



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS
LEGISLATION COMMITTEE

ESTIMATES

(Supplementary Budget Estimates)

WEDNESDAY, 21 OCTOBER 2009

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SENATE EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS**LEGISLATION COMMITTEE****Wednesday, 21 October 2009**

Members: Senator Marshall (*Chair*), Senator Humphries (*Deputy Chair*), Senators Bilyk, Cash, Jacinta Collins and Hanson-Young

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

Senators in attendance: Senators Abetz, Bilyk, Cameron, Cash, Collins, Fisher, Humphries, Lundy, Marshall, Mason, Ronaldson, Sterle and Xenophon

Committee met at 9.00 am**EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS PORTFOLIO****In Attendance**

Senator the Hon. Mark Arbib, Minister for Employment Participation and Minister Assisting the Prime Minister for Government Service Delivery

Department of Education, Employment and Workplace Relations**Cross Portfolio**

Ms Lisa Paul, Secretary

Mr Robert Griew, Associate Secretary

Mr Michael Manthorpe, Deputy Secretary

Dr Michele Bruniges, Deputy Secretary

Mr Bill Burmester, Deputy Secretary

Ms Malisa Golightly, Deputy Secretary

Mr Graham Carters, Deputy Secretary

Mr John Kovacic, Deputy Secretary

Mr Ewen McDonald, Deputy Secretary

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

Ms Vanessa Graham, Deputy Chief Finance Officer, Finance Group

Mr Glenn Archer, Chief Information Officer, IT services Group, IT services Group

Ms Robyn Kingston, Chief Internal Auditor, Internal Audit Group

Mr Glen Casson, Deputy Chief Internal Auditors, Internal Audit Group

Mr Simon Gotzinger, General Counsel and Group Manager Acting, Investigations, Legal, Investigations and Procurement Group

Mr George Kriz, Chief Legal Officer and Group Manager, Procurement, Legal, Investigations and Procurement Group

Mr Henry Carr, Senior Executive Lawyer, Litigation, Corporation and WR Programs, Legal, Investigations and Procurement Group
Ms Margaret Pearce, Group Manager, Parliamentary and Communications
Mr Pattie David, Branch Manager, Internal Capability and Support Branch, Parliamentary and Communications
Mr Brant Trim, Branch Manager, Communications Delivery Branch, Parliamentary and Communications
Ms Barbara Grundy, Branch Manager, Strategic Communications Branch, Parliamentary and Communications
Ms Debra Rollings, Branch Manager, Parliamentary Branch, Parliamentary and Communications
Mr Ben Johnson, Group Manager, People Group, People Group
Mr Ben Wyers, Branch Manager, Capability Development and Agility, People Group
Ms Chris Silk, Branch Manager, Remuneration and Performance, People Group
Ms Sue Saunders, Branch Manager, People Services, People Group
Ms Helen Skrzeczek, Group Manager, Applications Systems Group
Ms Jenny Harrison, Acting Group Manager, Delivery and Network Group
Ms Margaret Kidd, Group Manager

Outcome 4—Employment and Strategic Policy

Ms Lisa Paul, Secretary
Ms Malisa Golightly, Deputy Secretary
Mr Graham Carters, Deputy Secretary
Ms Janine Pitt, Group Manager, Job Seeker Support DEEWR, Job Seeker Support
Ms Dianne Fletcher, Group Manager, Employment Purchasing Group, Employment Purchasing Group
Mr Stephen Moore, Group Manager, Employment Systems Group
Ms Medha Kelshiker, Acting Group Manager, Income Support and Stakeholder Group
Ms Lyn Valentine, Branch Manager, Working Age Payment Programs Branch, Income Support and Stakeholder Group
Ms Jo Caldwell, Group Manager, General Employment Services Group
Mr Tony Waslin, Group Manager, Specialist Employment Services Group
Mr Derek Pigram, Branch Manager, Employment Pathways, Specialist Employment Services Group
Ms Alison Durbin, Branch Manager, Disability Employment Policy and Performance, Specialist Employment Services Group
Ms Sharon Stuart, Branch Manager, Disability Employment Services, Specialist Employment Services Group
Mr Malcolm Cook, Director, Jobs Policy, Job Strategies
Dr Alison Morehead, Group Manager, Social Inclusion and Participation
Mr George Thiveos, Branch Manager, Social Inclusion, Social Inclusion and Participation
Ms Debbie Mitchell, Branch Manager, Participation Policy, Social Inclusion and Participation
Ms Robyn Shannon, Branch Manager, Income Support Policy, Social Inclusion and Participation

Ms Joanne Wood, Group Manager, Indigenous Employment and Migration Policy Group, Indigenous Employment and Migration Policy

Mr Cris Castro, Branch Manager, Indigenous Employment and Enterprise Policy, Indigenous Employment and Migration Policy

Ms Susannah Smith, Acting Director, Migration Branch, Indigenous Employment and Migration Policy

Ms Jasmin Fielder, Branch Manager, Indigenous Workforce Strategies, Indigenous Employment and Migration Policy

Ms Julie Polson, Branch Manager, Migration Branch, Indigenous Employment and Migration Policy

Dr Trish Mercer, Group Manager, Research, Analysis and Evaluation

Mr Barry Cameron, Director, COAG Data Analysis and Reporting, Strategic Information Management, Research, Analysis and Evaluation

Mr Luke Elliott, Employment Training Strategies Evaluation Section, Evaluation and Program Performance, Research, Analysis and Evaluation

Mr Malcolm Greening, Branch Manager, Economic, Labour Market and Education Analysis, Research, Analysis and Evaluation

Mr Justin Griffin, Branch Manager, Evaluation and Program Performance, Research, Analysis and Evaluation

Mr Denis Hart, Director, Occupational and Industry Analysis, Labour Supply and Skills, Research, Analysis and Evaluation

Mr Ivan Neville, Branch Manager, Labour Supply and Skills, Research, Analysis and Evaluation

Mr Giancarlo Savaris, Director, Strategic Management of Information, Strategic Information Management, Research, Analysis and Evaluation

Mr Cedric Seveque, Assistant Director, Program Performance, Evaluation and Program Performance, Research, Analysis and Evaluation

Ms Nerida Coulter, Director, Skills Shortages, Labour Supply and Skills, Research, Analysis and Evaluation

Ms Yvonne Dunlop, Acting Branch Manager, Research, Research, Analysis and Evaluation

Ms Shannon Madden, Director, International Indicators and Analysis, Research, Research, Analysis and Evaluation

Ms Carmel O'Regan, Director, Regional and Industry Demand, Labour Supply and Skills, Research, Analysis and Evaluation

Ms Lydia Ross, Acting Director, Employment Services Evaluation, Evaluation and Program Performance, Research, Analysis and Evaluation

Outcome 5—More Productive and Safer Workplaces

Ms Lisa Paul, Secretary

Mr John Kovacic, Deputy Secretary

Ms Michelle Baxter, Group Manager, Safety and Entitlements Group

Mr Derren Gillespie, Branch Manager, Remuneration Tribunal Secretariat, Safety and Entitlements Group

Mr Chris Wallace, Secretary, Defence Force Remuneration Tribunal, Safety and Entitlements Group

Ms Flora Carapellucci, Branch Manager, Safety and Compensation Policy Branch, Safety and Entitlements Group

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

Ms Helen Marshall, Federal Safety Commissioner, Office of the Federal Safety Commissioner, Safety and Entitlements Group

Ms Julie Rheese, Director, Office of the Federal Safety Commissioner, Safety and Entitlements Group

Mr Michael Maynard, Group Manager, Workplace Relations Implementation Group

Ms Jody Anderson, Branch Manager, Private Sector Branch, Workplace Relations Implementation Group

Ms Helen Bull, Branch Manager, Private Sector Branch, Workplace Relations Implementation Group

Mr Jeff Willing, Branch Manager, Building Industry Branch, Workplace Relations Implementation Group

Ms Sandra Parker, Group Manager, Workplace Relations Policy Group

Mr Mark Roddam, Branch Manager, Safety Net and Wages Branch, Workplace Relations Policy Group

Mr Stewart Thomas, Branch Manager, Diversity Flexibility and Strategic Branch, Workplace Relations Policy Group

Ms Louise McDonough, Branch Manager, International Labour and Consultation, Workplace Relations Policy Group

Ms Fiona O'Brien, Acting Branch Manager, Fair Work Framework Branch, Workplace Relations Policy Group

Ms Colette Shelley, Branch Manager, National Workplace Relations Systems Unit, Workplace Relations Policy Group

Mr Jeremy O'Sullivan, Chief Counsel, Workplace Relation Legal Group

Mr David Bohn, Assistant Secretary, Safety Net Branch, Workplace Relation Legal Group

Mr Peter Cully, Assistant Secretary, Building, Organisation and Protections Branch, Workplace Relation Legal Group

Mr Henry Lis, Assistant Secretary, Bargaining, Safety and Compensation Branch, Workplace Relation Legal Group

Ms Elen Perdikiogiannis, Assistant Secretary, National System and Legislation Team, Workplace Relation Legal Group

Mr Rex Hoy, Chief Executive Officer, Safe Work Australia

Mr Drew Wagner, Branch Manager, Regulations Branch, Safe Work Australia

Ms Amanda Grey, Branch Manager, Policy and Strategic Services Branch, Safe Work Australia

Ms Julia Collins, Director, Model Legislation, Safe Work Australia

Ms Michelle Cullen, Director, Corporate Services, Safe Work Australia

Ms Justine Ross, Director, Legal Team, Safe Work Australia

Ms Ivanka Debevec, Director, Legal Team, Safe Work Australia

Australian Industrial Registry

Mr Doug Williams, Industrial Registrar and Chief Executive Officer, Australian Industrial Registry

Mr Brendan Hower, Award Project Manager, Australian Industrial Registry

Mr Dennis Kneehigh, Director Finance and Chief Finance Officer, FWA

Comcare

Mr Paul O'Connor, Chief Executive Officer, Comcare

Mr Steve Kibble, Deputy Chief Executive Officer, Comcare

Workplace Ombudsman

Mr Nicholas Wilson, Workplace Ombudsman, Workplace Ombudsman

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

Mr Mark Scully, Chief Financial Officer, Finance Branch, Workplace Ombudsman

Mr Bill Loizides, Group Manager, Field Operations Group, Fair Work Ombudsman

Mr Alfred Bongi, Group Manager, Customer Service Group, Fair Work Ombudsman

Ms Su Kearns, Acting Group Manager, Corporate Services, Fair Work Ombudsman

Ms Janine Webster, Director, National Litigation Function, Legal and Advice Group, Fair Work Ombudsman

Mr Geoffrey Casson, Chief Counsel (Acting), Legal and Advice Group, Fair Work Ombudsman

Ms Samara Dobbins, Executive Director, Workplace Relations Communications and Solutions, Fair Work Ombudsman

Australian Building and Construction Commission

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

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

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

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

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

Fair Work Australia

Mr Tim Lee, General Manager, Fair Work Australia

Mr Terry Nassios, Director, Tribunal Services and Organisations, Fair Work Australia

Mr Dennis Mihelyi, Chief Finance Officer, Finance, Fair Work Australia

CHAIR (Senator Marshall)—I open this public hearing of the Education, Employment and Workplace Relations Legislation Committee. The Senate has referred to the committee the particulars of proposed expenditure for 2009 and 2010 and related documents for the education, employment and workplace relations portfolios. The committee has set Friday, 11 December as the date by which answers to questions on notice are to be returned.

Under standing order 26 the committee must take all evidence in public. This includes answers to questions on notice. Officers and senators are familiar with the rules of the Senate governing estimates hearings, and if anyone needs assistance the secretariat has copies of those rules or will otherwise assist you. I particularly draw the attention of witnesses to an order of the Senate of 13 May 2009 specifying the process by which a claim of public interest immunity should be raised, which I now incorporate in the *Hansard*.

The extract read as follows—

Public interest immunity claims

That the Senate—

- (a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;
- (b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;
- (c) orders that the following operate as an order of continuing effect:
 - (1) If:
 - (a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and
 - (b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.
 - (2) If, after receiving the officer's statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.
 - (3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.
 - (4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.
 - (5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.
 - (6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.
 - (7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).
 - (8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

(Extract, Senate Standing Orders, pp 124-125)

[9.01 am]

Department of Education, Employment and Workplace Relations

CHAIR—Officers called upon for the first time to answer a question should state their name and position for the *Hansard* record, and witnesses should speak as clearly as possible into the microphone. I would ask everyone to make sure their mobile phones are either switched off or on silent. The committee will begin today's proceedings with cross-portfolio questions and then we will follow the order as set out in the circulated program. Proceedings will be suspended for breaks as indicated on the program.

I now welcome the Minister representing the Minister for Education, Employment and Workplace Relations, Senator the Hon. Mark Arbib, the departmental secretary, Ms Lisa Paul, and other officers of the department. As you have said you do not have any opening remarks you would like to make to the committee, we will move straight to questions.

Senator MASON— Good morning, Minister, Ms Paul and officers. I have some questions in relation to cross-portfolio that touch on contract notices. Can I start with contract notices relating to provisions of confidentiality. Do you think it is fair that the main principle of a Senate order is that the parliament and the public should not be prevented from access to information about government programs and services through the incorrect use of confidentiality provisions? Is that a fair statement?

Ms Paul—I will just ask Mr Kriz to comment.

Mr Kriz—Senator, my apologies for being late.

Senator MASON—Is that a fair statement, Mr Kriz, do you think? Do you want me to read it again?

Mr Kriz—Yes, please.

Senator MASON—Yes, of course. I should just say I am reading from the Auditor-General's report, so I hope you agree. It says:

The main principle of the Senate Order is that the Parliament and public should not be prevented from access to information about government programs and services through the incorrect use of confidentiality provisions.

Mr Kriz—Yes.

Senator MASON—You would agree, would you, that if a contract is listed as containing a confidentiality provision or provisions the consequences might be that the public, or indeed the parliament, are unable to scrutinise the terms of that contract? That is right too, isn't it?

Mr Kriz—Not entirely in this particular case.

Senator MASON—We will get to that. But that might be the case?

Mr Kriz—Yes.

Senator MASON—How many contracts are listed by the department as containing confidentiality provisions? Do you know how many of the contract notices relating to DEEWR have confidentiality provisions in them?

Mr Kriz—Of all the current, active contracts, no. I would have to take that—

Senator MASON—Could you take that on notice?

Mr Kriz—Yes.

Senator MASON—The committee would be interested in that I think. Recently, in late September of this year, there was an ANAO report. Are you aware of that report?

Mr Kriz—Yes.

Senator MASON—It relates to confidentiality in government contracts. It is *Confidentiality in Government Contracts—Senate Order for Departmental and Agency Contracts (Calendar Year 2008 Compliance)*. Are you aware of that?

Mr Kriz—Yes.

Senator MASON—There is an audit of contracts and the use of confidentiality provisions—I am sure you are aware of this, Mr Kriz—in table 2.1 on page 35 of that report. Are you aware of that.

Mr Kriz—Yes.

Senator MASON—There is a summary of contracts with confidentiality provisions, is there not?

Mr Kriz—Yes.

Senator MASON—Indeed, the agency at the top of that table is DEEWR. So there is an audit, a random selection of contracts selected by the ANAO? Is that right?

Mr Kriz—Yes.

Senator MASON—In relation to DEEWR—and this is just a random audit—it says: ‘Reviewed contracts listed as containing confidentiality provisions’, 46. Is that right?

Mr Kriz—Yes.

Senator MASON—There are other departments listed in table 2.1, are there not?

Mr Kriz—Yes.

Senator MASON—What is that one below?

Mr Kriz—The Department of Industry, Innovation, Science and Research.

Senator MASON—And ABS—that is statistics?

Mr Kriz—Yes.

Senator MASON—What is OCO?

Mr Kriz—You have got me there.

Senator MASON—I thought you would know that, Mr Kriz. Anyway, it does not matter. Various Commonwealth agencies are listed. Fair enough. So 46 contracts that were put out by DEEWR were examined. In the next column there are 24 of those which the Audit Office found to be ‘Reviewed contracts that did not contain any confidentiality provisions’—in other words, they were incorrectly described on the contract notice as having a confidentiality provision. So 52 per cent, more than half—indeed the majority of the contracts—were incorrectly described on the contract notice. That is right, is it not?

Mr Kriz—Yes. I can explain further if you wish?

Senator MASON—Yes. We will go across the table and then come back to you. I certainly will give you the opportunity to explain. But I am not misrepresenting the table? That is right, is it not?

Mr Kriz—No, the table correctly identifies what the position is.

Senator MASON—The next column is headed ‘Reviewed contracts that contained incorrect confidentiality provisions’. In other words—to put it into simple English—there is an inappropriate use of confidentiality provisions. That was 14 contracts out of the 46, which is 30 per cent; is that right?

Mr Kriz—Yes.

Senator MASON—So, 52 per cent plus 30 per cent means 82 per cent of what some might call maladministration—but I promise that I will come back to you. Finally there were ‘Contracts containing correct confidentiality provisions and correctly listed’—so the department got these right. That was eight out of 46, which is 17 per cent. That is what the Audit Office says. It does not seem very good to me. I would not have passed anyone with 17 per cent when I was an academic. What does the department say in defence of that? What is the line?

Mr Kriz—Clearly it indicates a misunderstanding on the part of the departmental officers as to what are confidentiality provisions which need to be identified.

Senator MASON—Good.

Mr Kriz—I will describe the way that our contracts operate. Our contracts have in them two types of potential confidentiality provisions, if you like. There is a generic provision, which in the body of the contract can be activated if some material is sought to be retained as confidential by the provider or by the Commonwealth. In a number of these instances—

Senator MASON—Could you just say that again, Mr Kriz. I am sorry but I just want to follow that.

Mr Kriz—We have a contract which has a body up-front and a schedule at the back. In the text of the body there is the capacity to activate a confidentiality provision if something is identified in the schedule as being confidential—for example, a particular pricing mechanism or particular commercially confidential information.

Senator MASON—Something sensitive, commercially sensitive?

Mr Kriz—Yes, sensitive information.

Senator MASON—Fair enough.

Mr Kriz—A number of our officers in the department have incorrectly identified contracts as containing confidentiality provisions merely because there is a clause in the contract that can be activated. But it was not. There was nothing in the schedules to be kept confidential. The provision itself was inactive—a mere administrative error, if you like, on the part of officers, who—

Senator MASON—I am not suggesting there is any lack of good faith.

Mr Kriz—Nobody was trying to keep anything—

Senator MASON—I have not suggested that. I am not suggesting there is any bad faith or trying to keep information from the public or the parliament.

Senator Arbib—What are you suggesting, then, Senator?

Senator MASON—All I am suggesting is there has been a failure to incorporate confidentiality provisions correctly. Mr Kriz has just said that. That is what I am suggesting.

Ms Paul—There has been a failure, not—

Senator MASON—I am not suggesting any bad faith. I have not suggested that.

Ms Paul—It is not a failure to incorporate correctly; it is a failure to understand the nature of this reporting requirement. People have over-reported. They have been overkeen, if you like, to report on confidentiality even though in actual fact they could have said no to that question because—

Senator MASON—That is right.

Ms Paul—the confidentiality provision was inactive.

Senator MASON—The consequence of that, as the Audit Office says, is that parliament and the public are deterred from asking further questions because of the confidentiality provision. So these mistakes have consequences for public information.

Ms Paul—I am not aware of any consequences that this has actually had, as Mr Kriz—

Senator MASON—The Audit Office itself says that the overuse of confidentiality provisions, which you have just admitted to—

Mr Kriz—No, this is not an overuse.

Ms Paul—No, it is not an overuse.

Mr Kriz—It is exactly the opposite. In fact, it is a lack of understanding by the officers concerned across the large department, if you like, about when a contract contains confidentiality provisions as opposed to a provision which can be activated but which was not in most of these cases. Going back in history to when this particular audit was commissioned by parliament—or not this one but a number of the previous ones—it was all designed to basically ensure that the usage of confidentiality provisions was reduced. This does not indicate that we have used more confidentiality provisions; it indicates a lack of understanding on the part of our officers, which is being addressed by an education process. There is nothing to hide.

Senator MASON—Let me get to that. I am not suggesting, again, that there is any mala fides or anything here. I am happy to discuss remedial action in a minute. But here we have more than half of the 46 randomly selected contracts not containing any confidentiality provisions but being incorrectly labelled on the contract notice as having them. That is the problem. This has worked with me. I am not saying there is bad faith, but one thinks, ‘Oh, it is confidential; I had better not ask any questions about it.’

Mr Kriz—My experience in appearing before this committee for a number of years is that it has almost had the opposite effect. Whenever we have sought to claim confidentiality

provisions, we have had to, quite rightly and properly, explain to parliament whether there was a right and correct reason for doing so. Obviously it was not—

Senator MASON—Let me get to that in a minute.

Mr Kriz—an intended result to withhold any questioning or anything like that. It is merely an error on the part of departmental officers.

Senator MASON—But, as I say, it has significant consequences, and that is what worries me.

Ms Paul—I would argue with that. I suspect it has not. We have talked here before about—

Senator MASON—Sorry, Ms Paul; I did not hear that.

Ms Paul—I do not think it has had material consequences, and we have certainly fixed it up now.

Senator MASON—Ms Paul, more than half—

CHAIR—No, just wait, Senator Mason.

Ms Paul—I certainly remember many occasions when we have been asked about contracts which had the confidentiality tag on them specifically for that reason, as Mr Kriz says. I do not think it has inhibited anybody from asking anything. Nonetheless, it has been good that the Audit Office has been able to identify an area in which we need to educate our people more clearly, and we are grateful for that.

Senator MASON—Ms Paul, the department has used confidentiality provisions correctly in only 17 per cent of cases. Do you think that is a good result? Tell me.

Ms Paul—It is not the case that we have used the confidentiality provisions incorrectly. We have reported about confidentiality when we should not have. Anyway, sorry; Mr Kriz was saying something.

Senator MASON—So you think the department did well? Do you think that is a pass mark?

Ms Paul—I think that it has been very useful, as I said before, for the ANAO to identify an area in which we need to educate our people—which we are doing—that they are to report that on the contract notice only if the confidentiality provision has been made active, which of course is actually quite clear. That is what Mr Kriz said.

Senator MASON—Do you think the department has performed adequately?

Ms Paul—I did not say that. I think—

Senator MASON—I want to know what you think.

Ms Paul—I think it has been important to learn that we have an area to educate the department in. We are doing that, and I cannot really take it much further than that.

Senator MASON—There is room for improvement, is there?

Ms Paul—Clearly in this nature of reporting there has been some room for improvement, and we have done that.

Senator MASON—I would have thought so, at least, Ms Paul, yes.

Mr Kriz—Senator, I can give you our response to the Audit Committee. We have acknowledged the recommendations of the performance audit. We have incorporated Financial Management Guidance No. 3, including the details of the—

Senator MASON—I cannot hear, sorry.

CHAIR—There really is just too much noise and it is up at this end of the room. Can you just tone it down at the back.

Senator MASON—I cannot hear either.

Mr Kriz—In terms of our response to the performance audit, the department has incorporated Financial Management Guidance No. 3, which deals with these particular issues, including the details of the four-criteria test for confidentiality within its staff training material and relevant policies and practices, including our procurement manual and the contract management framework. We have started rolling out a comprehensive education campaign and a training package and other support—for example, intranet information, handy tips and help desk information to improve staff's understanding of policies and procedures in relation to confidentiality.

Senator MASON—I read that in the ANAO report, and that is legitimate and fine.

Mr Kriz—We take it seriously. Obviously nobody likes to get results like that, but they do not show that we have incorrectly applied confidentiality provisions, as the secretary has said. There was nothing confidential in these contracts.

Senator MASON—But that is the problem. When something is labelled in a contract notice as having a confidentiality provision, the problem is then that either you do not look or you might not pursue it. It gives the wrong signal to the public and the parliament. That is the problem. That is what the ANAO says. I am not making that up.

Mr Kriz—No. The department acknowledges that, and we have put in place quite a fulsome training process and assistance to staff to improve this misreporting situation.

Senator MASON—I just cannot believe it was that bad. An accuracy of 17 per cent is not a high percentage. Even at my most generous, when I was teaching I would not have passed anyone with 17 per cent.

Mr Kriz—To offer some sort of explanation of why we think the department's staff have done this, apart from the lack of understanding, they have tried as best they can to comply with the intent of the reporting requirements. They might have got it wrong, but their intention was good in the sense that they did not pretend that there was not anything in order to make the department look better; they went all the way and identified it in every possible case, even though they were a bit too enthusiastic about it and reported on provisions which were not active.

Senator MASON—I know you are a very good lawyer, Mr Kriz. I think you could at least say that some departments or agencies are worse. Some are much better, I might add, but some are worse. I do not seek to say that DEEWR is the worst, but it is certainly not the best.

Mr Kriz—Thank you, Senator.

CHAIR—But that was not the question. I think Mr Kriz has really just answered the question that you originally put to him. You did not ask him to comment on a comparison to other agencies.

Senator MASON—I know. I am just saying that, to be fair, if you average it all out DEEWR is a little bit worse than average.

CHAIR—Yes.

Senator MASON—But that is not a defence.

CHAIR—We do not know whether with the scores of the other agencies it is the result of the same overenthusiasm about identifying inactive clauses, so it is not a good comparison.

Senator MASON—No. It is hard to know what the reasons are. I can follow this up at a later date, can I, Ms Paul? I assume that the department will improve its use of confidentiality provisions?

Ms Paul—Absolutely.

Senator MASON—I can be assured of that and the parliament can be? I will just go over some specific contracts, then, if I can. I have asked questions in the past about Dr Samuel Dennis Glover. I understand that the secretariat was made aware of the contract numbers that I would be referring to so there would be people here to answer the question.

CHAIR—I am sorry; what is the—

Senator MASON—Last time I asked questions relating to certain contract notices and people were not here to answer the questions. So I gave notice to the secretariat so we would have the people here.

CHAIR—So the point is you have the right people here.

Senator MASON—Yes. There are several contract notices, and they all relate to Dr Glover. The numbers are CN71064, CN180842, CN180856 and CN189059. What we have are contracts with the department that cover February 2008 to June 2009 relating to Dr Glover. There are four separate contracts—one for \$46,000, one for \$31,000, one for \$21,000 and one for \$32,000—in that 16-month period adding up to a fraction over \$130,000. Why are there three different contracts for more or less exactly the same one-year period, February 2008 to February 2009?

Ms Pearce—There is actually one contract.

Senator MASON—I thought there were three contract numbers.

Ms Pearce—There is one contract, which is the primary contract, for \$46,000, and that was CN71064. Then there were two variations to that contract, which were 189059 and—

Senator MASON—So we have the primary contract.

Ms Pearce—There is the primary contract.

Senator MASON—That is CN71064.

Ms Pearce—The second contract is for \$32,000.

Senator MASON—That is CN189059.

Ms Pearce—That is correct.

Senator MASON—So we have a primary one and we have a secondary one, which is the CN189059?

Ms Pearce—That is the variation. Then there is a second variation, which is the \$21,000.

Senator MASON—It is \$21,015. Is that the one?

Ms Pearce—That is the one.

Senator MASON—What does that mean? I cannot follow it.

Ms Pearce—We established the contract believing that we would have a certain body of work done and that would be the value. Whenever you do a contract and you put it into the system it goes up on to AusTender, and that was the \$46,000. It is always an estimate because for a service like that you do not know exactly what the amount will be. However, as it turned out we had a massive demand for speeches, which we have raised before here, and we needed to develop a further variation, which was the \$32,000. As we have told you in the past, we went out into the market looking for speechwriters. We were not successful. Then we decided we would go for a panel arrangement because we might be able to pick up a range of writing services, not just speechwriters, which we did. It always takes quite a long time to get a panel in place. We therefore did a third variation.

Senator MASON—Which is the third variation?

Ms Pearce—That is the \$21,000.

Senator MASON—Don't we not have a primary, a variation and then a secondary variation?

Ms Pearce—You have a primary contract, \$46,000, and you have two variations, \$32,000 and \$21,000.

Senator MASON—So the \$21,000 is the secondary variation.

Ms Pearce—It is a variation on the primary contract.

Senator MASON—How much money did Dr Glover receive from the department for that period?

Ms Pearce—The total was \$99,015.

Senator MASON—Let us leave it at \$99,000. That is for what period?

Ms Pearce—February 2008 to February 2009.

Senator MASON—Then there is another contract for a little bit later.

Ms Pearce—Then we established our panel. When you set up a panel arrangement, you put the arrangement into our contract system; therefore, there will be an AusTender notice of your estimate for that particular body of work. Then you have individual contracts with each of the people on your panel and you do an estimate for them, and that \$30,000 is an estimate for the panel arrangement for one individual, Dr Glover.

Senator MASON—So Dr Glover received nearly \$100,000 between February 2008 and February 2009?

Ms Pearce—That is correct.

Senator MASON—And he will receive another \$32,000.

Ms Pearce—No. I just mentioned \$30,000, but that is only an estimate.

Senator MASON—So around \$130,000-odd. I accept that we are not sure about the last \$30,000 because it is an estimate. Do we know how many speeches Dr Glover wrote between February 2008 and February 2009?

Ms Pearce—Yes. I have mentioned that before.

Senator MASON—Could you remind the committee?

Ms Pearce—Sixty-five speeches.

Senator MASON—Between February 2008 and February 2009?

Ms Pearce—That is approximately \$1,400 a speech.

CHAIR—Lucky he is not a lawyer!

Senator MASON—It depends on the speeches, doesn't it!

Senator Arbib—There is a skill shortage of speechwriters.

CHAIR—That is cheap.

Senator MASON—So that is up to February 2009.

Ms Pearce—That is correct.

Senator MASON—That is seven or eight months ago. The last contract you mentioned takes Dr Glover up till when? He is contracted until June 2009, isn't he?

Ms Pearce—I am not sure of that. I will have to check.

Senator MASON—I am pretty sure that is right. That is CN180842.

Ms Pearce—That is possibly correct. I have not got that with me.

Senator MASON—Is Dr Glover contracted to the department post June 2009? In other words, is he currently employed by the department under contract?

Ms Pearce—I have not got information with me about whether he has written any speeches since then and what is actually in the—

Senator MASON—Is he contracted to the department?

Ms Pearce—He is on the panel, so we can use him. If we use him, we would change the estimate if he fell outside the estimate.

Senator MASON—So he is.

Ms Pearce—Yes.

Senator MASON—And you are not sure if he has written any speeches since July.

Ms Pearce—I cannot remember. He probably would have, but I do not have that information. He is part of our panel arrangement, and he has written 17 out of the 170 speeches. But you are asking me about timing and I do not know about the timing.

Senator MASON—Seventeen out of 170 speeches. For what period are we talking about?

Ms Pearce—The information I have is from April. I would have to check the dates.

Senator MASON—From April 2009?

Ms Pearce—Yes.

Senator MASON—To the present?

Ms Pearce—It may be. I cannot recall when this brief was put together, but it could have been in September or something like that.

Ms Paul—The way I understood it, that is since the panel was set up, so it probably is to now. We will have to check that he contributed to 17 out of 170.

Senator MASON—So 10 per cent.

Ms Paul—That is right, since we have had the panel.

Senator MASON—Between February 2008 and February 2009 Dr Glover received about \$100,000. Why isn't he employed by the department as a speechwriter?

Ms Pearce—I cannot answer why Dr Glover does not want to apply for speechwriter positions.

Senator MASON—In a contractual arrangement \$100,000 is a lot of money.

Senator Arbib—That is probably a question for Dr Glover.

Senator MASON—It is a question about taxpayers' money, Minister, and the use of that.

Senator Arbib—We do not pretend to understand his train of thought. You can raise that with him.

Senator MASON—No, but I pretend to understand how taxpayers' money—I do not understand, but I am inquiring about how taxpayers' money is being used.

CHAIR—We are here to help you understand that.

Ms Pearce—Per speech, \$1,400 is actually very good value.

Senator MASON—At one level that might be right, Ms Pearce, but this is the problem: how long is a piece of string? When you say 'speeches', that can mean all sorts of different things; let us be frank. You understand exactly what I am saying. It is very difficult for the committee to gauge what that means.

Ms Paul—I am not sure the speeches are very long—

Senator MASON—Some can be major speeches. Of course they can; I do not dispute that.

Ms Paul—I am not sure the string is very long in this case if he has contributed to 17 out of 170 since April. But we will need to check that for you.

Senator MASON—Yes, but, for February 2008 to February 2009, there were 65 speeches, Ms Paul, which is \$100,000. So we are not talking about small bickies; we are talking about a lot of money.

Ms Pearce—And a substantial body of writing. These are the more complex speeches. He is not doing short speeches. That is actually very good value for money, from my judgment of

what I have seen over the years paid for speeches and what we would pay our own people in terms of overheads et cetera. That is actually good value for money.

Senator MASON—In the 16 months from February 2008 to June 2009, it is about \$130,000. That is more than I get paid. Perhaps Dr Glover is worth much more than me.

CHAIR—Let us not go there, because that is a complicated—

Senator MASON—I suspect Dr Glover has other interests. However—

Ms Pearce—Senator, could I just correct something. It is actually \$99,000 for the 12-month period.

Senator MASON—For the 12 months, but—

Ms Pearce—An estimate of 30.

Senator MASON—It is an estimate, but that is the best we have got. Let us go with the estimate. It might be more, Ms Pearce.

Ms Pearce—I have just mentioned that there were 17 out of 170 speeches.

Ms Paul—It is probably more likely to be less.

Ms Pearce—So it is much more likely to be a lot less.

Senator MASON—I can only go on the estimate. I have not got anything else to go on. That is a lot of money in 16 months. Dr Glover is currently contracted to the department. We know that. Are you aware, Ms Pearce, that Dr Glover is also contracted to the Department of the Treasury from 26 July 2009 to 31 March 2011? It is contract number No. 213342 and the contract value is \$70,000. He is doing all right. If he is employed elsewhere in the Commonwealth, I do not know, but I certainly know about the Department of the Treasury for those 22 months—for \$70,000. I note too that the Deputy Prime Minister gave a speech to Per Capita, which is self-described as ‘an independent progressive think tank’. I was looking there and it said that Mr Bentley, her senior adviser, is on the board, and apparently Dr Glover helped establish Per Capita and he is currently a fellow. Is that right?

Ms Paul—I do not think we can comment on that.

Senator MASON—It is on the website. You can take it from me, Ms Paul. I just checked it; take it from me. What I do know is that Dr Glover is a fellow of Per Capita and helped to establish it. Mr Bentley, who is a senior adviser to Ms Gillard, is on the board of Per Capita. Yesterday, Ms Gillard gave a speech to Per Capita called ‘Back to the future: economic policy in the post-crisis era’. One of the dot points was: ‘Can Keynesian economics be applied to an open, globalised economy?’ Very interesting. Did Dr Glover write that speech?

Ms Pearce—I would have to take that on notice.

Senator MASON—Can you find out? Because I really want to know whether he is writing a speech for the Deputy Prime Minister for an organisation of which he is a fellow—and Mr Bentley is a senior adviser and member of the board. That strikes me as difficult.

Ms Pearce—I would have to take that on notice.

Senator MASON—Could you do that, Ms Pearce, because the committee would be very interested to know if Dr Glover is being paid to write speeches for a body he helped found

and of which he is a fellow. That would be interesting. If you would find that out, I would be delighted.

CHAIR—So what was the question? You are saying that he is being paid to write speeches for that organisation?

Senator MASON—No, for the Deputy Prime Minister to address an organisation he is a fellow of.

CHAIR—You want to know whether he is writing speeches for the Deputy Prime Minister?

Senator MASON—Yes, but to address an organisation he is a fellow of.

CHAIR—Right, and that has been taken on notice?

Ms Pearce—Yes.

Senator MASON—In fact, the department is here today and tomorrow. I am sure that could be discovered quite quickly.

CHAIR—It has been taken on notice.

Senator MASON—I do not see why it could not be answered very quickly.

CHAIR—Generally the department, if they can get the information, do get it quickly. But the decision of this committee is that Friday, 11 December is the date by which answers to questions on notice have to be returned.

Senator MASON—This will take one phone call.

CHAIR—But the department, as I say, have been very cooperative, helpful and responsive and if they can get the answer earlier, I am sure they will.

Senator MASON—All right. I will be asking questions if we do not have an answer.

CHAIR—You will not ask the same question because that has been taken on notice.

Senator MASON—Tomorrow I might just ask the question again, Mr Chairman. You know me; I cannot be restrained when I am onto a good thing.

Senator JACINTA COLLINS—You mean all those nice things I have been saying about your restraint are not accurate?

Senator MASON—Restraint is not one of my good points as you know, Senator Collins. Can I just go to the estimates from 1 June of this year. Ms Pearce, I was asking you some questions about Dr Glover and contracts with Dr Glover. On page seven of the transcript for Monday, 1 June, I was talking about contract CN180142. The contract period is 21 April 2009 to 30 June 2009. I said:

So it is currently operative, and it is for \$30,000. The description is 'Editorial and Writings Services'. It is for about a 10-week period. The contract says that the reason for confidentiality is:

Can't disclose DEEWR confidential information without prior written approval.

I asked:

What is so confidential about this contract? What is the reason for confidentiality?

This goes back to my point, Mr Kriz, about, it says confidential, so you go 'oh'. I asked the question and when I was rereading the transcript I realised that—inadvertently, I am sure—you had not answered that question. I slipped up, not you Ms Pearce. I did not pursue it. Could you know readdress that?

Ms Pearce—I am just trying to find out which one you are talking about. Are you talking about—

Senator MASON—I have got page seven of the transcript from Monday, 1 June.

CHAIR—I think, to be fair, Senator Mason, you have asked the second question before you have given officers a chance to answer.

Senator MASON—I would not do that, would I, Chair?

CHAIR—Yes, you do.

Senator MASON—Very unfair.

CHAIR—Anyway, that being said—

Senator MASON—I have read the transcript and I could not see it. I am not trying to be—

CHAIR—We will try to get an answer for you.

Ms Pearce—I have got a copy of the AusTender notice. I have not got a copy of the *Hansard*.

Senator MASON—I can give you it, if you like.

Ms Pearce—No, that is okay. So you are asking me a question about—

Senator MASON—Why is that confidential. Why was that—

Ms Pearce—I will have to take it on notice. As you can see, under 'confidentiality of the contract' it says no.

Senator MASON—But the contract says that the reason for confidentiality is—and I am quoting from the document:

Can't disclose DEEWR confidential information without prior written approval.

Mr Kriz—Senator, we will have to have a look at it to find out specifically. However, from what you are describing, it is quite a proper course for the Commonwealth to take to ensure that the contractors with whom we do business do not disclose information that we give them for the purposes of performing business on behalf of the Commonwealth. If you were the speech writer and we gave you some confidential information which you needed in order to prepare the speech for the Deputy Prime Minister, we would not want you to disclose that information somewhere else.

Senator MASON—Mr Kriz, you might be right but what concerns me is when confidentiality provisions are only being used correctly 70 per cent of the time. I get worried.

Mr Kriz—We have to look at this, Senator—

Senator MASON—I know, but it is an example of why I am asking the question.

CHAIR—It has in fact been taken on notice.

Senator MASON—Can you look at that, Ms Pearce, and tell me why that was confidential?

Ms Pearce—Yes, Senator.

Senator MASON—Thank you, I appreciate that. Also, I think rereading the transcript, I do not think this was taken on notice although you said you were going to. I asked the question on page 9 of the transcript about whether Dr Glover wrote the Sir Robert Menzies oration. You said:

Ms Pearce—I could check for you, if you like,

Senator MASON—All right, and I think there was an oration—

Then I was interrupted by Senator Collins who quite wickedly said, ‘Sorry, Senator Mason—

Senator JACINTA COLLINS—‘Wickedly’? That is unparliamentary. I take offence at that.

Senator MASON—No it was a fair—

Senator JACINTA COLLINS—No actually, I take offence at that.

Senator MASON—It was a fair interjection.

Senator JACINTA COLLINS—I would like you to withdraw that.

Senator MASON—I withdraw ‘wicked’.

Senator JACINTA COLLINS—Thank you.

Senator MASON—The interruption was:

Senator JACINTA COLLINS—Sorry, Senator Mason, we were just thinking we could not imagine you never doing that.

Could you just find out who wrote the Sir Robert Menzies oration?

Ms Pearce—I am sure I have got that here.

Senator MASON—Okay, if you can tell us now.

Ms Pearce—I actually thought we answered that.

Senator MASON—I read the transcript and I could be wrong.

CHAIR—Just before you go on, again there are three or four conversations going up this end of the room and it is making it very difficult for me and Senator Mason. Thank you, Ms Pearce.

Senator MASON—Thank you, Chair.

Ms Pearce—I am just trying to get through the paper.

Senator MASON—Take it on notice, Chair, I do not want to detain the committee, I am happy for it to be taken on notice.

Ms Pearce—I will take it on notice. If I find it I will give it to you, Senator.

Senator MASON—It was only Senator Collins’s interjection that brought it to my attention. Local employment coordinator, contract notice 232483, can I just ask you about

that? It is an unusual contract. Are all local employment coordinators being paid in what seems to be a lump sum? It just struck as a discordant note, Ms Paul, this one.

Ms Paul—Why, what is the sum there, Senator, I do not have it in front of me?

Senator MASON—Let me go through it. The category is marketing and distribution. The contract period is 10 July 2009 to 30 June 2011 and the contract value is \$517,000. It just did not gel.

Ms Paul—I do not have that in front of me and I will check and the people who know about it are not here right now. However, it was not one of the numbers which I was given before.

Senator MASON—Wasn't it? Okay that was my fault.

Ms Paul—No, but nonetheless, regarding the local employment coordinators, there is one person employed in each of the 20 priority employment regions around Australia, which are those regions of fastest growing unemployment where industries are the most vulnerable and so on, so Western Sydney, Wollongong, et cetera. Each of those employment coordinators, whom we have now employed, is on a contract. My imagining is that the contract you are referring to there is for their employment, but I will need to confirm that.

Senator MASON—Could you check that?

Ms Paul—I cannot imagine it could be for anything else, but I will confirm that for you.

Senator MASON—Are they all set to be paid the same amount or can they negotiate?

Ms Paul—I would have to check, I do not know the answer to that. My imagining is they are paid the same, but I will check that for you.

Senator MASON—Also, something else slightly unusual: that contract number has a payment of \$517,000 yet previously a posting was on the web made for the same local employment coordinator for a lesser amount, yet that posting has now been removed. Is this a correction or was there some—can you explain anything about that at all?

Ms Paul—I do not want to speculate, but the Prime Minister announced the first nine regions, I think around Easter. We forged ahead with the employment of the first nine. Then the next 11 regions were announced later and we forged ahead with the employment of the next 11. My guess is, but I will check—

Senator MASON—Can you check it for me?

Ms Paul—that the higher amount is for the 20 and it replaces the amount which we would have posted for the nine.

Senator MASON—That makes sense, but if you could check it, I would appreciate it.

Ms Paul—I am sure that is true.

CHAIR—I think Ms Pearce has some information to help you.

Ms Pearce—Yes, Senator, actually I did provide a formal answer to the question about the Robert Menzies oration.

Senator MASON—I am sorry, I apologise.

Ms Pearce—The answer was yes.

Senator MASON—Remind me, Ms Pearce.

Ms Pearce—It is a number, EW0153_10.

CHAIR—We will get that for you.

Senator MASON—What are you referring—

Ms Pearce—You were asking me whether he wrote the Sir Robert Menzies oration and was I going to provide an answer and I said that I did provide one and that is the answer.

Senator MASON—So what page was that?

Ms Pearce—This was answer to question EW0153_10.

Senator MASON—On notice?

Ms Pearce—Yes.

Senator MASON—I must have missed it, all right I apologise.

Ms Pearce—It refers to page 5 of the senate *Hansard*.

Senator MASON—So you did not answer it there but on notice you did, thank you. I apologise. The Community Festivals for Education Engagement program contract notice 199195, what is that program for?

Mr Storen—That contract is actually a contract to evaluate the community festivals program. My assumption is you are asking about the contract on the notice which is the evaluation contract?

Senator MASON—Indeed.

Mr Storen—The contract is with the Social Research Centre who have been engaged to evaluate the Community Festivals for Education Engagement program which is a program run through the department in our Indigenous education area. The contract has been made through panel arrangements. The department has established a research, evaluation and analysis panel. A large process to organise a number of providers of evaluation analysis type services was conducted. If memory serves me right, it was over 12 months ago now. What that means is that, when there is a piece of work within the department and the assessment of the department is that we need external expertise or support in terms of the evaluation or research task, we go to the panel. In this case three providers that were on the panel were approached and asked for a quotation in relation to this piece of work and the Social Research Centre was the organisation that was contracted.

Senator MASON—Does it deal specifically with a certain client group such as youth or mature age job seekers?

Ms Paul—In terms of what the community festivals are?

Senator MASON—Yes.

Ms Paul—They are festivals for Indigenous school children. The proprietary brand name that might ring a bell for you from the past would be Croc Fest and that is not a current provider.

Senator MASON—Yes, I have heard of that.

Ms Paul—Yes, you probably would be familiar. In 2009 we had 13 festivals which involved 9,000 Indigenous students. I have been to one in Kununurra. They are fantastic. They bring schools together from the region and focus on trying to maximise school attendance, engagement with school, motivation to keeping on with school and so on for Indigenous children. It is one of our planks in our Indigenous education program.

Senator MASON—Issues we have discussed, we might touch on tomorrow, Ms Paul. Thank you for that. The next contract number is CN194751. It is a review of departmental secretaries' remuneration. You might be interested in this, Ms Paul, I do not know, but what is all that about?

Mr Storen—Yes, Senator, this arrangement initially began in I think May 2008 where the Remuneration Tribunal, of which the secretariat support is provided by this department, made a decision to review the remuneration of secretaries across the Commonwealth.

Senator MASON—So it is not just for the department; it is right across—

Mr Storen—No this—

Senator MASON—I did not think it would be just for Ms Paul.

Mr Storen—This emanates out of the workplace relations work of the department and covers the whole APS. The Remuneration Tribunal commissioned some work to look at remuneration of secretaries and part of that work involved discussions and interviews with a number of secretaries.

Senator MASON—What advice was given by Egan Associates?

Mr Storen—The process is still ongoing.

Senator MASON—You cannot tell me whether the advice has been heeded.

Mr Storen—It is very close I understand to—

Ms Paul—It is a matter for the tribunal.

Senator MASON—Of course. I am sure, Ms Paul, that departmental secretaries are underpaid. Of that I am certain; I have no doubt about that. Stepping Stone for Tourism workshops, CN194755, can we go to that contract notice? Can I ask what are the Stepping Stone for Tourism workshops?

Mr Storen—This was a contract entered into with Stepwise Heritage and Tourism in June 2008. It was aimed at the development of tourism enterprises in East Arnhem in the Northern Territory. The funding covered the delivery of eight workshops. There are training fees, venue fees, travel and so forth. The Northern Territory Government provided some in-kind support in relation to the exercise as well. The original period was June through to November 2008, but it was extended through to August 2009 because a number of the workshops had to be rescheduled. The aim of the workshops is to look at the business development needs of Indigenous tourism enterprises in East Arnhem et cetera.

Senator MASON—That is fine. Why does it contain a confidentiality clause. I trust it is not incorrectly listed, is it, Ms Pearce? Mr Kriz, is this one on deck?

Ms Pearce—We will have to check that.

Mr Storen—We will take that on notice.

Senator MASON—We would not want to make a mistake, would we? We have got to hope it is one of the 17 per cent, Mr Kriz.

Senator JACINTA COLLINS—Have you been reading leadership polls again?

Senator MASON—Leadership?

Senator JACINTA COLLINS—Polls.

Senator MASON—Thank you, Senator Collins. Could you check that, Mr Kriz or Ms Pearce?

Ms Pearce—Yes.

Senator MASON—When was the workshop conducted? I ask because the contract period is from 6 June 2008 to 31 December 2008, yet it was not posted until 18 June 2009. Why was that?

Mr Storen—It was not a single workshop. There were about eight workshops over a period of time.

Senator MASON—When was the last workshop?

Mr Storen—The information I have is that we have extended the completion date to 15 August 2009 because a number of the workshops had to be deferred for timing issues.

Senator MASON—Could you supply the committee with the dates of the workshops?

Mr Storen—Yes, we can do that.

Senator MASON—Mr Kriz, you may know the answer to this. The requirement, I understand, is to post contract notices within six weeks of entering into a contract. That is right, isn't it?

Mr Storen—Yes.

Mr Kriz—It is within six weeks or as soon as reasonably possible after that.

Senator MASON—How is the department going in meeting that six-week time limit?

Mr Kriz—We are improving our process in relation to that. One of the things that you should be aware of in terms of—

Senator MASON—What is the answer to the question? What percentage do you get within—

Ms Paul—I think he was just about to give it. We have had to do some particular work there.

Mr Kriz—One of the problems that exists with the AusTender database is that if, for example, there is a contract variation of a year or 18 months later, it will then indicate that you are a year or 18 months late in terms of publishing the data. I understand that that particular aspect of the database, which is a problem across the board, is being or will be addressed by the department of finance. So when looking at those sorts of details you need to bear in mind that it does not necessarily accurately reflect the position in all cases.

Senator MASON—Allowing for that, how many are posted within six weeks?

Mr Kriz—In terms of all the numbers, Senator, I do not know. I can get back to you on that.

Senator MASON—Can you take it on notice?

Mr Kriz—However, we have a process in place to ensure that we get—

Senator MASON—I am sure you do, Mr Kriz, but the committee would like to know how many are posted within six weeks.

Mr Kriz—Yes.

Senator MASON—That would be great. Thank you.

Mr Kriz—Senator, we need to have some sort of a time frame. I do not mean time frame in terms of a timetable but what period you are looking at.

Ms Paul—What about how we are performing now? That is probably the question you are asking, isn't it?

Senator MASON—Yes. Over the past 12 months how many contract notices tendered by the department or placed on the web were placed within the six weeks? Can you do that?

Mr Kriz—Yes.

Senator MASON—Six weeks of the appropriate date, or the relevant date.

Mr Kriz—Yes.

Senator MASON—Has the Senior Executive Service held a conference this year?

Ms Paul—No.

Senator MASON—No? None at all? There has been no SES conference this year in the department?

