I am not prepared to provide an opinion without having full details in terms of how it might appear in a particular instrument. I am just not going to speculate around possibilities.

Senator BRANDIS—That is very convenient, Mr Kovacic, because you know very well the political sensitivity of this. You well know that the government has asserted time and again that preference clauses were prohibited content under its new industrial relations

scheme. Now we have a letter, which the government sought to suppress, from the Deputy Prime Minister allowing this fact. Non-compliant conduct will nevertheless be permitted.

CHAIR—That is just a wrong statement.

Senator BRANDIS—You sought to suppress it; I asked for a copy of the letter and it was refused.

CHAIR—It was not refused.

Senator BRANDIS—I had to go to other sources.

Senator Ludwig—That is completely and utterly inaccurate, and you know that, Senator Brandis. First of all, the advice that was received was that we would check with the Deputy Prime Minister whether it could be released. Most of those issues would then be taken on notice and we could then decide whether the letter would or would not be released. So at this point in time it would be completely inaccurate to say that you were refused a copy of the letter from us.

Senator BRANDIS—Minister—

Senator Ludwig—In any event, your subterfuge is really shown up. You had the letter in the first place and you could have tabled it. One really wonders when you then decide to say that we are refusing to provide the letter, which you have—

CHAIR—Minister, we will suspend for a moment until I can get some cooperation from the senators.

Proceedings suspended from 7.52 pm to 7.54 pm

CHAIR—We will now reconvene. The minister is going to respond to the proposition that was put to you.

Senator JACINTA COLLINS—The dishonest proposition.

Senator BRANDIS—I ask for that to be withdrawn. That is unparliamentary.

Senator JACINTA COLLINS—Well, then, why did you accuse me of being intellectually dishonest, Senator? You said your behaviour is always appropriate, and I drew you out in the first breath.

Senator BRANDIS—Chair, I ask you to rule.

Senator JACINTA COLLINS—I withdraw, unlike you, who did not.

CHAIR—All right. Let us see if we can move forward. Senator Ludwig.

Senator Ludwig—I had almost completed. For the purposes of the *Hansard*, it was in relation to the question where you indicated that the government had refused to give you a copy of the letter. As I understand it, we have not refused. As I said, we will take it on notice and decide whether we can provide it or not. The difficulty, of course, always is that you ask that with full knowledge of a copy of the letter, which you have now tabled, so it seems to be a moot point in any event.

Senator JACINTA COLLINS—False stuff. Pathetic stuff.

Senator BRANDIS—Senator Ludwig, it is a moot point now. At the time I asked you that question before dinner, I actually did not have a copy of this letter. I had obtained it over the course of the dinner suspension. So if I had it, I would not have needed to ask. But nevertheless the government has not provided a copy of the letter. You say that matter is under consideration, and I hear what you say. As you rightly say, the matter is now moot because we do have a copy of the letter before us. I go back to the text of the letter and what this scheme—I do not say that in any pejorative way—or this proposal being advanced by the Deputy Prime Minister in attachment A might mean. Now I want you to listen, please, Mr Kovacic, very carefully to this because I am going to try and put this question in a way in which it is possible for you to give an answer rather than simply say, ‘I’ll take it on notice.’ Having regard to the statement in the first and second sentences of the penultimate paragraph of the letter, which is the Deputy Prime Minister’s own precis of the effect of the scheme set out in attachment A, may it not be the case that the application of that principle would mean that a state industrial relations law which contained a preference clause would be valid under the federal scheme, notwithstanding the prohibition on preference clauses by their classification as prohibited content?

Mr Kovacic—Perhaps I will take you to attachment A, Senator, under the heading ‘Policy Application’, point 1. It states:

Consistent with the Code and 8.1.1 of the Guidelines, entities operating under state and territory industrial relations jurisdictions that are complying with their legal obligations set out in relevant legislation, applicable court and tribunal orders, directions and decisions or industrial instruments will be considered to be in compliance with the Code and Guidelines.

Senator BRANDIS—That is a restatement in a slightly greater number of words than the two sentences I have given you. The reason I am particularly interested in this, Mr Kovacic, is we know from the other letter of the Deputy Prime Minister, the one that was freely provided to the committee earlier today, that in the week commencing, according to the corrected evidence, 25 May:

The Government intends to introduce into the parliament a second tranche of consequential and transitional legislation which will deal with the reference of state powers.

That is what that is about. That is what it says.

Mr Kovacic—Yes.

Senator BRANDIS—You have not been able to tell us what the metes and bounds of that reference of state powers will be. I am not criticising you for that. Presumably, that particular bill is still in development.

Mr Kovacic—In terms of the referral of powers, with the exception of Victoria, which has indicated that it is going to continue with a referral of its powers, for the other jurisdictions, that is still the matter under discussion and negotiation.