Ms Paul—That is correct.

Senator MASON—Not within the last financial year?

Mr Johnson—No, Senator, as Ms Paul indicated.

Ms Paul—We had one last financial year, which we have spoken about here before.

Senator MASON—Yes, but not this calendar year?

Ms Paul—No, that is right.

Senator MASON—Procurement: can anyone tell me how frequently is the APS remuneration survey is undertaken?

Mr Johnson—I think it is updated by the commission on an annual basis.

Senator MASON—Do you know when the last one was undertaken?

Ms Paul—The most recent one, I think, was December 2008. This is the Mercer survey that you are talking about?

Senator MASON—Yes.

Ms Paul—They are generally done on an annual basis, but I will check that.

Senator MASON—Ms Paul, thank you. Minister, thank you. Mr Kriz, thank you very much. Chairman, thank you very much.

CHAIR—Thank you, Senator Humphries. Oh, Senator Mason. I do sincerely apologise.

Senator MASON—Apologise to Senator Humphries.

CHAIR—Senator Humphries.

Senator HUMPHRIES—Thank you. You mean me, don't you?

CHAIR—I do mean you now.

Senator HUMPHRIES—Could I just follow up the questions about consultancies that Senator Mason asked about. I do not think he asked for the department to table a comprehensive list of the consultancies undertaken since the government came to office. I would like, please, a list of the consultancies that have been undertaken or are underway since the government came to office, including the name of the consultant, the subject matter of the consultancy, the duration and cost of the arrangement and the method of procurement—that is, was it open tender or direct source or something of that sort—and, if possible, the value of those consultancies.

Ms Paul—That is absolutely fine. We will do that. I note that much of the detail may be in the annual report once it is tabled. We can start there and keep going according to what you wish.

Senator HUMPHRIES—Great. If you say, 'The annual report plus this,' that would be fine.

Ms Paul—Sure.

Senator HUMPHRIES—Can you tell me at the moment how many consultancies are planned for this calendar year?

Ms Paul—I could not say, but I am happy to take it on notice. We can do our best estimation.

Senator HUMPHRIES—As consultancies are planned, are they, in the case of this department, published on the annual procurement plan section of the AusTender website?

Mr Kriz—We do, like every other agency, publish an annual procurement plan. As best as we can forecast intended purchases we put them on, but of course not all can be forecast. We also obviously comply with all the other requirements of AusTender publication, both in terms of the business opportunities when the offer goes out to seek consultants and also in terms of the contracts awarded from which questions are asked obviously in committees like this. But consultancies and, in fact, other purchasing decisions sometimes happen throughout the year which had not been thought of earlier on when we put on the annual procurement plan data.

Senator HUMPHRIES—Does the information that appears on the annual procurement plan usually include things like the method of the contract being let, the cost of the contract, its duration and things like that? Are they usually on that part of the website?

Mr Kriz—I will have to check on that, but I do not think it goes into that sort of detail. It merely identifies the type of activity that we expect to undertake, to give business and various organisations the opportunity to start preparing to engage with the Commonwealth, and it

indicates the time of year when we think that it is likely that we would go out to market on that. I can get back to you on all the details that are required and that we be put on.

Senator HUMPHRIES—That would be useful, thank you very much. You mentioned that we do not yet have an annual report. When is that report due, did you say?

Mr Storen—No, Senator, Ms Paul did not say. The legislative tabling date is 31 October. We are on track for meeting the 31st and we may do it a couple of days earlier.

Senator HUMPHRIES—Obviously this is an issue that has been canvassed before in the committee. It is hard to ask questions about where the department has been going without an annual report. I think the request was made previously, and I repeat it now, that if it is possible to have even elements of the report tabled here or a draft of the report, that would be useful in the future. I just put that into your mind for the department's consideration.

Ms Paul—Yes, it is difficult timing when estimates come before, but most agencies tend to take it almost up to the statutory period, mainly because of financial statements, of course. We will do our best to get it in as early as we can.

Senator HUMPHRIES—It is also open to the Senate at some stage to move the estimates, if we can, back to November. That is another way of dealing with that. But perhaps that is a bridge too far. I want to ask some general questions about the process that the Commonwealth is undertaking to put in place a national industrial relations system and particularly to get states to agree to refer powers to the Commonwealth for the purposes of establishing that national system.

Ms Paul—Senator, that is a matter for the Workplace Relations outcome, which is being dealt with this evening or this afternoon, outcome 5.

CHAIR—I suspect after dinner.

Ms Paul—The correct people will be here then who can take you through it. I can certainly give an outline, but it is probably fairer to wait.

Senator HUMPHRIES—Yes. I want to ask about occupational health and safety harmonisation steps.

Ms Paul—The same.

Senator HUMPHRIES—Outcome 5?

Ms Paul—Yes.

Senator HUMPHRIES—That will save a little bit of time. I understand that the department has recently received a new collective agreement. Is that correct?

Ms Paul—We made a collective agreement quite a while ago now, earlier this calendar year, which represented moving to a single remuneration basis following the merger of the three departments, or two departments and a significant proportion of a third. Mr Johnson may like to answer, Senator, if you have some specific questions. We started it well before Christmas last year and effected it early in the calendar year.

Senator HUMPHRIES—Can you give me more information about it, please?

Mr Johnson—That is correct, Senator. The new collective agreement commenced operation at the end of April this year, but it reflected negotiations and discussions with the parties right back to 2008.

Senator HUMPHRIES—Until that point, were the staff who had come from those different agencies still operating on the basis of what their previous agency agreement had been?

Mr Johnson—That is correct. They were operating essentially under three separate certified agreements for the former three agencies of DEST, FaCSIA and DEWR.

Senator HUMPHRIES—Is it possible to say what the pay rise has been in percentage terms for each of those three categories of staff of the department?

Ms Paul—No, it is not. Mr Johnson can talk about this. It represented an equalisation, if you like—that is not quite the right word—trying to bring it into a single framework, so people were affected differently basically. It is almost impossible to say.

Senator HUMPHRIES—Is it possible that some people have had a loss of salary or conditions in order to meet that framework?

Ms Paul—I do not believe so. It is probably easier for us to take it on notice and give you a description of what we did, maybe with a table, if we can do that. That is probably the easier way. It is going back some time now.

Senator HUMPHRIES—That would be useful if you could. How many programs in the 2008-09 financial year have been underspent in this department?

Mr Storen—Yes, Senator. It would be easier for me if I could take that one on notice so that I could give you the number and a list of the programs. There were a number. The department operates over 100 programs of different descriptions, depending on how you want to define ‘program’. It would be easier if I could give you the number and a list of those programs.

Senator HUMPHRIES—If you could do that. In respect of each of those, you might let me know what requests have been made for a rollover of underspends into 2009-10 and, if you have information about whether those requests have been successful or not at the time that you answer the question, that would be useful. Perhaps I could have the same information in respect of overspends as well, please. You cannot really roll over an overspend, I suppose.

Mr Storen—To reduce the volume of the answer, is there a threshold you would like us to work within to hit a mark across 100 programs? Is five per cent or 10 per cent agreeable to you for us to report overs and unders?

Senator HUMPHRIES—Five per cent would be great, yes. Thank you for that. Most of my questions relate to outcome 5. I might leave it there.

CHAIR—As there are no other questions for the cross portfolio, I thank Ms Paul and the other officers and welcome officers from Comcare.

[10.08 am] **Comcare**

CHAIR—Our first agency for questioning today is Comcare. Welcome, Mr O’Connor. Is this your first estimates?

Mr O'Connor—It is, Senator.

CHAIR—Welcome.

Mr O'Connor—Thank you.

CHAIR—Mr Kibble, you have been here before. Mr O'Connor do you have an opening statement?

Mr O'Connor—No, Senator.

CHAIR—Then we will move straight to questions. Do you have a litigation policy?

Mr O'Connor—The policy for litigating matters where there is disputation on agency decisions?

CHAIR—Yes. Are you a model litigant?

Mr O'Connor—We believe so.

CHAIR—How do you measure that?

Mr O'Connor—We measure that by looking at the way we conduct our decision making to make sure that our decisions within the agency are open, honest, fair and reasonable, and we would be looking at testing that against any potential complaints or comments that might be received or put forward by members of the public or members of the judiciary.

CHAIR—What percentage of new compensation claims are initially rejected by Comcare?

Mr O'Connor—With regard to injury claims, I believe the number is about eight per cent, but I will take that on notice.

CHAIR—What is the basis of rejection?

Mr O'Connor—The basis of that rejection would be that there is not an entitlement under the legislation.

CHAIR—Is that the only basis that is taken into consideration? Is the potential cost of the claim a consideration?

Mr O'Connor—No.

CHAIR—How is that policy implemented?

Mr O'Connor—Across our claims services division all new claims under the Comcare scheme are received and processed by one of our claims teams that deal with initial claims eligibility.

CHAIR—Claimants seeking reconsideration of a Comcare decision are required to apply for a review by a review officer within 30 days of the original decision—that is right, isn't it?

Mr O'Connor—Correct.

CHAIR—Are there any policies or guidelines that govern the amount of time taken for Comcare to undertake reviews?

Mr O'Connor—Yes.

CHAIR—What are they?

Mr O'Connor—Comcare aims to meet the target set by the Safety, Rehabilitation and Compensation Commission that those reconsiderations should be assessed within 35 days of the receipt of that request.

CHAIR—How do you meet that?

Mr O'Connor—In the last financial year, I understand our average was 33 days, but of course there will be certain claims with complexity about either the issue or the period of time that is being covered by that original decision or perhaps the complexity of information. That may take that into a longer period of time.

CHAIR—I accept that there may be some claims. Can you tell me on notice how many claims are outside the required time and by how much? I will leave it to your discretion to bunch that into—

Mr O'Connor—Yes.

CHAIR—You might say more than five days, more than 10 days, more than 15 days et cetera, right up to the maximum amount.

Mr O'Connor—Yes.

CHAIR—Are there any policies or guidelines that govern the amount of time taken for Comcare to undertake reviews or reconsiderations of a previous decision when requested?

Mr O'Connor—Separate to the reconsideration?

CHAIR—Yes, if there has been a review. We have talked about the original position. If someone wants a reconsideration of a decision you have made on a request to a review, what is the time frame taken to decide that?

Mr O'Connor—There are dispute procedures in place. I might defer to Mr Kibble. He may have a deeper understanding of the mechanics.

Mr Kibble—To clarify your question, Senator, the Safety, Rehabilitation and Compensation Act sets a three-tier appeal process. There is the initial liability decision made by Comcare. Then a party can seek a review of that decision; that is the reconsideration. That is undertaken by Comcare in relation to the Comcare schemes. Then, if a party disputes the decision made in the reconsideration process, the third tier is through the AAT.

CHAIR—Thank you for clarifying that for me. When Comcare has made its final decision and people ask for a reconsideration through the AAT, what is your policy with respect to that? Do you challenge every one of those decisions?

Mr O'Connor—No, we do not challenge those. There would be a percentage. I can take the question on notice and give you the percentage of those decisions where the original decision is varied, altered or turned over.

CHAIR—Yes, please do that. I also want to know how many of those that you challenge legally you pursue past the steps of the court. That is fundamental to my concerns. It has been put to me—I would like you to be able to prove otherwise if you can; if you cannot, I will have more questions at a later date—that, in order to discourage people from asking for reconsideration, you do not legally challenge every one of those positions and then you effectively settle at the doors of the court. That may not be a large cost to Comcare but it is, of

course, a large cost to people in this situation that are seeking a reconsideration. That goes back to the question of being a model litigant or not. I would like all the information about how many claims are challenged, how many are settled before they go to the tribunal, how many are challenged and settled before completion, how many determinations you finally get through the AAT and how many you win or lose.

Mr O'Connor—Understood. We need to clarify that it would not be Comcare that would be challenging; it would be people affected by Comcare's decisions who either do not understand or do not accept the decision and who seek to further test it. We would then take that through. But I understand the context of the question.

CHAIR—I guess the two questions are linked. Again, it has been put that there is a policy position simply to reject requests for review and to frustrate people so that when they legally challenge that automatic refusal they are dragged through a legal process up to the steps of the court and then Comcare accepts that their initial request for a review was legitimate. This is where I want to come back to whether there is or has been a policy at Comcare, which we suspect may happen with a number of insurers, where the automatic answer to all claims, or to most claims, is 'no' and you force people to go through a process to discourage them. Do you understand the point I am making?

Mr O'Connor—Yes.

CHAIR—That is where I want to get to. I would like to be in a position where I am satisfied that Comcare does not employ such tactics.

Mr O'Connor—Certainly. In the last financial year through to 30 June, almost 1,400 requests for reconsideration were made. After reviewing the requests at the initial first-tier review that Mr Kibble described, Comcare affirmed 937 of those decisions and others were either changed or varied—changed in the sense that the outcome sought by the person affected by the decision was put in place or the original decision was varied in some way.

CHAIR—Thank you.

Mr O'Connor—But we will give you the details.

CHAIR—I will leave it up to you to work out whether you put that in the form of a table or some other form that I can understand. I would like you to disprove what has been put to me.

Mr O'Connor—I understand.

CHAIR—Thank you. How do you do your legal work within Comcare? Do you have an in-house team or do you contract to outside lawyers?

Mr O'Connor—Both of those. The principle that we operate under is that decision makers within Comcare are supported where possible by in-house legal services—that is, Comcare employees, who help the decision makers craft the correct or preferable decision and, if necessary, assist in the communication of that decision so that people affected by the decision understand and can accept it. With some matters we use the services of an external legal panel, which has been in place for some time. It includes private law firms as well as the Australian Government Solicitor. In some litigation undertaken by Comcare we are constrained by the rules set down by the Attorney-General's Department and are not

allowed—for example, in Federal Court matters—to conduct our own litigation. We do not have, unlike some agencies, permission to do that. They are examples where we would use external law firms. There might be cases, for example, where we might seek commercial advice. In addition to advice provided by our own employees, who are qualified Australian legal practitioners, we would seek further or more specific advice. We also outsource any advocacy work, usually to members of the independent bars in Australia who would take that work.

CHAIR—How do you manage both of those things, solicitors and the advocacy work? Do you have a panel arrangement?

Mr O'Connor—Yes, we do, and that panel arrangement is managed by our general counsel. There are controls around which matters are assigned—the service expectations and also the expectations, of course, of being a model litigant that are imposed by the Office of the Legal Services Commissioner within the Attorney-General's Department.

CHAIR—Can you take on notice for me who is on the panel—unless this is in your annual report. Is it?

Mr O'Connor—Our annual report, which is scheduled to be tabled, will highlight the dollars paid by Comcare to external lawyers.

CHAIR—On notice, I would like to know who is on the panel and, of those who are on the panel—and this is both for solicitors and advocates—how much they were paid over the last financial year.

Mr O'Connor—Yes.

CHAIR—Do you have a complaints officer and an internal complaints process?

Mr O'Connor—We do.

CHAIR—How many complaints have you received and in what categories are those complaints?

Mr O'Connor—I will take that on notice, unless Mr Kibble has more immediate knowledge of that.

Mr Kibble—No. To clarify, when you are talking about complaints, what do you mean?

CHAIR—Let us take a very broad picture of Comcare. You will have complaints possibly about your inspection services and those sorts of services but also about your rehabilitation processes, insurance et cetera. Could you break those complaints down and provide the nature of the complaints within the breakdown?

Mr Kibble—Yes.

CHAIR—If there are complaints about the length of time you take to process, to service and to do those sorts of things, that would be useful to know.

Mr O'Connor—We will segregate them according to those that are subject to external review by, for example, the Ombudsman, as well as those that are raised with us directly.

CHAIR—Thank you. Without wanting to overburden you, I would like to get a picture of whether complaints are going up or down. If you want to provide extra information that I

have not asked for to explain that or to talk about the policies you might have in place, I would be happy to receive that as well. I want to go back to something which Mr Kibble and I have been talking about for a long time but about which I am still unsatisfied: the five per cent superannuation deduction. I keep going back through the transcripts of the Senate inquiry into the original bill four years or maybe even longer ago.

Mr Kibble—Three years.

CHAIR—I look at the recommendations and the conclusions that the Senate came to in its report. I am not sure whether I was chair of that committee.

Mr Kibble—I do not think you were.

CHAIR—I might have been deputy chair. Yet we still have this notional five per cent deduction. The rationale, as I understand it, is that if that deduction was not there technically someone might end up with more in their hand than if they were still at work. The initial rationale put to us by Ms Bennett, who was the CEO at the time, was that the five per cent would go into a benefit for those people once they hit retirement age. You can understand that logic, because effectively that is what happens with people who are in the workforce: a superannuation deduction is taken away and it benefits them after retirement. But, in terms of people who are injured and cannot return to work, not only are they deprived of that five per cent but they are deprived of that five per cent after they reach retirement age too. That money simply goes into consolidated revenue. Maybe you could have another go at trying to explain the rationale and the common sense behind this decision, because it seems to fly in the face of the original objective of the act about giving people what is a percentage of their pre-injury income that they should have after they are permanently disabled.

Mr O'Connor—Why don't we try again to restate the perspectives and the issues.

Mr Kibble—Under the Comcare scheme, injured workers receive weekly incapacity payments of 100 per cent of their normal weekly earnings for the first 45 weeks of their incapacity. After the 45 weeks, workers receive a maximum of 75 per cent of their normal weekly earnings until they return to work. Under the Comcare scheme that can go until age 65. Focusing on the 'after 45 weeks', so we are talking generally about longer term people—

CHAIR—Yes, we are.

Mr Kibble—what we would be looking at is trying to put on an equal level people who are injured and receiving weekly incapacity benefits under the scheme who are still employed against those people who are not employed. The aim is to put them on an equal footing. There is a mathematical formula to try and take account of the various circumstances of those people. There are three formulas in the act to take account of those people in receipt of superannuation benefits: one in relation to the people who have taken a lump sum superannuation benefit, one where they have taken a weekly pension and the final one is where they have taken a combination of a lump sum and a weekly benefit. In trying to put the injured workers who are still employed and those who are not employed on the same level, one of the things the formula does is accept that the people who are still employed are still making a contribution to their superannuation fund, whereas the people who are not employed any further are not required to or are not making any contributions to the superannuation fund because they have received and accessed their benefit.

CHAIR—But once they reach retirement age—

Mr Kibble—I am going to come to the five per cent issue. Unfortunately, we got off on the wrong foot in terms of the five per cent. The five per cent is part of the formulas but it does not exist as real money, in a sense. It is a notional deduction, but it does not exist. As you mentioned in the discussion three or four years ago, it is not invested in a super fund, a trust fund or anything like that. It does not exist in that sense. It recognises that the injured workers are still making contributions to the scheme, whereas the people who have retired are not making a contribution to the scheme anymore.

CHAIR—In effect they are, because the money they would have been contributing to the scheme has been taken off them.

Mr Kibble—That is comes to the second part of the formula. After 45 weeks it is 75 per cent for those in work but, because the people who are still employed are paying five per cent to a super fund, what they get in their hand is in fact 70 per cent of their normal weekly earnings.

CHAIR—Even though the object of the act was to provide for 75 per cent.

Mr Kibble—Yes. It is described as 75 per cent but, as part of that 75 per cent, five per cent is paid by the employee to the super fund. So there are two parts to the formulas: one is about the five per cent and the second part, and this goes to the original policy rationale of the SRC Act 1988, is that the people who are in receipt of superannuation benefits—whether it is a lump sum, the weekly benefit or some combination of them—have five per cent taken off them, and then the next part of it is that what they are getting reflects the workers benefit, but deducted from that is a deemed amount, because the legislation is framed so that the 70 per cent takes into account not only their workers compensation benefit but also their superannuation benefit. To take the example of a person who retired and took a superannuation lump sum, the formula assumes that they have invested their money and are accruing an income stream from that superannuation.

CHAIR—For the sake of the ease of the argument, if we put that to one side and assume that people have not taken a lump sum, what happens with people who were permanently incapacitated as a result of an injury—

Mr Kibble—Yes, until age 65.

CHAIR—who should have been getting 75 per cent of their pre-injury earnings as a consequence of the object of the act but have an notional five per cent deduction to bring them in line with people who are in the work force, because their five per cent is going into superannuation for post-retirement? What happens to these people once they reach retirement age? Where is the notional five per cent super that should have been going to their benefit, post-retirement?

Mr Kibble—You will appreciate that once they retire and access their benefit they are members of the superannuation scheme but they are not contributing any further.

CHAIR—Well, no, they do not contribute, but where s the value of that five per cent? We were told in the committee, when—

Mr Kibble—Senator, it was unfortunate that that misunderstanding occurred.

CHAIR—I do not think it was a misunderstanding. Ms Bennett told the committee that that five per cent deduction of superannuation was to be put to the benefit of these people once they reach retirement age.

Mr Kibble—We thought we had corrected the record soon afterwards to reflect the wrong advice we provided to the committee.

CHAIR—But it was logical advice, and I guess that is the problem. Obviously Ms Bennett, the CEO at the time, failed to understand it, because that is the logical rationale. If you are deducting that five per cent to put them on an equal footing with the people in the workforce, I understand the logic of that. That five per cent that has been deducted should be a benefit paid to those people once they retire, but it is not. It is simply a deduction, so they are not put on the same footing as people in the workforce. In terms of the money in their pocket that may be the case, but the people in the workforce are getting a benefit post-retirement for that money.

Mr Kibble—It depends on the rules of the scheme, but the employer is making contributions on behalf of a person who is in work under the rules of the superannuation fund, as they are required to under the law, and the employee is also making contributions. The people we are talking about have retired. They are no longer in work. They are not employed, so the employer has no responsibilities under the statutory requirements to pay superannuation benefits on their behalf nor does the employee have a statutory requirement to make any contributions. They are out of the workforce. They are no longer building their nest egg.

CHAIR—I should not be debating the issue with you during estimates. I will have a look at *Hansard* to see if the explanation satisfies me. I suspect it probably will not.

Mr Kibble—I might refer to some questions on notice from the last estimates hearing, including some from Senator Siewert, in answer to which we provided a worked example. We are obviously happy to have further conversations about the worked examples.

CHAIR—My last question, then, is that you talked about the formulas, and I think you said the formulas are contained within the legislation. So it was in the bill before the parliament? They are not regulations? You are very clear that the formula is contained in the legislation itself?

Mr Kibble—Yes.

CHAIR—It is not a regulation?

Mr Kibble—No. Just to be—

CHAIR—Was that formula in the original SRC bill or was that—

Mr Kibble—Yes. There was a formula in the original bill. The reason we had the discussion with the Senate committee, starting in, I think, 2006, was that the government introduced amendments to the formulas which came into effect in 2007. For completeness, I should say that the formulas that are in the legislation pre-2007 still apply to those people who retired before 2007. So the formulas as amended in 2007 apply only to those people who have retired since that date.

CHAIR—Thank you for your patience once again, Mr Kibble.

Senator BILYK—Are Defence personnel covered by Comcare?

Mr O'Connor—Members of the Australian Defence Force are covered under Comcare's regulatory activity for occupational health and safety for any compensation arising from injuries handled by the Department of Veterans' Affairs on behalf of the Military Rehabilitation and Compensation Commission after a date in 2004. The Department of Veterans' Affairs handles the compensation for injuries before that date under the Comcare legislation, but it is self-contained within that portfolio.

Senator BILYK—Thank you. I asked the question because I noted in the media this morning the unfortunate death in Port Augusta of the officer from the Army's Special Operations Command unit. Obviously, I offer my condolences to the family, and I know Senator Faulkner has already, on behalf of the government. Will you be investigating this and, if so, do you make your own reports or do you leave it to Defence to do so?

Mr O'Connor—I also endorse the condolences to the members of the family of the fatally injured soldier from 2 Commando Regiment and the family of his colleague from the Incident Response Unit who was also injured. Yes, Comcare would investigate any fatalities, serious injuries or near misses. We are in fact working with the police and the Australian Defence Force Investigative Service collaboratively to investigate this incident. We have Comcare investigators en route this morning to participate in that investigation. We will produce our own report, and that will follow the normal processes following any fatality investigation undertaken by Comcare, but we would work collaboratively with the other investigating agencies to make sure that it is both an effective and an efficient investigation into this tragedy.

Senator BILYK—So you have officers going to Port Augusta as we speak?

Mr O'Connor—Correct.

Senator BILYK—Thank you. That is all I have with regard to that, Chair. Thank you for the update.

Mr O'Connor—You are welcome.

Proceedings suspended from 10.38 am to 10.53 am

CHAIR—Mr O'Connor or Mr Kibble, normal weekly earnings must change from time to time. Would you be advised by different agencies or different clients about what normal weekly earnings are as they change?

Mr O'Connor—That is the case, yes.

CHAIR—If an agency advises you that this particular person's normal weekly earnings are now X plus a percentage increase that everyone got last year, is that the figure that you then use to make your calculations on or do you have discretion to simply use some other figure?

Mr O'Connor—I believe the former is the case, but I will confirm that for you.

CHAIR—All right; please confirm that for me. Thank you.

Senator HUMPHRIES—With respect to private sector employers joining Comcare, I think we discussed—if not at the last estimates then at the previous estimates committee—the

situation with a moratorium being placed on admitting private sector employers into the scheme. That moratorium is still in place, isn't it?

Mr O'Connor—Correct.

Senator HUMPHRIES—I think the department was obtaining or had obtained legal advice on the situation with respect to whether this moratorium was in fact possible under the terms of the legislation. Did it obtain advice about that question?

Mr O'Connor—I would have to defer to the department on that. That was not something that—

Senator HUMPHRIES—It was not something Comcare sought but something the department sought?

Mr O'Connor—Correct.

Senator HUMPHRIES—Okay. But Comcare would have been consulted about that advice, wouldn't it?

Mr O'Connor—That is a policy matter with the policy framework that the department is responsible for. Under section 100 of the legislation, people apply to the minister; if that is approved then applications—in the normal process, which would apply but for the moratorium—would come to Comcare. That is when we would be apprised of that. With the moratorium, obviously there has been no movement.

Senator HUMPHRIES—Okay. When a private sector employer comes to you and says, 'I want to be part of Comcare,' are you able to offer them any advice as to why they cannot at this stage be part of Comcare?

Mr O'Connor—We refer them to the department and the policy framework, which is implementing the government's decision to place a moratorium on new entrants to the scheme.

Senator HUMPHRIES—All right. I will try to ask the department that question. On a different matter, we have also asked at previous committee hearings about the review of the SRC Act that the government is undertaking with respect to journey claims—whether people ought to be covered on journeys to and from work, during lunch breaks and things like that. Where does that review stand at the moment? That might be a question for the minister rather than for Comcare.

Mr O'Connor—That was one of the items looked at by the department's review on behalf of the government. As a result of the government's response to that review, recess claims but not journey claims will be included within the scheme, which keeps the Comcare scheme in line with other accident compensation schemes in Australia.

Senator HUMPHRIES—So a journey between work and home will not be covered, but someone doing something in a lunch break or a morning or afternoon recess of some sort would be covered?

Mr O'Connor—That is the intention of the government's response to the Comcare review, I understand.

Senator Arbib—You might be able to get more information on that when the appropriate departmental officials are here this afternoon, Senator.

Senator HUMPHRIES—Yes. Has that response been published?

Mr O'Connor—Yes, it has. Following the last meeting of the Workplace Relations Ministers Council in Sydney at the end of September, the minister—the Deputy Prime Minister—announced the government's response and published both the departmental review and the expert report upon which that was based, and she announced the changes to the Comcare scheme that would be implemented as a result of the government's response.

Senator HUMPHRIES—Does that imply that this is an agreement which state governments are also signing up to so that they will have a similar structure to their worker's compensation arrangements for public servants?

Mr O'Connor—I cannot comment on that. I am not aware of that. The Deputy Prime Minister's response was with regard to the Comcare scheme and the Comcare review that was undertaken.

Senator Arbib—But, again, you will be able to get that information this afternoon, Senator.

Senator HUMPHRIES—All right; thank you.

CHAIR—As there are no other questions for Comcare, thank you, Mr O'Connor and Minister.

Mr O'Connor—Thank you, Senator.

[11.00 am]

Australian Industrial Registry

CHAIR—Welcome, Mr Williams. Am I correct in assuming this will be your last appearance before the committee?

Mr Williams—Just so. That is my expectation.

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

Mr Williams—It is not my custom, but given the circumstances, with your indulgence, Senator, I would like to make a brief opening statement.

CHAIR—You are welcome, Mr Williams.

Mr Williams—Thank you. Senators, this will be my final appearance before the committee, so my brief remarks that follow are for the formal record in that context. The first Industrial Registrar was a Mr Gordon H Castle OBE, appointed in 1905. I guess that, like the iconic flight recorder, the creation of an independent industrial tribunal was an Australian world first with profound ramifications. The tribunal brought to an end protracted and crippling industrial disputation from the late 1890s, particularly in the shearing and maritime sectors. It was an initiative that reflected a coincidence of need and desire among employers, employee representatives, elected representatives and other community leaders of the time. The same approach to an industrial umpire, independent of executive government, has subsequently been widely replicated elsewhere.

The tribunal's annual report is due to be tabled next week but, as I reflect on being Australia's 14th and last Industrial Registrar in 104 years, well into the third year of a five-year appointment, some personally pleasing achievements are the following. First, the commission, including the registry, has maintained a very strong national reputation for integrity, professionalism and effectiveness. Similarly, staff surveys show high levels of job satisfaction, well above comparable agencies reported in the APS *State of the service* survey. The commission's website and information line have been remade into a modern service for external stakeholders—customers, if you like—and form the platform to create the new electronic presence of Fair Work Australia. The organisation's core case management system has been redeveloped as a modern, open systems tool linking all matters from their instigation to conclusion, with stakeholder access through the website. This has also provided for Fair Work Australia's case management capability and particularly its end-to-end service provision.

The very complex and large award modernisation task has been progressed on time and without material contention. This is against expert views that the task was impossible or would prove fruitless like past efforts. The organisation has returned to operating within its budget with demonstrated high standards of governance. Most recently, the transition to Fair Work Australia was made on time and specification, including because the Australian Industrial Registry accepted taking periodic strategic risks to implement and fund key elements of Fair Work Australia's architecture and particularly its IT and communications requirements. Critically, an operating structure was designed for Fair Work Australia that has accommodated every single staff member of the registry and the Australian Fair Pay Commission secretariat in mostly identical roles, reporting lines and teams, allowing Fair Work Australia to open for business on 1 July with a high level of confidence and capability.

After 104 years of industrial registrars, can I say as Australia's 14th and final Industrial Registrar that it has been a privilege to hold statutory office. I thank the committee for its indulgence in allowing the record to indicate the circumstances of the formal end of the lineage of industrial registrars.

CHAIR—Thank you, Mr Williams, for those very considered and thoughtful words. Might I say that you have held that office with distinction and it has been an honour to have worked with you, particularly in the Senate estimates forums. So, thank you. We will now move to questions. Senator Humphries.

Senator HUMPHRIES—Thank you very much. I also thank you, Mr Williams, on behalf of coalition senators for your time in that role. I want to ask about award modernisation. Is this the right time to be doing this, Mr Chairman?

CHAIR—Insofar as it would impact upon this agency, yes.

Senator HUMPHRIES—Okay. We have had updates pretty regularly at each of the hearings into progress with award modernisation. Could you give us a quick thumbnail sketch of where that process stands as far as you are concerned at the moment?

Mr Williams—Certainly. The process has been separated into four stages. We are presently in the fourth and final stage of making modern awards. We are still on track according to the published timetable of completing the process on 4 December this calendar year. To date, 93

modern awards have been issued by the full bench. There are presently in the fourth and final stage 28 exposure drafts in the public space and, by doing the maths, the present expectation is that when the process is finished on 4 December there will be 121 modern awards made.

Senator HUMPHRIES—This might be a hard question to answer. I have certainly heard a number of parties to those processes, employers particularly, say to me that the outcomes they are envisaging from this—and this in some cases refers to processes that are still not quite completed—are very poor outcomes from their point of view, outcomes where concerns and issues that they say the industry has placed on the table have not been taken into account because of the way that the process has proceeded. Can you give us any sense in which the parties to this award modernisation process are taking ownership of this exercise and are satisfied with the outcome of this award modernisation process?

Mr Williams—Let me approach it this way. One of the real initiatives this time was to use modern technology, the commission's website in particular, to make sure that, every step of the process, everything has been in the public space. All statements by the full bench, all decisions, all submissions by parties, the timetable, when and where consultations have been held, the transcripts of those consultations—everything has been in the public space with immediacy.

Senator FISHER—If I may intervene, Senator Humphries, what about an indication of which commissioners are dealing with each sector and the ensuing awards, Mr Williams?

Mr Williams—We can come to that, Senator.

Senator FISHER—You have just said that everything is in the public space. Is that in the public space, where and how?

Mr Williams—Yes, where members of the commission—and I will come back to your question, Senator, I am sorry—

Senator HUMPHRIES—That is fine.

Mr Williams—Where members of the commission have been involved, particularly beyond the full bench, in every case—and I will be corrected if I am wrong, but I believe in every case—members of the commission have also managed the consultations associated with the work that has been allocated to them. Those consultations are then a matter for listing by the commission, and the members of the commission that have been involved have been noted in those listings. That automatically becomes a matter of the public record about which members of the commission have been handling those aspects of the consultations or any other part of their contribution to developing modern awards.

Senator FISHER—Has the full bench varied its membership?

Mr Williams—No.

Senator FISHER—Okay.

Mr Williams—With perhaps the caveat that not every member of the full bench has been present for the entirety of the full bench's deliberations at all times; but the membership of the full bench for award modernisation has not altered.

Senator Humphries, to conclude my answer to your question, I just wanted to lay the groundwork about the transparency arrangements. In any exercise of this character, the tribunal is required to make judgments according to its mandate. Whenever judgments are made, there will be some that see themselves advantaged and some that see themselves not advantaged. The character that I would lend to award modernisation to date is that it has been going—and I would say deliberately—remarkably well. There is a certain predictability, I guess, that when submissions are called, when consultations are held, there will be parties that will seek elements of modern awards which for various reasons are not capable of being put in those modern awards. They may be ambit claims; they may be things that go beyond what has been the norm in general practice in awards—a variety of such reasons.

Senator HUMPHRIES—There might also be things that have been in awards in a particular part of an industry for some time that people seek to translate into the new awards but do not fit with those new awards.

Mr Williams—Indeed, Senator.

Senator HUMPHRIES—They are the sorts of concerns that I have heard expressed.

Mr Williams—In one of the bench's decisions, or I think it was a statement—and I do not have the date immediately to hand, but we have it with us—the full bench actually articulated at some length the principle upon which it would make a judgment, when a particular modern award was being developed, about what aspects of a particular award in a particular industry would be deemed to be common or general practice and what would be the reference point for the full bench in taking that into a modern award. I am paraphrasing but I think the substance of the principle in the full bench's statement was that they would be looking to the extent to which that element of traditional awards was a common element in such awards and widespread in terms of its application across the industry, across states. The obverse of that is that there will inevitably be some parties that have awards that apply to part of the industry or some geographical spread that historically had been particular to them but only them.

Senator HUMPHRIES—Thank you for that answer, but in a sense I still do not have a picture of how well the employers affected by this are embracing these changes. I expect that people like senators and members of parliament will get complaints about processes like this from people who are unhappy. People who are happy do not come and tell us what they are concerned about, obviously. The real question is whether these changes ultimately bed down in an effective way. Due to the nature of this process, where it is being rolled out over five years, we may not know for some time whether these things, for example, cost jobs at the end of the day because industries are less flexible and cannot offer employment.

I will give you one specific example. The pharmacy industry pointed out that, with barriers in the new award that they were presented with to the employment of people on a part-time basis, they saw it as being very difficult to get pharmacy students to come in on weekends and during evenings and make up the packs that they deliver to nursing homes with pre-packaged medications for people in those homes, because the award made it very hard to employ people on a part-time or casual basis. Those sorts of issues will not necessarily translate into large-scale job losses within the sector but they will lead to loss of opportunities for people like students to get work at a time that suits them and in a way that suits them. What sort of

messages along those lines are you hearing from litigants or from parties to these proceedings?

Mr Williams—I guess I should clarify that those remarks are all addressed to the commission, not to the registry. The extent to which I might be aware of them will depend on happenstance of how I come to inform myself about it, but it is not directly my business. What I can say to you, though, is the bench, supported by the registry, has been particularly attuned to making sure that whatever parties have to say is made available in the public space in a timely way through our website. There are no negotiations, discussions or presentations that might be characterised as off the public record or in a grey space. That allows counterviews or alternative views to be presented as well. I hear what you are saying in the particular instance that you have given, but that is one view. It is also imbedded in a marketplace where lots of other things are changing all the time, too, not just awards. Advantage, disadvantage and opportunity are created constantly in a myriad of ways. It is the tribunal's job to form a judgment about how that balances out. To assist the parties, they have regularly issued statements indicating the basis, the framework, the principles upon which they would make those judgments.

Senator FISHER—To the extent that you are suggesting that certain aspects of Senator Humphries' questions are properly of the commission rather than the registry, who out of those who are appearing today will be able to answer those questions for us?

Mr Williams—The best answer that you can get directly today will be from me, as head of the registry.

Senator FISHER—I struggle to find that satisfactory. Thank you.

Senator CASH—I am a senator from Western Australia and I would just like to turn to the wine industry award, which is now due to commence on 1 January. It has been modernised. We have obviously a large grape-growing and wine-producing region in the south-west of Western Australia. A lot of the feedback that I am getting and that I know that the member for Forrest, Nola Marino, is getting is that the casual rate has been increased by 25 per cent under the modernised award. It reduces the number of ordinary working days, and a lot of the grape producers are coming to us and saying: 'This is actually going to place additional costs on us. What can actually be done?' You now have a modernised award that is due to commence. You have a number of interested parties who are saying that there will be an additional cost imposed upon them as a result of the award modernisation process. What can actually be done to address those complaints or concerns?

Mr Williams—If I am correct, the commission has indicated that parties are free to make application to vary a modern award. The full bench will deal with those expeditiously. That is available to anyone. Beyond that, there is a significant element of the proof of the pudding. There is timetabled a review of modern awards in two years, and then a full and more comprehensive review in a following two years—that is, four years out from 1 January 2010. They are the avenues that are available.

Senator JACINTA COLLINS—Sorry, Senator Cash, can I just clarify a component of your earlier question? Did you say that the casual rate had been increased by 25 per cent or to 25 per cent?

Senator CASH—By 25 per cent. The current rate has been increased by 25 per cent, yes. In terms of the process leading up to the award modernisation, did the commission or anyone from the department actually go out and contact interested parties, like grape growers in Western Australia, for example, or was the onus on them to actually present their arguments to the commission?

Senator Arbib—Mr Williams cannot answer on behalf of the department, but there will be departmental officials here this afternoon who could answer the question.

Senator CASH—Thank you. Just in terms of the process that was undertaken.

Mr Williams—I am conscious, and I believe that the president of the commission has publicly indicated, that in the lead-up to award modernisation commencing—that is, in advance of the specific directions being provided by the Deputy Prime Minister—there were informal discussions with selected major stakeholders and then subsequently a full timetable over the four-stage process has been issued. It has had some modification along the way, but the current timetable in detail has always been, and still is, on the website.

Senator CASH—Could you take on notice how many wine grape growers were contacted in Western Australia as part of that process?

Mr Williams—We are happy to take that on notice. I can certainly assure you I would not have that level of specificity at hand.

Senator CASH—No; that is why I asked if you could take it on notice.

Mr Williams—It would be helpful if you would indicate over what time frame you are interested in that contact occurring?

Senator CASH—I will provide further information to you.

Mr Williams—Thank you.

Senator JACINTA COLLINS—Could I just go back to your earlier answer about who can assist the committee in various ways? I was somewhat surprised to hear your understanding of where various matters could be dealt with by the committee. As I recall, the genesis of the request was in relation to Senator Humphries' discussions about the pharmacy industry. The discussion before the committee did not mention the fact that there has been a further ministerial request which pertains to the issues that Senator Humphries was referring to. Perhaps for the committee's benefit and, indeed, for yours: I think the minister has subsequently highlighted the point that the department is in a position to respond to a variety of requests of this nature. The department was involved in the process of dealing with the concerns that occurred in the pharmacy industry, as indeed was I to some degree, and the subsequent ministerial request to deal with some of those issues.

I think the committee needs to understand that, in terms of the Industrial Registry, you are in a position to talk to us, as indeed you did, about the overall scope of the project, the number of awards that have been simplified, and I think if I am correct, you indicated that it had been unexpectedly successful, the amount of work that has occurred in simplifying a multitude of awards down to a much lesser number. Fair Work Australia or the commission is in a position to talk about the processes and how decisions have been consulted upon and reached, but in

your case, the registry, from my understanding of years on this committee, is here to report to us about essentially the outcomes that the registry deals with. Is that not the case?

Mr Williams—That is correct.

Senator JACINTA COLLINS—Okay. For the benefit of the committee, could you expand on your earlier point—and I do not think your words were that it had been unexpectedly successful, or maybe it was exceptionally successful in the process of all the awards—

Mr Williams—I think I said ‘remarkably’.

Senator JACINTA COLLINS—That is the word. Could you expand on those outcomes that you believe have remarkably achieved what I understand to be a significant level of simplification and consistency? Contrary to the earlier comments, I think there has been more flexibility rather than less delivered in the simplified awards.

Mr Williams—Thank you. I have characterised the process as I have and, in past appearances before this committee, I have been so bold as to say to that date it had been going swimmingly. Why? Because there were many practitioners out there who had long experience of managing through the tribunal changes to awards, let alone past reviews of awards in whole or in part. I guess history tells us the extent to which those processes have been completed and with what effectiveness.

I think it would be fair to say that on this occasion there was a wide body of opinion among practitioners that the extent of award modernisation that was envisaged in the directions from the Deputy Prime Minister was exceptionally large, and the timeframe that was available to do it in was exceptionally short. People expressed views that never in their experience had anything within those bounds been deemed possible. I think it is a reflection much more on the commission than it is on the registry that a process was developed quickly and made public using modern technology—the website especially—which has allowed a highly transparent process to be conducted, and with extensive and regular consultation.

Senator JACINTA COLLINS—Your view is that that process has been remarkably successful from where you sit in the registry?

Mr Williams—It is, and just so that I do not offend my recent colleagues in the registry, I think that having been assigned a challenge by the commission in its architecture for the process for award modernisation, the capability of the registry was realised in a very visible way in the manner in which our website, our IT and communications capability generally were enhanced to allow this enormous undertaking to be run through a public space via this technological route.

Senator JACINTA COLLINS—You may need to do this on notice, but is my understanding correct that we have had roughly 2,500 awards simplified down to somewhere between 130 and 150?

Mr Hower—I can probably answer that for you. Approximately 1,700 multiple business awards are affected by this modernisation exercise. On present indications it will be 121 modern awards.

Senator JACINTA COLLINS—But that is just simply looking at the multiple business awards?

Mr Hower—Yes. That figure of 2,500 you are quoting I think included the enterprise NAPSAs that have since been removed from the process under an amendment to the minister's request.

Senator FISHER—Of those 121, what figures do you have as to how many modern awards exist in each sector? In other words, is it necessarily one per sector? I would have thought not. Can you answer that?

Mr Hower—We have 93 individual web pages for the various sectors that the commission is looking at. We have 93 industry sectors and 121 awards.

Senator FISHER—Can you please identify for the committee which of those 93 sectors have more than one award, and if so, how many as part of the award modernisation process?

Mr Hower—I could give you some examples: health has four; building—

CHAIR—Just while you are going through those figures, it would be useful to make a comparison. When you say the health sector has now four modern awards, how many did it have?

Mr Hower—I think the figure was somewhere in the vicinity of 80, in that particular case.

Senator JACINTA COLLINS—When is the annual report due?

Senator FISHER—Can I finish having the answer?

Senator JACINTA COLLINS—Yes—I wanted to build some context into this.

Mr Hower—It will be tabled on Monday.

Senator JACINTA COLLINS—Okay, so after Monday can I assume that some of this will be detailed in the annual report?

Mr Hower—Yes.

Senator JACINTA COLLINS—Thank you.

Senator FISHER—Health; do any other examples come to mind?

Mr Hower—Building has four; entertainment and broadcasting has three or four, I think.

Senator FISHER—Hospitality, restaurants and cafes?

Mr Hower—Restaurants and cafes have their own exposure draft at this stage. It is still being finalised.

Senator FISHER—Hospitality?

Mr Hower—Hospitality just has the one award.

Senator FISHER—Given that restaurants and cafes are now a carve out from hospitality?

Mr Hower—Yes.

Senator FISHER—What about racing?

Mr Hower—Racing has three.

Senator FISHER—What about—

CHAIR—I am not sure that we want to go through the 90 sectors, do we? Are you able to—

Senator FISHER—I do not propose to go through 90, Chair. I have one more question in this respect.

Senator JACINTA COLLINS—Then we can go back to my question?

Senator FISHER—That is up to the chair.

CHAIR—You had actually interrupted—

Senator JACINTA COLLINS—No, it is actually up to me!

CHAIR—You had actually interrupted Senator Collins to ask this line of questions.

Senator FISHER—Thank you for your indulgence, Chair. What about the amusement and leisure sector?

Mr Hower—That probably came under entertainment and broadcasting.

Senator FISHER—Right. What is the position in respect of country shows, which were previously part of the amusement and recreational award?

Mr Hower—The country shows became a separate industry in this final stage, so there is an exposure draft called the Travelling Shows Award that is due to be finalised on 4 December.

Senator FISHER—Okay. In respect of the country shows, and restaurants and cafes there was a subsequent carve out?

Mr Hower—Yes.

CHAIR—Just in clarification so that I know what to ask for on notice—I am interested in making a comparison—will the annual report show in each of the 93 industry sectors how many modern awards are in each sector and how many were in each sector, or is that information I need to ask you for specifically?

Mr Hower—That would be information you would need to ask specifically.

CHAIR—All right. Would you take that on notice, just for completeness for us?

Mr Hower—Yes.

Senator JACINTA COLLINS—I have only one further question.

CHAIR—Then we will cascade back to you.

Senator JACINTA COLLINS—But who knows what other questions my questions will trigger? Mr Williams, I was just interested in a reflection from you from the registry's perspective of the benefits of this very ambitious project. You have indicated that you think it was remarkably successful, but for the committee's benefit, could you give us some examples of where you think significant benefits have been achieved through that simplification, achievement of consistency across industries or across states et cetera?

Mr Williams—To be honest with you, I do not think it is my remit to comment on that. My task is to support the commission in undertaking the award modernisation process. Forgive

me, I am not seeking to sidestep your question. Whatever views I might have would be personal views, and I would suspect not at all appropriate in this context.

Senator JACINTA COLLINS—I was more interested from the angle of things such as administrative simplicity?

Mr Williams—Perhaps that is a matter that you could take up with Fair Work Australia later in the day.

Senator JACINTA COLLINS—You do not think that is relevant to the registry?

Mr Williams—On 31 December there will be no registry, so since the awards do not start until 1 January 2010; it is moot from my perspective.

Senator JACINTA COLLINS—Okay. So there is no benefit in terms of administration of this system?

Mr Williams—No, I have not said that.

Senator JACINTA COLLINS—No, I am just asking from your perspective whether you have a reflection along those lines?

Mr Williams—I just do not think it would be appropriate for me to offer you a personal comment. It is not my remit to administer it. That now falls to Fair Work Australia to administer it.

CHAIR—I think you are right, Mr Williams.

Senator JACINTA COLLINS—We understand that—in terms of prospectively.

Senator HUMPHRIES—I have no doubt that there are some very good outcomes and some significant steps forward in this process. As members of parliament, we get strong messages from those who do not see themselves as having been winners out of this process. We are arguing about how long a piece of string is, to some extent, but we could use a number of tests to decide whether the process ultimately has been successful or not. One might be the number of times, in the next five years as this transitions, the awards need to be revisited because of a complication or an issue that arises. I assume it is possible for the awards to be revisited in those five years?

Mr Williams—As I have indicated, the commission has made it clear that at any time any party can seek to vary an award, and they have established the basis upon which an application can be made as well as making commitments about dealing with any such applications. That has been primarily in the context of any such applications between now and 31 December, but the general point remains. Then, beyond that, there is a review two years down the track and a further more comprehensive review two years beyond that.

Senator HUMPHRIES—Another test we could apply is the extent of what Senator Collins referred to, I think, as ‘ministerial requests’ sort of intervening in this process. How many of those ministerial interventions have there been?

Mr Williams—To date, is it three?

Mr Hower—Seven.

Mr Williams—Seven. I beg your pardon. I have been corrected. Again, on our website you will find the original directions together with all changes. On each occasion, those changes have been formed into a consolidated request, so that you have at any point in time what the consolidated request looks like.

Senator HUMPHRIES—Couldn't we say that when a minister needs to intervene in that way there is some indication that the process is not producing the sort of outcomes that are desirable from the point of view of the stakeholders?

Mr Williams—I think you could probably argue that representations have been made to the government and that the government has accepted some measure of those representations and adjusted its directions accordingly. In fact, I would argue that logically you could not take that as far to make any presumption one way or the other about the success and progress that the commission is making in award modernisation. After all, the commission can only work within the policy framework set by the government.

Senator HUMPHRIES—So you are saying that the minister might have intervened too soon in some cases so that you would then sort out some problem?

Mr Williams—No, I am saying the government would have reasons to form a judgment about a shift in its policy position for a variety of reasons, just one of which might relate to or might not relate to how the commission is conducting its business. I am in no position to know what the imperatives were for the government.

Senator Arbib—That would obviously be a matter that you would canvass, and I am sure that Senator Fisher will canvass this afternoon when the relevant department officials are present.

Senator FISHER—Thank you for the invitation, Minister, accepted with relish.

Senator Arbib—I am looking forward to it, Senator Fisher.

Senator HUMPHRIES—Of course, a third test could be whether any employers or employees are worse off as a result of these awards. I have canvassed this before, but it is possible—indeed, it is certain—that some employers, and perhaps employees as well, will be worse off as a result of the end result that they have with the award modernisation in their particular sector?

Mr Williams—Yes. I apologise; I was not here at last estimates. I was out of the country, but I have read the transcript and therefore I am aware of the relatively extensive debate that was held in the committee last time involving yourself, I believe, and the minister representing at the time. I believe in the end the chair indicated that that conversation had partly reached its natural conclusion at that time and/or had been a matter when the legislation was in the committee stage rather than in estimates. I am not sure that I could add anything today.

Senator HUMPHRIES—Can I bore down to some of the specific issues that the process has been leading towards? Since the last estimates, have there been any changes in the policy settings of the commission with respect to the way this five-year transition period is meant to work, or is it essentially the same kind of structure that has been previously foreshadowed as the way in which these issues will be ironed out over the next five years?

Mr Williams—I will take the question about transition arrangements. The full bench has set out how it sees generally the transition arrangements working. I think the full bench has indicated—and I will be corrected if I am wrong—that it is taking on advice and considering whether there is any need for any fine tuning or filling in some of the more specific detail. Undoubtedly, elements of that will be dealt with in the next consultation phase, which occurs in Melbourne and Sydney in the coming two weeks. The commission then will make its decision and publish it as per the timetable. I do not know the specific date for the transition measures, but certainly by 4 December.

Mr Hower—Certainly since the last Senate estimates, the commission issued a decision on 2 September covering transitional arrangements for the modern awards that were issued in the first two stages of the process. That decision set out a model clause and schedule that would be inserted into most modern awards. What is being transitioned are minimum rates, penalties and casual loadings in five instalments—basically 20, 40, 60, 80 per cent, commencing from 1 July.

Senator HUMPHRIES—This is where those penalty rates, whatever, impose a higher cost to the employer, so they are phased in over five years. All right. So, what you are saying is that, where there are higher burdens on employers, for example for penalty rates, they will be low for everybody at the beginning and they will be higher at the end of that five-year transition period?

Mr Hower—Yes.

Senator HUMPHRIES—If a state award, say a NAPSA, imposes a penalty rate of time and a quarter for work on a Saturday, for example, and the new award has time and a half on a Saturday. So it would sort of transition between time and a quarter and time and a half, progressively over five years. Is it possible for a particular business to escape the transition to the higher penalty, or are they all absolutely bound by that?

Mr Hower—They are all bound.

Senator HUMPHRIES—But there is no sort of hardship exemption or something to pass it on?

Mr Hower—Well, there is a review mechanism in how the transitional arrangements operate, and Fair Work Australia can initiate the review or—

Senator HUMPHRIES—But that is whole of sector or whole of—

Mr Hower—There is a review mechanism in each award. An organisation bound by an award could seek a review.

Senator HUMPHRIES—There is a provision, though, for employees who lose out to have an employee take-home order made in respect of individual employees, isn't there?

Mr Hower—There are take-home order provisions, yes.

Senator HUMPHRIES—Okay. You could argue that the commitment not to have an employee worse off can be met by that sort of instantaneous relief mechanism but there is not an equivalent for employers, where they find particular burdens in their business as a result of the award increases, is there?

Mr Hower—The transitional arrangements are there to try to phase in any increases.

Senator HUMPHRIES—It delays the pain but it does not take it away, does it?

Mr Hower—Yes.

Senator JACINTA COLLINS—An increase is still an increase; a disadvantage is still a disadvantage.

Senator Arbib—But also, Senator Humphries, you are not looking at the benefits that business will gain from simplicity reducing red tape; there are some major benefits for employers which will lead to cost savings, and this is—

Senator JACINTA COLLINS—But Mr Williams said he could not talk about this sort of thing from the registry. I asked him earlier.

Senator Arbib—Sure, but the government has been talking about it for a long time, and this is a reform that business groups have been calling for for decades. I think that to be going from 1,700, as Mr Williams has said, down to 121 is a very successful process. There have been a small number of issues that the government has had to deal with, and you have rightly said that the minister has intervened in a small number of matters. We are attempting to work through those to the benefit of both employers and employees.

Senator FISHER—Once an employee has had disadvantage rectified by a take-home order, what is the process to assess the impact of that take-home pay order on the employer—who of course is footing the bill for the take-home pay order—to ensure that the disadvantage suffered thereby by the employer is not also negated in accordance with the government's promise? You need to work it through, Senator, because this is what is going to happen. Once a take-home pay order is made in respect of an employee—presumably to rectify disadvantage that would otherwise be suffered from a modern award for that employee—someone has to foot the bill for that take-home pay order. It will be the end of the earth—

CHAIR—There already is in the current bill. This is where the logic does not make any sense.

Senator FISHER—What does the process do to then take account of the effective recalibration of the no-disadvantage equation for that particular employee's particular employer under that particular award and in respect of the subsequent take-home pay order to ensure that there is no cost to employers as well as no disadvantage to employees, as promised by the government?

Senator CAMERON—You would have to take that on notice and get a translation.

Senator FISHER—You did not seem to understand it, Senator; maybe you did not want to.

CHAIR—Is this section moving outside your responsibilities as registrar?

Mr Williams—I was just confused momentarily about whether the question was being directed to me or to the minister.

CHAIR—Okay. It is an interesting discussion that we can have at a point in time, but I would rather have it in the right place.

Senator FISHER—Which is?

CHAIR—When the department is here.

Senator FISHER—Thank you.

CHAIR—Senator Fisher, we have asked questions about award modernisation at previous estimates. You were aware of—

Senator FISHER—But I felt the need to be reassured, Chair. Thank you, because the reason why I struggled with Mr Williams's earlier response was not his response about the limits of his remit per se, which I entirely understand, but his view that there would be no-one today of whom we could ask these questions. The fact that that was not corrected by the committee—

Senator JACINTA COLLINS—It was corrected. I corrected it.

Senator FISHER—until subsequently—thank you, Senator Collins—

Senator JACINTA COLLINS—Yes, I was being polite.

Senator FISHER—So I am reassured by that.

CHAIR—Order! All right, just relax. As you should have known, because you have asked questions about award modernisation of the department before, it is clearly in outcome 5; that is where it has been asked before, and you will have an opportunity to do so.

Senator FISHER—Good.

CHAIR—All I am suggesting is that it would appear to me, given that we have the Industrial Registry before us, that the debate is going to a level that is outside the Industrial Registry, and I was just trying to clarify with Mr Williams if he also thought so. If he thought that is the case, we should move on.

Mr Williams—I can confirm for you that, on the question of take-home pay orders, the commission has been clear that there are those provisions and they will be dealt with as they arise. I think I heard it remarked a moment ago by someone—perhaps you, Senator—that that does not of itself impose any cost on a business, because it would simply maintain the remuneration that an employee was already receiving and therefore it would already be realised and would not be any form of contingent cost on the business. That has been concatenated with your question, Senator—

Senator FISHER—Sorry—concatenated? Whatted?

Mr Williams—Concatenated—combined with.

Senator FISHER—Thank you. Whoop!

CHAIR—We will have no whooping in here, Senator Fisher. Let us just keep it dignified.

Senator FISHER—I am having a good time, Chair.

CHAIR—Well, keep it to yourself.

Mr Williams—Your question has been concatenated with another question, relating to how the full bench has dealt not with competing but with a variety of objectives and requirements in making modern awards, one of which is costs for business and another of which is remuneration to employees. I think that, when you put a question together that relates to take-home pay orders and to one aspect of the general range of considerations that the full bench

has to take into account in making a modern award, you have a question that I would struggle to answer, whether it was in my remit or not.

Senator Arbib—I think Mr Williams has answered it, though.

CHAIR—That is right. We really need to come back to questions about your specific function and leave some of the other questions which I am sure we will have for the department when they get here. Are there further questions of Mr Williams?

Senator HUMPHRIES—Yes. I think that the last time we were discussing the award modernisation process we talked about the newsagency sector. Do you have any updates for the committee on where that award process has concluded? Again, is it possible to say whether this is a satisfactory outcome from the point of view of all the parties?

Mr Williams—For that level of specificity, I will ask Mr Hower to respond.

Mr Hower—At the last Senate estimates, the Queensland Newsagents Federation had, just a few days before the Senate estimates, put in a submission to the transitional provisions proceedings of the commission. Their concerns were mainly in relation to increased wages for weekend work and penalty rates for delivery drivers. To an extent, the transitional provisions that came out of those proceedings in September would have at least phased in the penalties that they were concerned about. They also wanted newspaper delivery drivers to remain award free. I think there is still a driver classification in that general retail award that they would be part of. So they would need to apply to vary the award if they wanted to pursue that avenue.

Senator HUMPHRIES—There is obviously some process that has dealt with this, but my question was really: do you think this has actually settled the issue to the satisfaction of the parties or, from the point of view of some of the parties, are there still outstanding problems with that modernisation exercise?

Mr Hower—I do not know that I can comment as to whether they are satisfied or not.

Senator HUMPHRIES—I am a bit concerned that, in a sense, you do not feel that you can comment on that. Obviously the commission has a process of considering award modernisation—whether this is the best way of being able to make a particular sector work in a more efficient and structured way—in the way the minister referred to. What people are saying about the effect of those changes on their industry and employment levels and labour costs and so on is an important issue. I just do not sense that you have a sense of where that goes at the end of this exercise. Isn't it the job of the registry to be able to say, 'We have resolved things to the satisfaction of parties,' or, 'We have ended up with a decision which is not supported by some of the parties and therefore may be the subject of further revision in the future or further action in front of Fair Work Australia as these processes unfold'?

Mr Williams—If I may, that is not at all the responsibility of the registry. The registry's responsibility is to support the commission in undertaking its work to modernise awards. Therefore, the judgments about how to accommodate submissions and about how effectively that accommodation has occurred are solely for the full bench.

CHAIR—Mr Williams, you provide the machinery to enable Fair Work Australia or the old commission to do its work?

Mr Williams—Correct; just so.

Senator Arbib—Again, Senator Humphries, you can ask that question this afternoon when the department officials are here, and I am sure it will be an issue that gets dealt with.

Senator HUMPHRIES—Okay. Are the industry sector representative bodies that are appearing before the commission at the moment making assessments or submissions about the effect of the modern awards on employment levels within their sectors? In other words, are the industry umbrella organisations saying, ‘We believe these draft awards will lead to this level of employment loss or employment gain within a particular sector?’

Mr Williams—At that level of specifics, I acknowledge I am not conscious of whether any representative has made specific forecasts of employment impacts of a proposed modern award in whole or in part.

Senator HUMPHRIES—I find that very surprising, might I say.

Mr Williams—I guess I will be assisted in a moment, because Mr Hower will remind me of how many submissions have been made, and how many days of consultation occurred with how many thousands of parties. You will forgive me, but I do not have to my mind that sort of specific at that level of detail. Can you remember, Mr Hower, perhaps any examples of parties that have raised the question of the employment effects of a proposed modern award?

Mr Hower—Certainly—one example is where employers in the horticultural industry raised concerns about the costs of the horticulture award, and the commission encouraged employer groups to apply to vary the award. The National Farmers Federation and the Horticulture Australia Council have submitted applications to vary the award, and a submission program has been established for those particular applications with a view to final submissions in late November, I think.

Senator HUMPHRIES—Okay. I am looking for a sort of overall picture of what employers are saying about employment levels. You cannot provide me with a picture of where that is heading?

Mr Williams—I think it would be fair to say that, overall, the question of the employment effects of modern awards has not been a feature, or common or central to the consultations, discussions or submissions that have been made. You may care to surmise from that that, generally speaking, it has not been the impact of modern awards that has been top of mind for parties.

Senator HUMPHRIES—On the last occasion that we had you before us, questions were raised about the extent to which the commission was adhering to the requirements of the minister’s award modernisation request. The items in that request say that the intention of the process is not to increase labour costs and not to disadvantage employees. Is there a mechanism that the commission uses, or that you use, to actually calibrate the extent to which the agencies the commission is using are achieving the minister’s request?

Mr Williams—I would really just direct you to the various statements and detail of decisions that the full bench has made as it has delivered modern awards or dealt with specific matters of principle. Beyond that, I would not anticipate the bench would have anything else

to say in terms of the detail of how they have weighed up what I imagine are rather difficult points of decision for them.

Senator HUMPHRIES—One of the things that the commission has said, on the record, is that the considerations about not increasing labour costs and not disadvantaging employees are, ‘potentially competing.’ To your knowledge, how has the commission dealt with the fact that those criteria have been set out by the minister in the request and are potentially competing, in the words of the commission?

Mr Williams—I do not sit in on the full bench’s deliberations, so I cannot assist you.

Senator HUMPHRIES—There has been no public statement about how that dilemma is to be resolved or is being resolved?

Mr Williams—Presumably it has arisen to some extent, along with all the other things they are considering in making modern award by modern award, so the full bench has had to consider that case-by-case. As I say, I am not part of the full bench and I do not sit in on their deliberations, so I fear I cannot assist you in how they have worked through resolution of that. Like you, I see the substance of their decision and any statements that go with those decisions and the modern awards themselves: that is all I am party to.

Senator HUMPHRIES—I understand the point you make, but it leaves the committee without an answer to the question, has the minister’s request been complied with by the commission?

Mr Williams—I believe the Deputy Prime Minister has been given to make comment about the degree of her satisfaction with how the commission has been progressing award modernisation and with regard to those sorts of considerations that you are expounding on, so I guess I just point to the government’s view about that.

Senator HUMPHRIES—But the commission does not have a view it can put on the table for us?

Mr Williams—I think you can be well satisfied that, by dint of publishing a modern award, the commission has reached the point where it is satisfied that it has dealt with the matters that are before it as it needs to. It also does that in a process which presents those modern awards as drafts, and subject to submission and consultation, so in the event that something has been overlooked there is an automatic process step which allows that to be identified.

Senator FISHER—Mr Nassios, are you before us right now in your capacity in the Industrial Registry as opposed to your new capacity, I understand, in Fair Work Australia?

Mr Nassios—I believe I am, yes.

CHAIR—Well, you are; let me make that very clear.

Mr Williams—Thank you, Chair. As the head of the agency, I will confirm that everyone appearing before you at this moment is doing so in their capacity at the time over the period we are talking about in serving the Australian Industrial Registry.

Senator FISHER—Are you aware of the extent to which the Fair Work Act 2009 replicates or otherwise the powers and functions that have been exercised by your part of the organisation under the Workplace Relations Act?

Mr Nassios—Are you directing that to me?

Senator FISHER—To any of you, having got that clarification; otherwise I would have asked you, Mr Nassios.

Mr Williams—I think that would fall squarely into the province of me offering a personal opinion about what I have observed about a process that is not part of my role. Again, I do not think it would be appropriate for me to offer a personal view about something that is not part of my professional role.

Senator FISHER—So, during the lead-up to the Fair Work Act, were there any discussions with your organisation about the functions that your organisation performs under the Workplace Relations Act with a view to considering those discussions in the formulation of the Fair Work Act?

Mr Williams—No, they are matters of policy, and as an agency that is statutorily independent of executive government, I would not consider it appropriate for that sort of policy formulation discussion.

Senator FISHER—So you guys stop doing your jobs at the end of this year, and you do not know if anyone picks them up after that?

Mr Williams—No, I am not saying that.

Senator FISHER—So what are you saying?

Mr Williams—I am saying that my understanding of those things is simply a personal view and is not part of my professional responsibility. My professional responsibility, including before this committee, is to engage you and respond to your questions about the work of the registry, not conjecture about what might be translated across to Fair Work Australia. I have no role in relation to Fair Work Australia.

Senator FISHER—All right. Thank you.

CHAIR—Thank you, Mr Williams. I think your last appearance before this estimates has probably also been the longest.

Mr Williams—I am not a clock watcher, Senator, but I suspect you are correct.

CHAIR—Again, thank you for your service to the registry and for your time as registrar. We wish you all the best into the future.

Mr Williams—Thank you.

Proceedings suspended from 12.05 pm to 1.32 pm

[1.32 pm]

Fair Work Australia

CHAIR—We are now with portfolio agencies and Fair Work Australia. Mr Lee, welcome. This is your first appearance before estimates.

Mr Lee—That is correct.

CHAIR—It is certainly the first appearance of Fair Work Australia.

Mr Lee—That is also correct.

CHAIR—Do you have any opening remarks you would like to make to the committee before we go to questions?

Mr Lee—Very briefly, I would like to recognise the contribution of Mr Williams, who appeared before you this morning as the outgoing Registrar of the Australian Industrial Registry. I am pleased to be here in the role of General Manager of the new Fair Work Australia, a role I have been in since late July, with Fair Work Australia commencing as of 1 July 2009. With me is Mr Nassios, who is in charge of the tribunal services and functions and also the unfair dismissals and agreements area; Dennis Mihelyi, who is our chief financial officer; and Mr Hower, who, as you heard this morning, is in charge of the award modernisation team.

CHAIR—Thank you. On that we will move to questions. Senator Humphries?

Senator HUMPHRIES—Yes, I have some questions somewhere.

Senator FISHER—I have some questions, if that helps.

Senator HUMPHRIES—Yes, if you want to lead off I would be happy. I did actually want to see the advice. Thank you.

CHAIR—Senator Fisher?

Senator FISHER—Thank you, Chair. Thank you very much for your appearance, Mr Lee and others. I had a clear preference for the president of Fair Work Australia to attend alongside you to advise the committee as to what Fair Work Australia is doing in the discharge of its financial obligations—for which I understand you have some responsibility—and administrative and operational obligations. I seek to table some advice that I have received from Harry Evans, the Clerk of the Senate, to the effect that this committee is entitled, if it so wishes, to require that Mr Justice Giudice, the President of Fair Work Australia, attend estimates for that purpose in the discharge of the performance of his functions in that regard. I seek to table that advice, Mr Chair. Thank you.

CHAIR—Thank you. Senator Humphries?

Senator HUMPHRIES—Thank you very much, Mr Chairman. I want to start, Mr Lee, by talking about the speech that you gave to the Australian Services Union Victorian Authorities and Services Branch conference earlier this month.

Mr Lee—Yes.

Senator HUMPHRIES—You stated in the speech that you gave on that occasion that you were hoping to have some new appointments made to FWA soon ‘because things had got a lot busier’. How many proceedings have commenced before FWA since 1 July this year?

Mr Lee—In answering your question, Senator, I would point out that one of the major changes that has occurred since 1 July is that agreement processing is now with the tribunal, whereas previously it was with the Workplace Authority. That has changed, as expected, the workload for the organisation.

Senator HUMPHRIES—Was that unexpected?

Mr Lee—No, it was expected that that would occur, and resourcing for that has followed. The total number of lodgements of all matters—and this includes agreements, bargaining notices and all of those types of things—is 10,326.

Senator HUMPHRIES—So that is all matters that have been commenced since 1 July?

Mr Lee—That is for the period from 1 July until 30 September.

Senator HUMPHRIES—Have any of those been resolved so far, so that they are effectively no longer on your work plate?

Mr Lee—It is slightly more complicated than that. That includes all matters that have come before the tribunal. It includes, for example, 5,400 agreements, many of which will have been processed and registered. That is the term now; it is no longer ‘certified’.

Mr Nassios—Approved.

Mr Lee—Approved, thank you. In terms of notices to commence bargaining, many of those will have been dealt with and others are awaiting approval, so the outcome would vary.

Senator HUMPHRIES—Do you have matters from the AIRC handed over to you, or is that still with the AIRC?

Mr Lee—The AIRC is largely dealing with award modernisation. There will be some legacy matters, I expect, at the conclusion of the AIRC, which is 30 December. As I understand it in terms of the legislation, those matters will then be dealt with by FWA in the future.

Senator HUMPHRIES—The 10,326 includes unfair dismissal claims?

Mr Lee—It includes all claims for a remedy from termination of employment.

Senator HUMPHRIES—Are you able to tell us how many unfair dismissal claims are before—

Mr Lee—Yes, the number until 30 September is 2,736.

Senator HUMPHRIES—So when you said earlier this month that things have got a lot busier, in what sense do you mean? You were obviously expecting to get a workload based on the new legislation coming in. Do you mean busier than you anticipated or busier than was the case on 1 July? In what sense?

Mr Lee—We are as busy as we anticipated, and we anticipate that there will be more commissioners appointed. The context for my statement in the speech to which you refer was simply that I was looking forward to them coming on board as part of the organisation to deal with the work of Fair Work Australia.

Senator HUMPHRIES—If we take that period of 1 July to 30 September, you say there were 2,736 unfair dismissal claims. Can you tell me how that compares with the same quarter last year?

Mr Lee—Yes, I can tell you that. The same quarter last year was 1,794 and, again, when you say ‘unfair dismissals’, the figure I am quoting is termination applications, so that

includes all matters—unlawful applications under the general protections provision—the complete basket of remedies, if you like, available to individuals.

Senator HUMPHRIES—You mention that there were 2,736 unfair dismissal claims, 15,400 agreements to be approved—

Mr Lee—No.

Senator HUMPHRIES—I am sorry, what was the figure?

Mr Lee—It is 5,425.

Senator HUMPHRIES—Sorry, there is a bracket mark there. It is 5,400. Sorry. That leaves about another 2,000 or so matters. Will they all be or substantially be notices to commence bargaining?

Mr Lee—No. Bargaining is in the order of 755.

Senator HUMPHRIES—So what are the other matters?

Mr Lee—Perhaps if I pick some of the larger numbers. There is a table of some 15-odd items. There is a broad range of functions that we perform: disputes, 619; applications for entry permits, 456; financial reporting, 106.

Senator HUMPHRIES—What is that about? In what sense does financial reporting come before you?

Mr Lee—I could give an answer to that but a more accurate one would come from Mr Nassios.

Mr Nassios—Every registered organisation under the act is required to lodge with us their financial returns for the financial year. So that is for the first quarter of the year.

Senator HUMPHRIES—How many of those were there, did you say?

Mr Nassios—There were 106. In terms of the agreements, I should say for the sake of clarity that over 4,500 of those are actually applications to terminate AWAs. When Mr Lee was talking about the approval of agreements, it certainly is not that number.

Senator HUMPHRIES—Could you repeat that.

Mr Nassios—I will come up with a specific figure. There were 4,577 applications that were lodged between 1 July and 30 September to terminate either an AWA or an individual transitional agreement of some description.

Senator HUMPHRIES—That is not included in the 10,326?

Mr Nassios—It is included. It is included in the 5,000 and whatever agreements.

Senator HUMPHRIES—Agreements to be approved?

Mr Nassios—Yes.

Senator HUMPHRIES—Would it be possible to have the table that you are obviously referring to tabled so we can see the totality of all the matters?

Mr Nassios—Yes.

Mr Lee—We could provide that.

Senator HUMPHRIES—Going back to the speech that I referred to, Mr Lee: I understand that in that speech you made the comment that the process of appointments to FWA was different from the previous process in that it involved the shadow minister as well as senior Public Service officials. I assume you were referring to the fact that this process involved consultation with the opposition spokesperson on industrial relations with respect to appointments?

Mr Lee—Yes, that is correct.

Senator HUMPHRIES—How has the shadow minister been consulted about those sorts of matters?

Mr Lee—I am not aware.

Senator Arbib—I think these are probably questions more appropriate for the department when they are here this afternoon.

Senator HUMPHRIES—You cannot answer those now, though?

Senator Arbib—The departmental officials will be here this afternoon. You may want to refer the question to them.

Senator HUMPHRIES—So the department has consulted, rather than you or a minister?

Senator Arbib—I am saying that appointments are an issue that you may want to raise with the department when the appropriate officials are here this afternoon.

Senator HUMPHRIES—All right. Are you able to tell me what positions at FWA are consulted on with the shadow minister? Are they the appointments of commissioners, conciliators or appointments to other positions?

Mr Lee—My understanding in terms of public statements that the minister has made is that there is a particular new process that is followed for consulting on the appointment of members of the commission. So it is commissioners or senior members of the commission.

Senator Arbib—Again, that information will be forthcoming this afternoon when the appropriate officials are at the table.

Senator HUMPHRIES—You make a good point, Minister. This is a matter for the department. It is a policy matter, isn't it, rather than an administrative matter?

Senator Arbib—That is correct.

Senator HUMPHRIES—In that light, I was struck by the comments that you made, Mr Lee, in that speech about the process of consultation being in contrast to the previous process of appointment by 'press release'. I interpret that as a fairly political comment—a criticism of the previous government's approach to this compared with the new government's approach. You may well have that belief, but is it appropriate for you in your role as general manager of FWA to express that sort of view in the context of speeches in a public place about government policy?

Mr Lee—What I was doing at that particular forum was as I have done at a number of forums. Since I started at Fair Work Australia, I have met with and spoken with ACCI and a number of organisations—I will be speaking with AiG next week—and at all those forums people have asked me what is different about the general manager role and what is different in

terms of the way the legislation is constructed. Really, my intent was only to indicate what had changed in terms of the new role. It was no more than that.

Senator CAMERON—On that point, Mr Lee, have you also taken steps to discuss these issues with the ACTU, or is it just employer organisations that you have consulted with?

Mr Lee—The ACTU were in to see me in the second week of my appointment.

Senator CAMERON—That is not what I am asking. They came to see you, but have you taken proactive steps, like you have taken with employer organisations, to go and address them?

Mr Lee—To be honest, I have not been invited at this stage. I have basically taken an approach where I have accepted invitations to speak.

Senator CAMERON—So it is by invitation?

Mr Lee—At this stage. To be frank, this is my 10th week in the role, and I was just having the discussion with my communications people the other day that once I get to a point where I feel there are gaps in terms of stakeholders I have been talking to I will look to remedy that.

Senator CAMERON—The ACTU would be a gap, wouldn't they?

Mr Lee—In terms of forums, that is possibly right.

Senator Arbib—I am surprised they have not issued an invitation, Senator Cameron. I am very surprised, actually.

Senator HUMPHRIES—As opposed to other sorts of consultations you might undertake with the ACTU or whoever, this speech to the ASU was a public one—at least it was public enough to be reported in *Workplace Express*. You were reported by them as saying: 'Mr Lee told the ASU conference ... that, by contrast with the former practice of effectively making appointments by press release, the new process provides for stakeholders, including senior federal and state Public Service officials, the opposition's IR spokesman and FWA itself to have input on appointments.' You do not interpret that as being a political comment?

Mr Lee—No, I do not. I can only clarify that my understanding is that that practice of appointments has existed for a long time under all levels of government. So in no way was I meaning to be party political. Again, I was just demonstrating that there is a change.

Senator FISHER—Minister, doesn't the minister have an obligation under the act to consult with the shadow minister about appointments to Fair Work Australia? So wouldn't you know whether that has taken place or not?

Senator Arbib—I have already said that department officials who deal with that side will be here this afternoon. You can direct those questions there.

Senator FISHER—But wouldn't you know?

Senator Arbib—I would have thought the comments that Mr Lee made at that dinner would have been welcomed by both sides of politics. This is a positive step in the right direction. Consulting the opposition's spokesperson is a positive step. So I do not think Mr Lee's comments were out of step or improper in any way.

Senator HUMPHRIES—No-one is doubting that, Minister. It is a question of how that was contrasted with previous policy and whether it—

Senator Arbib—I think, as Mr Lee said, there was no—

Mr Lee—I can clarify that it was not directed at a previous coalition government or at a previous Labor government, because the practice, as I understand it, has existed for a very long time up until now.

Senator HUMPHRIES—You are aware, of course, that the appointments in the past were not made by press release; they were made by an instrument executed and published in the gazette to produce a particular outcome.

CHAIR—I do not think that is the case.

Senator HUMPHRIES—I am sure they are.

CHAIR—They might have been a legal appointment. I seem to recall lots of press release appointments being made over the years.

Senator HUMPHRIES—They are announced when they are made.

Senator Arbib—I think we can all agree that this is a much better process. Both sides of politics can agree that this is a much better process.

Senator HUMPHRIES—It depends on who gets appointed.

Senator Arbib—We will have to see.

Senator HUMPHRIES—I want to move on to ask about lawyers' right to appear. Section 596 of the Fair Work Act requires a lawyer or paid agent to seek permission of FWA before they can appear. I think that is the case.

Mr Lee—Correct.

Senator HUMPHRIES—Have there been any cases so far where this section of the act has been tested by virtue of practice before FWA?

Mr Lee—I might defer to my colleague, Mr Nassios, on this one.

Mr Nassios—I am presuming you mean an individual matter before FWA rather than a test case of some description.

Senator HUMPHRIES—Either.

Mr Nassios—I cannot recall a test case on it, but in terms of individual matters when this happens it would ordinarily happen at the beginning of the proceedings. We certainly do not keep records as to how often leave is either granted or refused.

Senator HUMPHRIES—I am aware, again courtesy of *Workplace Express*, which is not a publication I usually peruse at great length but it has certainly been drawn to my attention on this occasion—

Senator BILYK—I am pleased you are reading it.

Senator HUMPHRIES—I am very good at reading, thank you. It talks about a case involving Hunter Valley Earthmoving Co. Pty Ltd where Commissioner Harrison denied the firm permission to appear via a lawyer. This was earlier this month at a hearing planned for 14

October, the same day you gave your speech, Mr Lee. That is the case I am aware of. I do not know whether you are aware of that case, Mr Nassios, but are there others of that kind that you are aware of?

Mr Nassios—I am certain there would be refusals. I just do not know the number. I am not aware of that particular case, sorry.

Senator HUMPHRIES—Could you take on notice the question of how many times a party has sought to be represented by a lawyer or a paid agent and whether they were refused or the application was accepted?

Mr Lee—In respect of any matter?

Senator HUMPHRIES—Yes.

Mr Nassios—I am not sure how I am going to do that. We do not actually keep any records. The only suggestion I could possibly come up with is somehow reading the transcript, and it would be a horrendous task to try to read the transcript of every matter.

Senator HUMPHRIES—This is a particular power that appears under a section of the act. I would have thought you keep records of where that power under the act is exercised. It is a power by FWA to refuse leave for a lawyer or agent to appear. The commissioners do not record these things for you to—

Mr Nassios—Not to my knowledge. I am not suggesting there are not some potential differences between the commission practice and FWA practice, but this provision has been there for many years. I am not aware of anywhere where we would record the amount of times that it has occurred.

Senator HUMPHRIES—Can you tell us anything about that case involving Hunter Valley Earthmoving?

Mr Nassios—I have no personal knowledge of it.

Senator HUMPHRIES—Okay. Under the legislation, representatives of industrial organisations, either unions or employer groups, have an automatic right to appear, as I understand it.

Mr Nassios—Correct.

Senator HUMPHRIES—In the Hunter Valley case, I am told that the applicant was represented by a union. You obviously do not know if it is the case, but the report in the *Workplace Express* tells me that the person was represented. So the only way that an applicant or respondent appearing before Fair Work Australia can have an automatic right to representation is if they use a union or an employer organisation to represent them. Am I correct in understanding that is the approach?

Mr Nassios—I hazard to say I think you are right, but I really would prefer to go and have a look at the provisions again to categorically answer whether that is the case or not.

Senator Arbib—Again, departmental officials may be able to answer your question in a better way this afternoon. So you should re-ask the question, Senator Humphries.

Senator HUMPHRIES—I am just concerned with asking questions about the operation of Fair Work Australia of departmental officials and then them saying to me, ‘Actually, you should direct that question to Fair Work Australia.’

Senator Arbib—You are asking here in terms of the act and an interpretation in relation to lawyers.

Senator HUMPHRIES—By Fair Work Australia. They have got to administer their own act, presumably. It is the Fair Work Act.

Senator Arbib—I appreciate that. I think it has been answered, but I am saying that you may also ask the question later on and get a more substantial answer. I am trying to assist you.

Senator HUMPHRIES—That is fair enough. My understanding of how the act works was just articulated then. If you think I have misinterpreted it, Mr Nassios might like to come back and let me know.

Mr Nassios—Certainly. My reticence at the moment is that the section you are referring to—and I should be aware, but unfortunately I just cannot recall the actual section that used to appear and where exactly it appears in here at the moment—is specifically about lawyers and paid agents, and there is a provision in here which says that the very people you are speaking about are not said to be lawyers or paid agents for the purpose of this section. So that is why I think you are correct, but I would prefer, if I could, to be able to know where the previous section about representation by organisations did appear in this act. At the moment, I have to say to you that my memory is not helping me.

Senator HUMPHRIES—Are these issues always resolved at the beginning of the proceedings? That is, when the person first comes to FWA to appear on behalf of a party, is that the point at which this is dealt with? Is it when the proceedings actually begin?

Mr Nassios—Correct. They ordinarily will introduce themselves and use words to the effect, ‘I seek leave to appear,’ at which point leave is either granted or refused.

Senator HUMPHRIES—Where does that leave somebody who comes to court with his lawyer and then the commission or FWA says—actually, is it a commission? Is that its technical legal status? Is it an authority? What is it?

Mr Lee—It is Fair Work Australia, and the shorthand version we are probably adopting is ‘the tribunal’.

Senator HUMPHRIES—What does the tribunal do if it says to the person, ‘No, you can’t have Mr So-and-so appear as your lawyer’? Is it customary to adjourn proceedings to allow the person to go away and find somebody else to represent him or prepare the case himself?

Mr Nassios—It is going to be difficult for me to answer. I do not know if there is a general course of action they would adopt. Again, looking at the particular section in the act where you would determine that a paid agent or lawyer was not necessary—which is section 596(2)—it talks about issues where it would be unfair not to grant permission. There are reasons that the tribunal needs to take into account in determining why you are going to say no to a particular paid agent. Some of those grounds may very well answer your question. If they do not answer your question then, yes, the possibility of adjourning the proceedings is

available to the member. Again, I am not going to be able to come up with a general course of action for you. I would be just speculating.

Senator HUMPHRIES—I am surprised there is not some means whereby a litigant cannot find out before they commit to the cost of briefing a lawyer and the lawyer appearing, because he is still going to get paid for the appearance in the tribunal that day. So there would be some mechanism that FWA has introduced to allow a ruling on that to be made well before the first day of a proceedings when the lawyer rocks up and expects to put his client's case. Would the tribunal consider some mechanism to prevent people incurring the cost of hiring lawyers when that will be a futile exercise, such as by giving advice in advance on whether it is likely that an appearance will be permitted by the tribunal?

CHAIR—That really goes to a policy decision and it is not a question I think representatives from Fair Work Australia can answer.

Senator HUMPHRIES—I would argue it is more a practice matter. It is a matter of what practice the tribunal develops to deal with the way in which parties come before it and are dealt with. They have got to put out practice notes about how people deal with matters before the tribunal.

Senator CAMERON—Or rules.

Senator HUMPHRIES—That is right. They make their own rules, presumably.

Senator FISHER—They do. I have a copy.

Senator HUMPHRIES—Are you prepared to at least consider that? Obviously at least one person that we know of has incurred the expense of retaining a lawyer, had the lawyer appear at the first day of the hearings and has been told to go away, that he cannot use the lawyer. This person, or this company, presumably has lost some sum of money by retaining a lawyer futilely.

Senator Arbib—This is one example, Senator Humphries; is that right?

Senator HUMPHRIES—It is the only one that anyone seems to know about. You seemed to suggest, Mr Nassios, that there could be other examples of which you are not aware.

Senator Arbib—But there is only one example that you know of.

Senator HUMPHRIES—That I know of at this point, yes.

Senator Arbib—I am just making that point, okay.

Mr Lee—We can take that on notice, Senator. It would require an examination of the practicalities of that type of arrangement. I would refer to what Mr Nassios said, though, in particular the query as to the extent to which there have been changes in this part of the act. On my reading of it also it is something that has been in place for a very long time—this particular provision—and has stood the test of time. But I am happy to take that on notice.

Senator HUMPHRIES—Okay. I am aware of some individuals who have conscientious objections to belonging to organisations, whether they are organisations of employers or employees, who choose not to be, for a variety of reasons, members of collective kinds of organisations. They do not really have anywhere to go in these circumstances, do they, except to become amateur lawyers themselves and run their own cases, if they need to, before the

tribunal. You have no mechanism to allow for someone to use a conscientious objection to belonging to organisations in order to—

Mr Lee—That might be a matter that they would raise in the proceedings in advance in support of their argument as to why they needed to have representation, perhaps. Again, as Mr Nassios said, these cases are determined in terms of rights to appear on a case-by-case basis with commission members making decisions on the merits of the positions that are put immediately before them.

Senator Arbib—You are getting into a policy area here now, I think, Senator, in terms of the way the act is interpreted and constructed. So I think that may be a question, again, that you would want to refer to departmental officials this afternoon.

Senator HUMPHRIES—Okay. Those are the questions that I have about lawyers' rights to appear. We can move on to something else.

Senator FISHER—Gentlemen, given that this is essentially the first estimates since the commencement of Fair Work Australia, I would welcome a bit of an exposition from you about how you see your role in terms of the administration of an organisation in the course of the expenditure of public funds, which is, of course, in large part the role of estimates committees. So I would welcome an exposition from each of you about what you see as your roles and functions in that regard so that we can then proceed to establish the basis upon which we are able to ask you questions about exactly that.

Senator Arbib—Senator, their role is obvious in terms of the legislation—the Fair Work Act. Do they need to pull out the act to inform you what their role is, because I am sure you know that.

Senator FISHER—Mr Nassios, can you summarise for the committee your operational role, please?

Mr Nassios—Yes, certainly. Currently, until Monday, when I am having a colleague join me, I have responsibility for what is called the tribunal services, which traditionally was our former registry—the administrative support that we provide. I also have responsibility for the organisations, in other words, the regulation of trade unions and registered employer bodies. That is my role. Until Monday, I also have procedural responsibility for unfair dismissals and agreements.

Senator FISHER—And how does that change on Monday?

Mr Nassios—My colleague will come in and be responsible for the unfair dismissals area.

Senator FISHER—And what is the position of that colleague?

Mr Nassios—Director of unfair dismissals and disagreements.

Senator FISHER—Are you aware of the extent to which your operational responsibilities assume what were the comparable operational facilities of the industrial registry under the Workplace Relations Act?

Mr Nassios—I am not sure exactly what you are asking me but I am, in large part, doing what I used to do, but I do not know if that is answering your question.

Senator FISHER—It is. The extent to which you are doing something different from what you used to do in your capacity as a very professional officer of the industrial registry: how is it different?

Mr Nassios—As Mr Lee said, we have certainly got the agreements, which was a function that was around three or four years ago and then went to the Workplace Authority, and that function of approving agreements has come back. In terms of numbers, that is the largest change that will have occurred. There are certainly some other areas of the legislation which are potentially new to us. In fact, in terms of good faith bargaining, good faith bargaining was around, from my recollection, about 10 or 12 years ago. So in some respects it is a function that has come back.

Senator FISHER—How does that impact on you in an operational way—that new aspect?

Mr Nassios—To the extent that I need to provide an administrative support to a member then I am required to do so, and the more lodgements, the more I need a person to input the data into our case management system and from that point on go to the end of the process, where the outcome and output is presented on the internet and other mechanisms, or other—

Senator FISHER—Thank you. Are there any other significant new areas?

Mr Nassios—Certainly not at this stage, no.

Senator FISHER—Thank you. Mr Lee, of course, your position as general manager is new. Can you summarise for the committee your operational and financial obligations and functions?

Mr Lee—It is clearly spelt out in section 657 of the legislation. My functions and powers are to assist the president in ensuring that FWA performs its functions and exercises its powers. I also have the following functions: any function conferred on me by a Fair Work instrument or by a law of the Commonwealth, and there is a general power ‘to do all things necessary or convenient to be done for the purpose of performing his or her functions’. So I operate, Senator, in that capacity. As the general manager of the organisation I also have responsibilities under the Public Administration Act. I convene the executive of the organisation and ensure that there is a proper governance of the organisation in terms of its decisions that it makes and, obviously, confer regularly with the president.

Senator FISHER—Do you have an organisational chart?

Mr Lee—Yes.

Senator FISHER—That you could perhaps provide the committee with a copy of? Have you got copies today?

Mr Lee—No, I do not have some with me today, but I am happy to provide that. There is an interim structure that was put in place by a task force that wrapped up its work around 1 July and we are still operating under that interim structure at this stage.

Senator FISHER—Okay.

Mr Lee—But I am happy to provide that.

Senator FISHER—Thank you—on notice, that would be good. You have referred properly to section 657 of the act. Section 657(1) talks about you assisting the president in ensuring that Fair Work Australia performs its functions and powers.

Mr Lee—Yes.

Senator FISHER—Has your role in assisting the president been the subject of any formal direction?

Mr Lee—From the president?

Senator FISHER—Perhaps, or in any other way.

Mr Lee—I think the answer to that is no.

Senator FISHER—Okay.

Mr Lee—So far as I am aware.

Senator FISHER—Thank you. In respect of section 653 of the act, which gives you some specific responsibilities—

Mr Lee—Yes.

Senator FISHER—In terms of reviewing the developments in enterprise agreements, researching individual flexibility arrangements, researching the national employment standards et cetera, what progress have you made thus far in your performance of those functions?

Mr Lee—To date I have had discussions with the person who, at this stage, leads the now titled Minimum Wage Branch but has a broader research role. We have talked about the sorts of information that we would need to obtain in order to fulfil my obligations, remembering that under the terms of section 653 I am required to provide a report at least within six months of the end of a three-year period. Notwithstanding that, I am taking early steps to make sure that we are in a position to collect that information.

Senator Arbib—I was going to say that it is only very early days. You started at the end of July.

Mr Lee—Yes.

Senator FISHER—Indeed, that is why I said what progress—

Mr Lee—So the answer is that we have already explored the two key areas in any research task: the methodology that we might employ and what existing datasets we could access and what others would we need to be created.

Senator FISHER—Have you finalised any of that methodology?

Mr Lee—Not at this stage.

Senator FISHER—To the extent that you have documented that methodology, is that information you can share with the committee?

Mr Lee—It is not documented at this stage. As I have described, it has been discussions between me and my fellow executive.

Senator FISHER—How would you describe the president's administrative responsibilities under the act? How would you summarise them for the committee?

Mr Lee—There is a particular section of the act that outlines the responsibilities of the president. Section 581 outlines the functions of the president. It states:

The President is responsible for ensuring that FWA performs its functions and exercises its powers in a manner that:

(a) is efficient; and

(b) adequately serves the needs of employers and employees throughout Australia.

Section 582, as you would be aware, describes various directions that the president may give and to whom he may give those directions.

Senator FISHER—How does section 577 arguably dovetail into the president's responsibilities, given that section 577 talks more specifically about the powers and functions of Fair Work Australia itself in terms of delivering outcomes that are just, equitable, expeditious, in the interests of harmonisation and cooperative workplace relationships and open and transparent? How do those dovetail into the president's operational and administrative responsibilities?

Mr Lee—I see those principles applying to FWA as a whole. It dovetails in terms of what the president is required to consider when he decides how to conduct the business of the organisation. They are indeed principles that I must also apply.

Senator FISHER—Have you had discussions with the president to that effect?

Mr Lee—As the organisation moves forward, it sometimes makes decisions on a day-to-day basis about what it is going to do, as does any organisation. These principles form part of the framework for referencing decisions which we might make about which way we might go on a particular issue. If there was a choice between doing something which was going to slow the organisation down or make it quicker and more informal, we would go the quicker and more informal road, subject to the usual considerations of cost and practicality.

Senator FISHER—Does that mean you have discussed and agreed with the president that section 577 and the criteria laid out therein form a key component of his performance of his functions and your performance of your functions under the act?

Mr Lee—I cannot say that we have had that specific discussion. Not surprisingly, I am well aware of the obligations on me under the act, as is the president. Again, I can only repeat that those considerations are a backdrop to any discussion we have about what we might do in terms of decisions that affect the organisation's performance.

Senator FISHER—Are you also well aware of the president's obligations under the act? I notice you are looking at the act there.

Mr Lee—We were just talking about the functions of the president in section 581.

Senator FISHER—It is part of your job to assist him. Can you comment on how the legislative and operational responsibilities of the president, in particular under section 581, compare with his operational responsibilities under the Workplace Relations Act as president of the Australian Industrial Relations Commission?

Mr Lee—Not really. I have come into the organisation as the new general manager. I am operating under the new legislation, so it is not something that I have really considered. I am sure, to the extent that would be able to be ascertained by reference to the previous legislation and the new legislation, the department that was involved in crafting the legislation would be able to assist with that.

Senator FISHER—Do you see that a compare and contrast between what will soon have been versus what will be is relevant in any way to the process from 1 July under the Fair Work Act?

Senator Arbib—Are you asking Mr Lee to compare now to the past?

Senator FISHER—No. I am asking Mr Lee whether he thinks a comparison is relevant in any way between what used to have been and what will now be, in an operational and financial context with Fair Work Australia under the Fair Work Act as from 1 July. Is there any relevance in making that comparison?

CHAIR—In a financial context?

Senator FISHER—In a financial and operational context—in an estimates context, in other words.

Senator Arbib—So are you asking this in relation to estimates. So it is a bit easier to answer the question, what is the point that you are trying to make?

Senator FISHER—I am simply asking the question—

CHAIR—I think you need to ask it again. It seemed to change with clarification. Ask the question again, because we actually need to understand it if we expect people to answer it.

Senator Arbib—I was just going to say that Mr Lee has not attended estimates before, so I assume it would be impossible for him to make a judgment, given he has not seen these proceedings and how they took place prior to Fair Work Australia.

Senator FISHER—Having attended estimates is not necessarily a requirement to answer that question. It may be helpful if one was working as part of the workplace relations fabric at the time, but—

Senator Arbib—You asked in relation to estimates.

Senator FISHER—I am sure Mr Lee can answer my question.

CHAIR—I do not think he can, because I do not understand it. Ask the question again and if we can understand we will try to make sure you get an answer.

Senator FISHER—Is it relevant in an estimates context what used to be the requirements in an operational and financial sense under the Workplace Relations Act versus what are arguably now the requirements under the Fair Work Act?

Senator Arbib—If you are asking in relation to estimates, I do not think Mr Lee is in a position to make that judgment. He has not witnessed estimates or been a participant in estimates prior to this hearing. It is an impossible question to answer.

Senator FISHER—Therefore it must be irrelevant, because if Mr Lee does not need that knowledge to assist us today in estimates as we go forward then I presume, at the very least, he thinks it was not relevant; otherwise he would need to know it and have a view.

Senator Arbib—You are asking him to make a judgement on which he can make no judgement. He was not at a previous estimates hearing. He has no experience at it, Senator.

Senator FISHER—We will move on. Mr Lee, I have some more questions on what you have properly described as the functions of the president under section 581. How does the president satisfy himself that Fair Work Australia is performing its functions in a manner that is sufficient and adequately serving the needs of employers and employees throughout Australia? Do you want me to ask that question again since you were conferring?

Mr Lee—Yes, please, Senator.

Senator FISHER—In terms of section 581 and the president's obligations thereunder, how does the president satisfy himself that Fair Work Australia is performing its functions in a manner that is efficient and adequately serving the needs of employers and employees throughout Australia?

Mr Lee—The answer to that is through the governance structure that we have in the organisation. As I said, I regularly meet with the president and discuss with him decisions and recommendations that the executive have reached as to things that we might do, whether it was to buy some more computer equipment or whatever it might be. The president also receives minutes of our executive meetings. It is through that process that the president is in a position to continue to work with me in guiding the organisation to fulfil its obligations in that regard.

Senator FISHER—So he regularly meets with you?

Mr Lee—Yes.

Senator FISHER—Not with the executive? He regularly meets with you?

Mr Lee—Yes.

Senator FISHER—And he gets minutes of the meetings of the executive?

Mr Lee—Yes.

Senator FISHER—And in your view that is what the president does to satisfy himself that Fair Work Australia is performing its functions and exercising its powers in a manner that is sufficient and adequately serves the needs of employers and employees throughout Australia?

Mr Lee—No, that is not what I was saying.

Senator FISHER—Is there something else, then?

Mr Lee—I misunderstood your question. In terms of the governance structure, that is part of how it operates.

Senator FISHER—I did ask you how he satisfies himself. That was my question.

Mr Lee—He would satisfy himself by speaking to me about the particular performance of the organisation, by examining the various reports and statistics that are collected in terms of how the organisation is performing in terms of its speed of delivery, its customer contact, its

web service—all of those sorts of areas—and provide direction as needed as to changes or concerns that he has about whether or not his obligations are being met.

Senator FISHER—Do you provide the president as a matter of course with copies of reports and statistics and the sort of information to which you just referred?

Mr Lee—Yes.

Senator FISHER—Are you able to provide the committee with a sample of the sorts of reports and information that you provide to the president in that course?

Senator Arbib—How is that relevant, Senator?

Senator FISHER—Because it relates to the criteria used for the president to determine whether Fair Work Australia discharges its financial and operational obligations and the extent that he uses that—and Mr Lee has said he does—to satisfy himself that he is satisfying his functions under section 581.

Mr Lee—I would have to take that on notice, Senator, because of the practicalities of that.

Senator FISHER—And I have asked for a sample.

Mr Lee—Yes.

Senator FISHER—Let us hope the prognosis is good, then, Senator Bilyk. Does the president, as part of this process of satisfying himself that he is performing his obligations under section 581, refer to feedback from stakeholders? You talked about some website reports and statistics. Does he take into account views of stakeholders outside Fair Work Australia?

Mr Lee—Yes, he would.

Senator FISHER—He would or he does?

Mr Lee—He does, sorry; I correct that.

Senator FISHER—And what sorts of stakeholders? Who? How often? What sort of feedback?

Mr Lee—It is broad ranging. The president engages with stakeholders—

Senator FISHER—How?

Mr Lee—Well, he conducts hearings, and stakeholders are present at those and I am sure express their views—

Senator FISHER—Are those hearings only on the public record, or are there other sorts of hearings that you would suggest he might be seeking views from stakeholders on? Are you suggesting that he engages with stakeholders through formal proceedings before Fair Work Australia?

Mr Lee—Well—

Senator FISHER—That may be part of it, but is that the end of it?

CHAIR—Senator, just ask a question and wait for the answer.

Mr Lee—That would be one mechanism. As to others, if you are asking if there are any other formal mechanisms that the president engages in, I would have to take that on notice.

Senator FISHER—Why would you have to take that on notice?

CHAIR—The question has been taken on notice.

Senator FISHER—What about informal consultation with stakeholders? Is the president engaging in that in order to satisfy himself—

Senator Arbib—You have already asked the question, Senator. You are just asking it in another fashion and Mr Lee has already taken it on notice.

Senator FISHER—Well, the president has informed this committee that Mr Lee is an appropriate person to answer questions about the discharge of operational responsibilities in an estimates context. The president has informed this committee that Mr Lee is an appropriate person to inform the committee about the discharge effectively of his obligations under section 581. I am asking about those and I am wanting to know why Mr Lee is not able to answer some of these questions and is preferring to put them on notice.