Senator BRANDIS—Absolutely. That is why I make no criticism of your inability to tell the committee what the metes and bounds of that referral will be. As you rightly say, that is a matter of negotiation between the Commonwealth and the states other than Victoria. But, Mr Kovacic, this is my problem: we now know that the Deputy Prime Minister, as conveyed in this letter of 10 February, has proposed a scheme whereby conduct that would otherwise be

regarded as prohibited by the new Commonwealth legal regime will be regarded as being lawful conduct, notwithstanding an apparent inconsistency between the state regime and the Commonwealth regime. We know that because that is what she says. That might apply to a whole pile of different aspects of industrial practice. I have just settled upon the issue of preference clauses because that is a particularly controversial one.

Here is my question: when the reference of state powers takes place, as we anticipate it will, and when there is conduct sanctioned by state law that would, but for this scheme propounded by the Deputy Prime Minister, be unlawful under the new Commonwealth legal system, will the effect of that reference be to change that? In other words, will the effect of the reference of state powers be that this non-compliant state conduct, which according to the Deputy Prime Minister would nevertheless be 'seen to be' compliant, now be sanctioned by federal law too?

Mr Kovacic—Senator, without knowing the details of the terms of reference—and, as I mentioned, that is a matter that is still under negotiation—I am not in a position to answer that.

Senator BRANDIS—Can you do any better, Ms Paul?

Ms Paul—No.

Senator BRANDIS—You see my concern, do you not? I hope I am wrong about this, by the way. But this looks very much to me like an attempt by the back door to smuggle in conduct which is *prima facie* prohibited by the new Commonwealth legal scheme but nevertheless, because it is sanctioned by non-compliant state schemes that are, according to the Deputy Prime Minister, seen to be compliant although they are not, to give Commonwealth legal sanction to these what would otherwise be unlawful practices.

Mr Kovacic—Senator, were there no limitations in terms of the nature of the referral, the federal legislation would apply because the employers would be brought into the federal system. As a result of that, it would be the provisions of the federal act that would govern their arrangements.

Senator BRANDIS—I would have thought you are right, Mr Kovacic. I would have thought that ordinarily that is the way these referrals of state powers to the Commonwealth work. So the entire state law is subsumed by and overtaken by Commonwealth law. So I am with you about that. But what troubles me is this language, where the Deputy Prime Minister says:

State and territory industrial relations obligations will be considered as Code and Guidelines compliant, including where these may conflict with elements of the Code and Guidelines.

Will that somewhat bizarre situation continue to obtain after the reference of state powers, or are you not in a position to say?

Ms Paul—We are not in a position to say, as Mr Kovacic said before.

Senator JACINTA COLLINS—But on Senator Brandis's hypothetical—if we stretch ourselves to entertain that a bit further—is not the answer, Mr Kovacic, no, because the federal jurisdiction will apply?

Mr Kovacic—If an employee comes into the federal system, it will be the federal legislation that will apply. That is the point I made a moment ago.

Senator JACINTA COLLINS—Which makes all of this quite some moot point.

Senator BRANDIS—That is all I have on that topic, thanks, Chair. I think Senator Fisher might have something.

Senator FISHER—I have a further question, thank you, Chair.

CHAIR—Thank you, Senator Fisher.

Senator FISHER—Mr Kovacic was earlier concerned about speaking in terms of hypotheticals. Mr Maynard, your very important bit of the organisation is responsible, is it, for assessing proposals against the code and guidelines? Is that right?

Mr Maynard—That is correct, Senator.

Senator FISHER—So your team decides whether to approve or not code and guidelines compliance, does it?

Mr Maynard—That is correct, Senator.

Senator FISHER—In the past, have you been aware of situations in which would-be contractors for federally funded work under the code and guidelines have been deemed non-compliant with the code and guidelines due to breaching the freedom of association provisions of the code and guidelines?

Mr Kovacic—Senator, I am not sure that there is enough information there to make a call.

Ms Paul—When we make an assessment, we have a lot of information in front of us.

Mr Kovacic—That is right. The point I made before—

Senator FISHER—It may be one of many reasons?

CHAIR—That is not an appropriate thing to say.

Senator FISHER—I am trying to assist with the answer, Chair.

CHAIR—The officers are being very responsive and trying their best to assist you.

Senator FISHER—They are.

CHAIR—I must say it was a very convoluted and difficult question.

Senator Ludwig—I wrote it out, I must say.

Senator JACINTA COLLINS—Read it back, Minister.

Senator Ludwig—I did not want to add to it. But, in examining it, I can understand why you would want to have all the information in front of you before you decide.

Senator FISHER—I am sure the department understands.