CHAIR—Taking a question on notice is not not answering it.

Senator FISHER—He may have—

CHAIR—I do not want you to misrepresent—

Senator FISHER—I would like to hear his reason. I am entitled to ask his reason for taking the question on notice, Chair.

Senator Arbib—I assume so he can get the information to you and make sure it is correct, Senator.

Senator FISHER—Well, why don't we hear from Mr Lee?

Mr Lee—I cannot speak in terms of who and when with clarity here today as to stakeholder engagement the president engages in. If the president states to me that he had a concern about some part of our operation that a stakeholder had raised, I do not necessarily know whether he ascertained that information informally or formally. So that is really the issue, Senator.

Senator Arbib—Chair, the question has been taken on notice. She can ask it as many ways as she wants, but it is the same question and it has been taken on notice.

CHAIR—This is common practice in estimates, as I am sure you well know, to ensure that complete, fulsome answers are given.

Senator FISHER—Mr Lee has just said that he does not know whether the president satisfies himself formally or informally—

CHAIR—No, I am not sure that is what he said.

Senator Arbib—Mr Lee said he is taking your question on notice and will get an answer to the committee.

Senator FISHER—Did I get that wrong, Mr Lee?

Mr Lee—Yes, you did.

Senator FISHER—Can you restate what you said? I am sorry.

Mr Lee—In reference to a particular example where I might be told by the president about a particular stakeholder view, all I am saying is that I would not necessarily know that that stakeholder view had been ascertained at a formal meeting or at an informal meeting. That is all I am saying.

Senator FISHER—All right; thank you. I gather from what you said earlier that the president has had regard to the provisions of section 577 in satisfying himself that he is performing his functions under section 580. Can you confirm that the president has had regard to the provisions of section 577 in satisfying himself that he is performing his functions under section 581?

Mr Lee—In my 10 weeks in the organisation I have had no reason to believe that he is doing anything other than that.

Senator FISHER—Can you confirm that he will continue to do that?

Mr Lee—I cannot confirm what any individual will do in the future.

Senator FISHER—I am struggling, because the president is not here to reassure this committee about how he is going to satisfy himself that he is performing his operational responsibilities under the act. He has informed this committee that, in his view, you will be well placed to answer those questions about his administrative role, so I am attempting to get some answers to those questions.

CHAIR—Let me make it clear: it is the position which the committee has accepted.

Senator FISHER—Indeed the committee has—

Senator Arbib—Senator Fisher, if you have any examples you want to raise about the role of the president, then please let us know and we can answer the questions. But at the moment you are asking hypothetical questions about the future and I do not think Mr Lee should have to answer those.

Senator FISHER—Indeed the committee has acted, as the Chair just indicated, but advice from the Clerk of the Senate indicates the fact that Mr Lee may well be an appropriate person to answer questions about the operation of Fair Work Australia. That does not detract from the committee's ability to require the president to attend before the committee and answer questions about the administrative discharge of his functions under section 581.

CHAIR—That is just such bad faith, Senator Fisher—such bad faith—in terms of the discussion we have had previously, and I must say I am not surprised.

Senator FISHER—I do not understand, Chair. We have tabled advice from the Clerk which is to that effect.

CHAIR—It is common practice for senior officers—heads of departments—to have to take questions on notice in order to ensure that all of the facts are correct and that the answers are full and complete. That is normal practice, and that is what has happened. For you to somehow try to suggest that that is an action that would not happen if someone else may have been here when the committee has accepted and Mr Tim Lee has been responsive to all of your questions is just a blatant misrepresentation of what has happened today.

Senator FISHER—Thank you, Chair. How is the president measuring his satisfaction that he is achieving the outcomes set out in section 581?

Mr Lee—The organisation obviously looks to measure a range of things, and I mentioned some of them earlier—the speed at which we process agreements, for example, and our turnaround times on a range of things. Like any organisation, there are indicators of what we are doing in terms of performance and that would be, I guess in a formal sense, one of the primary means by which we are able to test our health in terms of how we are performing.

Senator FISHER—Are there key performance indicators for each and every component of the president's obligations under section 581? Is that how the president measures whether or not he is achieving the outcomes set out under section 581?

Mr Lee—Section 581 talks about FWA being efficient and adequately serving the needs of employers and employees throughout Australia. In that context we are looking at making sure that we have that customer service focus, so we are looking at measuring those types of things that I talked about in terms of speed of service delivery—that is, that when people ring up our phone centre they are dealt with appropriately and get the information that they are looking for.

Senator Arbib—Senator Fisher, do you have any examples of Fair Work Australia not performing its operations?

Senator FISHER—It is early days, Minister, so I am asking the basis upon which they are assessing that. The short answer is no.

Senator Arbib—I am just checking if you have received any complaints or if there are any issues or examples that you would like to raise so that we can answer those issues for you.

Senator FISHER—No, not that I intend to raise today.

Senator Arbib—But you have not received any?

Senator FISHER—What I am trying to explore is the criteria and the measurement mechanisms. So far Mr Lee has been able to talk about the speed of the telephone service.

Mr Lee—No, it has been an agreement process.

Senator Arbib—But Mr Lee has also said—

Senator FISHER—Sorry, but I am not sure that *Hansard* got that further comment.

Senator Arbib—Mr Lee has also said, Senator, that in terms of the research et cetera that he will be undertaking it is only very early days and the methodology is still being worked out. Until that sort of work is completed and put into place, then really a lot of the questions you are asking will not get the answers you are seeking.

Senator FISHER—That work was talked about in answer to my question of Mr Lee about his discharge of his responsibilities. I am asking Mr Lee about the president's satisfaction that the president himself is satisfactorily discharging his operational obligations under section 581. That is what I am asking Mr Lee about now.

Senator Arbib—I accept that, and Mr Lee has been answering that.

Senator FISHER—And thus far I have heard about the speed of telephone servicing. What else—

Senator Arbib—That is pretty important, Senator, in terms of the use of phones and ensuring that customers are getting the service they require. It is a pretty important KPI, as you would say.

Senator FISHER—Indeed. Is there more?

Mr Lee—As the minister alluded to just a moment ago, it is early days and it will be one of those areas where we will be looking to ensure that we are in a good position to measure what needs to be measured to ensure that we are able to be satisfied across those broad range of areas.

Senator FISHER—So will there be KPIs developed relevant to measuring 581(a) and 581(b)?

Mr Lee—I would say that any KPIs that we develop will be consistent with those, yes.

Senator FISHER—You would say that?

Mr Lee—Yes.

Senator FISHER—What about the particular limbs of section 577(a) to (d) which you have earlier said are taken into account by the president in discharging his responsibilities? Will there be KPIs developed in respect of each of those limbs that assist the president in satisfying himself whether he is satisfactorily discharging his obligations under section 581?

Senator Arbib—We are going to have a KPI on fair and just: Work Choices unfair, Fair Work Australia fair. There is a pretty good KPI for you.

Senator FISHER—Sorry, Mr Lee, but yes or no?

Mr Lee—I cannot say at this stage that there will be a KPI on fair and just. I am trying to be responsive but—

Senator FISHER—Yes, you are. I am trying to find out how these things proposed are being measured by the president in the discharge of his operational responsibilities. I appreciate it is early days so you may well say: ‘It is work in progress. This is where we are headed.’ I am not necessarily wedded to a KPI, but I am asking you what is the measurement method that is being used or is proposed to be used to ensure the performance of obligations under sections 581 and 577? You tell me.

Mr Lee—I am happy to take on notice the issue in terms of the two parts to that: what is being used and what may be used in the future. In terms of what may be used in the future, that is not finally determined as it is early days. I am happy to provide information subsequently as to what we are currently using.

Senator FISHER—All right; thank you. Has the president discussed his functions under section 581 and 577 with the minister’s office at any stage since 1 July?

Mr Lee—I cannot—

Senator Arbib—Why don’t we take that on notice for you, Senator. We will try to get you an answer on that.

Senator FISHER—Thank you. In terms of the directions that the president is able to give under section 582 of the act, how many directions has he given since 1 July, if any?

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

Senator FISHER—Has he given any?

Senator Arbib—Senator, the question has been taken on notice and we will provide you with that information.

Senator FISHER—My second question is: has the president given any directions under section 582 since 1 July? Can you answer that, Mr Lee?

Senator Arbib—The question is how many and the answer is we will take it on notice, so we will provide the committee with that information.

CHAIR—Move on, Senator Fisher.

Senator FISHER—What is the criteria to be used by the president in determining whether to issue directions under section 582? It is a question of process.

Mr Lee—I am not sure I can assist you, Senator, beyond what is in the act. It provides the basis upon which the president may give directions that are general or of a particular matter. It certainly reads to me as providing a basis upon whom the directions can be given to.

Senator FISHER—To you, yes.

Mr Lee—Yes. Also to members of FWA, to a full bench or to the minimum wage panel.

Senator FISHER—Indeed, it specifies ‘to whom’ so against what criteria and on what basis has the president decided that he will issue directions to one or more of those entities identified in—

Mr Lee—That relates to the earlier question that I have taken on notice and I guess in that sense I would have to do the same, Senator, as to whether or not the president has given a direction—or, ‘How many directions he has given?’ was the question that you asked me.

Senator FISHER—My question now is: based on what criteria has the president decided he will issue directions or not?

Senator Arbib—As Mr Lee said, you have now crossed into your previous question, which Mr Lee has taken on notice.

Senator FISHER—Why do you need to take the second aspect on notice, Mr Lee?

Senator Arbib—Because you have now tied together criteria with a direction decision and we have already taken the question in terms of whether there has been a decision and how many on notice.

Senator FISHER—I have not so tied. My question is: upon what criteria does the president decide to issue any direction?

Senator Arbib—That is a different question to what you just asked, Senator. You tied those issues together and Mr Lee has appropriately answered the question.

Senator FISHER—So let us take a new question. Upon what criteria has the president decided he will issue directions under section 581 in—

Senator Arbib—Mr Lee has already answered that question.

Senator FISHER—And the answer is?

Senator Arbib—You asked that three questions ago and Mr Lee answered it.

Senator FISHER—And the answer is?

Mr Lee—I am not aware of any criteria.

Senator FISHER—Does that mean there are not any criteria used by the president in deciding whether to issue directions under section 582?

Mr Lee—No, it does not, but that is why I wanted to take it on notice, Senator.

Senator FISHER—Who would be aware of whether there are any criteria?

CHAIR—It has been taken on notice, Senator.

Senator Arbib—Senator, we are very happy to get back to you with an answer and that is why Mr Lee has taken it on notice. We will do everything we can to assist you with the issue raised.

Senator FISHER—Okay, thank you. Does the president consult with others before deciding whether to issue a direction under section 582?

Senator Arbib—Again, the question of whether there has been a direction or not has been taken on notice, Chair. It is impossible to answer the question, because Mr Lee has been not able to ascertain there has been a direction.

Senator FISHER—Irrespective of whether the president has already exercised his powers under section 582, does the president consult with others before issuing a direction under section 582? Irrespective of whether directions have been issued thus far under section 582, has the president decided that he does and will consult with others before issuing a direction under section 582?

Mr Lee—Again, I will have to take that on notice, Senator.

Senator FISHER—Please take on notice as well: if so, with whom does he propose to consult and why? Section 582(4) enumerates the sorts of directions he might make, for example, modern awards in relation to annual wage reviews, the conduct of full benches and a direction about the transfer between Fair Work Australia members of matters being dealt with by Fair Work Australia. Does the president believe that the matters enumerated in that subsection make adequate provision for the sorts of directions necessary for him to carry out his functions under section 581, noting that that is an inclusive criteria—not exclusive or limiting? Does the president believe that provision is adequate to enable him to make the sorts of directions necessary for him to carry out his functions under section 581?

Mr Lee—Yes, Senator.

Senator CAMERON—A point of order. The president, as I understand it, operates under a statute and operates under legislation. Whether the president thinks there is enough—

Senator FISHER—We cannot ask the president because he is not here.

Senator CAMERON—It is a point of order.

Senator FISHER—The president has said that Mr Lee—

Senator CAMERON—Whether the president is here or not, the president operates under the law and my point of order is that it is irrelevant as to what the president thinks in relation to the act that he is administering.

CHAIR—Unfortunately there is no point of order. If there was a point of order of relevance or irrelevance in the Senate estimates, I would have been able to pull up Senator Fisher a long time ago.

Senator Arbib—Even Senator Fisher is laughing at that one.

Senator FISHER—Boom, boom! Mr Lee?

Mr Lee—I note that 582(4) starts with the words ‘without limiting subsection (2)’, which is the general power. Then I would think the president would be entitled to assume that the power was broad enough.

Senator FISHER—Thank you. Has the president issued a direction to you or another officer of Fair Work Australia since July?

Mr Lee—You asked me that question earlier, Senator, and I said no, he has not issued a direction to me.

Senator FISHER—I asked you in respect of your function to assist, and this may or may not be the same—I am trying to explore that—but you are saying, are you, that he has not issued you with a direction under section 582?

Mr Lee—That is right.

Senator FISHER—Thank you. When you answer on notice the question about how many directions have been issued since 1 July, if any, if you could also answer on notice to whom those directions have been issued, when and on what basis? Can you also specifically enumerate, if it is not clear from the answer, which of those directions relate to the president’s powers under section 582(2) (a) to (d)—in other words, which of the directions are specifically for a Fair Work Australia member, a full bench, a minimum wage panel; and you have said you ain’t got one yet, you being the fourth category? Thank you. With the provision in the act in relation to cooperation with prescribed state industrial authorities, how does the president propose to meet the criteria set out in section 582 and the note thereunder that says:

The President must perform his or her own functions and exercise his or her own powers in a manner that facilitates cooperation with prescribed State industrial authorities ...

How does the president propose to meet that requirement?

Mr Lee—I refer to section 649, which details, ‘President to cooperate with prescribed State industrial authorities’. It repeats that provision to which you refer, Senator, and then makes reference to, without limiting that subsection, things that the president may do. I would have to take on notice the extent or otherwise to which those types of actions have been taken.

Senator FISHER—What discussions has the president had with prescribed state industrial authorities since July in the furtherance of the obligation to which you have referred under section 649?

Senator Arbib—We just took that on notice.

Senator FISHER—Why?

CHAIR—To ensure that the information provided to you is accurate and fulsome and complete. Have you got any other questions, Senator Fisher?

Senator FISHER—Yes, Chair.

CHAIR—All right. ‘What did the president have for lunch?’

Senator FISHER—Actually, is the president attending to judicial events today? He told the committee that is what he would be doing yesterday and today.

CHAIR—No, he has not told the committee that at all, and I would ask you not to misrepresent the president at all. The president has not said that to the committee.

Senator Arbib—Actually, my understanding is that the committee accepted the president was not going to be here today.

CHAIR—Absolutely.

Senator Arbib—So I am astounded—

Senator FISHER—Yes, you did—

Senator Arbib—If Senator Fisher continues on this ‘trying to send the president a message’ campaign, I think we have all got the message.

CHAIR—While we are on that, Senator Fisher tabled earlier in the day some advice from the Clerk. I want to make it quite clear: in the second paragraph of that advice, the Clerk indicates that the president refused a request of the committee to attend. That is absolutely incorrect. Maybe the Clerk based that on bad-faith advice from Senator Fisher, who has given that advice to him, or may have been misled or maybe he has just misconstrued the information in front of him, but I want to make it very clear that the president did not refuse a request of the committee to attend. Indeed, the committee has made it clear that Mr Tim Lee is the appropriate person to answer questions in this estimates. It is true that Senator Fisher has expressed a different point of view from that and may take that up, but she ought not misrepresent the president or the facts in this Senate estimates hearings. Do you have any more questions?

Senator FISHER—Chair, if I may clarify the record? If you look at the dates of respective correspondence, you will be able to note that the advice that was sought from the Clerk and provided to me by the Clerk was done prior to the committee communicating, as you have just outlined, with the president. So my advice was sought from the Clerk and the Clerk provided it at a point in time based on correspondence and communication that appeared to be accurate as far as the record was concerned at the time I sought the advice and at the time the Clerk provided it and then there has been subsequent correspondence.

CHAIR—Let me say that I am staggered, then, that you would then table advice which is out of date and is not based on accurate information. I really think that is bad faith to the Senate and to this committee.

Senator FISHER—The advice stands, Chair, and it is not out of date in terms of its substance.

CHAIR—That is what you say.

Senator FISHER—You are informing the committee now, as these proceedings unfold, of particular views by particular people about particular things of which we have not necessarily been apprised up until now. So the advice stands on its own feet.

Senator Arbib—Can I just say that we have now been going with Senator Fisher's questions for almost an hour and she has raised not one problem, not one complaint, not one issue with the operation of Fair Work Australia.

Senator FISHER—I am happy to have a rest. I will be back.

CHAIR—But we have not got to the president's dietary requirements or what time he gets up, or what brand of toothpaste he uses.

Senator Arbib—Can I thank Senator Humphries for finally pulling her into line and let us move on, please.

CHAIR—All right, then.

Senator HUMPHRIES—It is not my job to tell a senator what to do.

Senator FISHER—No, and he would not dare try.

CHAIR—Some advice might not go astray, though.

Senator CAMERON—It is not a party room you are in here, so do not—

CHAIR—Senator Humphries, do you have some questions?

Senator FISHER—I am having a party, though.

Senator HUMPHRIES—Yes, I do.

CHAIR—I am happy to go back to other senators.

Senator HUMPHRIES—I hate to intrude on ladies, but if you do not mind, Senator, I would be happy to do that. Can I ask about flexibility clauses in agreements, please? I understand that it is a requirement of the act that there be a model flexibility clause in agreements that are approved by the tribunal, although those clauses can be varied by negotiation between the parties; is that the case?

Mr Nassios—Yes.

Senator HUMPHRIES—First of all, how many agreements have been approved since the start of FWA?

Mr Lee—I will defer to Mr Nassios on this one.

Mr Nassios—Just bear with me a second. There have been 213 up to 30 September.

Senator HUMPHRIES—Okay. Can you give us some idea of what proportion of those contain the model flexibility clause and what proportion contain varied or modified flexibility clauses?

Mr Nassios—I cannot do that at the moment. That is part of the exercise that Mr Lee was talking about in terms of us trying to come up with a methodology to try to come up with that information for the purposes of report. But I certainly could not provide that at the moment.

Senator HUMPHRIES—Sorry, are you saying that you need to take that on notice or that you simply do not have the information?

Mr Nassios—We are trying to come up with a methodology whereby that information will be available not only to the Senate but also to ourselves. At the moment, that information is simply in the agreements. We are not in any way tracking it.

Senator HUMPHRIES—Okay. But you are saying that at a future estimates hearing we may well be able to get that information, if your process is successful?

Mr Nassios—That is certainly my hope, yes.

Senator HUMPHRIES—Right. Can you give us any impression of whether your feeling is that most agreements are using the model flexibility clause or most are not using it?

Mr Nassios—I would be merely speculating; I have no idea.

Senator HUMPHRIES—Is my understanding correct that it is possible for industrial action to be taken if there is disagreement about the adoption of a flexibility clause? There can end up being industrial action over a disagreement on that question in relation to an industrial agreement?

Mr Nassios—I do not know the answer to that question, unfortunately.

Senator Arbib—It is probably a question you could get answered this afternoon from the department.

Senator HUMPHRIES—I think this issue was ventilated in a dispute involving Campbell's soup in Victoria recently. Are you aware of the circumstances of that particular dispute?

Mr Nassios—No.

Senator HUMPHRIES—I will have to ask the department about that. So you are not aware of any examples specifically of where the flexibility clause has been modified to change the level of flexibility in an agreement?

Mr Lee—Again, as Mr Nassios said, under the reporting requirements, that is my obligation under section 653, it is possible that it would be part of the methodology in terms of the things that I am required to look at—in particular, conducting research into the extent to which individual flexibility arrangements under modern awards and enterprise agreements are being agreed to and the content of those arrangements. So it fits within that framework.

Senator HUMPHRIES—I will ask the department about that later today. I turn to the approval of enterprise agreements by Fair Work Australia. I have asked you already about the approval of industrial agreements; I think that was the question I asked you previously and the answer was 213.

Mr Nassios—Correct.

Senator HUMPHRIES—Enterprise agreements—

Mr Nassios—I am sorry. I thought you were asking about enterprise agreements. So, to the extent that it is a different question, I was answering how many enterprise agreements were—

Senator HUMPHRIES—So it is 213 enterprise agreements?

Mr Nassios—Yes, my apologies.

Senator HUMPHRIES—How many agreements have you approved which are not enterprise agreements?

Mr Nassios—We would not have any other agreements at this stage. The only other agreements I can possibly think of would be the ones that are the pre-reform certified agreements that are being varied and extended. If you have some other agreements in mind, I am not sure what they would be.

Senator HUMPHRIES—Well, how many of those agreements that have been modified or extended—

Mr Nassios—I do not actually have figures for that. I could get those for you but I do not have them with me.

Senator HUMPHRIES—Can you take that on notice as well?

Mr Nassios—Yes.

Senator HUMPHRIES—Referring to the 213 enterprise agreements since 1 July this year, you have approved 213 but obviously others would have been submitted to you for approval which would not have been approved, because they failed to meet the requirements of the legislation?

Mr Nassios—Correct.

Senator HUMPHRIES—Can you tell me how many of those unapproved or rejected agreements there might have been?

Mr Nassios—As of 30 September there were two that were refused.

Senator HUMPHRIES—Two refused?

Mr Nassios—Yes.

Senator HUMPHRIES—That is a very high level of success. Does FWA shepherd or advise people about these things?

Mr Nassios—I can also tell you there were 661 actually lodged during the same period, so to the extent that you want to draw conclusions from that I invite you to do so. But I am not able to answer whether that is the case. I do not believe we are shepherding them through—if that is the purpose of the question.

Senator HUMPHRIES—Once an agreement is lodged and FWA picks up a problem which drives it outside the legislation, is it possible for the same agreement to be modified by the parties while it is still lodged with the tribunal, or does it have to withdraw it, change it and then lodge it again?

Mr Nassios—There is a capacity to approve it with undertakings. So the undertakings will fix up the particular problem. Of those 213, two of them have been approved with undertakings.

Senator HUMPHRIES—Under the terms of the legislation, a union does not have to be a party to an agreement for it to be lodged, does it?

Mr Nassios—Correct.

Senator HUMPHRIES—But I understand that FWA does have to notify the relevant union, whatever that is, if an agreement has been lodged in an area where that union has coverage.

Mr Nassios—The FWA puts the application itself onto our website. It does not actually inform anyone as such, but that notification gives an indication that an application has been received by a particular applicant, be that a union or an employer.

Senator HUMPHRIES—So FWA does not have to contact the relevant union and say, ‘There is an agreement lodged in the area in which you have coverage’?

Mr Nassios—That is correct. If the union wishes to be bound by the agreement or covered, it is required to give us notice that it wants to be covered by that agreement and it must do that prior to the approval.

Senator HUMPHRIES—So we have to assume that they will check the website to see if there are such agreements, in case they might want to buy in?

Mr Nassios—Correct.

Senator HUMPHRIES—Can you tell me how many agreements have been lodged out of those 661 where a union is not a party to the agreement?

Mr Nassios—If a union gives notice, that notice must appear within the body of the decision. Again, it is part of—

Senator HUMPHRIES—When you say ‘body of the decision’, do you mean body of the application?

Mr Nassios—The approval decision. So when FWA approves the—

Senator HUMPHRIES—No, I want to go back a step. The agreement is lodged—let us assume it is a non-union agreement—and you put a notice on the website to say that a non-union agreement has been lodged. That process may or may not draw in a union. Of the agreements that have been lodged, how many have been non-union agreements—as in, they do not involve the union as a party?

Mr Nassios—I could not answer that at the moment. It depends on how the application comes in. For example, it could very well be that it is an application that has been made by the employer but there is still some union involved and that is clear from the application. I do not have data to answer that question.

Senator HUMPHRIES—I just express some surprise. These are all issues that were ventilated quite heavily when the legislation was being debated. They were fairly controversial matters. We were told agreements could be lodged that were non-union agreements, but you cannot tell us how many non-union agreements have been lodged. You cannot tell us how many agreements contain model flexibility clauses. This is also a matter of some concern. You cannot tell us how many times people are appearing with lawyers and being refused the right to appear with lawyers. These are all issues that were strongly debated at the time of the legislation. I really would have thought, to be frank, that you would have been compiling statistics about these sorts of things because they were issues that were in the public domain and were very much argued about while the legislation was being debated.

Senator Arbib—Senator, it is very, very early days. We are talking about an organisation that is only a couple of months old.

Senator HUMPHRIES—But no-one is collecting the figures.

Senator Arbib—Let me finish: just because it was an issue that figured prominently in political debate does not mean there is a requirement on Fair Work Australia to actually provide you with data to support or not support your claims. Again, Mr Lee has talked about the work that he is doing in terms of methodology and research in the future, and other officials have answered that there is work being undertaken in many of these areas; but at the moment they are not in a position to answer these questions. It is extremely early days for this organisation, and so far not one member of the committee has put forward an example or a case of Fair Work Australia not undertaking its duties.

Senator HUMPHRIES—I put to you, Minister, that Fair Work Australia, frankly, ought to be able to tell the committee how many non-union agreements have been lodged. There is a requirement in the legislation to invite unions to become involved in an agreement that is lodged. That fact is triggered by the fact that an agreement is lodged and a union needs to be told about it. I am just astonished that that obligation to have a union notified—effectively by lodging it on a website—is not a matter that is being absorbed into the framework of FWA's administration.

Senator Arbib—I am very happy to pass that on to the Minister for Employment and Workplace Relations.

Senator HUMPHRIES—Okay. But you are saying that in this, as in other areas, it may be possible to get this information in the future, because you are getting around to collecting and collating that information. Is that what you are telling us?

Mr Nassios—The approval decision itself must indicate whether a union has sought to be covered by the agreement. So the actual information you are after will be contained within the decision. It is just that at the moment our methodology is not such that I am able to extract that without actually physically going through the 215 decisions.

Senator HUMPHRIES—So you know at the end of the process whether a union is a party?

Mr Nassios—Correct.

Senator HUMPHRIES—But you do not know at the beginning when the application is lodged whether a union is a party?

Mr Nassios—Because of its very nature, you are not necessarily going to know, in the sense that the union can give notice at any time, from the point an employer puts in an application until the actual approval. So you are not necessarily going to know it at the outset.

Senator HUMPHRIES—Surely you have to know by virtue of what is in the application itself. The application has to reveal whether it is an agreement that involves a union or not, doesn't it? Once you publish the application on the website, you cannot be sure that a union has not overlooked the fact that it is on the website. So at the end of the day you have to read the application to know whether or not it involves the union. Surely that has to be the process you use.

Mr Nassios—The application might make reference to a bargaining representative, which may well be a union, but it does not mean that the union actually wants to be covered by the agreement. I am suggesting that there is a strong correlation but it is not necessarily certain.

Senator HUMPHRIES—I understand that FWA may approve an agreement that does not satisfy the requirements in the Fair Work Act subject to accepting a written undertaking from the employer. This is what you referred to before.

Mr Nassios—Correct.

Senator HUMPHRIES—How many times has that happened?

Mr Nassios—Twice.

Senator HUMPHRIES—Is that the same two cases where you said the agreement had been refused?

Mr Nassios—No. They are different cases.

Senator HUMPHRIES—When the bill was introduced for Fair Work Australia, there was much said about how enterprise bargaining would improve productivity levels of workplaces. Have you got any mechanisms that would disclose to the committee how you measure or track improvements in productivity arising from the adoption of agreements approved by Fair Work Australia?

Mr Lee—That is not really in our remit. I think that would be a matter to take up with the department.

CHAIR—There is nothing wrong with asking whether Fair Work Australia does that, but I was not aware that it has ever done that. That is something the government department has always done. We will find out this afternoon whether it is continuing to do that.

Senator Arbib—If we get to the department.

Senator HUMPHRIES—Can you give any examples of agreements lodged that have clauses dealing with productivity measures specifically?

Mr Nassios—I would have to have someone look through the agreements. Certainly today I could not do it, and I could not lay my hands on any readily.

Senator Arbib—Senator Humphries, again, you should ask that question this afternoon, because someone from the department may have that information and make it available.

Senator HUMPHRIES—If Fair Work Australia, which is the agency approving these agreements, cannot point to anything that demonstrates any of the benefits which this process was supposed to be delivering—it was the government's commitment that this would deliver better productivity—then I hope the department can answer that question because, if it cannot, I will ask the question: who can answer it?

CHAIR—I think it is a fair point to make. But the previous government also used to claim that their system did some of these things.

Senator HUMPHRIES—That is no basis.

CHAIR—No, but I am saying that it was never the Industrial Relations Commission's, or now Fair Work Australia's, role to actually measure those things. That was a departmental

responsibility. So I was trying to make the point that who has done it in the past and who does it now is actually the department. The Australian Industrial Relations Commission and Fair Work Australia, as I understand it, are there to approve agreements or not according to the law. That is their job. They implement the law, not analyse and make decisions. That is a departmental policy.

Senator Arbib—I would say the chair is correct. You will have better luck this afternoon.

Senator HUMPHRIES—Would you expect that in the annual report for 2009-10, your first annual report, you would have any data or provide any information about how the work that you have done in approving enterprise agreements has contributed to better productivity of Australian workplaces?

Mr Lee—Again, I suspect probably not, because, as the chair pointed out, it is more the province of the department to examine what the outcomes of the policy framework they have put in place would be or have been.

CHAIR—We will break until 3.35 pm.

Proceedings suspended from 3.19 pm to 3.34 pm

CHAIR—The committee will resume with questions to Fair Work Australia.

Senator FISHER—Can you walk us through the process for dealing with unfair dismissal applications in terms of the telephone conciliation and the stages thereafter?

Mr Lee—I might ask Mr Nassios, the director of that area, to answer that question.

Mr Nassios—On receipt of the application we put the application into our case management system. We send the documentation off to the employer. As an internal process, if there is, shall we say, an issue with the application that appears to be a jurisdictional bar—for example, a person has not been employed for the requisite period of employment; the best example I can give of that is if a person has been there for less than six months then, whether it is a small business or not, they have not met the qualifying period—one of our staff, who will be referred to as a conciliator, will contact the individual and ask whether there is some further information they can provide as to whether that application should proceed.

Senator FISHER—Take it back a moment. Applications can be lodged by phone?

Mr Nassios—Correct.

Senator FISHER—And then they have to be followed up with the payment of a fee and a written application before it is taken any further? Is that how it works?

Mr Nassios—Correct.

Senator FISHER—Then automatically it is assigned to a conciliator who deals with it by phone, is it?

Mr Nassios—The initial step where it goes to a conciliator is in those circumstances where the application, as I have indicated, has some sort of potential jurisdictional problem. As I have said—

Senator FISHER—Or is out of time?

Mr Nassios—Not out of time. It is a matter for Fair Work Australia to determine whether that ought to be extended in terms of the legislation. That is certainly not something that a conciliator would look at. The obvious one is that the person has not been employed for at least six months. That is simply a jurisdictional bar. They will contact the applicant in that case and try to ascertain whether there may be a mistake in the application and it was a longer period or so on.

Senator FISHER—So telephone conciliators are effectively making those decisions and those determinations?

Mr Nassios—They are not determining, no. What they will do is bring to the applicant's attention that the legislation provides a certain period for qualification. It is a matter for the applicant to determine whether they wish to continue with the matter or in some way withdraw the matter. The conciliator makes absolutely no determinations whatsoever.

In the ordinary course what would happen, as I have indicated, is that the application would go to the employer with a time that we would have set down for conciliation. Both parties have the option, if they agree, for that not to be by telephone. It can be in person. They have that option and alternative.

Senator FISHER—Back up, there. What is the process for actually assigning a telephone conciliator? How long does that process take from receipt of the application?

Mr Nassios—I can tell you that from the lodgement to the finalisation—that is probably a better way to explain that, because the vast majority of matters are being finalised at that conciliation date and that pretty much reflects the conciliation date—the period is 20 days at the moment.

Senator FISHER—Do you have any measure of the period between lodgement and the time at which the applicant and respondent are notified of the conciliator who will deal with their matter?

Mr Nassios—They will not know the name of the conciliator until the day or so before. They will only know the time and date.

Senator FISHER—When do they get told? How long after lodgement of a claim are they being told the time and date for telephone conciliation?

Mr Nassios—In terms of the notice that we are sending to the employer and the applicant? Is that what you are asking?

Senator FISHER—You tell me.

Mr Nassios—For example, the application will come in and, assuming there is no difficulty we can see with the application, that application will go to the employer with the notice saying the matter will be heard, at this stage, in roughly 20 days. The applicant will get the same correspondence at that time. That will happen within a couple of days of the application being lodged.

Senator FISHER—All right. I think you said earlier that the parties are given a choice whether they prefer face-to-face or telephone contact.

Mr Nassios—Correct.

Senator FISHER—At what point are they given that choice?

Mr Nassios—It is part of the correspondence that goes out, I believe—I had better make sure. I believe they get the indication of whether they wish to arrange for face-to-face conciliation.

Senator FISHER—Is that standard correspondence or is it on the record anywhere? Can you provide the committee with a copy of it? I presume it is standard. That will answer those questions.

Mr Nassios—Yes.

Senator FISHER—Then we have conciliation of a form, be it over the phone or face to face. What is the next step?

Mr Nassios—If the matter is resolved or finalised at that point—

Senator FISHER—So be it.

Mr Nassios—So be it.

Senator FISHER—Good.

Mr Nassios—If it is not, depending on what ought to happen, it may very well be that the employer at that point will raise a jurisdictional objection that will need to go to an FWA member to determine jurisdictional objection—

Senator FISHER—Does it at that point?

Mr Nassios—Not at that point, but it is part of the process. It will go at some point.

Senator FISHER—When?

Mr Nassios—At the moment we have not had too many. Given that we are only three months into the process, I could not give you a time line for that at the moment.

Senator FISHER—Part of the anecdotal feedback that I have been getting in this respect is that there is some attempt to resolve matters by conciliation when at least one of the parties thinks there is a technical shortcoming to the application—for example, it is out of jurisdiction or out of time—and that that is left to be determined at a date later than the conciliation, which would not seem to be consistent with what you are suggesting might be the practice and would not seem to make sense. That is why I am asking what the order is. What is the order of things?

Mr Nassios—The conciliation is definitely first. Those conciliators, as I have indicated, do not have the power to determine whether an application is or is not a valid application. They do not have that capacity.

Senator FISHER—If a party—I guess it will be the employer—says they object on the basis that they think this application is out of time, what then happens? Does the conciliator still attempt to conciliate?

Mr Nassios—Ordinarily, yes.

Senator FISHER—I think that is part of the concern that I am getting anecdotally from industry organisations—that is, how is that efficient and streamlining the process? If it is not

resolved at conciliation, is it then subject to directions to take the next step? What happens then?

Mr Nassios—Depending on what the issue is, whether it is a jurisdictional issue, it may be that substantive arbitration is needed from that point on. In essence the principle is the same. We will—

Senator FISHER—When will the parties know whether or not it is up for a full-on barney by way of arbitration?

Mr Nassios—It is too early for me to say at the moment. Because we have only been going for three months with this—

Senator FISHER—Do the parties not need to know? It is not too early for the parties who are going through it right now to know.

Mr Nassios—That is true.

Senator FISHER—In their particular cases.

Mr Nassios—That is true. I am aware of only six cases that have actually proceeded beyond the conciliation stage up to 30 September.

Senator FISHER—And in what cities or states have they been?

Mr Nassios—I do not know that.

Senator FISHER—If a Sydney or Melbourne based matter is not resolved at the conciliatory stage and it is then subject to directions to go the next step, whatever that may be, at what point in time are individual commissioners apprised that they will be handling one of those six?

Mr Nassios—In Melbourne and Sydney there is generally a roster that is set down, but I just do not know the answer your specific question about when the member would know. I would have to take that on notice.

Senator FISHER—And who determines the rosters in Sydney and Melbourne? How are they worked out?

Mr Nassios—The senior deputy president predominantly has responsibility for determining the actual roster. We have a group of staff both in Melbourne and in Sydney who provide some of the administrative support for that process.

Senator FISHER—Once the roster kicks in—and we do not know when individual members find out if they have the gig or not—a matter may or may not be arbitrated. Is there any obligation under the act for the parties to be consulted about whether a matter is arbitrated or not? In other words, what determines whether a matter is then arbitrated or conciliated, albeit by a member of the commission?

Mr Nassios—At the conciliation before a conciliator, one of the very issues they ask about is what they want the parties to do subsequent to that conciliation if it has not been resolved. So the questions they will ask are questions like: ‘How do you want this matter to proceed from here? What sort of timing? What sort of venue? What sort of process?’

Senator FISHER—What is it in the processes that Fair Work Australia has set up that compels the asking of those questions by the commissioner appointed at that point in time?

Mr Nassios—It is an internal process of ours.

Senator FISHER—Does it always happen? Again, I have anecdotal examples to suggest that it does not always happen.

Senator Arbib—What is the example?

Senator FISHER—The example is of a scenario where, post conciliation, the parties do not know whether the matter is going to be conciliated or arbitrated. They also do not know the identity of the commissioner to whom their matter has been assigned until some 24 hours prior to the date upon which it comes up. So parties are having to prepare in case the matter gets arbitrated at the time it comes before that individual member, even though it may not be arbitrated because the anecdotal concerns are based, I am told, upon examples that have happened but the information has come through industry organisations. To that extent I say it is anecdotal.

Mr Nassios—Six matters have actually gone on.

Senator FISHER—That is why I am finding this interesting. The particular example then involved sworn evidence being given at a so-called conciliation. What I am getting at is that the parties are approaching a proceeding without knowing whether it would be a conciliation or an arbitration. Unless and until they do know, they do not know what to prepare for. I understand the processes are formative, so perhaps next time you come before us we can have further developed it. They do not know what they are preparing for, and I am told anecdotally of a scenario where an individual commissioner took sworn evidence, supposedly during conciliation. Is a transcript kept of conciliation? It may be of concern to the parties, particularly if they want to appeal something that is quasi-arbitration, if a transcript is not kept of sworn evidence being given in the process of conciliation. Is transcript kept of conciliation? If so, in what circumstances?

Mr Nassios—I am not aware of any instances of the nature that you are referring to. To go a bit broader in terms of conciliation, generally speaking we would not transcribe a conciliation.

Senator FISHER—No. Generally speaking, though, would you take sworn evidence during a conciliation?

Mr Nassios—I would not have thought so.

Senator FISHER—No—hence the problem.

Senator Arbib—Senator, you are asking Fair Work Australia to respond to anecdotal examples which—

Senator FISHER—Actually, I was trying to expedite the process, Minister. I can go through the exhausting matter, ‘What is the process?’ You asked me earlier whether I have any examples. I am trying to oblige by saying, ‘Well, here is what I am getting at.’ But, if we want to go back to, ‘Righto, let’s step through this process nut and bolt, nut and bolt,’ I am happy to do so. Please do not criticise my attempts to help.

Mr Nassios—There may be a reason, but unless I had some idea as to the matter I could not say. I can indicate that the legislation uses the term, I think, ‘conference’ at some point. In terms of the conference there is capacity to make a determination. It may possibly be referring to that process, but I am speculating.

Senator FISHER—If you guys do not know this process, who can I ask about it?

Mr Nassios—I think it is not the process you are asking about; you are asking me what may have happened in this particular instance and I—

Senator FISHER—Let me revert, then, to the process. So we are back at the point at which a matter is not resolved at conciliation. It is subject to directions to go to the next point. What happens then in the process? Where is that process set down in a transparent way?

Mr Nassios—To be absolutely accurate—and I appreciate that I am going to sound as though I am not answering your question—I would prefer to take that on notice. That way I can tell you exactly what our processes are and how we deal with these matters. I think I have answered it in a general sense—

Senator FISHER—On notice, can you also inform me of how that process ensures that parties do not face the prospect of preparing for arbitration when arbitration does not transpire? Can you also tell me on notice the amount of notice individual commissioners get of the fact that they have, in Sydney and Melbourne, been subject to the arbitration roster and are given a particular matter with which to deal?

Senator Arbib—Can you go back two questions and ask that question again, please.

Senator FISHER—Two questions?

Senator Arbib—Not the last question, the one previous.

Senator FISHER—Can you also indicate what it is in the process that will mean that parties are not placed in the position where they feel the need to prepare in the event that the matter is arbitrated when it next comes on?

Senator Arbib—I do not know if that is answerable by anybody.

Senator FISHER—Well, let us see. I am happy to take that answer on notice.

CHAIR—I am happy for you to rely on *Hansard*. If there is a question that is answerable, you can do so. If there is not, that is what you will have to say.

Mr Nassios—Could I ask about one aspect of that question.

Senator FISHER—What in the process means that the parties know in advance that they are fronting up for either conciliation or arbitration? What new process ensures that the parties know that, and when do they know that in proximity of the next hearing or whatever it is?

Mr Nassios—This is after the initial conciliation?

Senator FISHER—Yes. We are at that point in the process.

Mr Nassios—I am very clear on where we are now. I will endeavour to answer the question for you. Again, in general the AIRC approach—and to this extent it has been replicated in the FWA—is that they would always seek to conciliate a matter where they could.

Senator FISHER—Of course.

Mr Nassios—So there may be instances where a party has come prepared for an arbitration and there has been conciliation attempted. Whether or not that is successful would obviously depend on the circumstances. That is one instance that I can suggest may be a possibility for what you are saying has happened, but other than that—

Senator Arbib—In terms of the figure that the Deputy Prime Minister released, 81 per cent of cases processed have already been resolved at or before conciliation. So that is a pretty good strike rate in terms of the way Fair Work Australia is dealing with the issues. It shows that conciliation is working.

Senator FISHER—In these early days.

Senator Arbib—That is true. It is early days and we accept that.

Senator FISHER—Can you also answer on notice if there is a requirement that evidence given under oath, whether it is in conciliation or arbitration or whatever, is transcribed in a way that is then publicly accessible?

Mr Nassios—The answer to that would be that if it is an open hearing—which these matters, in the way you are describing them, would be—then, yes, it would be.

Senator FISHER—No. Forget about it the way I am describing them. When a matter proceeds before a commissioner by way of conciliation or arbitration or whatever, are publicly available transcripts always kept of any sworn evidence given?

Mr Nassios—My apologies. I will take it on notice. My first impression is that we do not actually make the transcript publicly available in unfair dismissal matters.

Senator FISHER—If that is the case, given that a party's right to be legally represented is restricted, if parties then want to get some advice to reflect upon evidence that was given but they are prohibited in some way in sharing that transcript or if there is no record kept of sworn evidence they gave or if that record is not public, they may be restricted in seeking advice on what has occurred, which is not desirable, I would have thought.

Mr Nassios—I would agree. Again, my first answer to you is that the parties would get the transcript. By saying that we do not make the transcript publicly available I mean that we would not place it onto our website, where we would place other transcripts.

Senator FISHER—Then the next question is: are they then at liberty to share the transcript with whomever they wish? That is the first question. The second question is: in the course of getting advice, you might want to look at—I heard you about to say yes.

Mr Nassios—Again, I will continue with my first impression answer here. I believe there is no limitation. We certainly do not place a limitation on it. I will take it on notice.

Senator FISHER—Thank you.

CHAIR—Is that all?

Senator FISHER—I have questions about—

CHAIR—You can go on as long as you like. I just draw the committee's attention to the fact that it is almost four o'clock. So far, in terms of the agenda, we have completed cross-

portfolio, Comcare and the Australian Industrial Registry, and we are now on Fair Work Australia. We still have before us the Fair Work Ombudsman and the Australian Building and Construction Commission. Outcome 4 includes employment services, Indigenous employment, disability employment services and working age payments. Then outcome 5, which is a huge outcome and I know that many questions have already been flagged—

Senator FISHER—I know, but we have a lot—

CHAIR—includes employee assistance, workplace assistance and Safe Work Australia. So I do urge people, given the time that we have, to try to make the questions fit the time available.

Senator FISHER—Thank you, Chair. How does Fair Work Australia propose to apply the better off overall test come 1 January? What is the process?

Mr Nassios—That would be for a member to determine. I am not sure what you are asking me there.

Senator FISHER—Do you have a process ready to deal with the fact that we now have transitional implementation of the new modern awards? So what is the process to deal with the application of the ‘better off overall’ test as certain pay rates and allowances adjust upward and/or downward at intervals over a five-year period? What is the process that Fair Work Australia proposes to implement—because you are still thinking about it—to deal with the fact that an agreement approved, for example, on 1 July against a modern award with certain rates of pay may then need to be looked at again come July of the following year when a further transition may take place? Do you have a process to deal with that or will the ‘better off overall’ test, as assessed as at 1 July, stand over the life of the agreement?

Mr Nassios—I am unable to answer that question at this time.

CHAIR—Isn’t a matter for each commissioner to determine whether an agreement passes the test according to the legislation? Isn’t it a matter for the tribunal member to determine that?

Mr Nassios—Yes.

Senator FISHER—Are tribunal members going to get any assistance to ensure they have criteria upon which to base their decisions?

Mr Nassios—We can certainly provide them, as we currently do, with some administrative support. To the extent of your use of the word ‘criteria’, I am not sure what you are asking, but certainly we would help them administratively.

Mr Lee—They will have available to them the relevant modern award and obviously the agreement. They will be in a position to apply the test at that time with that information.

Senator Arbib—We might want to check when the departmental officials are here later on. But I think the government has made a submission to the AIRC advising that we will be making regulations to do this. So you may want to raise that later on with departmental officials.

Senator FISHER—That may assist, Minister. I am taking into account the time imperatives—believe it or not, Chair—and I am trying to ask simply those questions that I am

concerned I might otherwise be told should have been asked here. In respect of award modernisation, I will attempt to restrict it to matters hopefully that are properly for Fair Work Australia. Which commissioners dealt with the modernised awards that exist thus far in the following sectors: horse racing, restaurants and cafes, horticulture, wine-grape growing, and amusement and recreation?

Mr Lee—Mr Hower may be able to answer that.

Mr Hower—Could I have those industries again?

Senator FISHER—Horse racing.

Mr Hower—With horse racing the president was involved.

Senator FISHER—On his own?

Mr Hower—The president conducted the initial consultations. It is the full bench in each case that finalises the modern award, but the initial consultations are carried out by individual members.

Senator FISHER—Did the president deal with any other sectors in the first instance?

Mr Hower—The waste management area and also the miscellaneous award.

Mr Lee—Again, we are happy to be helpful, but these matters were dealt with by the AIRC, so the member is sitting as part of the Industrial Relations Commission proceedings—just so we are clear.

Senator FISHER—Sorry, are you saying that these questions, Mr Lee, are not properly of Fair Work Australia?

Mr Lee—Fair Work Australia will obviously be dealing with the implementation of modern awards after 1 January, but the process of creating the modern awards has entirely been undertaken by the Industrial Relations Commission and supported by the Australian Industrial Registry.

Senator FISHER—I understand that. Thank you. Are you able to answer on notice the identity of the commissioners who handled those other matters at first instance, Mr Hower? Thank you. That is all I have, Chair.

CHAIR—No-one else has indicated that they have questions for Fair Work Australia. So, Mr Lee, thank you for your presentation and your responsiveness to the committee.

Senator Arbib—Pass on our best to the president.

Senator FISHER—Indeed. We look forward to seeing him next time, and we will.

CHAIR—Your first estimates must have been a beauty for you and is one you will remember forever.

[4.06 pm]

Fair Work Ombudsman

CHAIR—Welcome. You are familiar faces at these estimates proceedings but you are now in a new role. Perhaps you could take a couple of minutes to briefly explain the transition

from the old structure to the new structure, where it fits and where the responsibilities may work through. That may avoid questions.

Mr Wilson—Thank you for that invitation, Chair. The Fair Work Ombudsman commenced operations from 1 July 2009. We were the combination of two previous organisations: the Office of the Workplace Ombudsman and the Workplace Authority. We came in pretty much as equal organisations in the sense of the scale of the organisations. The new organisation undertakes a broad range of advisory, educative and compliance functions in relation to the Fair Work Act. Each year we take roughly a million phone calls from employers and employees relating to the Fair Work Act, principally about people's rights and entitlements and things of that nature: what rate of pay should be paid, whether severance pay should be paid, other working conditions and so on. We also deal with roughly 25,000 claims of breaches against the act. Most of those relate to underpayments of wages. Last year, for example, the workplace inspectors recovered around \$32 million in underpaid wages for people.

The staff that we have operate nationally. We have presently about 859 staff. In the operational sense probably there are about equal numbers of people working in our contact centre and working as fair work inspectors. The staff at the inspectorate in particular are based through all states and territories. They are located in roughly 26 locations nationally: all of the capitals and usually three or four country areas as well. The contact centre, from recollection, has four or five centres in the capital cities. In addition to that, we have responsibility for achieving compliance with the Fair Work Act through our litigation activity, and we are a regular litigant, particularly in the Federal Magistrates Court and the Federal Court, usually alleging breaches of awards or agreements in a monetary sense but also dealing with industrial action matters and other matters. That is very vague, but it refers to the framework compliance issues associated with rights of entry, freedom of association and the like.

From 1 July our inspectors also have responsibility under the Fair Work Act to consider claims of breaches of the antidiscrimination provisions of the Fair Work Act, and they have been working in that area as well. Our office also provides services to the Workplace Authority, which you might recall is in existence at least until 31 January 2010, processing the backlog of collective agreements and individual transitional enterprise agreements, ITEAs. They are doing that over the next few months. It is effectively our staff who are contracted to the Workplace Authority to do that. But the reason for referring to that is to make the point that it is not our agency as such. The decisions about the agreements and so on are made by the authority themselves.

In relation to our relationship with Fair Work Australia, we work in a parallel sense with them, in that we have relationships with officers such as Mr Lee and Mr Nassios, who were here just before. Our role there is to try to make sure from the citizens' point of view that there is a seamless service across the country in terms of being able to access advice or information to be able to make complaints about underpayments or unfair dismissals. Notwithstanding that, the two organisations are obviously functionally and legally separate. Obviously the decisions of the respective organisations are their own. I hope that provides some sort of snapshot of what we do.

CHAIR—Your position is actually a new position, even though you were the Workplace Ombudsman.

Mr Wilson—That is absolutely correct. The position of Fair Work Ombudsman is created by the Fair Work Act. It did not exist prior to 1 July 2009. As I said at the start, there were two predecessor organisations: the Workplace Authority and the Workplace Ombudsman. They had their own statutory heads. I was one of those, as Workplace Ombudsman. But, to all intents and purposes, the Office of the Workplace Ombudsman and that position were abolished on 30 June of this year.

CHAIR—Congratulations on your new appointment.

Mr Wilson—Thank you.

Senator BILYK—I only have a couple of quick questions. Nicholas, I also congratulate you on your new position.

Mr Wilson—Thank you.

Senator BILYK—Also, thank you for that briefing. It did answer a couple of the questions I had, so you have saved a bit of time with that overview. I am a senator representing Tasmania. Could you give an update, in a similar way to the update you just gave nationally, on the sorts of activities that you have been undertaking in regard to Tasmania?

Mr Wilson—I might ask our Group Manager, Field Operations Group, Bill Loizides, to answer that question.

Mr Loizides—In Tasmania we also have recovered significant outcomes in that regard. For example, in just this financial year we have conducted three campaigns in Tasmania. We have done an apprenticeship audit with Skills Tasmania to ensure compliance with the act and the training contract requirements. We have also done an educative program with the employers—for example, at the Taste of Tasmania and the Festivale in northern Tasmania—as a follow-up to audits undertaken in January and February 2008. There were concerns that the festivals employ young casual workers and we were ensuring that they were paid appropriately. We have also done an audit—

Senator BILYK—Sorry to interrupt you there, but what was the outcome of that investigation?

Mr Loizides—Of the casual workers?

Senator BILYK—Yes.

Mr Loizides—I do not have that information here in front of me but I can take it on notice.

Senator BILYK—Can you take that on notice and get back to us?

Mr Loizides—Most definitely. We have also done an audit of security companies that are contracted to perform those services at five upcoming festivals throughout Tasmania over the next year.

Senator BILYK—Do you know what festivals they are?

Mr Loizides—No. Again, I do not have all of that detail here in front of me but I can take that on notice as well. But there are upcoming events.

Senator BILYK—I could probably work it out. We do not actually have all that many big ones.

Mr Loizides—Okay. With regard to complaints, in this financial year, for example, we have received 78 complaints in Tasmania—that is, from 1 July to the 30 September this year. In terms of the audits in the previous festivals I have mentioned, we have completed 51 of those audits.

Senator BILYK—What has happened with those 78 complaints? Where have they gone?

Mr Loizides—We generally resolve most of those by voluntary compliance. The payments are made—generally wages and conditions. In Tasmania we have also undertaken a number of litigations over the past 12 months. I can provide a more fulsome response and the types of litigation.

Senator BILYK—Yes, the workforce areas. Also, are you able to provide us with the age of the complainant and that sort of stuff?

Mr Loizides—We do categorise the types of complaints to vulnerable workers and we can provide that information to you as well.

Senator BILYK—That would be really good. What sorts of areas did those complaints cover—not what type of work areas? Were they for back pay or for not being paid penalty rates? Can you clarify that?

Mr Loizides—I cannot clarify all of those points for you—I can take it on notice—but most of them are related to wages and conditions matters or termination matters.

Senator BILYK—If you could take that on notice, that would be great, too. Thank you. Anything specifically that might help me understand more about what is happening within Tasmania would be greatly appreciated.

Mr Loizides—In fact, I can elaborate slightly. Of those matters, 13 were wages, four related to annual leave, 11 regarded penalties and loadings, two regarded allowances et cetera. Again, I can provide all of those particular details for you if you require.

Senator BILYK—I would appreciate that; thank you. That is all from me, Chair.

Senator FISHER—What was the cause of the so-called ‘whopper raids’ on what I understand from the *Sunday Times* recently were simultaneous raids on 12 Hungry Jack’s outlets in Perth? What led to the ‘whopper raids’?

Mr Wilson—Again, I would need to defer to Mr Loizides on that matter.

Mr Loizides—It came to our attention, as an outcome of audits we conducted in Tasmania, that there were some underpayments, which the company has rectified. We received further complaints in Western Australia from a Hungry Jack’s store. That led to the auditing of the particular stores in Western Australia.

Senator FISHER—The *Sunday Times* reported:

... inspections were part of a targeted investigation after information was supplied to the workplace investigator by a state politician, Fair Work said.

Was that a statement from the Fair Work Ombudsman or not?

Mr Campbell—Yes, that would have been part of a response to a direct inquiry from a journalist in Western Australia.

Senator FISHER—Does that mean, then, that this resulted from information supplied to the workplace investigator—that is you guys—by a state politician?

Mr Campbell—That may well have informed our decision to conduct the audits. I am not across the full campaign. I am aware of the matter, but would not surprise me if the information received from the local politician was part of our decision to undertake the audit.

Senator FISHER—What part of your decision would that have formed?

Mr Campbell—If there was a concern raised by a member of the federal or a state parliament about a constituent receiving payments that are unlawful or below the minimum wage, then we respond to those complaints like we would if we received them from the individual themselves. We would have, I would assume, made some inquiries into the circumstances surrounding the employment arrangements for those constituents and then made a decision to expand our inquiries.

Senator FISHER—So are you saying that you would have required some evidence of a complaint from an employee concerned before you proceeded?

Mr Campbell—If I do not talk to that case in particular—because I am not across it—the answer to the question would be no. We do not require a complaint to conduct an investigation. We can conduct an investigation on our own motion, if you like.

Senator FISHER—In this particular case, to what extent did the information from the state politician influence the Fair Work Ombudsman's decision to conduct the 'whopper raids', if I can call them that?

Mr Campbell—I would need to look into the matter further to give you some indication of the import of that input. However, I would say that whether it is from the politician or an issue raised from the media is largely irrelevant to us. We are concerned about any allegations of breaches of workplace law and will respond accordingly.

Senator FISHER—I would appreciate that being answered on notice. Who was the state politician?

Mr Campbell—Again, I do not know. I am not across the matter in that much detail. I was just talking about our general responsiveness to complaints we receive from the public or any other forum. I just wanted to give you some indication of our proactive response to workplace relations issues as well as our responsive investigations of complaints received.

Senator FISHER—Can you provide the identity of the state politician in your answers on notice?

Mr Campbell—If it is known to us and if it is not going to negatively impact on the conduct of our investigation, which is ongoing.

Senator FISHER—Thank you.

Senator ABETZ—I turn to Senate parliamentary question No. 1823, which was asked on 17 June. I was given a response on 16 July. It was in relation to the issue of the small business specialist unit. Do you have that in front of you somewhere?

Mr Campbell—Senator, was that from the department or from the Fair Work Ombudsman?

Senator ABETZ—I asked it of the minister. As I understand it, the specialist information and assistance unit for small and medium sized enterprises is to be established in the Office of the Fair Work Ombudsman; is that correct?

Mr Campbell—Senator, if I can just go to that issue alone and not the response to the question on notice, because I am not aware of it, but I can talk to you about the Small Business Education Unit if you like.

Senator ABETZ—All right. We were told on 20 March that the government had agreed to do this, is that correct?

Mr Campbell—Yes, Senator.

Senator ABETZ—I then asked for: the implementation, the starting dates, the number of advisers and where they will be situated, including in the state and city. I assume you have the question, because the answer, once again, was singularly uninformative. I have been told:

The Small Business Education Unit will employ five highly skilled education officers and will be operational within 3 months of the commencement of the Office of the Fair Work Ombudsman.

So has it started? What are the dates? When did the Fair Work Ombudsman start?

Mr Wilson—Senator, it appears that we do not have with us either the question that you asked in the Senate or the answer itself.

Senator ABETZ—On notice.

Mr Wilson—That may well have been responded to by the Department of Education, Employment and Workplace Relations. We would need to check that. But in relation to the policy issues—

Senator ABETZ—It is the minister's answer; it is never the department's. So Senator Arbib can wear any criticism in relation to the answer. I would not wish to lay that on you, Mr Wilson, or anybody else.

CHAIR—Senator Abetz, was that a question asked during estimates or on notice or in the chamber?

Senator ABETZ—No, it was a question on notice—a written question on notice.

CHAIR—All right.

Senator ABETZ—That is why I gave the question number and the date.

Mr Wilson—Senator, in any event, in relation to the policy issue itself—the establishment of the small business unit and the resources dedicated to that—we certainly can answer that and I would ask Mr Campbell to answer that for you.

Mr Campbell—Senator, the answer to your direct question about whether a Small Business Education Unit has been established in the Fair Work Ombudsman is yes. It was staffed on Monday, 7 September.

Senator ABETZ—Sorry; it was staffed, you say?

Mr Campbell—Yes. It commenced operation on Monday, 7 September.

Senator ABETZ—Right. So it is within the department?

Mr Campbell—Within the Fair Work Ombudsman, yes. The Small Business Education Unit reports to me.

Senator ABETZ—Yes, but what about the field officers out there—these five highly skilled education officers?

Mr Campbell—The five education officers you refer to form the Small Business Education Unit.

Senator ABETZ—Right. So they are out in the field as we speak?

Mr Campbell—No, the role of the Small Business Education Unit is not a field operations role. We have workplace inspectors in the field—up to 300—and we have 200-odd Fair Work Infoline advisers who advise employees and employers directly. The Small Business Education Unit's role is to develop educational resources to assist employers and employees to understand and comply with the Fair Work Act.

Senator ABETZ—So where are they situated in the department?

Mr Campbell—They are situated in the workplace relations policy and education branch in Melbourne.

Senator ABETZ—So it is like a call centre, is it, where people from around the country ring in to this specialist unit of five?

Mr Campbell—No. The Fair Work Infoline is our call centre, if you like, and that has about 204 operators who answer up to one million calls a year.

Senator ABETZ—Yes, I am talking about the Small Business Education Unit.

Mr Campbell—The primary focus of the Small Business Education Unit is not to be a referral service or an escalation service; it is about equipping our operational staff and those people who interact with us with tools to assist them to comply with the Fair Work Act.

Senator Arbib—Sorry. As he said, they develop the educational materials that are used by small business and your field officers et cetera?

Mr Campbell—That is correct.

Senator ABETZ—I think somebody got sold pretty short during the discussion of the Fair Work Bill when they were promised certain things for the small business sector to change their vote, but we will not go there. I will now go to budget estimates from the last time. These were questions that I asked at budget estimates. I refer to question EW0043_10. Why do you guys have an underscore? Most other departments do not. Anyway, it does not matter. I ask you, Minister, in relation to 0043, whether you would inquire of your colleague—I assume the Minister for Finance and Deregulation—as to how much interest is earned on the funds that the workplace ombudsman collects and that are then deposited into the Commonwealth Consolidated Revenue Fund. There is quite a substantial sum of money that is earning interest. My view is that any interest earned should, in fact, go to the workers who have been short-changed rather than to the benefit of trying to pay off the government's huge debt. So could we find out exactly how much interest is earned on that amount? Our officers

here said that they could not answer it on notice because it goes into consolidated revenue, into another area. So could you address the policy issue as to whether the workers, as opposed to the Australian government, should be the beneficiaries of the interest earned?

Senator Arbib—I certainly take your comments on board, Senator. If you are happy to pass up a copy of the relevant question, I am happy to take a look at it for you.

Senator ABETZ—It is EW0043_10. I have asked about this before. I just think it is an important policy issue, especially when we are told in EW0246 that this \$875,961—and that was since 27 March 2006—

CHAIR—The committee will provide you—

Senator ABETZ—Yes, in unclaimed wages.

Senator Arbib—Thank you, Chair.

Senator ABETZ—Can I have an update on that figure? One would assume that it would have grown since the last time. Has it hit the \$1 million mark yet?

Mr Wilson—I am sorry to say, Senator, that it has. As at 30 September 2009, the amount we are holding as unclaimed moneys is \$1,090,628.

Senator ABETZ—I might say, Minister—we established this scheme, and I said the last time that I do not make any political comment about this—that the interest being earned did not go to workers under us. I said this the last time. But I think that now, with some substantial delays and the size of the moneys involved, it is worthwhile revisiting that issue. I dare say most people thought at the time that, if unpaid wages were to be collected, there would be somebody with their hand out wanting them. But clearly it is difficult to trace some people, with the benefit of experience. But, if we do find those people three, four or five years later, it just seems to me that they should be the beneficiaries of the interest earned. How long do you keep these unpaid wages files alive? When do you finally scrub them off the list and say, ‘We have not been able to catch up with this particular wage earner’? It started in 2006. How long are we going to wait to try to track them down?

Mr Wilson—We hold the moneys indefinitely.

Senator ABETZ—Indefinitely. All right.

Mr Wilson—What I am able to say is that roughly three-quarters of the amount that I mentioned before is older than six months and, therefore, about a quarter of it is related to the past six months when we accumulated it. We do put a lot of effort into trying to track down the people, but it is difficult.

Senator ABETZ—We went through that the last time—the efforts that you go to—and I appreciate that. But last time I did not cover off how long you kept it; you say indefinitely and that is welcome news. Then, if I may, I move on to EW0247_10, because that is where we are told that for more than 180 days the figure is \$647,000. So, for those people who have been unpaid, the sums have been held for a long time and one would assume the interest component therefore becomes significant. So I just pursue that, once again, for your consideration.

Senator Arbib—I am happy to pass it on to the minister for workplace relations, who may take that point on board, because I am not the minister responsible.

Senator ABETZ—I accept that, but I am sure there is always good dialogue between you and Ms Gillard, despite the stated factional differences between you.

Senator Arbib—I am happy to pass it on to the minister for workplace relations. There are certainly very good relations, Senator. Thanks for your vote of confidence.

Senator ABETZ—I am sure the gender difference has no impact, but the stated factions might. Can I move on to whether or not the ombudsman is undertaking any investigations in relation to Southern Shipping and the crew of the *Matthew Flinders* in relation to unpaid wages?

Mr Loizides—Yes, we are currently investigating matters with regard to Southern Shipping.

Senator ABETZ—Right. When did those investigations start? How long have they been going on for? When do we think we might have some indication—for all concerned; it is public knowledge that the ombudsman has been interested—of whether charges may be laid or not or whether the complaint that has been made is not to be pursued?

Mr Loizides—I cannot answer the latter part of your question, Senator, because we have not reached a conclusion in the investigation. I do understand, though, that there have been some underpayments made to some of the workers with regard to Southern Shipping.

Senator ABETZ—So that is your preliminary advice but you would not take it any further at this stage?

Mr Loizides—I cannot at this point in time.

Senator ABETZ—There have been claims and counterclaims in the public domain in Tasmania about outstanding wages and the amount, but you tell me you have it in hand.

Mr Loizides—Most definitely. We are investigating and, as I said, we have recovered some of the wages and we are continuing our investigations into that matter.

Senator ABETZ—Right. Thank you very much.

Senator HUMPHRIES—We will move to one more issue with respect to FWO and that is to do with the relationship between FWO and the ABCC. As I understand it, when the ABCC encounters issues to do with safety net entitlements or the non-payment of safety net entitlements it refers those matters to your office, Mr Wilson. Is that correct?

Mr Wilson—That is correct. I guess there is a qualification to that as well which is that from people like carpenters and electricians or what have you we receive direct complaints of underpayments of wages. Given that they are simply in relation to money matters our inspectors deal with those as well.

Senator HUMPHRIES—Sorry, I did not catch the last bit of what you said.

Mr Wilson—If it comes to us and it is a direct money matter and there is no other compliance issue beyond whether or not the person has been paid correctly then very often our inspectors will work directly with that matter.

Senator HUMPHRIES—So there is a fairly common-sense approach towards matters that might best be dealt with by your office and if they are more substantial issues to do with the building industry then they are referred to the ABCC. Is that the case?

Mr Wilson—That is correct. There is a formal referral agreement between ourselves and the Australian Building and Construction Commission which was entered into by me and Mr Lloyd in 2006. That agreement went to the issues which we were dealing with at that time, and it was foreseeable, and indeed the case, that our inspectors would be better placed to deal with small money matters and therefore it acknowledged that. But it also acknowledged that there would be more significant matters which would come to either the ABCC or what we were at that time, the Office of Workplace Services, and that if they were in the wrong place we would then formally refer those matters. Since March 2006 when we started the arrangement—

Senator HUMPHRIES—This is a replication of the arrangement formerly with the Workplace Ombudsman, I take it?

Mr Wilson—It is, Senator. It has been continuing for all that time quite well. Since March 2006 until now there have been 16 matters formally referred from the ABCC to the Fair Work Ombudsman and our predecessors the Workplace Ombudsman and the Office of Workplace Services.

Senator HUMPHRIES—And this arrangement works well as far as you are concerned?

Mr Wilson—I think it does. It means that there is a formal mechanism and it is very focused on the individual matter and the people we perceive as the customer—the employer, the employee and others involved.

CHAIR—Sixteen matters have been referred to you over how long?

Mr Wilson—Sixteen have been formally referred. The point I was going to make is that between March 2006 and September 2009 the Fair Work Ombudsman and its predecessor have finalised 5,068 matters which came to our offices as small money matters.

CHAIR—In the building and construction area?

Mr Wilson—In the widest sense of the building and construction industry, yes.

Senator HUMPHRIES—How many matters under this arrangement have you referred to the ABCC?

Mr Wilson—I believe there has not been any that we have formally referred to the ABCC. Maybe if we can take that on notice that is the best way to resolve it.

Senator HUMPHRIES—Could you list for us the three industries or sectors from which your office receives the most complaints? A rough estimate would be fine.

Mr Wilson—Not off-hand; we do not have information with us. We do have a top something list which we can certainly provide. There are no great secrets about it. We would be happy to take that on notice.

Senator HUMPHRIES—That is fine. That is all I need from the officers.

CHAIR—In your new role will you be providing your own annual report?

Mr Wilson—Indeed we will. The Fair Work Act requires us to provide an annual report to the minister in the usual course of events this time next year.

CHAIR—So direct to the minister and not through Fair Work Australia?

Mr Wilson—Correct, it is direct to the minister.

CHAIR—If there are no further questions, I thank Mr Wilson and his officers for their appearance before the estimates today.

[4.39 pm]

Australian Building and Construction Commission

CHAIR—Welcome, Mr Lloyd and your officers, to the estimates. Do you have any opening remarks you would like to make to the committee before we go to questions?

Mr Lloyd—No, I do not.

CHAIR—Senator Humphries, you have some questions?

Senator HUMPHRIES—Thank you, Chair. Welcome, Mr Lloyd and colleagues. I want to ask about the case of ABCC and the CFMEU and Mr Mates that was dealt with in the Federal Court in Victoria in September. I am aware of some media statements put out by the ABCC about that case. I wanted to get some information about the case on the record here. Can you tell me about the circumstances of the case and the outcome of the proceedings?

Mr Lloyd—Mr Mates was the respondent. That was dealt with in September of this year. That was Cahill v CFMEU & Mates. Would you like some details about it, Senator?

Senator HUMPHRIES—Yes, just a thumbnail sketch of what happened. What was the allegation in that matter?

Mr Lloyd—That was a long case. It related to events which occurred in February 2006. It concerned unlawful industrial action by the union and people employed on the site. Mr Mates made a demand that a contractor appoint certain people as shop stewards and an OH&S officer. It was alleged that Mr Mates had threatened that the project would never recommence and was not going to happen if his demands concerning the re-employment of these persons were not met. He attended the site a few days later and demanded that the site's crane crew shut down and that the only crane at the site leave the site, which they ultimately did. Again, Mates's intention in shutting down the crane operations was to coerce the company to employ the people.

I was wrong in saying that it was found that he engaged in unlawful industrial action. The judge found that he did not engage in unlawful industrial action on that occasion. An injunction was sought in March 2006 to prevent action occurring, and an interim injunction was granted in March 2006. So we took action over the alleged breaches of unlawful industrial action and coercion.

The case then came to judgment first in February, when the judge found that there had been contraventions, and the penalty hearing was handed down in September, as you noted. The penalties totalled \$85,500. They were imposed on the union and Mr Mates on the grounds that they threatened the head contract—that the project would not recommence, was not going to happen, if certain people were not employed.

The court found that when Mates's demands were not met he attended the site and, as I said, shut down the crane. The judge found that Mr Mates unilaterally and arbitrarily prevented work continuing at the site as planned for that day and, plainly enough, the court found that his action was unlawful, that there was no explanation for it. The judge said that she inferred that it was done with a wilful lack of regard for the act.

The judge also noted that the union, through its representatives at various levels around the country, has a history of engaging in coercive conduct similar to the kind of conduct in question in this case. As I said, the judge then added there was a need for specific and strong penalties to deter such conduct, and that is underscored, she said, by the union's history of similar conduct. So the penalties were substantial: \$75,500 imposed on the CFMEU and \$10,000 on Mr Mates for three contraventions of the coercion provisions of the BCII Act. The respondents were also ordered to pay 60 per cent of the ABCC's costs in the matter.

Mr Dalgleish—I should add that the CFMEU has appealed against the size of the penalties, not against costs or liability, and that appeal is yet to be heard.

Senator HUMPHRIES—Putting that issue to one side for the moment, Mr Lloyd, as you noted, Justice Kenny said:

Penalties must also be sufficiently high to deter repetition by the contravener and others who might be tempted to engage in contravening conduct. Deterrence is a primary objective of penalties.

I note that the \$85,000 fine imposed here is greater than—in fact, it is more than double—the maximum penalty provided for unions or companies under the present BCII Amendment (Transition to Fair Work) Bill. Is that your understanding?

Mr Lloyd—Yes.

Senator HUMPHRIES—I understand that the maximum penalty is \$33,000 and \$6,000 for an individual.

Mr Lloyd—That is right.

Senator HUMPHRIES—That would suggest, would it not, that in the view of at least one federal court judge the penalties provided for in that legislation are insufficient to act as a deterrent to some industrial behaviour that is still occurring in the Australian workplace?

Mr Lloyd—I think the judge determined the penalty under the legislation in the terms that were currently before her when she made the ruling. As to what it implies about her attitude regarding future penalties, you could not draw any conclusion from that.

Senator Arbib—I was going to say it is a pretty big extrapolation to make that suggestion.

Senator HUMPHRIES—What I suggested was that the judge was of the view that the penalties would be insufficient. I do not think that would be a great extrapolation.

Senator Arbib—I do not accept that.

Senator ABETZ—The simple fact is, isn't it, Minister, that under the new legislation the judge would not have been able to impose an \$85,000 fine because she would have been limited to a maximum of \$33,000? That is the reality, so you cannot say that you do not accept it.

Senator Arbib—But that was not the question, Senator Abetz.

Senator HUMPHRIES—Well, actually, it pretty well was. I asked: in her view were the penalties adequate? Would she have regarded the \$33,000 as an adequate deterrent? She imposed more than twice that amount, so I think it flows fairly logically that—

Senator Arbib—I do not think Mr Lloyd can speak for the judge.

CHAIR—Mr Lloyd's answer is that he cannot go to what was in the judge's mind. The point has been made.

Senator ABETZ—We know what was in the judge's mind because she imposed a penalty of \$85,000, which she would not have been able to impose if the new legislation was law.

CHAIR—Yes, but, again, that was not the question.

Senator ABETZ—The point has been made. I think you are right, Chair.

Senator HUMPHRIES—I would like to ask you, Mr Lloyd, whether in your view a maximum fine of \$33,000 for a union or company and \$6,000 for an individual is a sufficient deterrent for this kind of action, which is obviously still taking place.

Mr Lloyd—I have expressed my views about penalty levels in advice I gave concerning the Wilcox report, and I have nothing really to add to that.

Senator HUMPHRIES—That advice, I understand, was that penalty levels should be higher than they are presently provided for in that legislation I referred to.

Mr Lloyd—Yes.

Senator HUMPHRIES—Do you believe that the culture of the building industry as it exists today generally warrants retention of high levels of penalties, in the event that conduct of the kind that was demonstrated to occur here recurs?

Mr Lloyd—As I said, I have expressed a view about the penalties and I do not want to add anything further to that. In relation to the culture of the industry, I have said on some occasions that I have found the ABCC has had an impact on the conduct of the industry but the culture is a longer term thing. I am not convinced that we have changed yet the culture of the industry. There is still an element of a lack of regard for the law, and in the absence of a strong regulator the past bad practices could re-emerge.

Senator HUMPHRIES—Can you give us any sense of whether in, let us say, the last year there has been any greater or lesser degree of the resurgence of that culture? That is, in the last year since the new legislation has been passed, in your view, has there been any sense that the culture of lawlessness and so forth has diminished, has increased or is much the same as before?

Mr Lloyd—No new legislation has been passed affecting the industry directly, except for the Fair Work Act and the direct impacts it has had on it. Our legislation has remained intact. I would say that around the time of the last election, and soon after, the industry was quieter than what we had experienced, but in the last half year or so we have seen, particularly in Victoria and Western Australia, an increase in unlawful conduct. The number of our investigations has increased and the number of briefs we are taking through to prepare cases has also been on a pretty steady path. I think the number of cases we have in court will probably increase in the months ahead.

Senator HUMPHRIES—I want to turn now to code compliance. I am aware that the ABCC puts a great deal of time and effort into work involving the national code. Can you say generally what impact the code has had on the building sector?

Mr Lloyd—I think the code has been instrumental and part of a key element of the reform of the industry. It has ensured that contractors take their code responsibility seriously on both government and private sites and it reinforces the lawful obligations under the act for the contractors to ensure that they comply with the code. So it has been an instrumental and key feature of the reforms.

Senator HUMPHRIES—I understand the minister issued a new national code on 9 July this year.

Mr Lloyd—The new national guidelines are called implementation guidelines. So the code is intact, but revised implementation guidelines, which basically support and give the detail of code implementation, were issued.

Senator HUMPHRIES—Can you briefly outline how those guidelines change what was in place with the code?

Mr Lloyd—There are a number of changes. I suppose one key change was that project agreements were not permitted on projects worth less than \$25 million. That figure has now been increased to \$100 million. Sham contracting arrangements are inconsistent with the code and guidelines. References in the guidelines to practices regarding site induction processes have been removed. Also, features like display of posters, helmets, stickers, union logos or flags are no longer referred to in the guidelines. ‘Show card’ days, which is when a union demands everybody walks through the gate and shows their card for various memberships, are now inconsistent with the code, as are ‘no ticket, no start’ signs. Reference to employers who refuse reasonable requests from workplace union representatives to represent employees in relation to grievances and disputes or discussions with members is now inconsistent with the code.

The reference in the previous guidelines to things like the ratio of employees’ arrangements, ‘one in, all in’ arrangements, ‘last on, first off’ clauses, restrictions on labour, prohibition of ‘all in’ payments, clauses negating the application of the code and guidelines, and industrial instruments providing for a site allowance have been removed. Provisions concerning security of payment are now included. There have been changes to tender evaluation criteria where the funding entity, which is the client, must not enter into contracts with contractors who have had a judicial decision against them relating to employee entitlements and have not paid the claim. Also, funding entities—that is, clients—are required to assess the performance of a tenderer on applying the code and guidelines to projects funded by the Australian government. Preference may be given to tenderers who demonstrate a commitment to adding or retaining trainees and apprentices; increasing the participation of women in all aspects of the industry; or promoting employment and training opportunities for Indigenous Australians. They are the main changes.

Senator HUMPHRIES—They have been in force, in effect, since 9 July.

Mr Lloyd—They apply to projects for which a tender is let after those guidelines were issued. So most of the projects underway in Australia at the moment are covered by the preceding guidelines, the 2006 guidelines.

Senator HUMPHRIES—So there is limited application of the guidelines.

Mr Lloyd—At the moment. But as time goes on they will become more widely used.

Senator HUMPHRIES—It is perhaps difficult to answer this question but, given that there are some significant changes, have you detected any change in behaviour or the environment in which industrial issues are dealt with in the sector as a result of those changes?

Mr Lloyd—I have not.

Mr Draffin—We, as yet, have not done an audit or an inspection on a site where the 2009 guidelines apply. So unfortunately we have no experience to be able to answer the question.

Senator HUMPHRIES—I think you mentioned ‘last on, first off’ clauses or other selection criteria that ignore the employer’s operational requirements. Did you mention that?

Mr Lloyd—I certainly mentioned that the ratio of employees and matters like that are no longer specifically mentioned in the guidelines. Perhaps you might clarify the question.

Senator HUMPHRIES—There are three provisions that I wanted to check to see whether they were in the guidelines. One is a provision dealing with ‘last on, first off’ clauses or other selection criteria that ignore the employer’s operational requirements. The second is ‘one in, all in’ arrangements that mean that if an employer offers an opportunity, for example, to work overtime to one employee it must be offered to all employees. The third is employee ratios that restrict the number of workers a particular employer can have on-site. Are they part of the guidelines?

Mr Lloyd—They are part of the elements which were removed. The references to those have been removed. Depending on how they are handled on-site, they may still be regarded as inconsistent with the guidelines, but the specific reference to those types of practices has been removed from the guidelines.

Senator Arbib—The minister has clarified for the benefit of both employees and employers that the 2006 guidelines continue to apply to construction projects which were underway prior to the commencement of the Fair Work Act, as Mr Lloyd said. Where there is an inconsistency between the 2006 guidelines and the Fair Work Act, the Fair Work Act of course will prevail. Those are the changes, and it is very similar to the change that former Minister Andrews made when he clarified the interaction of the guidelines with the Work Choices laws on 3 November 2006.

Senator HUMPHRIES—What I am trying to explore, however, is what changes, effects or impacts, if any, there are on the sector as a result of the guidelines which have been introduced.

Senator Arbib—I am trying to ensure that you get the full picture of why—

Senator HUMPHRIES—I understand it is a fairly complex picture overall.

Senator Arbib—Yes. When you bring in legislation, of course the administrative instruments need to be adjusted.

Senator HUMPHRIES—Are there any particular changes that you could point to? What were the effects on the industry prior to the code removing those practices?

Mr Lloyd—As I said, the code and the guidelines were an instrumental part of regulating the industry's workplace relations. As I said, they reinforce the thrust of the act. They assisted contractors in ensuring that the practices on the site complied with the law. The guidelines and the code operate as a lever on contractors. The sanctions are potentially the loss of ability to tender for government work. So the contractors have been quite attentive to it and responsibilities are placed firmly on their shoulders. They are integral, as I say, to having a lawful industry. Sometimes there is a lot of debate about our act and our powers but the influence of the code and the guidelines are overlooked. But we do not underestimate it.

Senator HUMPHRIES—I might leave that and ask some questions about the draft BCII Amendment (Transition to Fair Work) Bill and get some information about the effect of that. We did ask some questions about that, or where that was heading, in the last estimates but at that stage there was not a draft bill on the table. We now have a draft bill. Can I ask you to identify the areas—again giving a thumbnail sketch—in which the proposed bill alters the powers of the existing ABCC?

Mr Lloyd—I would say the most obvious area is the use of the power to compel people to attend for an examination. Under the bill the notice to require someone to attend an examination will be issued by a member of the AAT. There is also a capacity introduced through a new office called the Independent Assessor to switch that power off for particular projects. In addition, there is an oversight introduced by the Commonwealth Ombudsman on the ABCC's exercise of the power. So they are major changes. The objects of the act change. To me, as a regulator, you often go to the objects of the act to inform yourself how you are going about something. So they change. There is an advisory board introduced. It is an advisory board that makes recommendations to the head of the new agency, and that is a significant change. They are the main changes. As you alluded to before—

CHAIR—We have actually done an inquiry into this bill, and I am conscious that we are still nowhere near our timetable.

Senator ABETZ—It was worthwhile hearing it once again, I think, Chair.

CHAIR—We could simply publicly say, 'Refer to this particular report'—primarily your dissenting report, if you like.

Senator ABETZ—But you do realise, Chair, that under the new guidelines put out by Special Minister of State Ludwig we would not be allowed to use our communications entitlement to mail out that Senate report to constituents.

CHAIR—We are not even through the portfolio agencies yet. We have not gone anywhere near the outcomes and it is 10 past five. Again, I just draw the committee's attention to that.

Senator HUMPHRIES—Can I focus on the compulsory information-gathering powers and the switch-on, switch-off powers in the legislation. Is there anything in the proposed bill or, for that matter, in the Fair Work Act that indicates that an agreement or understanding

about switch-on, switch-off powers cannot be a consideration in the negotiation of an enterprise agreement?

Mr Lloyd—I will have to take that on notice, I think. Can you repeat the question?

Senator HUMPHRIES—Is there anything in either the bill or the Fair Work Act that indicates that an agreement or an understanding about switch-on, switch-off powers cannot be a consideration in the negotiation of an enterprise agreement?

Mr Lloyd—That is a question that is best directed to the department rather than us.

Senator HUMPHRIES—All right.

CHAIR—If we get to that.

Senator HUMPHRIES—I might put the rest of my questions on notice, because I am not sure whether they go to the department or to you.

Mr Lloyd—Okay.

Senator ABETZ—Did you or Senator Humphries touch on the use of compulsory examination powers?

Senator HUMPHRIES—Not really.

Senator ABETZ—Hopefully these are just facts and figures that you might be able to assist me with. How many times have you used the compulsory examination powers in the six months to the end of September 2009?

Mr Lloyd—We issued a report on this just last week on our website.

Senator ABETZ—Sorry, I am not fully caught up with that.

Mr Lloyd—We have used the compulsory examination power 176 times. We examined witnesses 176 times.

Senator ABETZ—And in the last six months? Do you have a figure for that?

Mr Lloyd—From 1 April to 30 September, which sounds like about six months—

Senator ABETZ—Yes.

Mr Lloyd—It was 27.

Senator ABETZ—How does that compare with corresponding periods previously? Are we ramping them up or is it slowing down?

Mr Lloyd—It is a bit of a bell curve. It was 28 for the previous six months. For the six months before, which was the highest six months—that is from 1 April 2008 to 30 September 2008, so a year ago—that was 36. Before that it was 26.

Senator ABETZ—So it is roughly about the same numbers?

Mr Lloyd—Yes, it is staying around the same.

Senator ABETZ—Have these powers been used more or less frequently in certain states? Are you able to provide that to us potentially on notice?

Mr Lloyd—I think we have that here somewhere. Of the 176 there have been 104 in Victoria, 40 in Western Australia, 19 in Queensland, six in your state, four in New South Wales and three in South Australia.

Senator ABETZ—So we have hot spots in Victoria, Western Australia and Queensland, and that is where a substantial amount of construction work is taking place—Western Australia and Queensland?

Mr Lloyd—Yes.

Senator ABETZ—There has been some commentary about this from time to time. From your experience, are there more employees than employers in the building and construction sector?

Mr Lloyd—There are more employees.

Senator ABETZ—That stands to reason.

Mr Lloyd—My word.

Senator ABETZ—Therefore, it would not be surprising if the statistics in relation to the use of this compulsory power were skewed in relation to the employee side of the equation as opposed to the employer, just by the sheer numbers of employees involved in the sector as opposed to employers or managers. Is that a fair—

Mr Lloyd—That is a fair—

Senator ABETZ—Can you tell us what the split is?

Mr Lloyd—Of the 176, 125 are employees, 39 from management, 10 union officials, there is one government official and one independent witness.

Senator ABETZ—I am sure that in general terms would relate to number of employees and employers. The chances are the number of managers in fact would be disproportionate to any other cohort in all of that?

Mr Lloyd—It could be, yes.

Senator ABETZ—The ABCC is clearly targeting managers as opposed to union officials and employees on those statistics, which is interesting.

Senator CAMERON—That is one proposition you could put forward. It is not necessarily accurate.

CHAIR—Are you targeting managers, Mr Lloyd?

Mr Lloyd—No, we are not.

Senator CAMERON—There you go, you see.

Mr Lloyd—We conduct investigations and whoever is involved in an investigation has information—the important thing here, of course, to recognise we never have the target of the investigation for the hearings. It is always someone with evidence about—

CHAIR—That is all right. We accept that. Senator Abetz was just trying to make a point, and I think he has made it.

Senator ABETZ—Thank you.

CHAIR—In the spirit that sometimes this committee has a bit of humour attached to it.

Senator ABETZ—Just as long as you recognise that a point has been made, which puts you in a more gracious category than Senator Cameron. But let us move on. How many instances did the use of the power lead to the commencement of legal proceedings?

Mr Lloyd—There have been 26 proceedings commenced which have involved the use of the power and that has involved 56 examinations.

Senator ABETZ—Have there been any people—and I do not want names—who have refused to be involved in a compulsory investigation in the six months leading up to the end of September 2009?

Mr Lloyd—I do not think it was six months.

Senator ABETZ—All right. Over the whole history.

Mr Lloyd—Yes, there have been two.

Senator ABETZ—All right. Of those two, would they have been—I was going to say ‘longer ago’—not within the last six months?

Mr Lloyd—No—

Mr Dalglish—If I could just interpolate there, there was one within the last six months—a fellow who was unable to make it for very valid personal reasons.

Senator ABETZ—That is not a refusal.

Mr Dalglish—That is not a refusal.

Senator ABETZ—No, I am talking about refusals as opposed to intervening circumstances and then making yourself available. If you can take that on notice, that would be good. I might have to go to another committee so, if I do not get another chance, can I simply say to Mr Lloyd that I look forward to seeing him at the next estimates.

CHAIR—And you never got any lobbying in about Tasmania while you were here with this witness.

Senator HUMPHRIES—Could I just—

Senator ABETZ—I am glad you recognise my lobbying activities on behalf of my home state.

CHAIR—You recall I was chairing legal and constitutional affairs yesterday and I saw that shameless lobbying on behalf of Tasmania.

Senator ABETZ—I will circulate that to the constituency—that Labor senators recognise my advocacy for my home state on their behalf.

Senator Arbib—Your advocacy? I did not think—

Senator ABETZ—That is right: I can’t anymore. I will personally letterbox it.

CHAIR—We will miss you, Senator Abetz.

Senator HUMPHRIES—Talking about letterboxing—and not necessarily quite as innocuous as the sort that was referred to then—I understand from a report in the *Herald Sun* that there were some unsavoury leaflets circulated around the building industry in Victoria

which targeted inspectors of the Australian Building and Construction Commission. The report talks about the leaflets being addressed to current and former employees of the ABCC, and says, 'God forgives; the building industry doesn't.' Do you have a copy or an example of the leaflet concerned that you can show us?

Mr Lloyd—I have a copy in the office. I do not personally have a copy with me today.

Senator HUMPHRIES—Could you send it to us?

Mr Lloyd—Yes, I think so.

Senator HUMPHRIES—I understand that it is subject to a police investigation.

Mr Dalgleish—We might have to delete personal phone numbers and personal details of the person.

Senator HUMPHRIES—Yes, I am very happy for you to do that.

Mr Lloyd—It is subject to a police—

CHAIR—We do not want to be part of the circulation of it.

Mr Lloyd—No, it was a reprehensible document. It named the inspector's home address and phone number.

Senator HUMPHRIES—These leaflets obviously do not have any authorisation on them or any source that is identified.

Mr Lloyd—No.

Senator HUMPHRIES—What stage has the police investigation reached with respect to those leaflets?

Mr Lloyd—We have reported it to the police. I am not myself au fait exactly with the latest situation there—obviously, with there not being any source attached to it, it could be difficult—but it is with the police and they are going through an investigation.

Senator HUMPHRIES—Okay.

Mr Lloyd—And we have provided a fair bit of support to the officer involved, of course.

Senator HUMPHRIES—In what sorts of places were those leaflets distributed?

Mr Lloyd—Building sites in Melbourne.

Senator HUMPHRIES—Okay. No further afield than that?

Mr Lloyd—Not to our knowledge, no.

Senator HUMPHRIES—Have any sort of precautions been taken with respect to the safety of the people who are mentioned in a threatening way in the leaflets?

Mr Lloyd—Yes. I personally met with the husband of my officer who was involved, because her husband is also mentioned by name, and we provided her with assistance. We have reviewed the security at her house, addressed some arrangements about travel to and from her home and changed the phone number, where a number of abusive calls were registered.

Senator HUMPHRIES—Okay. Was it only against that one household or were there others?

Mr Lloyd—There have been two recent leaflets. An earlier one also named the private addresses of inspectors' houses—they had a couple of houses—and they were identified and also had derogatory comments, abusive comments. It is a shocking sort of thing to do and to have to put up with. But we train our staff carefully. Unfortunately, they are going to occasionally encounter abuse on site. We train them to withdraw, not to engage, when those situations develop, and any matter which crosses the line I refer to the police. We have referred about six or seven matters now to the police.

Senator HUMPHRIES—They cannot, of course, withdraw from their own homes, can they?

Mr Lloyd—No. It is most disturbing to have the home addresses and numbers mentioned.

Senator HUMPHRIES—Thank you.

Senator CAMERON—Mr Lloyd, could you tell me the average time from when you investigate an allegation until prosecution commences?

Mr Lloyd—It is one of our criteria to do it within 18 months. We have as one of our performance criteria that, from when the matter comes to our attention and we commence an investigation, we aim to have, in 75 per cent of cases, legal proceedings commenced within 18 months. So what I can tell you is that, in 83 per cent of applications filed before the court, that was done within 18 months of the receipt of the complaint.

Senator CAMERON—What is the administrative process when you are considering using the coercive powers?

Mr Lloyd—There is quite an elaborate process. The act requires me or Mr Dalglish to reach a view that there is a reasonable case to be examined. If a person is choosing not to give information voluntarily and we think that there may be a case for a compulsory examination, there is a statement in support prepared within the organisation which details the investigation, the people who have been involved in that investigation, why they are refusing to give information voluntarily and what information it is considered they might have which is germane to the investigation. That statement is referred to our legal group to provide a view that there are legal grounds to pursue this matter. A notice is issued only after that process.

Senator CAMERON—So you do not rush to coercive powers?

Mr Lloyd—We certainly do not.

Senator CAMERON—And you go through a detailed process. Is there a report written about the outcome?

Mr Lloyd—No, there is a transcript kept and then if the—

Senator CAMERON—Sorry, is there a report written about your consideration of the need to go to coercive powers?

Mr Lloyd—A report written of?

Senator CAMERON—When you consider whether you are going to use the coercive powers, is there a report written about your considerations?

Mr Lloyd—No. As I say, there is a detailed statement in support, which the person—Mr Dalglish and I—who is going to conduct the examination and give the notice has to consider. They have to consider that detailed report, but there is no report of that. There is a five- or six-page document which is examined and then a notice is issued.

Senator CAMERON—How long does that process take?

Mr Lloyd—It varies due to the complexity of the case and the number of people who might be involved. With any investigation, of course, you are trying to progress it as close to the events as possible. We have to balance that, though, against being thorough, because we know that we are subject to challenge if we are not thorough and proper in our processes. So it does vary. A number of these are covered by the figure I gave you of 83 per cent getting to court within 18 months—

Senator CAMERON—Yes, but that is the whole process. I am talking about the use of the coercive power process. How long does that normally take?

Mr Lloyd—I do not know. Mr Dalglish might have an answer.

Mr Dalglish—In terms of the initial application, if you can call it that, that will then take a week or two to get to me.

Senator CAMERON—Does the application use coercive powers?

Mr Dalglish—Yes, and then I will consider it. Sometimes I will raise queries about it. Sometimes I will reject it. Sometimes I will just sign a notice, usually having redrafted it.

Senator CAMERON—Is that a criterion that you use to assess whether you sign off?

Mr Dalglish—Apart from the statutory criteria, yes, there is.

Senator CAMERON—What is that criterion?

Mr Dalglish—There is a set of criteria. Under the statutory one, the investigation has to be into a breach of a designated building law. There has to be an investigation under 52(8). There has to be reasonable grounds for thinking that the witness is capable of giving evidence relevant to that investigation. There has to be—it is not a statutory ground but it is an internal ground—an attempt made to obtain the evidence voluntarily and to see the outcome of that. If they do not want to give evidence voluntarily, that should be established. More generally, I suppose, you need to think, ‘Is the investigation serious enough to warrant the use of compulsory powers?’ If you had a relatively minor event then you would not want to have an examination.

Senator CAMERON—So you are saying you would not do it if it were not reasonable—is that correct? So it has to be a reasonable approach to the use of the coercive powers? You would not use them unreasonably?

Mr Dalglish—It is part of the investigative process which should be used with great care.

Senator CAMERON—So it has to be reasonable, hasn’t it? If it were unreasonable then you would not do it, would you?

Mr Dalglish—I would certainly hope not.

Senator CAMERON—Right. So the importance to the investigation—

Mr Dagleish—It is always relevant. It has to be of forensic relevance.

Senator CAMERON—What about the seriousness of the suspected breach? How do you—

Mr Dagleish—Yes, I have mentioned that. If it is a trivial breach, it would not justify the use of powers.

Senator CAMERON—Do you consider the effect on the individual of the use of coercive powers?

Mr Dagleish—To the extent that we can. You do not always know what the individual's personal circumstances are.

Senator CAMERON—So in terms of these powers that Justice Wilcox described as extraordinarily intrusive, you make no attempt to find out what effect that use would have on an individual?

Mr Dagleish—That is not what I said.

Senator CAMERON—I am asking you: do you do that?

Mr Dagleish—No, that is not true. What happens is—

Senator CAMERON—Why did you say it is not true? I am asking you. I am not putting any assertion to you; I am asking you a question.

Mr Dagleish—What happens is that to the extent that you know the individual circumstances you take them into account.

Mr Lloyd—The context, too, is that we have pursued—

Senator CAMERON—Including the effects on the individual? That is what I am asking.

Mr Lloyd—Of course, the context that I keep in mind too is that we have sought to get these people to give information voluntarily which they have declined to do.

Senator CAMERON—So this process can take weeks or it could be an immediate sign-off. In terms of the government's proposed bill, which requires a written report to an external person—a presidential member of the Administrative Appeals Tribunal—that would not be a problem in the context of your operations, would it?

Mr Lloyd—We do not care too much if we talk about the bill. It is a bill; it is there. We are the regulator. We use the powers under the current legislation. We have to be—

Senator CAMERON—I am not asking about the current bill. There is a proposal that there is an AAT presidential member—

Mr Lloyd—It is in the bill.

Senator CAMERON—Yes, it is referred to in the bill. I am asking you, given what you have outlined about the complexity of some of these issues, whether that is a serious problem to your investigation if that process is put in place.

Mr Lloyd—There is a bill there. We have to be careful about how we venture into giving opinions about the bill.

Senator CAMERON—No, I am asking about an operational situation that you could be faced with. Investigations on bills happen all the time. That is what I do for a living, mainly. People call me about it, including public servants. I am simply asking you: isn't it correct that in terms of what the government is proposing in the bill and the use of a tribunal member—an AAT member—to hear it separately and independently, that could work within the processes that you undertake and not be a problem for your investigation?

Mr Lloyd—The AAT member does not hear it. They consider the evidence. Under the bill, a statement is prepared by the director and put forward to the AAT member and then they issue the notice. The director does the examination. I am very careful here. It is hard to venture a view on this sort of thing when I am the current commissioner—

Senator CAMERON—You have ventured a view about lots of things in terms of legislation. You should not be reticent now.

Mr Lloyd—I do not think I have done that very often.

Senator CAMERON—You do it, so do not be reticent now.

Mr Lloyd—What I would say, though, is that the process that we do at the moment is thorough.

Senator CAMERON—I am not asking about your process; I am asking about the process that the government is proposing about an AAT presidential member hearing the issue of the use of the coercive powers. What is the problem with that operationally for you, if any?

Mr Lloyd—I am not venturing a view that it is a problem or not.

Senator CAMERON—It is not a problem, is it?

Mr Lloyd—I am not venturing a view as to whether it is a problem or not. The fact that I am not prepared to answer does not say I think there is a problem. I am just saying that as commissioner, with my current act to administer, I am not about venturing—

Senator CAMERON—So if the legislation changed and the AAT became part of the process for the use of coercive powers, as recommended by Justice Wilcox, you could operate that under that approach?

Mr Lloyd—That has not come to fruition.

Senator CAMERON—But I am asking you. This is a real possibility and I am just asking you what the consequences and implications are for you. It is on the statutes ready to go through.

Mr Lloyd—Yes, but it is not my role. The government has decided that will be the bill and that will be the approach taken by a new body—

Senator CAMERON—And, if you continued in your current role, could you work with that approach?

Mr Lloyd—I do not have that in front of me and I am not going to venture a view on it.

Senator CAMERON—You have ventured political views on many other issues. I am wondering why you are reticent to do so on such an important issue as coercive powers. What are the implications given it is an 18-month process? Why would it be a problem if there is a

referral to an AAT presidential member? Can you give me any problems that you can see with it?

Mr Lloyd—It is not for me to venture the problems. It is not for me—

Senator CAMERON—But you have ventured views on lots of changes the government is proposing.

Mr Lloyd—I have given the minister advice, but that was done confidentially and not publicly.

Senator CAMERON—So the operation of the new body could work effectively. Is there anyone prepared to venture an opinion? You are the experts in this area, as I understand it, and you are not prepared to venture an opinion in terms of a new operational procedure for the new body.

Mr Lloyd—I do not think it is my role to venture an opinion on that publicly.

Senator CAMERON—Would there be much difference from the current arrangements? Would it there be much of a difference, can I ask that question, other than that an officer of the ABCC is basically looking at whether coercive powers should be used? Is there much difference in this other process?

Mr Lloyd—A number of the elements that you covered in the current statement in support that we address are addressed in that but there are differences.

Senator CAMERON—But they are not fatal differences to the operation of the ABCC or a new body, are they?

Mr Lloyd—It is not for me to venture on the impact on the new body. I am not the new body; I am the ABCC.

Senator CAMERON—But you ventured a view on many other aspects. This is an issue for an individual being subjected to coercive powers. If this legislation goes through can you continue to operate effectively? Let me ask you that question.

Mr Lloyd—I ventured a view about the ABCC and what we do, as I am entitled to do as a commissioner. I do not intend to venture a view about the new bill, what it would do and how it would operate. I am not going to do that. I do not think it is appropriate.

Senator CAMERON—So if you were offered a continued appointment and this new legislation was in place could you operate under that legislation?

Mr Lloyd—That is conjecture. It is not appropriate for me to enter into that. It is a matter for the future. I am not going to give a view about that. It is something you consider at the time.