Senator Ludwig—You would have to know the instruments that you are referring to, what the conduct was, what non-compliant issue was alleged and what the breach was likely to be and, of course, then have the freedom of association guidelines in front of you to come to any concluded view. I would challenge anyone to be able to answer that in an accurate and fair way without having at least some, if not all, of that material before them, quite frankly.

Senator FISHER—Thank you, Mr Minister. Mr Maynard's team is in charge of assessing these applications weekly.

Senator Ludwig—I would hope that he would do that with all of that material before him, quite frankly.

Senator FISHER—And he may well recall a pertinent instance, which is what I am asking him about.

Senator Ludwig—I am sorry. I did not hear that in the question.

Mr Maynard—I do not recall specific examples where that would apply, Senator. However, I refer you to the third paragraph on attachment A and the example cited there, where businesses have, because of casual conversion clauses in state awards, been found to be non-compliant because of the administrative requirement in the code and guidelines that no restrictions on labour are to be included in their industrial instrument. Now these small businesses who are operating under state awards, through no fault of their own, were therefore being found to be in breach as being non-compliant. The practical effect of this letter is to say: 'Those state small businesses would no longer be in breach, because they are complying with their award. They would now be considered to be code compliant subject to the rest of their arrangements being compliant.'

Mr Kovacic—It really comes to a question of the precedence of a legislative instrument over an administrative instrument. In essence, the letter and the attachment are about clarifying the interaction of what is an administrative instrument through the code and guidelines in terms of legislation and legislative instruments that are derived from legislation.

Senator FISHER—Mr Maynard, thank you. Are you aware of an application by a Queensland based business that has been assessed by your team in this context—or that may be in the process of being assessed by your team in this context—that had a workforce governed by a workplace agreement? It was a Queensland workplace agreement or industrial instrument—a form of workplace agreement. It complied with the Queensland legislation in that it had a union encouragement provision—because section 110 of the Queensland Industrial Relations Act specifically permits union encouragement provisions in Queensland workplace agreements. Are you aware of a Queensland based applicant being assessed for compliance as against the code and guidelines, recently or in the past, which had a workplace agreement or proposed to reach a workplace agreement that would have had in it a union encouragement provision that would have been in compliance with section 110 of the Queensland Industrial Relations Act?

Mr Maynard—Senator, we have processed in excess of 14,500 applications. I am not aware of each and every one of them in detail. If you would like, I can take that on notice.

Senator FISHER—Can you take that question on notice?

Mr Maynard—Yes.

Senator FISHER—If there were such an application prior to the Deputy Prime Minister having written her letter, would your assessment have been code and guidelines compliant or not?

Mr Kovacic—Senator, without seeing any of the details—and we canvassed this to you before—

Senator FISHER—Thank you, Mr Kovacic. That is well covered. I will not bother asking a question as to the future, then, because I expect I will get the same answer.

CHAIR—Are there further questions on outcome 9?

Senator BRANDIS—Yes. On a different topic. I would like to ask about the economic modelling of the new industrial relations legislation. Could you tell me, please, what economic analysis or modelling was commissioned or undertaken in relation to the economic impact of the new workplace relations laws?

Mr Kovacic—Certainly. As part of the process of developing the bill, the department developed a 77-page regulatory analysis of the Fair Work Bill.

Senator BRANDIS—Pause there. Your department developed it?

Mr Kovacic—That is correct.

Senator BRANDIS—And it was a regulatory analysis, was it?

Mr Kovacic—That is correct—which is included in the bill's explanatory memorandum. The regulatory analysis underpins the department's submission to the Senate inquiry into the Fair Work Bill and should be read in conjunction with that submission. That submission to the Senate inquiry includes a section on the economic environment, which focuses in particular on how the bill will impact on wages, industrial disputation, employment and productivity.

The Office of Best Practice Regulation agreed that the regulatory analysis effectively documented the regulatory implications of the legislative proposals compared with the arrangements which existed under the legislative framework of the previous government. Indeed, in the regulatory analysis, the government has committed itself to monitoring the impact of the provisions contained in the bill through a postimplementation review. The review will provide a comprehensive analysis of how the government's new workplace relations system is operating and its impact on employers, employees, the community and governments. The review will assess if the provisions in the bill have led to any differential impacts across regions, industries and occupations.

Senator BRANDIS—Thank you very much, Mr Kovacic. The regulatory analysis to which you refer is the material that appears between pages iv and lxxxiii of the EM—is that right?

Mr Kovacic—I do not have a copy of the EM in front of me, but that sounds right.

Senator BRANDIS—Well, I do have a copy of the EM in front of me. I must say that, although I do not profess to be an economist, this is plainly not economic modelling. It is, as you say, a regulatory analysis. I have no criticism of that description of it. In fact, that is what it is called. But you accept, surely, that an economic model and a regulatory analysis are two different things?