Senator CAMERON—You ventured views on the quantum of penalties, but you will not venture a view about the use of coercive powers and the implications of the legislation on the effective operation of the ABCC?

Mr Lloyd—The view on the quantum of penalties I ventured in a brief to the minister. I did not do it publicly. It was released publicly later on, but I did not do it.

Senator CAMERON—Given that you cannot raise with me any significant problems, I can only assume that there are no problems if this legislation went through and you could continue to operate effectively with these checks and balances?

Mr Lloyd—I am not giving you a view either way.

Senator CAMERON—Let me go to the issue of Noel Washington. What were the total legal costs incurred by the ABCC in the Washington case? As you are aware, it was referred to the DPP and the charges were ultimately withdrawn by the Commonwealth DPP.

Mr Lloyd—I will see whether we have that.

Mr Dalglish—The cost that I have is Washington and Hadgkiss which is the Federal Court case where there was an application for an injunction to restrain having a hearing. That is not the proceeding you are talking about.

Senator CAMERON—What was the total legal cost incurred by the ABCC pursuing Mr Washington?

Mr Dalglish—The cost of defending that case that Mr Washington brought against the ABCC in the Federal Court was \$65,200.

Senator CAMERON—Were there any other legal costs associated with you pursuing Mr Washington.

Mr Lloyd—It was not us, it was the DPP. They would have the cost not us.

Senator CAMERON—Did you obtain any external legal advice about the prospects of a successful prosecution against Mr Washington?

Mr Lloyd—On the refusal to attend, no.

Senator CAMERON—You did not?

Mr Lloyd—I sent a brief to the DPP and they make the decision.

Senator CAMERON—So you did not get any legal advice as to whether—

Mr Lloyd—Not to my recollection, I do not think so.

Senator CAMERON—If you do not get any external legal advice, do you just go ahead?

Mr Dalglish—A prosecution of a civil penalty matter?

Senator CAMERON—Yes.

Mr Dalglish—No, we get external legal advice that there is a reasonable prospect of success.

Senator CAMERON—What was the cost of that legal advice?

Mr Dalglish—In which case?

Senator CAMERON—In the Washington case?

Mr Dalglish—As you know Mr Washington did not give evidence.

Senator CAMERON—That is not what I am asking you. I am asking about the cost to the Commonwealth.

Mr Dalglish—I do not know.

Mr Lloyd—We do not know the DPP's costs.

Senator CAMERON—What about your costs? What about the cost to the ABCC?

Mr Lloyd—We have told you that the cost of defending that was \$65,200.

Senator CAMERON—Were there any other legal costs?

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

Senator CAMERON—That is fine. Since the withdrawal of the charges against Mr Washington has the ABCC concluded its investigation in relation to any of the matters that it required Mr Washington to provide information about? If so, what was the outcome of the investigation?

Mr Lloyd—We will take that on notice.

Senator CAMERON—This was one of the headline cases for the ABCC and you have to take that on notice. As the chief executive you do not know?

Mr Lloyd—We have a lot of cases and a number of them do involve Mr Washington. I said that we would take that on notice.

Senator CAMERON—You do not know the outcomes? None of you sitting here know the outcome of this very widely publicised case? Are you serious?

Mr Lloyd—We have commenced 86 cases.

Mr Dalglish—In respect of the particular investigation that was the subject of the notice to Mr Washington, that was completed some time ago.

Senator CAMERON—What was the outcome of that investigation?

Mr Dalglish—There were no proceedings taken.

Senator CAMERON—So you had no evidence to justify pursuing Mr Washington?

Mr Dalglish—That question assumes that the investigation was an investigation pursuing Mr Washington. That is the difficulty with that.

Senator CAMERON—I do not see the difficulty. I am saying to you: what was the outcome of your investigations into it?

Mr Dalglish—The outcome of the investigation was that no proceedings were taken.

Senator CAMERON—So we can assume then that Mr Washington was not guilty of any crime or breach of the act because that is what that means? Is that correct?

Mr Dalglish—No proceedings were taken against anybody, not just Mr Washington.

Senator CAMERON—Has the ABCC reviewed its processes for referring such matters in the light of the unsuccessful referral in the Washington case?

Mr Lloyd—No.

Senator CAMERON—Why not? I think I have asked you about these issues before.

Mr Lloyd—We look at every case and see why it was not proceeded with. We noted that. We would ensure that if a similar circumstance arises with an examination being deferred, we would issue notices as required. With regard to referring matters to the DPP, no.

Senator CAMERON—So you would have tens of thousands of dollars expended on these cases and you do not do a review? Is that a normal process for a body that says it is professional and well managed?

Mr Lloyd—I think so. We have reviewed how we conduct those examinations given the outcome of that case. You asked me the question about whether I refer matters to the DPP. I take that on a case-by-case basis. There have only been two and they are dealt with on a case-by-case basis.

Senator CAMERON—Mr Lloyd you are on the record in the press as saying that it is not your job to investigate unlawful behaviour by employers or that you are not capable of doing that. How do you reconcile that with the obligation to achieve the objects of the act?

Mr Lloyd—Senator, I would like to see the context of that quote. It would be—

Senator CAMERON—Let me take you to some evidence that you gave to the Senate inquiry. You told that committee that arrangements with the Fair Work Ombudsman are in place because this organisation has the necessary expertise to undertake the work, and that work is the investigation of employers behaving illegally in terms of terms and conditions of building workers.

Mr Lloyd—Yes.

Senator CAMERON—Why do you not have the expertise, given that the main object of the act is to provide and improve a workplace relations framework for building work to ensure that building work is carried out fairly, efficiently and productively for the benefit of all building industry participants and for the benefit of the Australian economy as a whole? Why would you abandon that part of your remit under the legislation?

Mr Lloyd—There is an overlap in jurisdictions now between ourselves and the Fair Work Ombudsman in regard to employee entitlements in parts of the building industry for which we have jurisdiction. The Fair Work Ombudsman and predecessor bodies have a great deal of expertise in investigating and in generally achieving the restitution of the unpaid entitlements. That is backed up by a very well developed complaints line and internet contacts. In the best use of Commonwealth resources and to avoid duplication, I considered it was appropriate to exchange a letter with the person, Nick Wilson, who was then probably the workplace ombudsman, that we would refer matters in that line to them.

Senator CAMERON—So basically you abandon an area where workers may see some credibility—and I use the word ‘may’ very advisedly—in the ABCC, which is in pursuing employers behaving illegally in relation to their terms and conditions. You abandon that; that is not an important thing for you. You make an executive decision that you are not going to go down that path.

Mr Lloyd—We have not abandoned it. The impact on the workplace is not abandoned, because there is a very effective body there with expertise that does that.

Senator CAMERON—But you have responsibility for it as well.

Mr Lloyd—Yes, but I am entitled to make a decision, as is Mr Wilson, that the best use of Commonwealth resources is done in a particular way. As the CEOs of the two organisations, we decided that that would be the approach that was taken.

Senator CAMERON—So, regardless of what your obligation is under the act, you have made an executive decision not to pursue some of your key obligations under the act?

Mr Lloyd—I am satisfied that those obligations are met by another highly effective government agency and that there is no point in duplication for us to do a job which they are doing, set up to do and do very well.

Senator CAMERON—Why do you not train some of your people to have equal expertise as Fair Work Australia on this issue to try to give you some credibility with building workers, to send a message out that you are not simply acting on behalf of employers in the industry? Why would you not do that?

Mr Lloyd—I contest the assumption there is lack of credibility but, as I say, there is an overlap of jurisdiction. There are two bodies that undertake this role, there is highly developed expertise in one of them, and we decided that the best use of Commonwealth resources and the best functionality and reliability for the people involved would be to keep it with the one organisation which had the expertise.

Senator CAMERON—I understand, Mr Lloyd, that you have a view you should not involve yourself in health and safety issues; is that correct?

Mr Lloyd—I beg your pardon?

Senator CAMERON—The ABCC does not involve itself in health and safety issues.

Mr Lloyd—We do not have direct jurisdiction over occupational health and safety. That rests with the state WorkSafes, WorkCovers, Comcare and the Federal Safety Commissioner, but if we do detect an obvious health and safety infringement we refer it to the relevant agency.

Senator CAMERON—Did anyone from the ABCC contact the CFMEU's Victorian branch following the recent fatality of a 46-year-old construction worker at Pentridge jail in Coburg on 15 October? And did the ABCC express concern at the union's presence on the job after the accident?

Mr Lloyd—I do not have knowledge of whether that happened or not, but it has not been reported to me.

Senator CAMERON—Here we have a worker in the building industry killed and you do not know whether the ABCC took any action in relation to contacting the CFMEU on this issue?

Mr Lloyd—Occupational health and safety is not in our jurisdiction.

Senator CAMERON—But I am asking you whether anyone from the ABCC contacted—

Mr Lloyd—To my knowledge, no.

Senator CAMERON—Had anyone from the ABCC visited that job prior to the accident?

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

Senator CAMERON—What resources has the ABCC devoted to investigating the union's involvement on the job since the accident?

Mr Lloyd—I will take that on notice.

Senator CAMERON—I can now turn to the issue of sham contracting. Are you aware of any media reports regarding allegations of extensive sham contracting on building sites in New South Wales?

Mr Lloyd—I am aware that there have been media reports.

Senator CAMERON—What are you doing about those media reports?

Mr Draffin—I think there are at least three sham contracting investigations that are underway in New South Wales presently.

Senator CAMERON—Three currently underway?

Mr Draffin—Currently underway.

Senator CAMERON—How many independent contractors are employed in the industry?

Mr Lloyd—I will take that on notice. I do not know off the top of my head.

Senator CAMERON—Can I ask you whether it is roughly a small number?

Mr Lloyd—I think it is a significant proportion. There are a lot of contractors in the industry.

Senator CAMERON—On that basis you conducted face-to-face interviews with 39 subcontractors to consider arrangements with the so-called contractors who hired them. You did that back in, I think, September last year?

Mr Lloyd—There was an audit we did in New South Wales, I think, of some selected segments of industry.

Senator CAMERON—Is that the first audit you have done?

Mr Lloyd—Of sham contracting, yes.

Senator CAMERON—You indicated in your report that you would be conducting more audits. Has that taken place?

Mr Lloyd—One has been done in Queensland.

Senator CAMERON—How many contractors were interviewed in Queensland?

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

Senator CAMERON—Were there any findings similar to the findings in New South Wales that there was no sham contracting taking place?

Mr Lloyd—It has not been completed yet.

Senator CAMERON—Were you surprised about the outcome of the 39 subcontractors—that there was no sham contracting taking place?

Mr Lloyd—There was an audit done and there was a report. I was not quite sure what the first audit would show.

Senator CAMERON—Thirty-nine subcontractors out of the total number of subcontractors involved in New South Wales is minute, is it not?

Mr Lloyd—We wanted to do an audit which was thorough, but you have to balance it. If you have bigger numbers, often you will not be able to drill down as much as you would like.

Senator CAMERON—But you can look through a keyhole and miss everything else, can you not? You can look through a keyhole and be very thorough but you will miss everything else. That is really what you have done, have you not?

Mr Lloyd—You might. We chose it from a survey. There was a bit of science about the survey and how the particular people—

Senator CAMERON—So you are saying there was science?

Mr Lloyd—About the survey, about choosing—

Senator CAMERON—Were you advised that this was statistically significant enough, this 39—

Mr Lloyd—I do not know. I will take that on notice.

Senator CAMERON—How about whether it is statistically significant? I will run through a number of these things I would like you to take on notice on this issue. How long did the interviews take that you undertook? Were the results of the interviews recorded and retained? Was the assessment of the bona fides of these arrangements made at the level of the inspectors who conducted the interviews or at a higher level? Were these assessments rechecked or carried out only once? Of the 39 parties interviewed, how many also involved the ABCC speaking to the so-called contractors about arrangements rather than just a business that engaged them? How many involved an examination by the ABCC of the financial and payment records of those businesses involved? How much notice was given to those who were audited that an audit was to take place? Could you take those on notice and come back with some detail of this audit? I must say, I am very sceptical about whether it was a waste of money in this operation.

Mr Lloyd—I do not think it was.

Senator CAMERON—I have worked in the industry and I know that there is a long history of sham contracting. I just think for you to use this survey and come up with a finding that there is no sham contracting is meaningless. It just is absolutely meaningless.

Mr Lloyd—That is your view.

Senator CAMERON—In the period that you have been the chief executive officer of the ABCC, have you spoken to Ken Phillips, the executive director of Independent Contractors Australia?

Mr Lloyd—Yes.

Senator CAMERON—Have you sought any advice from Ken Phillips on any operational issues?

Mr Lloyd—No.

Senator CAMERON—Have you sought any advice from him in relation to any analysis of the industry?

Mr Lloyd—No.

Senator CAMERON—What were the discussions that you had with him about?

Mr Lloyd—I spoke at a conference which Mr Phillips was organising. I have gone to a number of meetings and functions in Melbourne where I have come across him. Those were industrial relations functions. That is the nature of the contact.

Senator CAMERON—You are aware that in your 2007 Econtech report his analysis was used as one of the inputs to the modelling?

Mr Lloyd—Yes.

Senator CAMERON—Have you studied what he proposed in terms of that analysis on the EastLink report?

Mr Lloyd—I read reports of his study. It is hard to recollect the extent to which I looked at his study particularly.

Senator CAMERON—But it was quite significant. Statistically, it would be significant in terms of the overall report.

Mr Lloyd—It was one of the studies of the Econtech report.

Senator CAMERON—It was one of the studies—and a big study in terms of alleged savings. Are you confident that the methodology used by Mr Phillips was a practical methodology?

Mr Lloyd—I am confident in the Econtech report. I have not closely examined the Phillips report.

Senator CAMERON—How can you be confident of the Econtech report if you do not know whether one of the major inputs was accurate or not?

Mr Lloyd—It was one of the reports. There were a number of reports, analyses and case studies that the Econtech report relied on to reach its conclusion.

Senator CAMERON—How many did you rely on?

Mr Lloyd—Econtech relied on a number. I do not have the Econtech report with me.

Senator CAMERON—How many was that?

Mr Lloyd—I do not know. I do not have the report with me.

Senator CAMERON—Was it more than five? Fewer than five? It was a small number, wasn't it? It was not a huge number.

Mr Lloyd—There were a number of case studies and reports.

Senator CAMERON—It was not scores?

Mr Lloyd—I beg your pardon?

Senator CAMERON—It was not scores? It was not 20, 30, 40?

Mr Lloyd—I do not think it was that high.

Senator CAMERON—It was a small number.

Mr Lloyd—Yes.

Senator CAMERON—If one report has no statistical reliability then that has an effect on the rest of the report, doesn't it?

Mr Lloyd—You are saying that.

Senator CAMERON—You do not know, do you?

Mr Lloyd—It was one of the reports that we used.

Senator CAMERON—You do not know—that is the problem—and you are relying on it. Did the ABCC have any contact with the Master Builders Association about the KPMG Econtech report on industry productivity either before or after the release of the report? If so, what was the nature of this contact, and was the MBA provided with any material by the ABCC arising out of or related to the two previous Econtech reports commissioned by the ABCC?

Mr Lloyd—I can assure you that there was no material—I think that was the last part of your question—provided by the ABCC to the MBA. As to the contact, I was aware they were doing it but that was all. We were told that it was being done and they had commissioned Econtech, which I think was a public statement.

Senator CAMERON—Can you take on notice whether any of your officers were engaged in discussions with the MBA in relation to this report?

Mr Lloyd—I will take it on notice but I would be very surprised.

Senator CAMERON—Your 2007-08 Econtech report, as you are aware, has not got a lot of credibility in that there were poor assumptions—

Mr Lloyd—I would disagree with that.

Senator CAMERON—and you have conceded there were mistakes in the report. Justice Wilcox describes it as not persuasive. Other analysis shows that it was deeply flawed and should be disregarded. Queensland DEIR tried to replicate your study and could not replicate it. They did consult with you. They corresponded with you on this and you did not give any substantive response. Why was that?

Mr Lloyd—I will have to take that on notice. There was contact between us. I will have to take the final outcome on notice.

Senator CAMERON—Professor Peetz also tried to replicate the outcome and came up with wildly different results. Did you have any discussions with Professor Peetz to try to understand why he thought your report was deeply flawed?

Mr Lloyd—No.

Senator CAMERON—Wouldn't that be a good idea? If a senior academic is saying there is a problem, wouldn't it be a professional thing to do to try to find out what he thought the problem was and try to find out if there is a problem?

Mr Lloyd—Professor Peetz and two other people from the Queensland government have analysed the Econtech report. They have reported on a number of occasions their findings on it. I do not see any need to talk to him because I do not think the Econtech report is flawed.

Senator CAMERON—But you do not even know some of the inputs that are in there. You have just conceded to me that you do not know the basis of the Phillips input to the Econtech report.

Mr Lloyd—What I said was I cannot give you a guarantee that I read every word of every report that Econtech considered.

Senator CAMERON—I am not asking whether you read it. But you are the chief executive. You are the guy who went out to the AiG on 28 May this year and said that productivity has increased between six and 13 per cent since the ABCC was created and you tried to present an argument that you were responsible for that, when academics, government bodies and other analyses—even other business analyses—were saying that was rubbish. But you persist with this spin. Why do you persist with this spin when you have not got proper grounding for the claims that you are making?

Mr Lloyd—Because it is not spin. The Econtech report is a thorough report. A number of measures of productivity over the period pointed in the same direction, ranging from a six per cent to a 13 per cent improvement. I consider, and a number of people consider, that the Econtech report is quite sound.

Senator CAMERON—Leigh Johns has been appointed in what was described as a crucial role in managing the transition to the new body. What role is Leigh Johns playing at the moment?

Mr Lloyd—He heads up the operations part of the organisation.

Senator CAMERON—Have you had any discussions with Leigh Johns about how you would transition to a new body if that body is instigated through parliament?

Mr Lloyd—It started off at one stage where I was involved on the Fair Work Australia task force, because initially the plan was that we would go into Fair Work Australia, so we were involved in a lot of transitional issues about that. Since the bill came out and a separate agency is to be created, we have done some thinking and forward planning, but the real planning for that will happen once the bill has been considered. If it proceeds then we will get stuck into it.

Senator CAMERON—But you have taken steps to make sure that if the bill is passed you can professionally move to the new operation.

Mr Lloyd—Yes. I have been through lots of changes of government organisations.

Senator CAMERON—So that would include being able to manage any changes to the coercive powers.

Mr Lloyd—Yes.

Senator CAMERON—So you would manage that well.

Mr Lloyd—I believe so.

Senator CAMERON—That is good.

Senator HUMPHRIES—Chair, a lot of these issues were ventilated during our inquiry into the new BCII legislation. When I was asking questions before about that legislation, you suggested that this had been covered in the inquiry.

Senator CAMERON—I will finish on that.

Senator HUMPHRIES—Okay.

CHAIR—That is obviously a point well made, Senator Humphries.

Senator CAMERON—You just made it a bit late. Mr Lloyd, as you are aware, there were some pretty disparaging comments from some senior judges—Justice Gray and Justice Spender—in relation to the operation and balance of the ABCC in its investigations. Since the last estimates, have there been any further disparaging remarks from judges? What have you done to fix this problem?

Mr Lloyd—We have answered this before. We look at every decision. We consider any comments that are made from a bench about the matter or anything that points to how we go about our investigations or legal preparation. We often consult the counsel who are involved. So that happens as a matter of course.

Senator CAMERON—Section 14(2)(b) of the act requires the ABCC to provide details in its annual report of assistance provided to building employees in connection with the recovery of unpaid entitlements. Why doesn't the annual report provide these details or say that no such assistance has been provided?

Mr Lloyd—It does, as I recollect.

Senator CAMERON—Can you point me to where?

Mr Lloyd—I will take that on notice.

Senator CAMERON—So this is an area of workers' entitlements that you are interested in, is it? You do not hand this over to the Fair Work Ombudsman, do you?

Mr Lloyd—We do. As I have said, we refer employee entitlements matters to the workplace ombudsman. Some we may investigate ourselves but most are referred to the workplace ombudsman.

Senator CAMERON—Does the ABCC have a practice of sending letters out to every employer who is engaged in enterprise bargaining with a union offering assistance and advice about the bargaining process?

Mr Draffin—Yes, we do.

Senator CAMERON—Do you send similar letters offering services and advice to the unions involved in the bargaining process?

Mr Draffin—No, we do not.

Senator CAMERON—Why not?

Mr Draffin—Normally the unions are well equipped and well aware of the processes involved.

Senator CAMERON—So you again provide a perception of bias in terms of Justice Spender, Justice Gray and Justice Marshall. This bias is again compounded by the fact that you offer assistance to employers on bargaining but not to unions or workers.

Mr Draffin—The letters that we send certainly do not extend to unions or workers, no.

Senator CAMERON—So do you not agree that that could be perceived to be a bias?

Mr Draffin—No, I do not.

Senator CAMERON—Why not?

Mr Draffin—There are a lot of activities that the ABCC enters into. Bargaining letters are merely one aspect of many others. To say that we are biased I do not think looks sufficiently at the overall activities of the ABCC.

Senator CAMERON—I am not interested in the overall activities. I am asking you about your activities in relation to sending out letters, like the copy I have here, from you to an employer offering assistance in the bargaining process.

Mr Draffin—I have answered—

Senator CAMERON—Do you see yourself as some kind of employer organisation to assist them in bargaining?

Mr Draffin—No, we do not.

Senator CAMERON—Why wouldn't the employer organisations do this work?

Mr Lloyd—Not everybody belongs to an employer organisation.

Senator CAMERON—But that availability is there. So why do you say, 'We'll help the employers but we're not interested in helping another party in the industry, the unions'?

Mr Draffin—It is a matter as to who would have the expertise to be able to deal with these issues. Our experience is that many small subcontractors simply do not have that type of experience.

Senator CAMERON—So if you get 300 subcontractors in the bargaining process and they say, 'Okay, we want your assistance,' what do you do?

Mr Draffin—It would depend on what assistance they required. We generally have a very low response to the letters that we send out.

Senator CAMERON—How many letters have you sent out to employers?

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

Senator CAMERON—You have taken on notice this issue of occupational health and safety and the death of a worker. Are your investigators skilled in occupational health and safety issues?

Mr Lloyd—No. They are not as skilled as the inspectors employed by WorkCover and WorkSafe.

Senator CAMERON—Isn't occupational health and safety one of the areas that does become an industrial conflict area?

Mr Lloyd—It can.

Senator CAMERON—I am not asking whether it can; I am asking you: is it? Is it your experience that there have been disputes in the building industry on occupational health and safety?

Mr Lloyd—Of course there have been disputes on occupational health and safety.

Senator CAMERON—That is a more reasonable answer.

Mr Lloyd—Sometimes it is abused; sometimes it is genuine.

Senator CAMERON—How do you then determine if it has been abused if there is no training for your officers in health and safety?

Mr Lloyd—We investigate the matter and sometimes we contact the relevant WorkCover and WorkSafe people, particularly if they have attended that site—

Senator CAMERON—So you investigate the matter and sometimes you contact them. Have you initiated an investigation or used the coercive powers or taken any action under your powers under the act based on a line officer of the ABCC making a decision about a health and safety dispute issue?

Mr Lloyd—I would have to take that on notice. It is an unusual question. I would have to take it on notice because I cannot answer that here. I am not too sure what you are getting at. What are you saying?

Senator CAMERON—What I am saying is that disputes arise over occupational health and safety.

Mr Lloyd—Yes.

Senator CAMERON—You would, in my view, take action on disputes arising out of occupational health and safety. Your officers have no training in occupational health and safety, so they make value judgments about the disputes without the appropriate expertise or training. That is what I am putting to you.

Mr Lloyd—They would not make a judgment call on an OH&S issue without first seeking the input from the relevant state authority that would have the expertise in that matter.

Senator CAMERON—Can you then provide me with details of how many times you have sought support and advice from the relevant occupational health and safety authorities and can you contextualise your answer in terms of how that relates to you making a decision to take action on a health and safety dispute?

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

Senator Arbib—I thought you were winding up, Senator Cameron.

Senator CAMERON—On your advice I will, I think.

CHAIR—Thank you, Mr Lloyd, and your officers, for appearing before the estimates hearing today. We will make a start with the department now. We are really rocketing along. Senator Cash has advised Senator Humphries that she has about four hours worth, but we are hoping to cut that down somewhat.

Senator CASH—Sorry, Ms Golightly.

CHAIR—So we will go straight to Senator Cash.

Ms Paul—Chair, do you mind if I answer a question which was asked this morning by Senator Mason? He asked if we could find out if Dennis Glover had written a speech that the Deputy Prime Minister gave to Per Capita, I think it was called, and I am advised that Dennis Glover did not write that speech.

CHAIR—Okay. Thank you.

Senator CASH—Ms Golightly, will you be answering questions in relation to Job Services Australia as per the last time?

Ms Golightly—Yes.

Senator CASH—We have only 15 minutes and I would like to get through this prior to the dinner break. What I am going to ask from you, as I have in previous estimates hearings, is for a number of statistics. I know you normally ask for them whilst we go on to other questions. So what I might do upfront is go through the questions in relation to the statistics that I need and then, whilst they are being sought, we can go through other questions, if that suits.

Ms Golightly—Sure.

Senator CASH—Thank you. I will be looking for what is the current case load for Job Services Australia. What is the breakdown for job seekers in streams 1, 2, 3 and 4? Can you please provide a breakdown of job seekers aged 15 to 24 who are in streams 1, 2, 3 and 4? How many Employment Pathway plans have been approved? How much from the Employment Pathway Fund has been committed to date? Can you provide a breakdown of that particular figure as a percentage against each stream 1, 2, 3 and 4—

CHAIR—And feel free just to ask Senator Cash to hold a little bit if she is going too fast.

Senator CASH—Absolutely. I am ticking them off, but if you need to go back—

Ms Golightly—No. I am up to, I think, the EPF committed and then that broken down by stream.

Senator CASH—Broken down against the streams. How many job seekers are currently suspended? How many job seekers have had a no-show, no-pay penalty recorded? How many comprehensive compliance assessments have occurred? How many New Enterprise Incentive Scheme businesses have commenced since 1 July 2009? What is the value of the NEIS Employment Pathway Fund? And how much money from that fund has been allocated?

Ms Golightly—Yes, Senator, we should have all of that with us.

Senator CASH—Fantastic. I will now turn to the other questions which, hopefully, we can work through while we are seeking that information. Do you need a minute to—

Ms Golightly—No, I think my colleagues would have written all of that down and be busily getting that for you.

Senator CASH—Thank you very much. Okay, Ms Golightly, I understand that there was an NESA conference in Sydney in August 2009 and that you spoke at it on behalf of the department.

Ms Golightly—Yes, Senator.

Senator CASH—And one of the things that you recognised in your speech was that there had been the standard teething problems of any initiative rollout with the JSA.

Ms Golightly—Yes.

Senator CASH—Could you elaborate on those standard teething problems?

Ms Golightly—Certainly, Senator. I think I also put that in the context, though, that it had been a very smooth transition and they were very, very minor things—such as there might

have been people still with queries about their case load, which we were able to resolve. They were queries more than anything.

Senator CASH—And what type of queries were they?

Ms Golightly—As I just said, it would have been providers asking questions about their case load and whether they were interpreting their reports and other normal things—getting used to the new arrangements and making sure that they understood that they were interpreting the information properly, that sort of thing.

Senator CASH—Were there any IT issues associated with the rollout?

Ms Golightly—None—

Senator CASH—None that you are aware of?

Ms Golightly—Yes.

Senator CASH—Okay. Any problems associated with contacting job seekers?

Ms Golightly—No, Senator. In fact, we have been really pleased with that aspect of it.

Ms Paul—In fact, I might add, Senator, because I am sure Ms Golightly would be too modest, that in my view the transition phase has been absolutely outstanding. Indeed, we have received a large number of compliments from providers about the IT system and the changes to the IT system which had been planned over a long period of time. In terms of job seekers, we did not face the level of potential disruptions for job seekers which we were concerned might happen with a change this size, which has never been seen before—a 100 per cent tender plus rolling a number of programs into one new program. It was just absolutely amazing. The providers have connected all of the job seekers. We did not face the disturbance that you might expect when something is affecting 700,000 job seekers. It is quite extraordinary. I think it is a tribute to the team and it exceeded our expectations significantly, actually.

Senator CASH—Did you hear of any providers who had trouble getting their IT systems installed on time?

Ms Golightly—Senator, I can check for you but, as far as I know, all of them had access to our IT system on the day.

Senator CASH—On the day.

Ms Golightly—Yes. I will check that for you, but that is my knowledge.

Senator CASH—Thank you very much. Were there any issues with providers not adequately being prepared for the commencement of the rollout, for example inadequate staff levels?

Ms Golightly—No, and we were checking this very diligently. All of the providers were able to be operational on day one.

Ms Paul—We had a really intensive effort, through Ms Golightly's leadership and through our state offices, and there was an enormous amount of personal contact with providers by our staff and I just think it paid off in spades. Given the size, the nature and the potential for

understandable levels of disturbance that just did not happen, it was the smoothest thing I have ever seen.

Senator Arbib—Can I just say, Senator Cash, that I congratulate the department on the work they did, because it was a very smooth transition. But interestingly, at the same conference that Ms Golightly was at, the NESAC CEO, Sally Sinclair, told the conference—and I think it is an important quote—that in considering the magnitude of reform, I think it is fair to say that we were in the midst of the most successful transition in Australian employment services history with Job Services Australia. So that was from the head of the job providers, which is a pretty good recommendation of what the department was able to achieve.

Senator CASH—Thank you for that.

Ms Paul—Yes, that is better than me just saying it.

Senator CASH—So are you aware of a provider on the Gold Coast that did not have its computers available on time and told job seekers that they would need to come back at a later date?

Ms Golightly—I am not aware of that. I can check into our records, but no.

Senator CASH—No.

Senator Arbib—Do you have the name of the provider so that we can check?

Senator CASH—No, not on me. On the AusTender website—and this is just something I found—there are some streamed services fees paid to Job Services Australia providers in the amount of \$10,000. Can I get you to explain what they are?

Ms Golightly—AusTender?

Senator CASH—When you have a look at some of the contracts it says, ‘Streamed services, \$10,000.’

Ms Golightly—Do you have a contract number?

Senator CASH—No, I do not have that on me.

Ms Golightly—Okay.

Senator CASH—I can get it during the dinner break.

Ms Golightly—Yes, certainly that would—we will look it up anyway, but certainly the contract number makes that job—

Senator CASH—A little bit easier.

Ms Golightly—Yes.

Senator CASH—Have any JSA providers handed back their contracts, either prior to the contract start date or since then?

Ms Golightly—We had one provider hand back their contract prior to the start date.

Senator CASH—And who was that?

Ms Golightly—I cannot recall the exact name of the organisation, so I will get that for you, but it was one in New South Wales.

Senator CASH—Thank you very much. What was the reason for them handing it back?

Ms Golightly—From memory—and again I will check this for you—they decided that in the end they did not want to accept the amount of business that was offered.

Senator CASH—And you will get that name for me?

Ms Golightly—I will check the name, but I would also be a bit hesitant in divulging it without checking with them that they were happy for that to be divulged.

Senator CASH—Was it an Indigenous-specific organisation?

Ms Golightly—From memory, yes.

Senator CASH—Have all job seekers now transitioned?

Ms Golightly—Of all of the job seekers who were meant to transition from 1 July, an immediate start, 99 per cent—

Senator CASH—Ninety-nine per cent?

Ms Golightly—It is actually just over 99 per cent. So just over 99 per cent had been engaged by 30 September. We are also 90 per cent of the way into those who had until 31 December to transition.

Senator CASH—Can I ask you what the difference was? Also, who was not due for immediate transition and why?

Ms Golightly—According to the transition rules that were in the request for tender and depending on the amount and type of service that the job seekers had previously, they were split into two groups and that was to help with the transition workload. So there were two groups.

Senator CASH—Were the people in the second transition workload subject to any disadvantage for being in that group?

Ms Golightly—No, because the transition rules allowed that we still contact all of them and make it clear that, if they would like to be serviced immediately, they could be. Many of them have taken up that offer, as illustrated by the fact that we are 90 per cent of the way through that already.

Senator CASH—Ninety-nine per cent?

Ms Golightly—No. With the second group, it is 90 per cent.

Senator CASH—In relation to the first group, can I ask you about the missing one per cent.

Ms Golightly—It is a missing 0.8 per cent, because it is 99.2 per cent. Often it was to do with people who might have got a job just the day before and were in the process of letting Centrelink know. They did not really need to engage with their provider anymore but, because the records had not been updated, they might have still been on our list. It is really that sort of thing, or it might have been someone who was in the process of getting a job capacity assessment. It was that sort of thing. It is quite understandable.

Ms Paul—You could basically say the transition is complete.

Senator CASH—How many job seekers failed to attend their first scheduled appointment with their JSA provider?

Ms Golightly—I will get you the figures on that if I can. I should say that, with 99.2 per cent having been engaged, it would indicate that quite a high number have attended, but I will get you the right figures.

Senator CASH—Has there been a full transition to work experience placement as well?

Ms Golightly—Yes. All of those rules apply, whether you are in work experience or streamed services.

Senator CASH—Are any Job Services Australia providers utilising subcontractors to assist them with providing their services?

Ms Golightly—Yes.

Senator CASH—Do you know how many?

Ms Golightly—Yes, I think we have answered those questions on notice so I will be able to dig them up during the break.

Senator CASH—Thank you.

Ms Golightly—From memory, I think it is 77, but I will check.

Senator CASH—I appreciate that; thank you. The question flowing from that question is: how many of those subcontractors tendered in their own right to offer Job Services Australia services but were unsuccessful?

Ms Golightly—Again, I will check that for you. I know there was one who was a subcontractor under Job Network who tendered as a subcontractor under Job Services Australia and was unsuccessful with that bid but has subsequently become a subcontractor to a successful bid. But I will check the own right bit.

Senator CASH—Thank you. How many subcontractors are delivering work experience activities such as Work for the Dole?

Ms Golightly—I will need to check that for you. We may not have that one here with us tonight but I will check.

Proceedings suspended from 6.31 pm to 7.31 pm

CHAIR—The committee will now resume with questions of the department in outcome 4. Do you have some answers for us straightaway, Ms Golightly, or, Senator Cash, do you have questions?

Senator CASH—Absolutely. What is the current case load for Job Services Australia?

Ms Golightly—As at 9 October, in total it was 764,400 job seekers.

Senator CASH—And the breakdown of the streams?

Ms Golightly—For stream 1 it is 252,130, for stream 2 it is 170,929, for stream 3 it is 209,979 and for stream 4 it is 96,891.

Senator CASH—Thank you very much.

Ms Golightly—If you add all those up, there are a small number remaining, and they are people who are either in stream 1 limited or who are waiting to be assessed by a JCA.

Senator CASH—Sorry, I missed that.

Ms Golightly—There is a small difference when adding those four numbers, and the total would be people who are either in stream 1 limited services or who are pending assessment—for example, through a JCA.

Senator CASH—Could you explain ‘stream 1 limited services’.

Ms Golightly—It is mainly for people who are not on income support—there could be other categories but that is the main one—and who volunteer to have service.

Senator CASH—What is the breakdown of job seekers aged 15 to 24 who are in the various streams?

Ms Golightly—Sorry, that is one that we could not get for you tonight. It requires a fairly sophisticated interrogation of the data, so we will get that for you on notice.

Senator CASH—Thank you. How many employment pathway plans have been approved?

Ms Golightly—Again, as at 9 October, 669,808 have been finalised, and there are at least a further 10,902 in the process of being finalised.

Senator CASH—Going back to the current case load for Job Services Australia and the breakdown in the various streams, does that mirror what the predictions were?

Ms Golightly—The predictions that were published as part of the RFT were for the whole of the contract, so not at a particular point in time, but it is evident at the moment that there are fewer people in stream 1 than predicted.

Senator CASH—You thought there would be, what, 61 per cent in stream 1?

Ms Golightly—From memory, I think it was 53 per cent.

Senator CASH—So fewer people, yes.

Ms Golightly—And there are more people in the other streams at this point than predicted, but it is a little hard to compare because, as I say—

Senator CASH—The whole of the contract as opposed to—

Ms Golightly—Yes. But at the moment that is how it is tracking.

Senator CASH—How much from the Employment Pathway Fund has been committed to date?

Ms Golightly—Again, as at 9 October, \$39,516,154 has been committed.

Senator CASH—Are we able to have a breakdown as a percentage against each stream?

Ms Golightly—Certainly. Of those commitments, 1.2 per cent was for stream 1; 36.9 per cent for stream 2; 42 per cent for stream 3; and 19.8 per cent for stream 4.

Senator CASH—Thank you very much. I will trust you that that adds up to 100 per cent.

Ms Golightly—It does indeed.

Senator CASH—I have handed to Ms Paul a copy of the contracts that I was referring to previously.

Ms Golightly—Yes. I have found out the answer anyway, Senator. Was that the next one on your list?

Senator CASH—It was, thank you.

Ms Golightly—For AusTender, the rules are that any contract over \$10,000 has to be registered. Our issue is that because the Job Services contracts are demand driven we do not know how much each will be worth. So, in order to discharge our responsibility to at least publish those contracts, we have put in the nominal figure of \$10,000 so that you can at least see what the contract is worth.

Senator CASH—Would that mean that every Job Services Australia provider—

Ms Golightly—Will have that same entry, yes.

Senator CASH—How many job seekers are currently suspended?

Ms Golightly—I do not have an exact number tonight, but it is around 130,000 job seekers as at 9 October. We can get you the exact figure, but it is definitely in that ballpark.

Senator CASH—How many job seekers have had a no show, no pay penalty recorded?

Ms Golightly—1,855 as at 9 October.

Senator CASH—How many job seekers failed to attend their first scheduled appointment with their JSA provider?

Ms Golightly—We were not able to get through all of your questions in the tea-break, but people are still working on some of them. That is one I have not got to hand as yet.

Senator CASH—How many comprehensive compliance assessments have occurred?

Ms Golightly—There have been 198 finalised in the system by Centrelink. There would be a small number of others that they have done but perhaps have not finalised the record. Again, that is 9 October.

Senator CASH—Do you have a breakdown of the triggers for these comprehensive compliance assessments?

Ms Golightly—Yes. I do not have them with me, but we could get them.

Senator CASH—Can you take it on notice?

Ms Golightly—Yes.

Senator CASH—How many NEIS businesses have commenced since 1 July 2009?

Ms Golightly—This one is at 12 October. There were 683 NEIS businesses commenced and there are a further 2,795 people doing their NEIS training, which is the mandatory step before doing their NEIS business.

Senator CASH—What is the value of the NEIS pathways fund?

Ms Golightly—Again, someone was getting the precise figure, but the total value was in the order of \$12 million, I believe. I will come back with a precise figure for that.

Senator CASH—Thank you very much. How much of the fund has been allocated?

Ms Golightly—To date \$127,280 has been charged. It is up to the providers as to when they actually bill for those services, so there could be a lag in that. I do have that exact figure for the NEIS EPF. It is \$12,956,744.

Senator CASH—Thank you.

Ms Golightly—I think that might be all of the answers I have so far.

Senator CASH—That is fine. Were we progressing on how many subcontractors have been utilised in conjunction with JSA providers? You gave a ballpark figure of 77.

Ms Golightly—Yes, sorry, that was confirmed.

Senator CASH—And it was correct?

Ms Golightly—Yes. There are 28 Job Services Australia providers that have subcontracting arrangements approved by us for 77 individual organisations. So the 77 figure was correct.

Senator CASH—Thank you. How many of the subcontractors tendered in their own right to Job Services Australia yet were unsuccessful? I know we spoke of one.

Ms Golightly—Yes. What we are checking through there are a number of permutations and combinations. They could have been a subcontractor before, tendered in their own right and were unsuccessful, or they could have been a subcontractor before, tendered in their own right and tendered as a subcontractor and were successful.

Senator CASH—That is fine. You are working through the permutations.

Ms Golightly—We are working our way through that, yes.

Senator CASH—Thank you very much.

Ms Golightly—But I do not think it is going to be a very big number.

Senator CASH—That is fine. Take it on notice. How many subcontractors are delivering work experience activities such as Work for the Dole?

Ms Golightly—That was something we could not get tonight because, under the contract, anybody that provides host services under work experience is categorised as a subcontractor. So I will need to go and count that up.

Senator CASH—Take it on notice. Thank you very much. I will now turn to the meeting in February 2008 between A4e executives, Minister Gillard's office and Minister O'Connor's office. Is somebody able to provide me with the information as to who attended this meeting on behalf of the government, who attended on behalf of A4e and was there any departmental representative at the meeting?

Ms Golightly—I will have to take that on notice. I do not have those details with me.

Senator CASH—Is it something that we can get tonight? It was in the *Age* newspaper. I can give you the date of the article if that is going to jog anybody's memory.

Ms Golightly—I do not think we would be able to get that for you tonight.

Senator CASH—Could you also please then provide me with the actual date of the meeting.

Ms Golightly—I will check with the relevant ministers.

Senator CASH—It was in February 2008, but could you provide me with the actual date of the meeting.

Senator Arbib—I am happy to try and chase up that information for you.

Senator CASH—Thank you. I appreciate that, Minister. There was a further meeting in July 2008 with Minister O'Connor's office and A4e. Again, can you advise the committee who attended this meeting on behalf of the government, who attended on behalf of A4e and was there any departmental representative at that meeting.

Senator Arbib—I am happy to try and chase that information up for you.

Senator CASH—Thank you. More generally, who would normally be the person from the department to meet with overseas providers?

Ms Golightly—It would depend what the meeting was about.

Senator CASH—Job services contracts.

Ms Golightly—It would be the relevant person available at the time, if any, because of course ministers meet with providers and other organisations all the time, as is normal practice. There may or may not be a departmental rep there.

Senator CASH—In terms of meetings with overseas providers, would the representative from the department come from any particular branch in the department?

Ms Golightly—It would most likely come from somewhere in my cluster, or possibly—

Senator CASH—Sorry, did you say your—

Ms Golightly—My cluster, which is a number of groups and a number of branches. Or it possibly could even be from Graham's cluster.

Senator CASH—It really would depend on what we thought the meeting might be about.

Ms Golightly—Could I narrow it down and say if it was about services within Australia.

Ms Paul—We would have to check. It is over a year ago. Both those dates are outside the tender time frames.

Ms Golightly—That is right.

Ms Paul—They are well before the tender. Both of those dates are over a year ago. Did you say you had a media reference—an article reference?

Senator CASH—Yes.

Ms Paul—That would be helpful.

Senator CASH—9 July 2009, accessible from theage.com.au.

Ms Paul—Thank you.

Senator CASH—Ms Golightly or Ms Paul, are you aware of the meetings that I am referring to?

Ms Paul—I am certainly not and, as I say, it is a long time ago.

Ms Golightly—It is not in my memory.

Ms Paul—We will have to check into it.

Senator CASH—Thank you. Is the department aware of the details of any meetings between representatives of A4e and government ministers and their officers since July 2008?

Senator Arbib—If you are talking about ministers, I do not think that is a question that the department can answer, but I am certainly happy to try and seek out that information for you on behalf of the ministerial officers.

Senator CASH—Would the department not be aware?

Senator Arbib—You are asking about meetings that ministers may have had.

Senator CASH—Sorry. Government ministers or their officers.

Senator Arbib—Again, though, that is government ministers and I am happy to try and chase up with the ministerial officers to see whether those meetings happened.

Senator CASH—Thank you, Minister. I would appreciate that. Is the department aware of any communications between Minister Gillard's office or Minister O'Connor's office regarding A4e, regardless of the time frame?

Senator Arbib—Again, you are talking about communications between ministerial officers, so that is a matter—

Senator CASH—I am just asking if the department is aware of any of the communications.

Senator Arbib—I am happy to chase that up with the ministers involved.

Senator CASH—Are you aware, Minister, of any communication between the various ministers' officers regarding—

Senator Arbib—No, I am not.

Senator CASH—Is the department aware that Mr Tom Bentley, a senior adviser to Julia Gillard, the Deputy Prime Minister, previously worked for David Blunkett, who is now an adviser to A4e?

Ms Paul—No, I am not aware of that.

Senator CASH—You have not seen the article in the *Age* newspaper on 9 July 2009?

Ms Paul—No, I had not, so thank you for the reference.

Senator CASH—Not a problem at all. Ms Golightly, were you aware of that fact?

Ms Golightly—No.

Senator CASH—Mr Carters?

Mr Carters—No.

Senator CASH—Is the department able to provide a copy of Tom Bentley's ministerial staff statement of private interests under the ministerial code of conduct?

Ms Paul—I imagine not, and it would not be a matter for us, it would be a matter for—

Senator Arbib—That would not be held with the department; that would be held at a ministerial level.

Ms Paul—That would be, if anything, a department of finance issue.

Senator CASH—So you are saying it is the wrong department to actually—

Ms Paul—I would expect so, but we can take it on notice and let you know where the correct place is, if you like.

Senator CASH—Thank you very much.

Ms Paul—Because you are going to issues which are trying to perhaps draw some connections with a tender, it is worth saying here that we had probity advice all over this tender from day 1, including very high level Clayton Utz probity advice, and the report that they made on our process with probity—and our probity processes covered everybody, including ministers and their officers, in terms of our advice of what was possible and what was not—was absolutely outstanding, and I think some of it is in the public domain through the Senate inquiry. That the process had been absolutely correct from go to whoa was something which we were quite proud of.

Senator CASH—I will accept that. I have to say I am a little surprised that you were not aware that Mr Tom Bentley, a senior adviser to Ms Gillard, previously worked for David Blunkett, considering it had been reported in the press in relation to the Job Services Australia program. But I accept your answer that you were absolutely not. You have committed that answer to *Hansard*, so I will accept it on that basis. If I could turn now to priority employment areas. Is that Ms Golightly's area?

Ms Paul—It is Mr Carters's area.

Senator CASH—Mr Carters, could I get you to start by defining what is a priority employment area.

Mr Carters—A priority employment area—and there were 20 of them which were selected—recognises that, with a significant downturn, which occurred in the case of the global recession, there are different regions which are affected differently in terms of the downturn. So the government wanted to provide particular assistance to the priority regions. The priority areas were in fact then selected by the department on the basis of quite a significant number of different criteria and there were a key half dozen or so criteria which we used to select those priority regions. Each area did not have to satisfy all of them; they had to satisfy sort of a collective grouping of them. One was that the area already had a high unemployment rate.

Senator CASH—When you say 'collective grouping', what does that actually mean?

Mr Carters—That means that we took a lot of factors into account in assessing the overall decision to make an area a priority area.

Senator CASH—You said that there were half a dozen criteria used to select whether or not an employment area would be a priority employment area, but you did not have to satisfy all of them.

Mr Carters—That is correct. Different areas—

Senator CASH—Might have been given a different weighting.

Mr Carters—Yes, that is exactly right. So if you looked at a table you would see that there are quite different values against each of them. The first one was that either there was already a high unemployment rate or there were indications of labour market disadvantage. The second one was that there was a noticeable increase in Centrelink unemployment beneficiary numbers.

Mr Carters—Yes, that is exactly right. If you looked at a table, you would see that there are quite different values against each of them. The first one was that there was either already a high unemployment rate or indications of labour market disadvantage. The second one was that there was a noticeable increase in Centrelink unemployment beneficiary numbers. The third was that there was already a high percentage of Centrelink income support recipients in the area. The fourth was that the area had poor educational or skill levels. The fifth was that there was entrenched disadvantage which had been experienced from previous downturns, so we looked at previous downturns to look at which areas were most affected by those downturns. The sixth was that there was a high concentration of industries in that area which would have been significantly affected by the downturn, and obviously the classics there are manufacturing and financial services and things like rental hiring, real estate and those sorts of things. They were the key ones we used, but there were a lot of other smaller ones we monitored as well.

The other way we selected them was that they had to be a particular size. The reason for that was that we were going to appoint local employment coordinators, one in each of those priority areas, so it had to be a population size which made sense to be serviced by a local employment coordinator. Also, there had to be a reasonable travelling distance within that, so that a local employment coordinator could do their job in that region.

Senator CASH—The *Keep Australia Working* report says:

The identification of the 20 Priority Employment Areas was based on an in-depth analysis of around 70 labour market indicators.

Who performed that analysis?

Mr Carters—Our research analysis and evaluation group performed that analysis.

Senator CASH—How many people are in that?

Mr Carters—It was not the whole group.

Senator CASH—That would be my next question. How many people from that group performed the analysis?

Mr Carters—About five people.

Senator CASH—Over what period of time was it performed?

Mr Carters—It still continues. It is ongoing monitoring.

Senator CASH—In terms of the identification of the 20 priority employment areas, it is still ongoing?

Mr Carters—We continue to monitor those factors for those regions.

Senator CASH—So the 20 could actually change?

Mr Carters—No, the 20 have been set, obviously, because we have local employment coordinators and lots of other things in place in those areas, but we do continue to monitor them to look at how they are responding in terms of the downturn, but also any future pick-up.

Senator CASH—In terms of those initial 20 priority employment areas and that particular analysis to establish that they would be the first 20, when was that analysis done—not the ongoing analysis but that particular analysis to establish that they would be the priority employment areas?

Mr Carters—I would have to take that on notice. I cannot recall over exactly what period it was, but it would have been a few months.

Senator CASH—What specific labour force data was used to identify the 20 priority employment areas?

Mr Carters—I went through the six key factors and, as you have said, there were about 70 overall that were looked at in that context. In terms of providing you with specific labour force data, are you asking for items that came out of the ABS labour force survey? What are you after there?

Senator CASH—Any type of labour force data that was utilised.

Mr Carters—Can we take that on notice?

Senator CASH—Yes. What types of reports were run by the department in establishing the 20 priority employment areas?

Dr Mercer—There were a wide range of reports that we drew on, many of which were the published ABS reports. We also drew on our own income support analyses and report, which is internal to us. We also drew on our industry skills analysis. So there is a diverse range, as you see. With 70 indicators it was very diverse across income support and the labour force statistics. All our understanding of what was happening with the industry is in those figures.

Senator CASH—So you used both internal and external data?

Dr Mercer—We certainly did.

Senator CASH—How were the reports collaborated?