Mr Kovacic—I also referred in my answer to the fact that the regulatory analysis underpinned the department's submission to this committee's inquiry into the Fair Work Bill. That submission actually included a section on the economic environment, which focused in

particular on how the bill will impact on wages, industrial disputation, employment and productivity. The two really need to be read in conjunction. I really stress that.

Senator BRANDIS—Coming to my question, you do accept, do you not, that a regulatory analysis and an economic model are two quite different things?

Mr Kovacic—I accept this is a regulatory analysis. In terms of what you might be talking about regarding economic modelling, it is probably something different, yes.

Senator BRANDIS—I go on to observe that the submission to this committee's inquiry into the bill was not an economic model as one would understand that expression.

Mr Kovacic—As I put on the record in the previous estimates hearings, the department has not undertaken any economic modelling around the provisions of the bill.

Senator BRANDIS—Sorry, did you say has not?

Mr Kovacic—Has not.

Senator BRANDIS—Has not. That is what I was trying to get to. So the department has not. When I posed my initial question, I asked whether you had undertaken or commissioned. You have told us you have not undertaken, but have you commissioned any economic modelling from an external agency or consultant?

Mr Kovacic—No, Senator.

Senator BRANDIS—That will do me. Thank you very much. I will turn to something else. Mr Chairman, I am not sure that I can ask these questions of these officers. You no doubt will give me helpful guidance, as you always do. Can I ask questions about the Wilcox inquiry into the ABCC or is that not appropriate at this stage?

CHAIR—Well, I do not think that that is covered by the problem we had before in respect of the bill that was being inquired into. So as long as it is in the right outcome and the officers are able to answer, I think those questions will be fine.

Senator BRANDIS—No. I was not concerned about that. I was concerned as to whether or not this was the right outcome in which to ask these questions.

Ms Paul—Yes, it is, Senator.

Senator BRANDIS—Thank you. Remind me, would you please, of the date on which Mr Murray Wilcox QC was appointed to head up the inquiry into the replacement of the ABCC.

Mr Kovacic—The inquiry or the consultations to be conducted by Murray—His Honour Mr Wilcox—was announced—

Senator BRANDIS—'Mr Wilcox', I think, is the appropriate form of address.

Mr Kovacic—on 22 May 2008.

Senator BRANDIS—22 May 2008. I am right in understanding that Mr Wilcox's hourly fee is \$550 an hour, or perhaps \$500 an hour plus GST?

Mr Kovacic—I think it is \$550 per hour, inclusive of GST.

Senator BRANDIS—That is what I said—\$500 plus GST—which is an ordinary professional fee for someone of Mr Wilcox's standing. How many hours has Mr Wilcox invoiced the department for to date?

Mr Maynard—Not having the number of hours, Senator, I can inform you that he has invoiced for, and we have paid, \$170,055.41 for his services to date. That is from his appointment through until 5 January 2009.

Senator BRANDIS—Presumably the fact that that figure is not divisible by \$550 means it includes outlays like hotel expenses and other outlays?

Mr Maynard—Correct, Senator. It includes some travel expenses and the like.

Mr Kovacic—Senator, I should clarify that his appointment was announced on 22 May. He did not actually commence initial consultations until July 2008.

Senator BRANDIS—When you say he did not commence consultations, I guess all I really want to know is: when did he actually embark upon the task? When did he start incurring these fees?

Mr Kovacic—The initial consultations, which is why I mentioned it, is in the sense that he actually got down to work in July 2008.

Senator BRANDIS—Mr Maynard, the fees and outlays for which Mr Wilcox has been reimbursed are up to when?

Mr Maynard—Up until 5 January 2009, Senator.

Senator BRANDIS—And there are no outstanding fees and outlays between July and 5 January? In other words, that is the bill for everything for the ABCC until January?

Mr Maynard—That is the entirety of his work to 5 January.

Senator BRANDIS—Has he been paid, by the way?

Mr Maynard—Yes, he has. He has, of course, continued to work past that point but has not yet invoiced us.

Senator BRANDIS—Does he invoice you on a monthly basis?

Mr Maynard—It is approximately every two months.

Senator BRANDIS—I see. That is fine. Are you able to tell the committee how many hours Mr Wilcox has spent interviewing stakeholders, preparing his discussion paper and otherwise engaging in consultations?

Mr Maynard—We would have to take that on notice, Senator.

Senator BRANDIS—That is fine. You will probably have to take these next few questions on notice too. I would like, please, a list of all stakeholders with whom Mr Wilcox has met in the course of these consultations.

Mr Maynard—Yes, Senator. We can provide that on notice.

Senator BRANDIS—Thank you. And the dates of those meetings.

Mr Maynard—Yes, Senator.

Senator BRANDIS—How many officers of your department, if any, have been seconded to form a secretariat to assist Mr Wilcox with his inquiries?

Mr Wiling—The number of staff working in the Wilcox secretariat has varied over time. I would estimate four to five people over the full period and, on average, probably two people.

Senator BRANDIS—At any given time, about two. And it is a variable cast, is it?

Mr Wiling—Yes.

Senator BRANDIS—Rather than waste time with this, will you take these questions on notice, please. Can you tell me, please—I do not need the names—the number of officers, the dates of their secondment and the classification of the secondees?

Mr Kovacic—Senator, we actually have not seconded anybody. They are still departmental officers. It is the department that is supporting them. They work for the period that they are working on the work for Mr Wilcox.

Senator BRANDIS—I am sorry. Perhaps I am using the word ‘secondment’ inaptly, but you get what I mean: the number of people from the department who are assigned to assist Mr Wilcox. That is fine. I take it that those officers, or some of them, assisted Mr Wilcox in preparing the discussion paper?

Mr Maynard—Mr Wilcox wrote the discussion paper himself. We provided the typesetting, so to speak, and arranged the printing service for him.

Senator BRANDIS—But surely these assigned officers assisted Mr Wilcox in the preparation of the paper beyond merely typesetting and things like that.

Ms Paul—Mr Maynard has just said no.

Senator BRANDIS—Well, has he?

Mr Maynard—Mr Wilcox wrote the paper.

Senator BRANDIS—I am sure he did write the paper. I am not cavilling with that. If somebody writes something, that does not mean they have not been assisted in the preparation of the draft by research assistants. There is nothing sinister or unusual about that.

Mr Kovacic—Senator, when Mr Maynard says that Mr Wilcox wrote the paper, he means that Mr Wilcox wrote the paper.

Senator BRANDIS—So Mr Wilcox was not assisted by any research assistants or provided drafting assistance by anyone?

Mr Kovacic—Beyond the sort of assistance that Mr Maynard has referred to, no.

Mr Maynard—The secretariat has been asked to provide Mr Wilcox with specific pieces of information and copies of documents. They have done so. Mr Wilcox has done his analysis. He has consulted with staff and he has written the paper himself.

Senator BRANDIS—That is fine. I do not know why everybody is so defensive about this. This is the way these things are normally written.

CHAIR—You are the one pressing the point.

Senator BRANDIS—I did not think it was such a big point, to be honest, Mr Chairman.

CHAIR—Well, stop pressing it.

Senator BRANDIS—So there has been research assistance given, but the initial draft and the final published version were all the product of Mr Wilcox himself?

Mr Maynard—Correct, Senator.

Senator BRANDIS—Thank you. Did Mr Wilcox brief any senior members of the department in relation to the paper before it was released?

Mr Maynard—Senator, my evidence has been that Mr Wilcox had us do the typesetting and arrange the printing. So when you say ‘brief senior members’, I just wish to be clear on what you mean by that.

Senator BRANDIS—I am not talking about the typesetters. Again, I would not regard this as unusual. Did Mr Wilcox, before this paper was launched on the seas of public opinion, have a talk to senior officers of the department about what he was proposing to say?

Mr Maynard—Mr Wilcox provided me with a copy of the paper. When he asked to have it typeset and arranged for printing, we did discuss the content of the paper. It was subsequently typeset and printed.

Senator BRANDIS—So you got an advance copy and you had a discussion with Mr Wilcox about it?

Mr Maynard—Correct.

Senator BRANDIS—Were there any changes made to the—

Senator JACINTA COLLINS—You did too.

Senator BRANDIS—Yes, I did. Were there any changes made to the paper before it was launched subsequent to your discussions with him?

Senator Ludwig—You mean more than typesetting changes or small corrections? Substantively? I think it is fair—

Senator BRANDIS—Were there any changes to the text?

Mr Maynard—Not that I recall, Senator. There were formatting changes but not to the text, that I recall.

Senator BRANDIS—Well, if you are not sure, would you take that on notice, please.

Mr Maynard—Yes, Senator. I will take that on notice.

Senator BRANDIS—Mr Maynard, have you retained a copy of the document that Mr Wilcox provided you with?

Mr Maynard—I believe that we would have a copy on file.

Senator BRANDIS—So you can lay your hands on a copy of the document he provided you with, which was—

Mr Maynard—To be able to answer your question on notice, yes, Senator.

Senator BRANDIS—I am sorry to burden you with such a chore, but I would like you to look at the document he provided you with and to look at the final published copy and to

indicate what changes, if any, there were between the original copy provided to you and the final published copy, please. Can you take that on notice, Mr Maynard?