Dr Mercer—When we say reports, we started with a labour force region and then looked at the local government areas there against all of those indicators which were grouped in the categories that Mr Carters mentioned. So we look across all of the areas with those indicators. It is not quite a report, as such, in that way; it is an ongoing process of analysis to see how the priority areas, and other labour force regions, are doing.

Senator CASH—In terms of this analysis and the people who were actually performing it, was it a subjective analysis or was it an objective analysis?

Dr Mercer—I think you could see from the long list of indicators that we have used all of the data available to us. Mr Carters also mentioned earlier that we had to think about the size and this being possible for a local employment coordinator. To that degree, that involved a different type of analysis to all the data that we had analysed across those indicators.

Senator CASH—When did the department provide to the Minister for Employment Participation and the Prime Minister a copy of the in-depth analysis that is referred to in the *Keep Australia Working* report?

Dr Mercer—There were a number of announcements of priority areas, so it was not just one report. There was ongoing advice.

Senator CASH—Can I get you to provide me with all of those dates, in terms of when the various reports were provided to the Minister for Employment Participation, the Prime Minister and the Minister for Employment?

Dr Mercer—I think here there is more. We certainly can give you the dates when the decisions on all the priority areas were announced.

Senator CASH—Thank you very much. Were the actual boundaries for the priority employment areas determined by the department?

Mr Carters—Yes, they were.

Senator CASH—Was there any involvement from the Prime Minister's Office or the Department of Prime Minister and Cabinet or the minister's office in the determination of these boundaries?

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

Senator CASH—Can I ask why you would need to take that on notice?

Mr Carters—Because there were a lot of people involved in developing this and I really cannot give a definitive answer on that without checking.

Senator CASH—Do you recall anybody from the minister's office being involved in the determination of the boundaries?

Senator Arbib—Which minister's office? Are you talking about my office?

Senator CASH—Yes.

Dr Mercer—We obviously put up advice on the selection of the areas, but the boundaries were all proposed by the department, as far as we were aware.

Senator CASH—Yes, as far as you were aware, and that is fine. I accept the answer that the boundaries for these areas were determined by the department. But, in the actual determination of these areas, was there any participation, whether it is one person, whether it is 10 people, from the agencies that I have identified?

Mr Carters—We certainly briefed officers on the work that we had done in terms of the six key factors and the 70 indicators.

Senator CASH—Officers?

Mr Carters—Minister's officers. What I would like to take on notice is whether or not there was advice given at those briefings. That is what I will need to check on.

Senator CASH—Okay. Could you also please provide the committee with the dates upon which those briefings occurred.

Mr Carters—We will take that on notice.

Senator CASH—Thank you very much. In relation to the top 20 priority employment areas there was, I note, the staggered announcement. I think you had the first seven, then you had two and then you had the final 11 that were announced. Why was there a staggered approach?

Mr Carters—I have the dates of those which I might give you.

Senator CASH—The dates of the briefings in relation to—

Mr Carters—No, the dates of the announcements of the seven, two and 11. On 5 April the first seven were announced, 28 May the next two were announced and then 8 July the last 11 were announced.

Senator CASH—Why was there that staggered approach?

Mr Carters—It is the government's decision on when they make announcements.

Senator CASH—But you have determined the boundaries for these areas as a department. What was your recommendation then? I am interested to know why you announced seven first.

Ms Paul—We cannot tell you what our advice was, but we can certainly assure you that it was our determination in terms of the areas and their boundaries. But we cannot comment further on the timing that the government chooses to make its announcements. It is a matter for government.

Senator CASH—Dr Mercer, going back to the information that you are getting for me, I want to confirm that I am getting the information that I require. It is the actual dates that the in-depth analysis was provided to the Minister for Employment Participation and the Prime Minister. That is in relation to the in-depth analysis. In relation to Mr Carters, on what dates did the briefings occur that the department gave the various officers in relation to the determination of the PEA boundaries? So not the dates of the announcements as such—that is on the public record—but the dates that those briefings actually occurred.

Mr Carters—Yes, we will take that on notice.

Senator CASH—Thank you very much.

Dr Mercer—If I could pick up from there, what I had said that I would be able to provide was the dates of the announcements of the areas, which have indeed now been provided, not the in-depth analysis which—

Senator CASH—On what dates did the department provide to the various officers the in-depth analysis to determine the 20 priority employment areas that are referred to in the *Keep Australia working* report?

Senator Arbib—While the department officials discuss that, can I say that nine local employment areas had been announced and the remaining 11 was a recommendation that came out of the interim report of *Keep Australia working*. You can find that in the report.

Senator CASH—So the final 11—

Senator Arbib—Were recommendations—not in terms of the geographic areas but that a further 11 areas be added to the Keep Australia Working program.

Ms Paul—I understand your questions, Senator, and we have taken them on notice.

Senator CASH—Thank you very much. Where did the recommendation in the interim report for the final 11 priority employment areas come from? I know you said it came from within the report. Was it a departmental recommendation? Was it a ministerial office recommendation?

Ms Paul—That is starting to touch on the nature of advice, so I suspect that we cannot go there.

Senator CASH—I am merely asking who actually made the recommendation.

Senator Arbib—In terms of Keep Australia Working and the interim report, it was pretty clear that unemployment was rising across the country and that nine local areas were not going to be enough to deal with rising youth unemployment. The figures we were seeing, certainly in terms of Centrelink data—Newstart data—were absolutely scary, and the decision was taken to expand the local employment areas and ensure that those communities that were struggling would have coordinators on the ground to pull together providers, training organisations and local leadership to fight unemployment.

The regions were for the department to assess and they did those assessments independently of ministerial officers. But, on the ground, the Keep Australia Working forums coordinators have had a huge effect in fighting unemployment. On top of that, you have had the Jobs Fund, the Innovation Fund et cetera, so it is an integrated and coordinated approach that really this country has not seen before in terms of unemployment. We are very proud of the way we have undertaken Keep Australia Working generally and in terms of local employment areas and the coordinators.

Senator CASH—The *Keep Australia working* report is signed by yourself as minister and Jason Clare as the parliamentary secretary. Is that correct?

Senator Arbib—Yes.

Senator CASH—So am I able to assume that the recommendations from the interim report in relation to the final 11 areas came from your office or Jason Clare's office, on the basis that you wrote the report?

Senator Arbib—No, they would have come from the department. As I said, we have had no involvement. I certainly had no involvement in what areas were to be selected. They were done from analysis that the department undertook.

Senator CASH—Sorry. You have had no involvement in the determination of the priority employment areas? Is that what you are saying?

Senator Arbib—I have had no involvement in the geographic areas that were selected for the priority areas.

Senator CASH—So what involvement have you had?

Senator Arbib—In terms of the priority areas?

Senator CASH—The priority employment areas?

Senator Arbib—In terms of the selection?

Senator CASH—Determination of the priority employment areas.

Senator Arbib—Absolutely nothing.

Senator CASH—Absolutely nothing? Were the first seven areas that were announced measured as the most vulnerable in terms of the labour market indicators that you have referred to under the in-depth analysis?

Mr Carters—No, they were the first seven that the government chose to announce.

Senator CASH—So the department did not recommend those first seven?

Mr Carters—The department did recommend the first seven, but they were not the seven most depressed of the 20, or they may or may not have been—we did not go down to that level of ordering them.

Senator CASH—How many priority employment areas did the department recommend to the minister?

Ms Paul—That is in the nature of advice. I do not think we can go there. But we have talked about the work we did on 20.

Senator CASH—Sorry, why do you say that it is the nature of the advice?

Ms Paul—Because you have asked me what we have recommended and we cannot go there. Nonetheless, not wanting to be unhelpful, we have spoken to you about the areas that we have identified as the highest priority in this country on those 70 variables and those six key areas and these are the 20. I was kind of making a technical point, so I apologise.

Senator CASH—No, that is all right. How many of the priority employment areas did the department recommend?

Ms Paul—My point is that to tell you that would be to offer you some advice that we might have offered and I am not going to go there. But, suffice to say, we have spoken to you about our recommendations on needy areas and we have talked about these 20. That is about all we can say.

Senator RONALDSON—Why can't you identify the number of areas?

Ms Paul—The senator was asking me for advice. There is nothing to hide here. We have been advising on 20 areas and they are the neediest areas in Australia. There is no mystery. It is just that I was being asked for our advice and, of course, I cannot offer that. But there really is no mystery.

Senator RONALDSON—Was your advice to the government in relation to the regions that you recommended?

Ms Paul—That is right, and we have talked about it. We have talked about us identifying the most needy regions and they are these 20.

Senator CASH—I am going to quickly defer to Senator Ronaldson. I understand you have another committee to go to.

Senator RONALDSON—I am very grateful to my colleague for her indulgence. I want to return to the A4e contract. The synopsis, I gather, was that you were aware of the contract, or

the department was; you were aware of Tom Bentley, but you were unaware of a David Blunkett. Is that right?

Ms Paul—No. Senator Cash asked whether I was aware of a connection between Tom Bentley and A4e and I said I was not. Senator Cash raised a particular article in the *Age*. I was not aware of it.

Senator RONALDSON—You were not aware of that article.

Ms Paul—I was not but we have the reference now, so that is helpful.

Senator RONALDSON—Have you seen the article now?

Ms Paul—No.

Senator RONALDSON—Minister, are you aware of it?

Senator Arbib—I have seen the article.

Senator RONALDSON—I can direct my questions to you. That is even better news. Very quickly with the department: I gather A4e went into Keepit, Bondi Junction, Mascot and St George, Sutherland. Is that right?

Ms Golightly—From recollection, that is where they have won, but I can check.

Senator RONALDSON—Do we know how many job agencies were operating in there, what those job agencies were and how many staff losses there were with the change of contract to A4e?

Ms Golightly—I would have to take that on notice.

Senator RONALDSON—That is fine. Will you tell me how many workers lost their jobs?

Ms Paul—They may not have. It might be hard for us to report on that, for a lot of reasons. We knew that many of the existing workers would transfer to new operators, and that was the case. We knew that workloads were growing because of the nature of the economy and that was the case. We put a lot of work in with NESAs on transition too. It seemed to work well for employees.

Senator RONALDSON—You said you would take it on notice, so that is fine.

Ms Golightly—I took on notice to get you the providers that were in that area.

Senator RONALDSON—Yes, thank you very much. Minister, you are aware of David Blunkett, aren't you?

Senator Arbib—I am aware who David Blunkett is, yes.

Senator RONALDSON—You are aware of the article. Are you aware that A4e is headquartered in Mr Blunkett's constituency of Sheffield?

Senator Arbib—I was not aware of that.

Senator RONALDSON—Are you aware that, according to the UK *Guardian*, last year David Blunkett was paid a fee of £25,000 to £30,000 for advice on its overseas expansion plans?

Senator Arbib—I was not aware of that.

Senator RONALDSON—Were you aware that the *Guardian* also reported that Blunkett had been sent on an all expenses paid junket to South Africa and failed to declare it on his register of parliamentary interests?

Senator Arbib—I may have heard about it at some stage. That does sound familiar.

Senator RONALDSON—Are you aware that Mr Bentley's title, when he worked for Mr Blunkett's office, was 'special adviser on school reform and social inclusion'?

Senator Arbib—I was not aware that he worked for Mr Blunkett until I read it in the *Age*, and that is from memory.

Senator RONALDSON—Yes. I emphasise the social—

Senator Arbib—I have not got the article in front of me.

Senator RONALDSON—Are you aware there was a report that, when Mr Bentley joined Ms Gillard's staff as a senior adviser, he had responsibilities for social inclusion?

Senator Arbib—I was not aware of that.

Senator RONALDSON—Are you aware that the *Age* reported that the employment agencies tendering for Job Services Australia contracts were obligated to address the issue of social inclusion in their bids?

Senator Arbib—If you are going to raise the issue of probity in terms of Job Services Australia again, I come back to what the secretary raised. There were probity measures put in place and Clayton Utz was hired as the probity adviser. Their report gave the tender an absolute clean bill of health. Also, I am advised that the meeting and the communications referred to in the article and in the questions today occurred well before the process of purchasing employment services had even commenced. It is expected, as part of ongoing business, that government and departments will have continuing interaction with relevant stakeholders. That includes consultation and learnings to help inform thinking about future reforms for employment services for Australia's unemployed. I am sure you are aware that, as the usual work must continue separate from any tender process and indeed any of the development work, it would be inappropriate for us not to do it. Again I refer you to the probity advice, which shows a clean bill of health.

Senator RONALDSON—The winter-spring issue 2009 of the A4e company magazine *Blueprint* editorialised:

The change of government has presented a rich opportunity for A4e in Australia. The Labour government, when it took power in late 2007, placed social inclusion high on its agenda, and A4e's international expertise in supporting governments by addressing social inclusion issues has enabled the company to act swiftly to establish a presence in Australia.

The *Age* reported that Mr Bentley, then already in Ms Gillard's office, met with A4e management in February of 2008. Is that correct?

Ms Paul—We said before, in response to the same question from Senator Cash, that we are not aware of those meetings.

Senator RONALDSON—Sorry, I was probably rushing up here.

Ms Paul—Yes, I do not think you were here at that time.

Senator RONALDSON—No.

Ms Paul—There was another date mentioned as well: same answer. I noted that those meetings were not only more than a year old now—in one case 18 months or more—but they were well before the tender period, and I reiterated that even the Senate inquiry into the Job Services Australia tender found that the probity advice, which to some extent has been made public through that inquiry—

Senator RONALDSON—I am happy to get to the probity advice in due course.

Ms Paul—showed that our process was absolutely impeccable in every way.

Senator RONALDSON—Thank you.

CHAIR—Just wait for the answer.

Senator RONALDSON—With the greatest of respect, we are good at editorialising here. I have got some questions I want to ask.

CHAIR—If it was true when you were saying ‘with the greatest of respect’, you would wait until the secretary had finished her answer.

Senator RONALDSON—This meeting with Mr Bentley with A4e management in 2008 was before the tenders went out, wasn’t it?

Ms Paul—Yes, it was before the tender period.

Senator RONALDSON—Are you aware that A4e decided to set up shop in Australia three months later, in May 2008, again before the tenders were advertised?

Ms Paul—I am not aware of that, but I note your statement.

Senator RONALDSON—Do you know what communication there was between Ms Gillard and Tom Bentley in regard to the A4e tender bids for Job Services Australia contracts, Minister?

Senator Arbib—No, I do not.

Ms Paul—The probity advice on the tender and the probity overview of the tender started from day one. So even from the drafting of the request for tender, which we did, the entire tender—from even the crafting of the request for tender right through to the announcements and slightly beyond—has been overseen by external probity and has been run entirely by the department, at arm’s length from any ministers or their officers. So I actually remain confident that the process of the tender was entirely sound.

Senator Arbib—And there was a Senate inquiry which found no evidence or raised any issues concerning the probity of the tender at all.

Senator RONALDSON—Is that right?

Senator Arbib—That is right.

Senator RONALDSON—Are you sure that is what the—

Ms Paul—Yes. We have been through the probity aspects in some depth in the Senate inquiry before now.

CHAIR—Yes.

Senator RONALDSON—Yes:

Doubts linger in the minds of the committee majority concerning the probity of this tender process. Although the committee received assurances that all steps taken were subject to probity audit, much of the information sought by the committee and other members of parliament to verify this was not made available.

I would have hardly thought ‘the committee majority concerning the probity of this process’ was a ringing endorsement.

Ms Paul—The probity letter from the independent probity adviser was unqualified and, indeed, said to us—

Senator RONALDSON—But the minister just said that this went to the Senate committee and they found nothing wrong with it:

Doubts linger in the minds of the committee majority concerning the probity of this tender process.

Senator Arbib—I do not think that is finding any issues—

Senator RONALDSON—That is not three elements and a—

CHAIR—That was a political stunt by the committee majority, quite frankly, because I sat through that inquiry and all the evidence was absolutely as the secretary had put—

Senator RONALDSON—I see.

CHAIR—How the committee majority—all of your party—could come up with that statement beggars belief.

Senator Arbib—There was no evidence, and I have the probity adviser’s report. The probity adviser put it this way:

It is usual for the minister and their office to have communications with tenderers on a wide range of issues during the conduct of a procurement process. Such communications are part of the business-as-usual arrangements of government. Further, as noted above, the communication protocol for the process clearly anticipates such continuing interaction with the relevant stakeholders as part of ongoing business.

That was an issue that was raised during the Senate inquiry. Finally, Clayton Utz noted that, in their role as probity advisers, they had complete visibility of the assessment process in each decision taken by the department to award business to each tenderer. They go on to say:

We can confidently state that the department made no assessment or business allocation decisions because of any improper influence or approach by or on behalf of a tenderer.

Senator RONALDSON—Did Mr Bentley have any role in advising or informing A4e on any issue related to tendering for Job Services Australia contracts?

Ms Paul—Can you say that again?

Senator RONALDSON—What role did Mr Tom Bentley have in advising or informing A4e on any issue related to tendering for Job Services contracts?

Ms Paul—I would imagine none, but I am happy to take it on notice.

Senator RONALDSON—You will take that on notice? Thank you.

Ms Paul—I am not aware of any role.

Senator RONALDSON—You did not even know that they had met, so—

Ms Paul—I am happy to take it on notice, but I can assure you that this tender process was absolutely impeccable, having sat through some of it.

Senator RONALDSON—Okay. I am going to ask you some questions very quickly about that. What role did Mr Bentley play in the formulation of Job Services Australia?

Ms Paul—He played no role, because it rested with the other minister.

Senator RONALDSON—He had no involvement at all?

Ms Paul—Not that I know of.

Senator RONALDSON—You could take that on notice?

Ms Paul—We could take that on notice, if you wish.

Senator RONALDSON—Have you got something else to add, Ms Golightly?

Ms Golightly—The actual tender process was conducted at arm's length to government.

Senator RONALDSON—That was not my question.

Ms Paul—Your question was about the development of the model itself, wasn't it?

Senator RONALDSON—Yes.

Ms Paul—I am happy to take that on notice, but I anticipate the answer is 'none'.

Senator RONALDSON—He was there as part of the social inclusion. That was part of the portfolio. He was the adviser.

Ms Paul—That is correct, and he was the other minister who was responsible for the model for Job Services Australia.

Senator RONALDSON—And, indeed, the social inclusion was part of the description for the Job Services contracts, wasn't it? There was due regard.

Ms Paul—I do not know if it was described quite in that way but, at any rate, the responsible minister was a different minister.

Senator RONALDSON—Did an adviser from Mr O'Connor's office meet with A4e executives in July of 2008?

Ms Paul—We have already taken that on notice.

Senator RONALDSON—You have taken it on notice? Thank you very much. When were these contracts announced?

Ms Golightly—The minister made a national announcement on 1 April and the individual results were advised to tenderers on 2 April.

Senator RONALDSON—April 2009?

Ms Paul—Correct.

Senator RONALDSON—Your department spends about \$1.6 million a year on media monitoring, does it?

Ms Paul—I cannot answer that. I know we are spending less at the moment than we have in past years, but I do not know the precise amount. I could get that for you, if you wish.

Senator RONALDSON—Can I express my great surprise that you are unaware of this *Age* article which made reference to the probity of contracts. Are you aware that the *Manchester Evening News* on 24 March 2000—if you find this amusing, Minister, that is fine.

Senator Arbib—How would the secretary be aware of the *Manchester Evening News*? I mean, gee, is she supposed to be on top of what is going on on the other side of the world?

Senator RONALDSON—That is a very interesting question. You have told us that there was constant monitoring, probity monitoring, of those who had placed tenders for the duration of this process. That was your wording or that of the secretary. Do you remember saying that?

Senator Arbib—That was not the wording.

Senator RONALDSON—Or did the secretary say that?

Ms Paul—That is correct.

Senator RONALDSON—Yes. Thank you.

Ms Paul—There was constant probity monitoring throughout the entire process.

Senator RONALDSON—Yes, that is right.

Ms Paul—That is right.

Senator RONALDSON—‘Job seekers treated like cattle’ is the title of the article.

Ms Paul—Which media outlet was this?

Senator RONALDSON—I told you: this is the *Manchester Evening News*. It said job seekers are being ‘treated like cattle’. The company they were referring to was A4e. The *Manchester Evening News* went on and identified a number of practices in relation to the people that they were apparently there to help and the news reported that this company was receiving £194 per person per week from the UK government.

Senator Arbib—I do not know if I believe everything I read in the newspapers. You are asking us to take into account the *Manchester Evening News*. I do not know what type of an organisation it is.

CHAIR—It may not even be a newspaper. Is it a newspaper?

Senator Arbib—Not to disparage it: is it a local newspaper?

CHAIR—If you are going to refer to it, could you provide a copy to the officers?

Senator RONALDSON—Yes, I am more than happy to. ‘We’ve been herded in like cattle,’ said one of these people. It continues:

He said up to 40 people—

CHAIR—No, but—

Senator RONALDSON—You said you wanted—

CHAIR—No, Senator Ronaldson. Could you provide a copy to the officers and then talk to it.

Senator RONALDSON—It says:

He said up to 40 people were being squeezed into small classrooms and had to go into city centre bars to use a clean toilet.

CHAIR—Senator Ronaldson, do you have a copy of the *Manchester Evening News* that you are going to talk to?

Senator RONALDSON—Yes. I am happy to provide it.

CHAIR—We will get some copies circulated.

Senator RONALDSON—Are you also aware, Minister, that there have been fraud investigations into A4e operations as long ago as—sorry, this is obviously highly amusing, is it?

Senator Arbib—In Britain, you are talking about?

Senator RONALDSON—I will just ask you: you find this amusing?

Ms Paul—Not at all.

Senator RONALDSON—Good. Thank you. And I am sure you would not find a fraud inquiry—

Ms Paul—Absolutely.

Senator RONALDSON—into a company that you had given substantial contracts to funny at all.

Ms Paul—No. Please proceed.

Senator RONALDSON—So we agree on that. Good. These investigations apparently started as long ago as May 2008 and it was reported in June 2009 that proceedings were going to be taken against this company. Indeed, it would appear that there were fraudulent job plans and the company would be forced to repay at least £15,000 to the UK government. I ask you this, and then I am going to go back to my colleague, because she has been very generous with the time. Do you believe that a company that was probably one of the first foreign companies to come in—

Ms Golightly—No.

Senator Arbib—It would not have been.

Ms Golightly—That is not correct.

Senator RONALDSON—But there were two foreign companies, weren't there, from my reading?

Ms Golightly—Any company that has a contract with us has to be incorporated in Australia, and since the first contracts of Job Network in 1998 there have always been companies that have had foreign connections.

Senator RONALDSON—Yes. There were only two foreign companies, I think, under Job Services, weren't there?

Ms Golightly—No.

Senator RONALDSON—No? Okay.

Ms Paul—No. Ms Golightly just said no, that is not the case.

Senator RONALDSON—Yes. If there was appropriate probity going on, why was it that the issue that I have raised today was not brought to the attention of the department?

Ms Golightly—We have a very comprehensive assessment process. That includes checking with any possible contacts that we might have here in Australia and overseas, including the UK, and we did those checks.

Senator RONALDSON—Allegations of fraud and of mistreatment of the very people that this program was designed to assist surely would raise some alarm bells for the department.

Ms Golightly—We have checked with the relevant authorities. We do not go by newspaper reports. Indeed, I think you have mentioned a number of times they were allegations. I am unaware that they were proven.

CHAIR—Yes, I think that is very wise, Ms Golightly.

Senator RONALDSON—They are a bit more than allegations.

CHAIR—I am looking at the *Manchester Evening News* on the net at the moment. If that is what you are relying on, I think you will need to do a lot better than that.

Senator RONALDSON—Okay. What about the UK *Observer*?

CHAIR—I will have a look at them online. What do they say?

Senator RONALDSON—Do you find the UK *Observer* more to your liking?

CHAIR—I do not know.

Senator RONALDSON—Do you?

CHAIR—I will look that up, too.

Senator RONALDSON—Do you like the UK *Observer*? If you do, you might have a look at an article on 29 June in relation to a fraud allegation. The *Observer* article disclosed that fraudulent job claims in A4e's Hull office would force the firm to repay at least £15,000.

CHAIR—So this is about newspaper reports, is it?

Senator RONALDSON—I have not seen anything on your title which describes you as the minister or from the department. If I am mistaken, please let me know.

CHAIR—The point I want to make to you, Senator Ronaldson, is that if you are going to actually put these things on the record in the Senate estimates you should provide the documentation that you are talking to. I thank you for providing the googled account of the *Manchester Evening News*, but if you are going to refer to the next one you can make that available to us too, thank you.

Senator RONALDSON—If you like. What about the *Guardian*?

CHAIR—Yes, all of them.

Senator RONALDSON—Yes, okay. Good.

CHAIR—If you are going to refer to them, do them all.

Senator RONALDSON—The *Observer*. I am happy to provide you with that information again if you like.

CHAIR—Thank you.

Senator RONALDSON—What I am putting to the department is that there is an allegation, whether it is established or not—I think it has been established, but if you want to call it an allegation that is fine—of fraud against this company. There are allegations that they had treated people like cattle. It is alleged that they were forced to repay £15,000 to the UK government as a result of false claims. I am asking the secretary: how could those matters have got through the probity process?

Ms Paul—You mean through the tender assessment process, probably.

Senator RONALDSON—Yes.

Ms Paul—There are two parts to the answer. One is the very rigorous assessment and reference checking and other processes that were gone through in the tender process. Then the other part is: were a provider not to perform here, what sorts of rigorous mechanisms do we have to monitor performance? Ms Golightly may wish to comment on both of those aspects.

Senator RONALDSON—Could you take on notice who the referees were for A4e, please.

Ms Golightly—Certainly. But I think I mentioned before that our assessment process was extremely comprehensive. It involved checking with any source that was relevant, not just referees.

Senator RONALDSON—But not the *Manchester Evening News* or the *Guardian* apparently, and they were very relevant, let me tell you.

Ms Golightly—It is not necessarily evidence. Like all of our providers, they are of course subject to a very robust performance monitoring regime right throughout the contract, and we do take any issues up with the providers and investigate them accordingly.

Senator RONALDSON—I presume you are going to make those inquiries—and the de facto secretary up here, who is the chair—in relation to allegations of inappropriate treatment of job seekers by this company in the UK and I presume you will make inquiry as to whether there have been allegations of—

Senator Arbib—Allegedly.

Senator RONALDSON—Yes. That is implicit. I said ‘allegedly’ before. I think the record will show that we have agreed that it is allegedly.

Senator Arbib—I am just making sure.

Senator RONALDSON—If the allegations of fraud against this company and the allegations of mistreatment of job seekers by this company are proven, what action would you take in relation to this?

Ms Paul—I think you are asking us to speculate on a scenario that may not occur and I will not go into a speculation. But I do thank you for the information. We will have a look at it.

Senator RONALDSON—Will you give me an undertaking that you will conduct an inquiry into whether these allegations that I have raised today are legitimate and will you then take on notice that you will provide me with your response to those allegations if they are proven?

Ms Paul—We can take on notice our consideration of the information you have provided, but I will say that the performance monitoring regime for all providers in Job Services Australia is extremely comprehensive and very rigorous. So, as a matter of course, we certainly can offer the additional comfort that any poor performance—for example, treatment of job seekers, which is one of the issues you raise—will be identified as a matter of course, because our regime on performance monitoring is actually very good.

Senator RONALDSON—Minister, would you be concerned if a firm, where it had been established that it had mistreated job seekers and been found guilty of fraud, was given contracts under this program?

Senator Arbib—You have not established that in any fashion tonight.

Senator RONALDSON—I said ‘if’ that is established, would that cause you concern?

Senator Arbib—I am not going to play a hypothetical game with you. You have not established that tonight. You have brought in newspaper articles which really prove nothing. You are talking about allegations; therefore, I am not going to play the hypothetical game with you.

Senator RONALDSON—But, if those allegations are proved to be correct, would it cause you concern that this company had been given contracts and would you be concerned by the probity of the probity process, for want of a better word?

Senator Arbib—I think I have answered that question.

Senator CASH—Could I ask one follow-on question, Minister. Was A4e one of the organisations which you decided to bring in as a new provider between 16 March 2009 and 31 March 2009?

Senator Arbib—No, I would not have done that, because I was not the minister at the time.

Senator CASH—Are you aware if A4e was brought on as a new provider between those dates?

Senator Arbib—I am not aware.

Senator CASH—Could I get you to take on notice to ascertain whether or not that is the case.

Senator Arbib—Sure, I am happy to do that. No problem.

Ms Golightly—I can answer that question for you.

Senator CASH—Thank you, Ms Golightly.

Ms Golightly—To my recollection they were not one of the new providers, but I can check that very quickly for you.

Senator CASH—Thank you very much.

Senator RONALDSON—I will hand back to my colleague. Thank you.

Senator CASH—Thank you very much. I will turn back to the priority employment areas. How many areas did the department recommend to the minister for inclusion as priority employment areas?

Ms Paul—We have answered that. We have talked about our work on the 20 areas.

Senator CASH—Could I get you to be more specific in terms of how many areas the department recommended to the minister for inclusion.

Ms Paul—No, you cannot, because what you are asking us is in the nature of advice. You are asking what we recommended and we cannot give that.

Senator CASH—In relation to public interest immunity claims—the order of the Senate, 13 May 2009—upon what public interest ground are you saying that you cannot disclose that information?

Ms Paul—I am not claiming a public interest ground. I am saying that it goes to the nature of advice to government and that is not something we can encompass in our evidence.

Senator CASH—My understanding is that, in the absence of a specification of the harm to the public interest that could result from the disclosure of the information, that is not a satisfactory answer.

Ms Paul—I would have to check that out.

Senator Arbib—That might be your interpretation, but it is not your decision to make.

Senator CASH—Then I would ask, Minister, if you would please detail why you believe the information cannot be given.

Ms Paul—I do not want to be cute here either. There is really no mystery here. We have talked about 20 priority regions. That is the work we have done. We have identified 20 regions.

Senator Arbib—Can I tell you, Senator, I have seen no more than 20 areas recommended. That might help you.

Senator CASH—You have seen no more than 20 areas recommended?

Senator Arbib—The 20 areas that are the priority areas are the 20 that have been recommended to me. Actually, I should not say that, because the first nine were to the previous minister, so I cannot speak on behalf of the previous minister.

Senator CASH—Did the department rank all of the employment areas in Australia?

Mr Carters—We did not rank them as in one, two, three, four, five, which is what I said before. We looked at the characteristics and selected on the basis of a whole range of criteria and we came up with the 20.

Senator CASH—So the first seven areas that were announced were selected from the list of 20 that were recommended to the minister?

Mr Carters—Yes, they were.

Senator CASH—Thanks. Minister, on what date did the recommendation of the 20 employment areas go to you?

Senator Arbib—I am not sure. I will have to take it on notice and get back to you.

Senator CASH—Thank you very much. Was this the total number of areas recommended for inclusion or were there others recommended from other sources?

Senator Arbib—I do not believe I have seen any more than the 20, but I will take it on notice and get back to you.

Senator CASH—Thank you. Could you also take on notice, then, whether all of the 20 priority employment areas recommended by the department were included.

Senator Arbib—Sure. I can give you an answer on that.

Senator CASH—You are taking on notice whether or not there were any others. Could you also take on notice whether there were any areas recommended by the department that were not included as priority employment areas. Were those 20 employment areas provided to the previous minister or just to yourself in your capacity as minister—so prior to when you became the minister?

Ms Paul—We would have advised both ministers. The minister just mentioned that the announcement of the first seven was made before—

Senator CASH—Yes, but you said that the seven were drawn from the 20. So was the previous minister advised—

Ms Paul—We would have offered advice to the previous minister, yes.

Senator CASH—On what date was the previous minister made aware—

Ms Paul—We have taken that on notice.

Senator CASH—Thank you. Can you clarify for me who made the ultimate decision as to whether an area was a priority employment area or not.

Mr Carters—As with most things, the department would have provided advice on the priority areas to the minister at the time, but ultimately it would have needed to be the minister who said, ‘Yes, let’s run with these,’ if you see what I mean.

Ms Paul—It would have been a government decision.

Mr Carters—So it was a government decision.

Senator CASH—So what you are saying is that the final decision was not with the department, it was with the minister.

Mr Carters—That is correct.

Ms Paul—It was a government announcement, as you know.

Senator CASH—So it would follow then that, if the department made a recommendation but the final decision was with the minister, the minister would have had the right to override a decision of the department if he had chosen to.

Ms Paul—A government always has the right to make its own decisions.

Senator CASH—Can I clarify for the record, Minister, that you have stated that you had no involvement in the selection of the priority employment areas.

Senator Arbib—The geographic areas.

Senator CASH—Can I go back then to exactly what your involvement was.

Senator Arbib—What was my involvement?

Senator CASH—You say you did not have any involvement in the selection of the geographic areas, so what was your involvement in the determination of the priority employment areas other than the geographic area?

Senator Arbib—I had no involvement in the determination of the geographic areas.

Senator CASH—Okay, not the geographic areas. What participation, if any, did you have in the determination of the priority employment areas?

Senator Arbib—I do not believe I had any participation.

Senator CASH—You do not know?

Senator Arbib—No, I do not believe I had any participation in the deliberation.

Senator CASH—Did you sign off on the priority employment areas? I hope you read what you sign.

Senator Arbib—In the end, I draw your attention to the *Keep Australia Working* report and recommendation 1, which talks about the 11 areas, which has been signed by me and Parliamentary Secretary Clare. That was, again, the interim report.

Senator CASH—Did you make any variation to the areas recommended by the department or their boundaries?

Senator Arbib—No.

Senator CASH—None at all? I want to clarify that for the record.

Senator Arbib—No, I did not.

Senator CASH—Your evidence is that you made no variation to the areas recommended by the department or their boundaries?

Senator Arbib—No, I did not.

Senator BILYK—I think that question has been asked five times.

Senator CASH—I just need to clarify this in my own mind—

CHAIR—It is clear to all of us now. There is no doubt.

Senator CASH—so that I do not misrepresent the minister at a later date. What was the involvement of the Parliamentary Secretary for Employment in the priority employment area selection process?

Ms Paul—I am not sure that we can answer for him entirely. We will probably have to take that on notice.

Senator CASH—What was the department's interaction with the parliamentary secretary during this process?

Ms Paul—To offer advice in the same way.

Senator CASH—As you would brief the minister?

Ms Paul—Yes.

Senator CASH—Mr Carters, are you able to elaborate on the involvement of the Parliamentary Secretary for Employment in the priority employment area selection process? Did you have any meetings with the parliamentary secretary in relation to this process?

Mr Carters—I am not aware of the parliamentary secretary having any involvement in the geographic selection of those areas.

Senator Arbib—Why don't I take it on notice for you, because we will need to check that.

Senator CASH—Thank you very much.

Senator Arbib—There has been a change in one of the priority areas, which was in Cairns, to take in the Indigenous community of Yarrabah, which occurred at one of the meetings. So why don't I take on notice the whole issue in terms of geographic areas? I will go away and check that out.

Senator CASH—I greatly appreciate that. I might explore it a little bit further, though, with Mr Carters. Mr Carters, did you have any meetings with the parliamentary secretary in relation to the priority employment area selection process? I do not think you need to look around, Mr Carters. You either know if you had a meeting or you do not.

CHAIR—Senator Cash, that was most unkind. The officers are being very responsive and if they need to take some advice they can. I am sure Mr Carters has many meetings going on over many periods of time and may need some assistance.

Senator CASH—I would hope that, in relation to something so important, Mr Carters might remember if he had a meeting or two.

CHAIR—It may not have been such an important meeting, if there was one.

Ms Paul—I am sure Mr Carters's calendar is very full, Senator.

Mr Carters—I do not recall having a meeting with the parliamentary secretary to discuss—

Senator CASH—You do not recall? That does not mean you did not, so could you please take on notice—

CHAIR—He was halfway through his answer. Mr Carters, please.

Mr Carters—We certainly met to discuss announcements, to discuss the rollout of the Keep Australia Working forums and those sorts of things. In terms of the actual geographic selection process, no.

Senator CASH—How often do you meet with the parliamentary secretary in your role with the department?

Mr Carters—There is not a fixed amount of time.

Senator CASH—Once a week, twice a week, once a fortnight on average?

Mr Carters—It is very hard to say. Possibly once a week.

Senator CASH—Thank you. Perhaps you could take on notice to be a little more specific in relation to the dates over the last three months that you have met with the parliamentary secretary.

Mr Carters—I will take that on notice.

Senator CASH—Mr Carters, did you have any meetings with the Minister for Employment Participation in the priority employment area selection process?

Ms Paul—I think we have already said—

Mr Carters—We have answered this one.

Senator RONALDSON—Mr Carters, are you going to take that question on notice or are you going to—

CHAIR—Which question? The question that Senator Cash just asked?

Senator RONALDSON—No, the one before about the meetings with the parliamentary secretary.

CHAIR—Yes, he did say he would take it on notice.

Mr Carters—I did.

Senator RONALDSON—You have undertaken to provide that information but you cannot do it now?

Senator BILYK—What, for the last three months?

Mr Carters—The meetings that I have had in the last three months with the parliamentary secretary?

Senator BILYK—He has taken it on notice.

Senator RONALDSON—Yes. You are going to provide those details? You are not actually going to take the question on notice and then make a decision about whether you will provide the information?

Mr Carters—No.

CHAIR—No, he is taking the question on notice. He is taking the question as it was asked on notice.

Senator RONALDSON—Why wouldn't you provide that information to Senator Cash?

Mr Carters—Because I do not have it with me.

CHAIR—It has been taken on notice.

Senator RONALDSON—But you will provide it once you have obtained it? Is that right?

Mr Carters—Yes.

Senator RONALDSON—Just so we are clear—

Mr Carters—That is correct.

Senator RONALDSON—Thank you.

Senator BILYK—I am amazed that one would expect Mr Carters to know the dates of everybody he has met with for the last three months.

Senator RONALDSON—You and I have not met.

Senator CASH—I will just go back to you, Minister: are you saying that, to the best of your knowledge, there was no involvement by any minister or parliamentary secretary in the priority employment area process and it was simply a sign-off of a departmental recommendation?

Senator Arbib—I have said it myself, personally. I am not saying it on behalf of anybody else, no.

Senator CASH—Are you aware—and this is for the department and for you, Minister—of any involvement by the Prime Minister, his office or the Department of the Prime Minister and Cabinet in the selection of the priority areas—the priority employment area process?

Senator Arbib—I am not aware of it, no.

Ms Paul—I am not aware either, but we can take it on notice and see if there is something there.

Senator CASH—Thank you. I have a number of other questions which I will place on notice in the interests of time. Just going back to boundary determination, my understanding from the information that has been provided in the *Keep Australia working* document is that there is a priority employment area called the Townsville-Thuringowa priority employment area.

Mr Carters—That is correct.

Senator CASH—Could you just take me through the process by which that boundary was determined.

Dr Mercer—That was exactly the same process that we have described for all the priority areas. It was the process that yielded the 20. We also indicated to you that in each case there was the factor of looking at how an LEC—local employment coordinator—would be able to cover the area.

Senator CASH—Did the department recommend to the Minister for Employment Participation the addition of Townsville-Thuringowa as a priority employment area?

Dr Mercer—It is one of the 20.

Senator CASH—It was one of the 20. Okay. On what date was that recommendation made?

Dr Mercer—I think that is among the questions we have already taken on notice, about briefings and analysis.

Senator CASH—In terms of that particular priority employment area, why was it determined to be a priority employment area? Were there particular reasons for that area?

Mr Carters—Yes. The key characteristics which meant that we chose that area were that it had recorded a sharp increase in the number of unemployment beneficiary recipients between September 2008 and June 2009. The increase was 50.4 per cent, which is very high, much

above the average increase across Australia as a whole, and the population in that area has relatively low levels of educational attainment, so the workers in that area with low levels of educational attainment are likely to be affected by the global recession and find it difficult to find employment if retrenched.

Senator CASH—What is the unemployment rate in that particular priority employment area?

Dr Mercer—The unemployment rate is 3.7 per cent at September 2009, and the increase in Newstart and youth allowance figures was 47.3 per cent from September 2008 to September 2009.

Senator CASH—Do you have with you the figures for the unemployment rate of the Gold Coast labour force region?

Dr Mercer—Yes, we do have that. For the labour force region—is that what you asked for?

Senator CASH—Yes. What is that?

Dr Mercer—That is 6.0 per cent.

Senator CASH—Can you explain something to me, just for my own benefit. How is it that Townsville-Thuringowa, with an unemployment rate of 3.7 per cent, is a priority employment area but the Gold Coast labour force region is not?

Dr Mercer—Do you mind if we go back to that list that Mr Carters read out? What we were looking at was performance—what was happening in a region across that range of indicators. That included income support, whether a region had a history of experiencing disadvantage in economic downturn and whether it had industries that would be adversely affected by the global recession such as mining and construction. So it is across that range of indicators that the decisions were made, not any one indicator on its own.

Ms Paul—In other words it is not just how it is now.

Senator CASH—So unemployment is not a key indicator as such.

Ms Paul—It is also how fast it is going down, and this one was changing very rapidly because of an almost 50 per cent increase in the number of unemployment beneficiaries. So it would have been a range of factors, as Dr Mercer was saying.

Senator CASH—Can I get you to provide me with the figures—and you may need to take it on notice—of the actual number of people in the Townsville-Thuringowa area who are unemployed and the number of people in the Gold Coast labour force region who are unemployed.

Ms Paul—Perhaps what we might do is give you a picture for the broader range of the 70 variables, or a subset of them if they are aggregated, to give you a sense of what we were looking at—what we were seeing in terms of the rate of change in the negative direction for this area.

Senator CASH—And, in terms of the departmental ranking of Townsville-Thuringowa, where was that ranked in the list of 20?

Mr Carters—As I said before, we did not actually do it in an order of one to 20.

Senator CASH—It was just an overall collation and then you chose the 20?

Mr Carters—That is correct.

Proceedings suspended from 8.59 pm to 9.15 pm

CHAIR—We will now resume these estimates hearings, and I think Senator Ronaldson is seeking the call. Senator Ronaldson.

Senator RONALDSON—Thank you, Chair. Secretary, can I refer you to a formal response submitted on behalf of A4e in relation to the Work and Pensions Select Committee inquiry into the management and administration of contract of employment programs, where it is acknowledged there was fraud in the organisation and that £12½ thousand was repaid by A4e to the Department for Work and Pensions. Can you please take on notice whether the department or those conducting the probity aspects of these tenders contacted the British Department for Work and Pensions to ascertain whether there were any issues with A4e, in the context of both their ability to deliver services and any issues with fraudulent claims, or any other matters that might have impacted on the viability or appropriateness of this company to receive—

Ms Paul—Certainly.

Senator CASH—If I can turn to priority employment areas, Mr Carters, can you confirm with me whether or not you were aware of any involvement by the Prime Minister, his office or the Department of the Prime Minister and Cabinet in the selection of the priority employment areas.

Mr Carters—We consulted with the Department of the Prime Minister and Cabinet.

Senator CASH—You consulted with them? On what dates did you consult with them?

Mr Carters—I will take that on notice.

Senator CASH—Approximately how many consultations did you have?

Mr Carters—There were several. We will take that on notice.

Senator CASH—Whom did you consult with from the Department of the Prime Minister and Cabinet?

Mr Carters—I will take that on notice.

Senator CASH—Is that because you do not know the information or you do not want to provide the information? Were you personally present at the meetings?

CHAIR—If the department did not want to provide the information, they would not take the question on notice. They have taken the question on notice and they will provide it by the due date.

Ms Paul—It is good to be comprehensive.

Senator CASH—I appreciate that, Ms Paul. Comprehensive is very good in relation to the priority employment areas. Mr Carters, were you at these consultation meetings with the Department of the Prime Minister and Cabinet? Should I ask you what you had for breakfast?

CHAIR—No, that is more in line with Senator Fisher's questions.

Senator HUMPHRIES—She is not here to defend herself, so you cannot say that.

Mr Carters—Not that I recall.

Senator CASH—Not that you recall?

Mr Carters—No.

Senator CASH—Again, that means that you are not sure if you did not. So will you take it on notice to go back and have a look at your diary and let me know whether or not you were at any of those meetings?

Mr Carters—Yes.

Senator CASH—Thank you. In terms of the witnesses in general, was anybody at the table aware of any interest by the Prime Minister at any time in the selection of the priority employment areas?

Ms Paul—I am not aware of that, but I think we have already taken that question on notice in terms of contacts and so on.

Senator CASH—Okay. So you are not aware of a statement by the Prime Minister in the House of Representatives on 28 May 2009 where he says:

I was speaking with the Minister for Employment Participation about the member's area recently as we looked at unemployment data from across the country. The member represents an area which, from recollection, looking at the data from April, is north of eight per cent—8.3, 8.5 per cent. Therefore, in terms of those priority areas which the government is seeking to address additional efforts to at the moment, it would, from our point of view, qualify for further consideration by way of additional assistance. In my discussions with the Minister for Employment Participation we have agreed that this should be designated as a priority employment area—that is, the area of the Richmond-Tweed, Clarence Valley and North Coast. We would also confirm to the honourable member in response to his question that we will proceed with the appointment of a priority employment coordinator for this area as well.

Ms Paul—Yes, that is right, and of course the Prime Minister has had a keen interest. Indeed, I think it was the Prime Minister who announced the first set. I cannot recall. But, at any rate, we have taken on notice the range of interest by various ministers.

Senator CASH—I thought you said that you were not aware of any interest being shown by the Prime Minister in the priority employment areas.

Ms Paul—I think I took on notice—perhaps I misunderstood you. I thought you were asking for dates for advice and so on.

Senator CASH—No, I asked whether or not you were aware of any interest being shown by the Prime Minister in the priority employment areas.

Ms Paul—I beg your pardon.

Senator CASH—So your answer to that question is yes.

Ms Paul—Yes, and I think he made the first announcement. Yes.

Senator Arbib—Senator Cash, you quoted Richmond-Tweed. Correct?

Senator CASH—Yes.

Senator Arbib—Are you saying the north coast of New South Wales should not be a priority area? Is that what you are—

Senator CASH—I am not saying that at all. My question was in relation to the level of knowledge by those at the table of the interest of the Prime Minister in priority employment areas. The level of knowledge was ascertained to be, 'I will take it on notice,' or, 'None.' But I believe that quote goes against what that evidence was, and I just wanted to ensure that the department were able to give the right evidence on *Hansard*.

Ms Paul—I think we are on the same page now, Senator. I beg your pardon.

Senator CASH—Was the interest by the Prime Minister usual or unusual?

Ms Paul—I do not think I could comment on that.

Senator CASH—Does the Prime Minister normally show a level of interest—

Ms Paul—I think that you are asking for an opinion, and I do not think I can do that.

Senator Arbib—As you have seen over the last 12 months, the Prime Minister has been totally interested in rising unemployment—

Senator CASH—Yes, I would too if my government were causing it.

Senator Arbib—and fighting unemployment, and that is what the stimulus is about, that is what Keep Australia Working is about and that is what the priority areas are about. So I expect the Prime Minister has been very interested in the areas.

Ms Paul—It has been confirmed that it was the Prime Minister who announced the first seven.

Senator Arbib—And I think it is a great virtue that we have a Prime Minister who has taken that interest.

Senator CASH—Thank you. Was that a paid editorial or one that you just did for free? Minister, did you receive a recommendation for 11 further priority employment areas in June or July, and did you sign off on that recommendation without any change?

Senator Arbib—I will need to take that on notice.

Senator CASH—Could you also take on notice then, if it was not yourself, if it was the parliamentary secretary who received the recommendation for the further 11 priority employment areas and signed off on that recommendation without any change. Could you also take on notice if those 11 areas were the ones outlined in the interim *Keep Australia Working* report.

Senator Arbib—Sure.

Senator CASH—Can I also get the department to take on notice, due to time, to provide to the committee with the reasons in writing for the 20 priority employment areas they selected. I understand that may be a considerable amount of information, but it would be appreciated. Could I also get you to take on notice the reasons as to why Townsville-Thuringowa, with a low unemployment rate and a high employment rate, versus the Gold Coast, with a much higher unemployment rate, was designated a priority employment area.

Ms Paul—I think we have already taken that on notice.

Senator CASH—Thank you, Ms Paul. In terms of the decision to appoint the local employment coordinators, did that come after the particular area was designated as a priority area or before that?

Mr Carters—When the priority areas were decided, the department appointed an interim local employment coordinator, who was an appropriate departmental person, to serve as the local employment coordinator in those areas until we were able to go through a selection process.

Senator CASH—I have a number of other questions in relation to this area that I will be placing on notice. Chair, would you like me to read them out for the record?

CHAIR—That is not necessary, if you have them in written form. Just pass them to the secretary.

Senator CASH—Thank you. I might come back through that. Who appoints the local employment coordinators? Is it the department or the minister's office?

Mr Carters—The department appoints the local employment coordinators.

Senator CASH—How much are they being paid?

Mr Carters—They each have a contract, which is negotiated on an individual basis.

Senator CASH—Can you give me the lowest amount paid to the highest amount paid, with an average?

Ms Kidd—The range that we advertised for the contracts over two years was between \$320,000 and \$517,000. That is a two-year amount, including GST.

Senator CASH—I do not have the contract number with me—and I apologise—but there was a question asked this morning by Senator Ronaldson in relation to local employment coordinators at \$519,000.

Ms Paul—Senator Mason asked it.

Senator CASH—Was it Senator Mason? Was that for more than one local employment coordinator?

Ms Kidd—That was the upper range that we advertised when we put out for the local employment coordinator positions. That is a two-year figure, with GST. If you take the GST off and annualise it, it comes out to \$235,000 per annum. That is an upper range.

Senator CASH—Are all the projects for the priority employment areas being initially put forward by the local employment coordinators or is there another personal body that puts forward the projects?

Ms Kidd—Are you referring to Jobs Fund projects?

Senator CASH—Yes.

Ms Kidd—Jobs Fund projects come in a range of ways: councils, local community groups or through the coordinators.

Senator CASH—Can you take on notice for me—and be a little bit more specific—if there are any further ways that they can be recommended.

Ms Kidd—Sure.

Senator CASH—Thank you. I was on the DEEWR website looking at the list of successful Jobs Fund projects and I came across the Thuringowa Enterprise Centre Inc. The project title is ‘The creation of traineeships resulting from North Queensland Small Business Development Centre infrastructure and training facility upgrades’. If the funding was given at \$65,958, what number of traineeships would that be expected to create?