Mr Maynard—I will take it on notice, yes, Senator.

Senator BRANDIS—How many days before the launch of the paper did Mr Wilcox give you the copy about which we are speaking?

Mr Maynard—I do not recall, Senator, but I will take that on notice.

Senator BRANDIS—Thank you very much. Did you or any employee of the department provide a copy of Mr Wilcox's discussion paper to the minister's office before it was released?

Mr Maynard—I believe Mr Wilcox provided a copy to the Deputy Prime Minister's office before it was released.

Senator BRANDIS—I see. How many days before the release was that?

Mr Maynard—I do not recall, Senator, but I will take that on notice.

Senator BRANDIS—Where is the copy provided to the minister's office now? Would it have been returned to the department? Would it be locatable in the department's files?

Mr Maynard—I could not say off the top of my head, Senator, but I will take that on notice.

Senator BRANDIS—What I would like you to do, Mr Maynard, is to attempt to locate the copy provided to the Deputy Prime Minister and to perform the same exercise I have asked you to perform in relation to the copy provided to you—that is, to compare any changes between that copy and the final version as published.

Mr Kovacic—Senator, we have taken those questions on notice, but I think there is a practical difficulty here in the sense that we are talking about a document which is a document that is Mr Wilcox's. I think to be fair to Mr Wilcox, this is something that we actually would need to canvass with him in terms of response. We might be able to give you some general sense of the issues, whether they were formatting or whatever. But, beyond that, I am really a bit cautious about exposing what are working documents by a consultant—that is how I characterise it—who has been engaged by the Commonwealth in terms of work that has occurred—

Senator BRANDIS—I think you will find the legal position is that Mr Wilcox's working documents are his private property. They are not the property of the Commonwealth. The questions I am asking you would not be properly asked of his working documents, which he retained. But I am not asking about working documents. I am asking you about a document that he handed to Mr Maynard and, as we know from Mr Maynard, handed to the Deputy Prime Minister, at which point they ceased to be Mr Wilcox's working papers, you see.

Mr Kovacic—We have taken that question on notice.

Senator BRANDIS—Sure. That is fine.

Mr Kovacic—I am just saying—

Senator BRANDIS—I understand your point. I hope I have clarified it.

Mr Maynard—Senator Brandis, it might be a pedantic point, but let us be sure. My evidence was that my understanding is that he provided a copy to the DPM. I did not say he handed it to the DPM.

Senator BRANDIS—He provided a copy. That is fine. I do not think you are being pedantic. I do not think there is a difference. Did Mr Wilcox meet with the DPM, as you are pleased to call her, prior to the release of the discussion paper?

Mr Maynard—I am sorry, Senator?

Senator BRANDIS—Did Mr Wilcox meet with the DPM prior to the release of the discussion paper for the purpose of discussing the discussion paper?

Mr Kovacic—We would have to take that on notice, Senator.

Senator BRANDIS—That is fine. If he did, can you tell me, please, on what date or dates that meeting or meetings took place?

Mr Kovacic—We will take that on notice.

Senator BRANDIS—Thank you. That is the end of that topic.

CHAIR—Are there further questions on outcome 9?

Senator FISHER—Yes, Chair. I will move to award modernisation, which of course is already being implemented under the first round of the government's workplace relations changes. The Pharmacy Guild of Australia has suggested that award modernisation will impose additional costs of about 20 per cent on pharmacy operators. Are you familiar with that claim?

Mr Kovacic—I have seen some newspaper reports to that effect, Senator.

Senator FISHER—Are you familiar as to what the guild attributes those increased costs?

Mr Kovacic—I can vaguely recall the article, Senator. As to the details of what the Pharmacy Guild may be saying, I cannot recall.

Senator FISHER—New penalty rates, increased casual loadings in most states and increased allowances et cetera. Has the department conducted any analysis of the allegations of the increased costs that would be imposed on the pharmacy industry?

Mr Kovacic—Senator, my understanding is that the submission that the Pharmacy Guild has made is in relation to a draft modern award, which is there for consultation. In the circumstances, it is a draft award and still subject to deliberations by the Industrial Relations Commission based presumably on a range of submissions, not just from the Pharmacy Guild but other interested stakeholders. At this stage, we are aware of the issues according to media reports. But, beyond that, we have not done any work.

Senator FISHER—Are you aware of whether or not the Industrial Relations Commission has in place processes to seek such modelling?

Mr Kovacic—That is a question that is probably more appropriately directed to the Australian Industrial Registry.

Senator FISHER—So the answer obviously as to whether the department has conducted any modelling is no?

Mr Kovacic—We have not, in terms of that particular award, no.

Senator FISHER—I have a similar question in respect of the retailers situation. Are you aware of claims from the Australian Retailers Association that the exposure draft award for its industry will cause an increase in labour costs of between 8 and 50 per cent? Are you aware of that claim?

Mr Kovacic—I am aware of the broad terms of concern expressed by retailers. I am also aware that the commission, in a statement dated 23 January, foreshadowed that for transitional issues relating to modern awards it was endeavouring to convene further hearings of the parties, probably, I think from memory, in June. In the Commonwealth submission to stage 2 of the award modernisation process, the government asked the commission to consider bringing that consultation process forward to early April to provide the maximum degree of certainty for the range of stakeholders in this sort of area.

Senator FISHER—Did the minister advise the government as to whether or not the joint aims of the award modernisation project—that is, to neither impose additional costs on employers nor detrimentally affect employees—were mutually achievable?

Mr Kovacic—Senator, I think, as I have said in evidence before, that is clearly a requirement of the award modernisation request that the Deputy Prime Minister has made. The commission is actually aware of the requirement to balance those needs. Indeed, I think in perhaps the first submission that was made to the first round of award modernisation—they would not necessarily want to be held to that—the Commonwealth certainly encouraged the commission, where there were issues in terms of cost impact, to consider transitional arrangements. As I mentioned a moment ago, the government, in its most recent submission to the commission on award modernisation, has encouraged the commission to bring forward a timetable for considering those transitional issues.

Senator FISHER—What does the government submission say about the balancing of those two aims?

Mr Kovacic—The award modernisation request requires the commission to have regard to balancing those needs. In terms of the specifics, I do not have a copy of the submission in front of me.

Senator FISHER—Can you take that on notice, please—

Mr Kovacic—Yes.

Senator FISHER—and provide a copy of the submission. In particular, highlight where the government submission may or may not go to those issues.

Mr Kovacic—I think the critical issue, Senator, is the award modernisation request itself, where the requirement is for the commission to be mindful of balancing costs for employers and not disadvantaging employees. That is where that is set out. But I will take it on notice.

Senator FISHER—It is an objective. My questions are about whether or not it is achievable and what is being done about industry concerns that it is about to not be achieved.

Mr Kovacic—I suppose the point I am making is that there are still issues around transitional arrangements which the commission is yet to consider. The government has

requested the commission to bring forward the time frame for considering those issues, which have the potential to address possible concerns in that area.

Senator FISHER—Thank you, Mr Kovacic. The Deputy Prime Minister's letter, a copy of which was furnished today, refers to—

CHAIR—Which letter?

Senator FISHER—Fair question, Chair. The one of 26 February dealing with—

CHAIR—The one to the committee?

Senator FISHER—To you, indeed, Chair, as chair of the committee. It deals with the transitional bill. The second or third dot point in that letter indicates that key elements of the transitional legislation will include provisions to ensure that an employee's take-home pay is not reduced as a result of an employee's transition on to a modern award. That is, of course, dealing arguably with one of the earlier objectives of the award modernisation project to which I referred, which is to not detrimentally affect employees, particularly in terms of their take-home pay. What is the policy reason for highlighting the important objective of not reducing employees' take-home pay with the award modernisation process yet omitting to mention the equally important objective of not imposing additional costs on business?

Mr Kovacic—Senator, this is a reflection of issues and key elements of the transitional and consequential legislation, the bill that is going to be introduced into the parliament in the week commencing 16 May.

Senator FISHER—Why is it a key element of that transitional bill to look after employees' pay but not have equal regard, it would appear, to additional costs, which business is saying it will face industry by industry, sector by sector?

Mr Kovacic—In essence, the point is that the commission has to have regard to those issues in terms of creating modern awards.

Senator FISHER—Then what is the policy reason for the Deputy Prime Minister specifically referring to employees' take-home pay as a key area with which the transitional bill will deal? Why the need, on your own say-so?

Senator Ludwig—I think you have just asked for a policy position to be answered by the witness by prefacing your question with just that word 'policy' behind the position.

Senator FISHER—They have not even gone part way along the path of answering it. Minister, perhaps you would care to answer it. Thank you.

Senator Ludwig—You could direct it to me. Thank you for letting me complete my sentence. However, in that instance I will have to take it on notice. I am sure that we will be able to get a response back to you in due course.

Senator FISHER—Thank you. Minister, will 'due course' be in advance of the introduction of the transitional bill to parliament?

Senator Ludwig—I think we are limited by it. I am not sure. What is the return date for questions on notice taken? It certainly will not be later than that, I would imagine. But it will depend on—

CHAIR—It is 9 April.

Senator Ludwig—So I imagine there should not be a reason why we could not provide an answer within that time frame. That is the usual requirement of these committees. My recollection is, having looked at the tables of questions that have been answered, that Labor, in comparison to under the Liberals, are doing a lot better.

Senator FISHER—But the transitional bill, the Deputy Prime Minister has said, Minister, will be introduced into parliament in the week of 16 March. My question is: will the question on notice be answered in advance of the introduction of the transitional bill into parliament, which the Deputy Prime Minister has said will be on 16 March?

CHAIR—Well, I think all that can be said is that the committee has determined the return date for answers to questions taken on notice. But I will point out that it has been the practice, and a welcome practice and a very new practice, of this department to start to answer questions very quickly. I can recall estimates going back two or so years—in fact, more: over six years—where we had hundreds and hundreds and hundreds of questions unanswered not just from the previous estimates but from three estimates prior to that. So I am pleased to say that this department has certainly picked up its game.

Ms Paul—Thank you, Senator.

Senator Ludwig—The short answer is that I will endeavour to do my best.

Senator FISHER—Thank you, Minister.

Senator Ludwig—But it will depend on others to be able to provide the answer.

Senator FISHER—Is the department familiar with the findings of the KPMG Econtech report referring to the average wage cost impact of the award modernisation process?

Mr Kovacic—I am aware of the said report, Senator.

Senator FISHER—Are you aware of the aspect of that report where it suggests that the average wage cost impact in South Australia—the state from which I come—would be 15.7 per cent across, in particular, areas like the catering industry?

Mr Roddam—We are aware of it. That is one of the contents of the report, yes.

Senator FISHER—Are you also aware of the claim made in that report that a nationwide increase of some 3.4 per cent in wage costs would directly decrease employment by 0.7 per cent and about 8,000 jobs?

Mr Roddam—Well, we are aware of that claim in the report, yes.

Senator FISHER—If you follow the premises of that report, the average wage cost impact in South Australia is higher arguably than in other states and higher than the nationwide impact. Does the department want to comment on what percentage of those 8,000 jobs to be lost will be in South Australia?

Mr Roddam—As Mr Kovacic said before, the commission has made it clear that it will be introducing transitional arrangements and having a process for that this year transitioning from the old awards to the new awards. So any assessment of employment costs or wage costs until those transitional arrangements certainly would be premature.

Senator FISHER—We just talked, Mr Roddam, about a letter from the Deputy Prime Minister that talks about the transitional legislation focusing on employees' take-home pay but with apparently no regard to the additional cost to business. So how will that transpire as part of the transitional process?

Mr Kovacic—Senator, just going back to the report itself, my understanding is that that is a report that was commissioned by the industry itself. It is something that I am advised was actually tendered to the commission and perhaps taken into account in the evidence that the commission considered regarding the terms of the modern award for the particular sector. It is certainly not something that the department has analysed in terms of the accuracy or otherwise of the claims that are made in that particular report. It is for all intents and purposes a report which a particular stakeholder estimated to the commission. We are not in a position to comment on the veracity or otherwise of the analysis undertaken contained in the report because we have not undertaken any analysis of it.

Senator FISHER—Thank you. The Deputy Prime Minister introduced the first round of workplace relations changes with the second reading speech, during which she said that the first round of changes will not jeopardise employment. Given the current economic climate, given that claim and given the claims by industry organisations that in part of that first round the award modernisation process is going to cost jobs sector by sector, industry by industry, has the department provided the government with any modelling as to the impact of the first round of workplace relations changes on jobs?

Mr Kovacic—Senator, as I indicated in evidence to this committee in its inquiry on the Fair Work Bill:

The Updated Economic and Fiscal Outlook released earlier this month states at page 1:

The weight of the global recession is now bearing down on the Australian economy. Growth is expected to be significantly weaker than previously anticipated and unemployment will be higher.

Changes in employment levels are a result of many often interdependent factors. These factors include the strength of domestic economic conditions, consumer and business confidence, population growth, regulatory changes, global growth and unforeseen external shocks.

These factors will be the main drivers of employment levels in the medium term.

In terms of the question of modernisation, the government has emphasised that key issues in terms of the reforms will provide significant efficiency benefits for workplaces in the economy, such as reduced regulation under simpler modern awards, include bargaining frameworks, amended rules for industrial action and the one-stop shop of Fair Work Australia. Those issues are canvassed not only in the regulatory analysis but also in the department's submission to the committee's inquiry.

Senator FISHER—Which is not an economic analysis, but thank you, Mr Kovacic.

CHAIR—Are there further questions in outcome 9? It appears that there are no further questions.

Senator CASH—We did not expect that.

CHAIR—Senator Cash, can I tempt you to ask a question? No. I want to thank the officers for their presentation and assistance and responsiveness to the estimates process. I thank Hansard. The committee is adjourned.

Committee adjourned at 8.46 pm