Ms Kidd—It would really depend on the nature of the project. We do not have a number of traineeships per dollar calculation that we do. For example, if a project was skewed towards helping disadvantaged job seekers, you might expect a higher unit cost than for regular unemployed.

Senator CASH—If the number was listed as zero, would there be an issue?

Ms Kidd—Again it goes to the nature of the project.

Senator CASH—The project is the creation of traineeships. The funding amount is \$65,958. Under the column ‘Total traineeships’ it says zero.

Ms Kidd—The Jobs Fund does have a job creation focus, so we look at the number of jobs created, the number of apprenticeships/traineeships and the number of work experience places.

Senator CASH—You are going to have to take me through this one.

Ms Kidd—Sure.

Senator CASH—I am clearly not as smart as the rest of you. The project title is ‘The creation of traineeships’. The total number of traineeships that are being created is listed as zero. Which part have I missed?

Mr Carters—The information that I have here suggests that it is creating three jobs.

Senator CASH—Correct. I am asking you about the number of traineeships being created. The title is ‘The creation of traineeships’. Do you not vet to see what is actually being created by a particular project that has been put forward before you fund it?

Mr Carters—Yes, we do.

Senator CASH—So can you explain to me then, in relation to the Thuringowa Enterprise Centre Inc., why the project title is ‘The creation of traineeships’ but it is not creating any traineeships?

Mr Carters—We will have to take that on notice, because we do not have sufficient detail here.

Senator CASH—That would be greatly appreciated.

Mr Carters—But I will emphasise again that it is creating three jobs, and \$65,000 to create three jobs is not a bad deal.

Senator CASH—If I go onto the website and I look at the details of others, I completely understand that. But when I see that \$65,958 has been allocated to the Thuringowa Enterprise Centre, which is a priority employment area, and it is called ‘The creation of traineeships’, call me stupid, but I have a bit of a problem when the number of traineeships is listed as zero.

Senator Arbib—As Mr Carters said, there are three jobs created out of that.

Senator CASH—Yes, and I think that it is absolutely fantastic that they are creating three jobs, but they are delivering traineeships. Should they not be held accountable for the creation of traineeships?

Ms Paul—We will take it on notice and get you the full story.

Senator CASH—I will now turn to the key performance indicators for the Job Services Australia contract. I have a number of questions which I will be providing on notice in relation to this section—questions that I would like to ascertain if you can provide—

CHAIR—Maybe before you do that, we will take a suspension for a couple of moments.

Proceedings suspended from 9.32 pm to 9.37 pm

CHAIR—We will resume. I have conferred with the deputy chair of this committee, the secretary of the department and the minister. What we propose to do now is simply complete questions in outcome 4 and then end the proceedings when that is concluded or at 11 o'clock, whichever comes first. So officers who are here for outcome 5 can be released. At lunchtime tomorrow we will make an assessment on how we are going in the education portfolio and possibly return to outcome 5 in the evening tomorrow. If that does not happen, we will spill over for two hours between 6.30 and 8.30 next Tuesday to complete outcome 5 at that time.

Senator Arbib—Senator Cash. There is some information that we thought might assist you.

Senator CASH—Thank you.

Mr Carters—I wanted to provide a little bit more information on the creation of traineeships project and the three jobs that it is creating. The three jobs will enhance the communication, data and training infrastructure within the North Queensland Small Business Development Centre and the jobs that have been created will target young people to provide them with computer skills and business administration up to cert IV. There are two parts to the project. The first is to provide super-high-speed internet services and the second part is to establish a multipurpose training facility. Those jobs are not traineeship jobs but they are providing the services and the infrastructure that will provide traineeships to young people.

Senator CASH—Can I get you to table whatever information you have there in relation to that particular project? Can you provide it to the committee?

Senator Arbib—It is on my computer.

Senator CASH—That is fine. We can thank you at a later date.

Senator Arbib—Sure.

Senator CASH—I have questions on Job Services Australia's new performance management framework. What are the key performance indicators for the new performance management framework?

Ms Golightly—There are three KPIs for providers: efficiency, effectiveness and quality.

Senator CASH—When were these KPIs scheduled to be released to Job Services Australia's providers?

Ms Golightly—They already have KPIs 1 and 2.

Senator CASH—When were they scheduled to be released, as opposed to when they were actually released?

Ms Golightly—We told them about the KPIs in the RFT. That would have been the earliest possible time they could have been told.

Senator CASH—Yes.

Ms Golightly—I would have to check. I think they were in discussion papers for comment before that, but that is the official time that they were told.

Senator CASH—So you are saying that the scheduled date was equal to the actual release date of the KPIs to the providers?

Ms Golightly—Yes. It is normal process that the request for tender includes as much information as possible, and that included as much as we had for the KPIs. For KPI 1 and 2, that was indeed included in the RFT. We also discussed KPI 3, which is quality, and in response to consultations with the industry we have undertaken to further consult with them about exactly how to measure KPI 3. We have been doing that, in fact, right up until very recently.

Senator CASH—How were the KPIs determined and by whom?

Ms Golightly—I think it is pretty common practice. Efficiency and effectiveness are very common KPIs. You would want to measure that in anything, as indeed quality is very important to us in terms of services to job seekers.

Senator CASH—Are they just standard KPIs?

Ms Golightly—They are standard at that level, but indeed they were discussed through various discussion papers and consultation forums, and the industry, as I understand it, are happy with those KPIs.

Senator CASH—When will the department first review those KPIs?

Ms Golightly—In terms of performance against them?

Senator CASH—Yes.

Ms Golightly—Ms Caldwell can fill in anything I miss. The contract allows for a formal review of performance halfway through the contract period. But, in addition to that, what we have undertaken is to give providers information on how they are going against the KPIs every three months.

Senator CASH—When was the list of successful Job Services Australia tenderers made public?

Ms Golightly—On 2 April.

Senator CASH—What was the protocol in regard to contacting successful tenderers during the probity period?

Ms Golightly—The RFT included an appendix which had the communications protocol published in there. I can get the exact reference for you in a second.

Senator CASH—Thank you very much. What are the consequences of breaching the probity period guidelines?

Ms Golightly—It would depend on what the situation was and what the probity adviser's investigation of that situation revealed.

Senator CASH—I will take you through the example. Is the department aware of any third-party contact with successful Job Services Australia tenderers during the probity period—people not from the department?

Ms Golightly—I imagine they have contact with people all the time. I am not sure I understand the question.

Senator CASH—A provider.

Ms Golightly—Sorry, Senator.

Senator CASH—Is the department aware of a provider contacting—let me hold on for two seconds. I must have misconstrued my question. The release of the successful tenderers was on 2 April 2009, and the probity period was prior to that.

Ms Golightly—And included that.

Senator CASH—And included that. Is the department aware of any third-party contact—for example, someone contacting one of the tenderers and congratulating them on their success—prior to the list of successful tenderers being released?

Ms Golightly—I am not aware of that.

Senator CASH—Was the department made aware that on 19 March a provider was sent a bottle of wine by a company called JN Solutions, congratulating them on their success?

Ms Golightly—I vaguely recall something, but I would need to check. Was the date 19 March?

Senator CASH—Yes, 19 March.

Ms Golightly—I think—certainly by way of context—on 16 March we had advised, without prejudice, the preferred tenderers. It was in confidence, but they may have told somebody and—

Senator CASH—So a preferred tenderer breached that confidence. Would there be a penalty for that?

Ms Golightly—It is in confidence between us and them. We ask them to keep it in confidence, but who they tell about their business is of course open to them.

Senator CASH—Could I get you to take on notice whether or not the company congratulating them prior to the probity period ending was breaching probity?

Ms Golightly—I can take that on notice. On the surface of it, it will depend on what the letter said. It might have simply been: 'Congratulations on being a preferred tenderer.'

Senator CASH—No, it was congratulating them on being a successful tenderer.

Ms Golightly—It may be a misunderstanding on behalf of whoever wrote the letter—I do not know. But if someone was concerned about that, or anything, it is always open to them to

raise that concern with our probity adviser and they will investigate it. I can check whether that was raised with them at any stage.

Senator CASH—Thank you very much. My understanding was, though, that it was raised with the department. Are you aware that that specific example was raised with the department?

Ms Golightly—I am personally not aware of that, but I can check whether the department was aware. All contact of that nature had to go through the ES purchasing hotline, not through me personally. So I would need to check that. I do not recall specifics of that nature, but I will check for you.

Senator CASH—Could you check that and see whether or not it was actually investigated?

Ms Golightly—I will, certainly.

Senator CASH—And the results of the investigation?

Ms Golightly—Certainly.

Senator CASH—Thank you very much. In terms of Job Services Australia provider case loads, what are the obligations on a provider to provide services to a voluntary participant?

Ms Golightly—If somebody volunteers for services—and Ms Caldwell can give you the detail—depending on what their circumstances are, Job Services providers may well be obligated to provide them with service, as long as that person still wants to be serviced.

Senator CASH—So when you say ‘may well’, on the basis that that person still wants the services—if the person does want the services and they are voluntary—are they obliged?

Ms Golightly—I believe so. I would need to check whether there are any exempt categories, that is all, because I am operating from memory, sorry. But Ms Caldwell might be able to answer.

Ms Caldwell—Ms Golightly’s response was correct and I can remove the qualification. A volunteer job seeker is treated in line with their eligibility, so is eligible for the full range of services, depending on their stream. As Ms Golightly said, that is dependent on them continuing to wish to volunteer. Importantly, these volunteer job seekers are included in our quality KPIs. So when we are talking about services and quality to job seekers, then that includes volunteers as well as those participating from an obligation.

Senator CASH—Is the department aware of any specific providers who remove voluntary participants from their case load for any reason?

Ms Golightly—The contract does allow them to remove the volunteer if the volunteer says they want to be removed.

Senator CASH—In the example that I am going to give you, is the department aware of an incident regarding the provider Central West Community College Ltd taking an Indigenous young mother off their case load, not because she wanted to be taken off but because she had a 20-month-old child?

Ms Golightly—I am personally not aware of that, but we can check for you.

Senator CASH—My information is that she did actually complain to the department about that occurring.

Ms Golightly—We can check that, if she has registered a complaint.

Senator CASH—Thank you very much. Could you let me know the results of the investigation?

Ms Golightly—Yes.

Senator CASH—Particularly in terms of what action would be or was taken against the provider for removing her from their case load when she did not want to be.

Ms Golightly—If that—

Senator CASH—If that is the case.

Ms Golightly—is the case, yes.

Senator CASH—The results of that. What fees are paid for volunteers, for people who are voluntary participants?

Ms Golightly—It would be the applicable fee for the service for which they are eligible, yes.

Senator CASH—Just going back to the probity period and the example I gave that on 19 March a provider was sent a bottle of wine by a company called JN Solutions, are you aware of any links between the office of the former Minister for Employment Participation, Brendan O'Connor, and JN Solutions?

Ms Golightly—No.

Senator CASH—Is anybody else at the table aware of any links between the former minister and that company?

Ms Paul—No.

Mr Carters—No.

Senator CASH—Ms Golightly, in terms of the example with Central West Community College removing the Indigenous lady because she had a 20-month old child, what measures are in place to ensure that this type of incident does not occur?

Ms Golightly—There are a number of things that can happen. In particular, with the one that you mentioned, people can ring our customer hotline and register a complaint and of course we will investigate that. If the local contract manager hears of that sort of thing, it is also investigated that way. From time to time we do all sorts of checks about how providers are servicing different parts of their case load. It may show up in one of those sample checks. There is data mining that we might do to check for anomalous trends—for example, high exits in a particular place. Those sorts of things are used in combination to try and pick these things up.

Senator CASH—Thank you. Ms Golightly, were you aware that the former Minister for Employment Participation, Brendan O'Connor, had an interest in the company JN Solutions? Did he ever raise it with you or the department?

Ms Golightly—No.

Senator CASH—Was there any communication between the office of the former Minister for Employment Participation and the department in relation to JN Solutions?

Ms Golightly—Not that I am aware, but I can check.

Senator CASH—Thank you very much. I just need to go back to the priority employment areas. In terms of the determination of the priority employment areas, at any time did the department add federal electorates to their analysis and advice for the federal electorate boundaries?

Dr Mercer—Absolutely not to my knowledge.

Mr Carters—‘No’ is the answer to that.

Senator CASH—I will just pursue that very briefly with you, Mr Carters. Was any reference made in correspondence between the department and the office of the relevant ministers that the south-west metropolitan Perth region contained the federal electorates of Brand and Fremantle?

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

Senator CASH—Could you also take on notice whether or not there was any reference made in telephone calls between the department and the office of the relevant ministers that the south-west metropolitan Perth area contained the federal electorates of Brand and Fremantle?

Mr Carters—I will take that on notice.

Senator CASH—Thank you very much. I will briefly turn now to reporting outcomes. Again, I will be putting a number of questions on notice. But in relation to questions for tonight: how often does the department report on the employment outcomes for Job Services Australia?

Ms Golightly—Certainly at least annually, in the annual report. I think, from memory, if asked questions at Senate estimates we answer them, so I think we have provided them at other times as well.

Senator CASH—When was the last report on employment outcomes for Job Services made public?

Ms Paul—Job Services Australia has only been in place since 1 July, so I am not—

Senator CASH—Sorry, I missed that.

Ms Paul—You are just talking about the system that has been in place since 1 July?

Senator CASH—No, in terms of employment outcomes for Job Services generally.

Ms Paul—Including the old Job Network?

Senator CASH—Correct.

Ms Golightly—That will obviously be in our annual report, which is coming out shortly. I would have to check back in *Hansard* when we last took those sorts of questions and answered them at Senate estimates. I just cannot remember whether we—

Ms Paul—Our annual report will report on the year, with outcomes, and it comes out by 31 October.

Senator CASH—So when was the last report actually made public?

Ms Golightly—Sorry, yes. My colleagues are reminding me.

Senator CASH—That is all right. That is okay.

Dr Mercer—Senator Cash, we have a *Labour market assistance outcomes* publication and the last one there is March 2009.

Senator CASH—March 2009.

Dr Mercer—Yes.

Senator CASH—Is all reporting conducted on the employment outcomes for Job Services made public?

Dr Mercer—All of our post-program monitoring outcomes are published in that way and they are also reported in the annual report, and there are targets in the PBS, our portfolio budget statement.

Senator CASH—I do apologise, Mr Carters, but I need to return to the priority employment areas. This is my topic of the night.

Senator Arbib—Getting emails.

Senator CASH—I work email; I work hard copy.

Senator Arbib—And you attacked Stephen Conroy before.

Senator CASH—No, I was attacking you before.

Senator Arbib—Wash your mouth out. You are getting emails. You should not be working on emails.

Senator CASH—Are you aware that the department has prepared a list of priority employment areas by postcode and federal electorate?

Mr Carters—I am not aware of that, no.

Senator CASH—Are you able to provide the committee with a copy of the list of priority employment areas that have been prepared by the department by postcode and federal electorate?

Ms Paul—I do not know that we could do that. I think we build up from census or local government area.

Mr Carters—My advice is that we could probably do it by postcode, but we do not have electorates.

Senator CASH—Sorry, you do not have—

Mr Carters—Electorates.

Senator CASH—You are saying the department has not prepared—

Mr Carters—That is correct.

Senator CASH—Would you like me to get you a copy of the list that we have in relation to the priority employment areas by postcode and federal electorate? Are you absolutely not aware of this?

Mr Carters—Sorry, I need to correct that evidence.

Senator CASH—Thank you very much.

Mr Carters—We can do it.

Senator CASH—You can do it?

Mr Carters—And we have done it.

Senator CASH—My understanding is you have done it.

Mr Carters—And we have done it.

Senator CASH—The problem, Mr Carters, is that I now do not believe any of the evidence you have given tonight. It is a big problem.

Senator Arbib—Come off it!

Senator CASH—Mr Carters was quite clear that the department did not have this information by postcode or by federal electorate. He was then quite clear that you did not have it only by federal electorate. You have now corrected that only because I told you I have a copy of the report and the fact that the government does or did prepare this.

Ms Paul—Mr Carters has been absolutely diligent in correcting his evidence.

Senator CASH—Only when pointed out that a copy was actually had by myself.

Senator Arbib—I thought you pointed that out after he changed his statement.

Senator CASH—No, he changed his evidence after I pointed it out.

Mr Carters—Senator, my initial advice was no.

Senator CASH—It was.

Mr Carters—I took that as given to me and then another officer advised me that the answer was in fact yes.

Senator CASH—On what date did you first add the federal electorates?

Mr Carters—I will take that on notice.

Senator CASH—Minister, were you aware that reports had been prepared in relation to postcode and federal electorate for the priority employment areas?

Senator Arbib—What reports are you talking about?

Senator CASH—The priority employment areas by postcode and by federal electorate.

Senator Arbib—You are talking about a report that you have. What report do you have?

Senator CASH—A report that has been prepared by the department in terms of priority employment areas by way of postcode and by way of federal electorate.

Senator Arbib—I am certainly aware of postcode but I am not sure in terms of electorates.

Senator CASH—When you say you are not sure—

Senator Arbib—I have not seen—

Senator CASH—Did Jason Clare send away a letter detailing this?

Senator Arbib—I have not seen a report, to the best of my knowledge, in terms of electorates.

Senator CASH—What types of reports have you seen?

Senator Arbib—I have seen many reports.

Senator CASH—Okay, let's go through them together tonight.

Senator Arbib—You tell me.

Senator CASH—No, I am asking the questions. You are providing the answers.

Senator Arbib—When you say 'reports', that is a very generic word.

Senator CASH—You recognised what I said in relation to postcodes.

Senator Arbib—Why don't you be more specific?

Senator CASH—No, why don't you stop being cute and answer.

Senator Arbib—I am not being—I am sorry, Senator, you are asking the questions. I am asking you to be specific.

Senator CASH—Okay. Did the parliamentary secretary, Jason Clare, send to you correspondence in relation to the listing of priority employment areas?

Senator Arbib—I am not sure. I would have to check.

Senator CASH—Would you please check that.

Senator Arbib—Sure.

Senator CASH—Can you tell me in which electorates the priority employment areas are?

Senator Arbib—No, I cannot—not off the top of my head, certainly.

Senator CASH—Going back to the reporting outcomes and in relation to the March 2009 *Labour market assistance outcomes* report, what date was that actually posted on the information portal?

Dr Mercer—I would have to take that on notice. It does take some time to prepare.

Senator CASH—I appreciate that. Thank you very much, Dr Mercer. I have a number of other questions which, due to time, I will place on notice. I turn now to the Jobs Fund, but I reserve my right to go back to the priority employment areas. How many applications in total were made for funding under the Jobs Fund in round 1?

Ms Kidd—We received over 2,600 applications.

Senator CASH—How many of those applications were in a priority employment area?

Ms Kidd—I recall around it was 60 per cent. I can probably get you a more accurate figure.

Senator CASH—That would be greatly appreciated. Very briefly, due to time, can you explain the concept of the gateway criteria?

Ms Kidd—Certainly. I will just turn to my guidelines so I have them in front of me. The Jobs Fund has three gateway criteria. The first is that it is for projects in areas experiencing high unemployment, a significant rise in unemployment or vulnerability. The second gateway criterion is that projects must be viable and ready to start, and the third is that funding will not extend past 2010-11. Projects will be expected to be self-sufficient and/or not require Australian government funding beyond 30 June 2011.

Senator CASH—In relation to the approximately 2,600 applications that were received by the department, how many of those were assessed as meeting the relevant gateway criteria?

Ms Kidd—I do not think we have that information. We funded 172 projects as a result of the assessment process.

Senator CASH—How did you determine, out of the 2,600, that 172 that would be successful—unless you ranked them all against the gateway criteria?

Ms Kidd—Yes, we did.

Senator CASH—Do you see what I mean?

Ms Kidd—Yes. We assessed them against the gateway criteria. You had to pass the gateway criteria to be considered, so we ranked them against that. We also had further criteria that went to job creation, development of infrastructure, development of skills or whether the project was a social enterprise. They were four key areas that we looked at as well.

Senator CASH—If we go back to the number of applications received that were assessed as meeting the relevant gateway criteria, I am assuming it was more than 172 initially.

Ms Kidd—Yes.

Senator CASH—Do you have the information as to how many that was?

Ms Kidd—No, we do not have that.

Senator CASH—Can you take it on notice to provide that information please.

Ms Kidd—Yes, we can.

Senator CASH—How many projects in round 1 were recommended by the department for funding?

Ms Kidd—There were 172.

Senator CASH—That is it? Of the 172 that you recommended, they were the 172 successful ones?

Ms Kidd—Yes. There were certainly many worthwhile projects in the numbers that we assessed, but the delegate for Jobs Fund was within the department so, as part of that process, we looked at the funding envelope and the relative strength of the applications and we settled on 172 projects for funding.

Senator CASH—Are you able to explain to me very briefly the decision-making process from the receipt of the application through to being one of the 172 successful projects?

Ms Kidd—Yes.

Senator CASH—Thank you.

Ms Kidd—So applicants would fill in the application form and send it in to the department. We would register those applications and we would stream them as well. Not all of the applications were the responsibility of the department. There was also a stream for funding bike paths, heritage et cetera. We filtered those to the relevant departments. So when I talk about the Jobs Fund, I am talking about those that our department is responsible for. This resulted in around 1,600 applications that we had to assess. These were assessed against the three gateway criteria and, as I mentioned, also the four target areas. We did these assessments in teams of two officers. They would prepare an assessment report. We would then do credentials and financial viability checks, if necessary, and these proposals would be put forward to what we call the assessment review committee, who would then consider the recommendations. There were quality control checks done in between those stages as well.

Senator CASH—Were the recommendations made to the Deputy Prime Minister or to her delegate?

Ms Kidd—The delegate.

Senator CASH—Sorry, who was the delegate?

Mr Carters—I was the delegate.

Senator CASH—How many projects were recommended by local employment coordinators?

Ms Kidd—We did not specifically have that as an avenue. The projects would come in. In some instances, local employment coordinators had been working with proponents to develop their projects, but it was not something that we specifically monitored.

Senator CASH—Which minister had the final sign-off in relation to the 172 projects?

Ms Kidd—Mr Carters signed off.

Senator CASH—So, as the minister's delegate, you just told the minister, 'These are the 172 projects that I've signed off on'?

Mr Carters—That is correct.

Senator CASH—Were any projects which were not initially recommended by the department for funding approved?

Mr Carters—I was the delegate, so I approved all 172 projects.

Senator CASH—So you are saying that was the final 172 and there was never a change to that 172.

Mr Carters—Yes, essentially. We assessed them in stages and then the final determination of 172 came to me, which is what I accepted.

Senator CASH—Did any minister refer a project to the department for recommendation for funding?

Ms Kidd—We certainly had letters of support from members of parliament, but I do not think we received anything directly from a minister.

Ms Paul—The proponents had to apply against the criteria, so we would have looked for an application.

Senator Arbib—I have here letters from Senator Connie Fierravanti-Wells—

Senator CASH—Yes, we have been through this—

Senator Arbib—Senator Ian Macdonald, Senator Ian Macdonald again—

Senator CASH—But my question was not in relation to that. I asked whether any minister referred a project to the department for recommendation, as opposed to a letter of support. Did a minister say to the department, ‘This is a project that I recommend for funding’?

Ms Kidd—As Ms Paul said, proponents had to apply, so we only considered applications that came in through that process.

Ms Paul—The answer is no.

Senator CASH—Were any specific projects discussed by a minister with the department?

Ms Paul—The minister and his office had no involvement in this process. Mr Carters was the delegate, which I think is what he is trying to say.

Senator CASH—That is fine. What does the term ‘shovel ready’ mean?

Ms Kidd—‘Shovel ready’ I think is a term that is meant to imply ready to start. In the criteria I think we defined ‘ready to start’ as—

Senator CASH—Does it mean ‘start tomorrow’? Does it mean ‘start next week’? In the context of the Jobs Fund project, in an article in the *Australian* newspaper on 16 July 2009 some recommended projects were referred to as ‘shovel ready’.

Ms Kidd—We had a ready-to-start criteria, which I think was defined as ready to start within the first six months.

Senator CASH—In relation to the 172 projects, they would all be shovel ready—ready to start within the first six months?

Ms Kidd—That is right.

Senator HUMPHRIES—I assume if you made the decision, Mr Carters, about these 172 projects, it is you that I need to ask about why not one project from the ACT was approved in this funding round. Every Australian jurisdiction but the ACT received funding. Were any projects from the ACT considered suitable; they met the criteria that the department had set for this funding round?

Mr Carters—We received eight proposals from the ACT, which was a very small number compared to the very large number of proposals that we received.

Senator HUMPHRIES—I am sure they were very high-quality applications, as people in the ACT tend to submit.

Mr Carters—There were also issues with the ACT having a strong labour market in comparison to many other areas, particularly some of the priority areas. I guess in that sense it was quite difficult for an ACT project to compete against some of the more depressed areas. Overall, my decision was that the ACT projects were not as strong as other projects in other parts of Australia.

Senator HUMPHRIES—Although employment is strong across the ACT, you would be aware, wouldn’t you, that there are parts of the ACT where employment is not as strong? For

example, the ACT's youth unemployment rate is higher than that of some of the jurisdictions here which did receive funding. Are you saying that, because the ACT has a relatively high level of employment, it is unlikely to be successful in future rounds of this Jobs Fund as well?

Mr Carters—No, I am not saying that. What I did say was that the proposals will need to demonstrate their reason for being successful compared to a very high volume of high-quality proposals across Australia. In no way have I suggested that there would not be projects in the future that would be successful in the ACT.

Senator HUMPHRIES—I am surprised that not one project in the ACT was considered to be worthwhile. I just find that very hard to believe.

Ms Paul—They were competing against almost 2½ thousand others, unfortunately. I think it was a pretty tough call.

Senator HUMPHRIES—I suppose we cannot look at the eight from Tasmania or the six from Western Australia or the three from the Northern Territory and make a comparison. I have to rely on your good offices to assure us—

Senator BILYK—You are not suggesting the eight from Tasmania might not be worthy?

Senator HUMPHRIES—I am sure all the ones from Tasmania were very worthy, but I am also very sure that there must have been one from the ACT that was also very worthy. I just make that point, Mr Carters, for your consideration.

Senator Arbib—I was not involved in the Jobs Fund deliberations, but in terms of the stimulus, the ACT is getting its fair share. For infrastructure, 127 schools are receiving \$242 million. Fifty-six social housing units have been approved, with a further 284 on the way, which I know is an issue that the ACT government talks about quite often. In total, that is 340 dwellings, at \$87 million. Two hundred and forty-three social housing units are to undergo repairs. On top of that, there is \$11 million for the University of Canberra's International Microsimulation Centre at the National Centre for Social and Economic Modelling. There is \$2.7 million for 10 defence houses in Canberra. There is \$2.5 million for Curtin Primary School to build a new multipurpose centre. It goes on and on. The government does accept unemployment is an issue in the ACT, and that is why the stimulus has been rolled out.

Senator HUMPHRIES—Do you know how many science labs at ACT schools are being upgraded under your stimulus package?

Senator Arbib—No.

Senator HUMPHRIES—Not one.

Senator Arbib—But, again, if you look at the stimulus package that the ACT is getting, that is 127 schools, \$242 million. Again, I remind you—

Senator HUMPHRIES—I am sure that compares favourably with what is happening in other states.

Senator Arbib—that, if you were so concerned about the ACT, maybe you should have voted for those schools to get that funding in the Senate when you had the opportunity. In fact, you voted against it.

Senator HUMPHRIES—My constituents have paid for that stimulus package through their taxes and they are entitled to a fair share of that money, Minister.

Senator Arbib—I would have thought, as a senator representing your community, you would have been voting to ensure that your community got a fair share of the stimulus. In fact, the stimulus almost did not get through the Senate, and the Jobs Fund only got through the Senate with the support of the Greens and Senator Fielding. So you can talk about the Jobs Fund in terms of what it delivered for parts of the country, but you voted against the Jobs Fund.

Senator HUMPHRIES—That is a distraction, Minister.

Senator Arbib—It is not a distraction, it is a fact. You voted against the Jobs Fund.

Senator HUMPHRIES—The question is whether your government is fairly allocating these funds or whether it is allocating these funds on the basis of where the most marginal seats lie. Of course, there are not any marginal House of Representatives seats in the ACT, are there?

Senator Arbib—You voted against the ACT getting money through the stimulus.

Senator HUMPHRIES—Not relevant.

Senator Arbib—You voted against the Jobs Fund.

Senator HUMPHRIES—Not relevant, Minister.

Senator Arbib—It is relevant. It is totally relevant.

Senator HUMPHRIES—I will remind my constituents every time—

Senator Arbib—I certainly will remind your constituents that you voted against those schools getting the funding.

Senator HUMPHRIES—Go right ahead.

Senator Arbib—Those primary schools getting the funding, those high schools getting the funding, those community houses being put in the ACT. You voted against it.

Senator HUMPHRIES—So are you saying it is okay to punish those electorates or jurisdictions where the local members voted against the stimulus package?

Senator Arbib—No, not at all, but you have raised it as an issue and you said you were going to remind people about the government's actions. I certainly will remind the people of the ACT about your actions and voting against the Jobs Fund, voting against the stimulus package, voting against the schools package and voting against the community housing stimulus. They were your decisions.

Senator HUMPHRIES—I am sure that would be a very compelling argument if it is put—

Senator Arbib—I think it is.

Senator CASH—Let's return to the priority employment areas. My understanding is that the Parliamentary Secretary for Employment, Mr Clare, sent out a letter on 5 August 2009 to which there was an attachment which listed the priority employment areas as identified by local government area, postal area and electorate. Are you aware of that letter?

Senator Arbib—I have now been made aware of the letter. I think that was sent out to MPs in the priority areas.

Senator CASH—It certainly was sent to—

Senator Arbib—And I did not see the letter prior to it going out.

Senator CASH—And you did not see the letter.

Senator Arbib—No.

Senator CASH—Who prepared the attachment? Mr Carters, did you have any involvement in the preparation of the attachment in terms of listing the federal electorates to which the priority employment areas applied?

Mr Carters—We will have to take that on notice.

Senator CASH—I think you may have already taken this on notice. On what date did the department first add federal electorates to their documentation regarding the priority employment areas?

Mr Carters—We will take that on notice.

Senator CASH—Will the department monitor the number of trainees and work experience participants who benefit from the Jobs Fund projects?

Mr Carters—Yes. As part of the process of producing the contracts in terms of the Jobs Fund, the key components that we request monitoring on are the number of jobs, the number of traineeships and the number of work experience places.

Senator CASH—Will it actually be reported on?

Ms Kidd—Yes, it will be.

Mr Carters—Yes, it will.

Senator CASH—So you will monitor it and you will also report on it?

Mr Carters—Yes.

Ms Kidd—Yes.

Senator CASH—Has there been any change to the Jobs Fund guidelines as a result of either the interim or final *Keep Australia Working* reports?

Ms Kidd—The reports foreshadow that there will be changes to the guidelines.

Senator CASH—I have a number of questions which I will place on notice in relation to the Jobs Fund, specifically in relation to the heritage projects, the bike path projects, the Get Communities Working projects, and the infrastructure and employment projects as well. Of the 172 successful round 1 projects, how many successful projects were there in each federal electorate and how much was spent in each federal electorate?

Ms Kidd—We would have to take that on notice.

Senator CASH—In terms of those same projects, how many successful projects were there in each priority employment area and how much was spent in each priority employment area?

Ms Kidd—Yes, we have that information.

Senator CASH—Can you provide the location, the name of the project and the total cost for each of the 41 successful projects, which I understand were outside identified priority employment areas?

Ms Kidd—That is actually on our website.

Senator CASH—I will get you to provide the information in any event, if that is all right.

Ms Kidd—Sure.

Senator CASH—In terms of work experience placement how many of the transitioning job seekers are doing Work for the Dole?

Ms Golightly—I will just get the relevant people to the table.

Senator CASH—Thank you very much. Ms Golightly, can I also get the information regarding what the breakdown for job seekers is in the work experience phase who are undertaking volunteer work, part-time or casual work, training, Work for the Dole or Green Corps activities.

Ms Golightly—Certainly. We can get somebody working on that if you have a question.

Senator CASH—Yes, absolutely. Are the work experience reports available to the providers yet?

Ms Golightly—Certainly the providers have work experience reports, yes.

Senator CASH—I understand that there was a delay in actually providing the work experience reports to the providers. Were you aware of any delay?

Ms Golightly—Personally, no, but I will just check.

Senator CASH—Thank you very much. Is the department aware of providers in remote areas having additional difficulty in running work experience activities as they have limited or no access to the Productivity Places Program?

Ms Golightly—I am not aware. For a start, at the highest level they do not need necessarily to have the PPP places, because there is a whole menu of work experience. So, if it turned out there was such a difficulty, it would not be a barrier. But I am not sure that there is such a difficulty. So in principle it should not be an issue.

Senator CASH—Could you take on notice just to see whether or not—

Ms Golightly—Certainly.

Senator CASH—Thank you. Also, if the answer does come back yes, could you tell me who the providers are, where they are located and what specific details they are experiencing.

Ms Golightly—Yes. In relation to the work experience reports, there were a number of reports that we advised the industry we would have available at the commencement, and that included work experience reports. As with all of our contracts, as the contract goes on we develop new reports all the time and we prioritise which ones can be delivered at which time. So there may be more work experience reports becoming available.

Senator CASH—My understanding was, at the NESA conference, which you attended—was it Ingrid Cucchi, from the department, who raised the lack of work experience reports?

Ms Golightly—I would have to check that.

Senator CASH—That is fine; not a problem at all. Just going back to the 41 successful projects which were not in priority employment areas, Ms Kidd, I think you said that information was on the website.

Ms Kidd—That is right.

Senator CASH—Can I get some information that I understand is not on the website for each of those projects: the value, the location and the federal electorate that they are actually in.

Ms Kidd—We will get that information.

Senator CASH—Thank you very much.

Ms Kidd—I said I would find out one of the answers for you shortly, which was about the number of applications we received that were—

Senator CASH—Yes, total number of applications in the Jobs Fund?

Ms Kidd—You asked the proportion from priority areas?

Senator CASH—Yes.

Ms Kidd—I said I thought it was about 60 per cent, which was pretty right. It is 58 per cent. So 937 of the applications were from the priority areas.

Senator CASH—Thank you very much for that.

Senator Arbib—Can I also just say, Clayton Utz has been appointed to undertake an audit of the Jobs Fund program. The audit will, amongst other things, examine a report on the probity and integrity of the process and in particular the audit will examine a report on whether DEEWR's processes and procedures and evaluation of applications have been conducted in accordance with applicable probity principles. Also, it will examine and report on whether the applicants to the Jobs Fund have been treated fairly and appropriately. Can I inform you that the audit is not yet completed.

Senator HUMPHRIES—Who is doing this audit?

Senator Arbib—Clayton Utz.

Senator HUMPHRIES—The Canberra branch of Clayton Utz?

Senator Arbib—It is a probity audit.

Senator CASH—Ms Kidd, I hate to query your maths, but did you say 937 out of 2,600?

Ms Kidd—Out of 1,600.

Senator CASH—Sorry, I had 2,600 down. There were 1,600 applications in total?

Ms Kidd—For the local jobs and Get Communities Working streams, yes.

Senator CASH—Thank you, that was the clarification. Just very quickly in relation to the Green Jobs Corps, what level of funding is allocated to each participant in this particular area?

Ms Kidd—There is not a specific level of funding allocated per participant. Green Jobs Corps is a program and we will contract providers and pay the providers to deliver the program.

Senator CASH—Sorry, let me go back to that. My question was what level of funding is allocated to each participant? You are saying funding is not allocated to each participant in the actual program.

Ms Kidd—That is right. That participants will remain on income support and receive a supplement.

Senator CASH—So how much is actually paid for the Green Corps?

Senator Arbib—Are you asking how much participants are paid or are you asking the program total?

Senator CASH—The program.

Ms Golightly—I am just trying to get that information for you. I can give you the information that you asked for on the Work for the Dole work experience places etcetera if that is useful.

Senator CASH—Okay.

Ms Golightly—In total, there are 48,182 people on a work experience placement. That is as at 30 September. I need to point out that those people could be either in the work experience phase itself or they could be in the normal phase of a stream but doing a work experience activity. In the Work for the Dole category there are 6,274 people. I think you also asked about voluntary work.

Senator CASH—Correct.

Ms Golightly—2,194. Green Corps, 273. Did you ask about another category?

Senator CASH—I would have asked for volunteer, part-time/casual, training, Work for the Dole and Green Corps.

Ms Golightly—Part-time/casual, 8,763.

Senator CASH—Fantastic. Thank you very much. Due to time, I am just going to motor through a few more questions. In relation to the Green Jobs Corps, what is the level of funding allocated to each provider?

Mr Carters—You have not selected providers for the Green Jobs Corps?

Ms Golightly—The tender has just closed and we are assessing the bids.

Senator CASH—Can I very quickly turn to the green jobs and training places. What is the definition of a green job?

Ms Golightly—Sorry, I did not quite hear that question.

Senator CASH—The 50,000 green jobs and training places: what is the definition of a green job?

Senator Arbib—What is the definition in terms of—do you want the definition of a green job?

Senator CASH—Yes, I just do not know—it says the *Keep Australia Working* report has identified that the local job stream will be targeted to more sustainable employment and training opportunities for the most disadvantaged Australians by promoting green jobs. I am just interested—

Senator Arbib—It could be a job in conservation, it could be a job in terms of protection and rejuvenation of Australia's natural environment, energy audits or energy efficiency.

Senator CASH—So there is no specific definition of a green job. There are examples of what—

Senator Arbib—You just asked me what a green job is. I have given you some examples of a green job.

Senator CASH—No, I asked what the definition of a green job was, as opposed to specific examples of a green job. I am happy to accept there is no definition of a green job and you are giving me specific examples, but in terms of what the definition of a green job is as opposed to specific examples—

Senator Arbib—Some would say in terms of green jobs it could be in low-pollution, low-carbon industries. So it could be in renewable industries such as wind, solar or geothermal—any of those. It could be in terms of conservation or it could be nature preservation. But others will talk about jobs that are currently in place in terms of not just the jobs but also the skills that are required in areas such as the trades. So in terms of plumbers, those workers would need green skills to ensure that they can deal with water efficiency. In terms of electricians, same thing for energy efficiency. So there is a broad definition. I do not think there is one definition of what a green job is.

Senator CASH—So there is no specific definition: 'A green job is ... and these are the following examples of a green job'?

Ms Golightly—The RFT for the program talks about projects and it gives the examples that the minister has just outlined as to the types of projects that we expect to be run under this program. I also have the dollar figures that you were asking for before.

Senator CASH—I know Senator Humphries has some questions and I have a few more in relation to the Green Jobs Corps; then I will grab those statistics, if that is all right.

Ms Golightly—Sure.

Senator CASH—In relation to the Green Jobs Corps and the fact that the tender has just closed, are you able to confirm that the amount that will be given for a Green Jobs Corps placement is \$8,250?

Ms Golightly—Yes.

Senator CASH—That is the amount? Okay. Is this level of funding different to that allocated to a participant in the youth Green Jobs Corps?

Ms Golightly—This is for young people.

Senator CASH—Okay. The information that was given to me was that there was a Green Jobs Corps and then there was the youth Green Jobs Corps.

Ms Golightly—The Green Jobs Corps that we are talking about is for young people.

Senator CASH—So there are not two separate projects, being the Green Jobs Corps and the youth Green Jobs Corps?

Ms Golightly—No.

Mr Carters—It is called the National Green Jobs Corps, which is what the tender has just closed for, and it is for 17- to 24-year-olds.

Senator CASH—So it is not the youth Green Jobs Corps, it is the National Green Jobs Corps?

Ms Golightly—Yes.

Senator CASH—And that is the one that has a funding at \$8,250 per person?

Ms Golightly—Yes.

Mr Carters—Per place, yes.

Senator CASH—What is the estimated cost per green job for the local job stream, going back to the 50,000 green jobs and training places?

Senator Arbib—Sorry, could you repeat that?

Senator CASH—What is the estimated cost per green job for the local job stream under the category of 50,000 green jobs and training places? Can I also ask—because I know Senator Humphries is going to cut me off—what proportion of the \$94 million set aside for the 50,000 green training jobs is for the youth Green Jobs Corps?

Senator Arbib—Are you saying the local job stream of the Jobs Fund? Is that what you are talking about?

Senator CASH—Yes.

Senator Arbib—You are making a correlation to?

Senator CASH—Will there be green jobs in the local job stream?

Senator Arbib—Yes.

Mr Carters—Yes, there are.

Senator CASH—What is the estimated cost per green job for the local job stream?

Ms Kidd—We have estimated at least 6,000 green jobs to be created from the local job stream.

Ms Paul—I do not know that we would know the unit cost, because this is a different sort of approach. This was done on an application basis, so organisations of one business, as we described for the Jobs Fund more generally. So it is a different basis than the kind of entitlement basis per person funding that exists under National Green Jobs Corps. We could try to have a look at it for you—

Senator CASH—That would be appreciated.

Ms Paul—but it is not something which is automatically set.

Senator CASH—How much is paid for a participant in the Green Corps as opposed to someone in Work for the Dole?

Ms Golightly—The Work for the Dole and Green Corps programs, as stand-alone programs, finished on 30 June and have been integrated into Job Services Australia. They are both part of a suite of work experience activities, and providers are paid a fee for those activities. It is more driven by the level of disadvantage of the participant—whether they are stream 1, 2, 3 or 4, for example.

Senator CASH—Is there a difference between the Green Corps and the National Green Jobs Corps?

Ms Golightly—Yes.

Senator CASH—Can you take me through what that difference is?

Ms Golightly—Under Job Services Australia, Green Corps was expanded to be available to anybody of any age and it was able to be for any length of time, rather than set 26-week periods. So somebody can come onto a Green Corps program for a couple of weeks, if they wish, and combine that with paid work or some other activity—whatever suits their individual needs.

Senator CASH—Then the National Green Jobs Corps is the younger one.

Ms Golightly—Is the younger one, yes.

Senator CASH—Now I understand. What is the disparity in funding? What do you get paid for the green jobs as opposed to the national?

Ms Golightly—It is a little bit hard to do that comparison because, under Job Services Australia, not only do the providers get their services fees but they now—this is another difference—also get an outcome fee if that person gets a job. It would depend again on what stream that person was in and how long they stayed in the job.

Senator CASH—Can you tell me what the fundamental key skill differences gained by the participants are between the Green Corps and the National Green Jobs Corps.

Ms Golightly—For a lot of it there would be common skills, but I will check whether there is a difference in the qualification level, if you could bear with me for a minute.

Senator CASH—I will, and I would be interested in what additional skills the younger people are gaining by going through the project that has been set up specifically for them.

Ms Golightly—Under the National Green Jobs Corps the participants will receive a certificate level II at the end of their 26 weeks. In some exceptional circumstances, that may be a cert. I, but by and large it will be cert. II. In Green Corps, the training may be of that level but it does not have to be.

Senator CASH—There does not appear to be much of a difference between what I am actually gaining between the two programs.

Ms Golightly—There is in terms of age groups and eligibility and also the requirements while you are doing the program. For example, as we have mentioned, one is for a specific age group; the others are not. With the National Green Jobs Corps, you have to do 26 weeks at 25 hours a week and, therefore, you get your cert. II. Green Corps is there to be mixed with other things if needed, if that is what suits the individual. For National Green Jobs Corps, it is

more likely to be young people without year 12 or equivalent—not absolutely, but more likely to be. Green Corps is open to anybody.

Senator CASH—What are the key differences between the Green Corps as it was prior to 30 June 2009 and the new National Green Jobs Corps?

Ms Golightly—I think the age group—

Senator CASH—Sorry, the National Green Jobs Corps as opposed to the Green Corps. I am getting my terminology—

Ms Golightly—Sorry, just hang on.

Ms Paul—I will just toss in here too. The new National Green Jobs Corps, as you might be aware, is part of the national youth compact. There are several components of the youth compact: the earn or learn components and so on. This is one component, and these young people end up with the equivalent of a year 12. So it is a particular target, trying to minimise youth unemployment because, as everyone knows, young people are one of the most vulnerable groups in a downturn. That was kind of the starting point for this new program—trying to enable young people who do not have year 12 to get the equivalent of year 12 in this way as part of the youth compact.

Senator CASH—I suppose what I want to know, though, is how the actual programs differed prior to 30 June 2009 and now. What I am hearing is that they are very similar projects.

Ms Golightly—There are similarities but there are some very important differences in the program design. I cannot talk, of course, about the providers. I will do a comparison for you of Green Corps before 30 June compared to National Green Jobs Corps. I think that is what you have asked for. For a start there is a difference in the certificate level that you get. Old Green Corps was cert. I and the new Green Corps is mainly cert. II. With the old Green Corps, you had to do fewer hours per week. I cannot recall how much it was, but it was less than the National Green Jobs Corps, which is 25 hours per week. Also, participants in the old Green Corps were on a national training wage, whereas participants in the National Green Jobs Corps are on income support. The final one I can remember off the top of my head is that the old Green Corps was open to any 17- to 24-year-old, whereas the new National Green Jobs Corps is mainly for people who are on income support. Others can volunteer, but they will not get a wage.

Mr Carters—Old Green Corps was 35 hours per week and they were paid a training wage for that duration. They did not have to be on income support, so it was a popular approach for people taking a university gap year. The new one—the National Green Jobs Corps—will almost exclusively be people on income support. People not on income support can do it but they will not receive any payment because they do not get income support. The only other payment which is made is the \$41.60 supplement, and that also is payable to people who receive income support, not to people who do not.

Senator Arbib—Senator Cash, I understand you are trying to seek information on the differences, but at the same time I hope you are not putting forth that these sorts of work experience positions are not needed, because in the middle of a global recession youth unemployment—

Senator CASH—I am merely trying to ascertain information.

Senator Arbib—was over 12 per cent and teenage unemployment up over 25 per cent. So there is a big need for these sorts of work experience positions to try and fight youth unemployment.

Senator CASH—Thank you, Minister, I appreciate that.

Senator Arbib—I just want to make sure you understand that.

Senator CASH—I absolutely understand it.

Senator Arbib—They are imperative.

Senator CASH—In terms of the working hours for Green Corps and National Green Jobs Corps, what are the differences between the two?

Ms Golightly—I do have to correct something I just mentioned, because I think I swapped that inadvertently; my apologies. In the old Green Corps I understand it was 35 hours a week.

Senator CASH—Yes.

Ms Golightly—And in the new National Green Jobs Corps it is 25 hours a week. I think I said the age ranges were similar.

Senator CASH—Yes.

Ms Golightly—They are, but the old Green Corps was 17 to 20 and the new National Green Jobs Corps is 17 to 24.

Senator CASH—I will go back to some figures, because I am writing all sorts of things down on my paper here. In terms of what a provider gets for each participant, what do they get for someone in the Green Corps, what do they get for someone in Work for the Dole and what do they get for someone in the Green Jobs Corps? Sorry; my figures have just got a little bit messed up on the page.

Ms Golightly—Yes, sorry. I did not actually give you figures because you cannot—

Senator CASH—God knows what I have written down, then.

Ms Golightly—For Green Corps there is no set figure. It is a combination of service fees and outcome fees. That is the same for Work for the Dole as well. The same principles apply to any work experience activity, and the actual fees paid depend on the stream that the person is in—their level of disadvantage.

Senator CASH—So, if a provider were to tell me that in their opinion they get \$500 per participant in Work for the Dole, where is that figure derived from?

Ms Golightly—It is probably one of the service fees, I would imagine, without checking. But that is probably what it is.

Senator CASH—Do you have an average as to what a provider would get for a participant in the Work for the Dole scheme?

Ms Golightly—Someone has just said to me that \$500 is the amount they get in the Employment Pathway Fund. So that is on top of their service fees and their outcome fees. I am sorry; I did not quite hear your last question.

Senator CASH—Not a problem at all. Is there a specific allocation of money, though, when a job seeker enters the work experience phase?

Ms Golightly—Yes.

Senator CASH—And what is that? Ms Golightly, in relation to the terminology ‘youth Green Jobs Corps’, have you heard of that? Have I got the correct terminology?

Ms Golightly—No. The official title as per the tender is National Green Jobs Corps, but it is for young people.

Senator CASH—Thank you very much. I have read it somewhere, but obviously it is the same thing. Okay. Senator Humphries.

Ms Paul—I am sorry, Senator Humphries. Could I just squeeze in a very brief clarification on something we were talking about with Senator Cash. You were talking about electorate information attached to a letter from the parliamentary secretary. I have been advised that the letter from the parliamentary secretary was to all members whose electorates are covered by the priority areas and that the parliamentary secretary wrote in the same terms to both government members and non-government members. The letter has the purpose of informing the relevant local member whose electorate is covered by a priority region about the Keep Australia Working forums and introduces them to the local employment coordinator. Clearly the electorate information is important to alert them to the connection to their electorates. These letters were sent in August and I note that our original analysis which identified the priority areas was done before Easter.

Senator CASH—I appreciate that information. What I would also like to know specifically, though—and I believe Mr Carters has taken this on notice—is on what date the electorates were first made part of the departmental documentation and who drafted the particular attachment to Mr Clare’s letter.

Ms Paul—Sure. We have taken that on notice.

Senator CASH—Thank you.

Ms Golightly—Senator Cash, there is another difference I should have mentioned as well. The old Green Corps had around 1,800 places a year, whereas the new National Green Jobs Corps has around 5,000 places per year. In terms of the fee that providers get on somebody commencing the work experience phase, it is \$456 in a non-remote area and \$775 in a remote area.

Senator CASH—Very briefly, Ms Paul, with the additional information that you have just given in relation to the letter from Mr Clare, if that was sent out in August, can I take it that the department’s original analysis of the priority employment areas made no mention of federal electorates?

Ms Paul—I think we have already taken something like that on notice, haven’t we? But we would need to check.

Senator CASH—No, it is just now that you have raised the issue further with me.

Ms Paul—Mr Carters, I think, said quite clearly that we did not do our original analysis, which was done in the first instance before Easter, on the basis of electorates. We did it on the

basis of 70 variables, mainly to do with employment—mainly information coming from the ABS.

Mr Carters—We used labour force regions and then broke them down into local government areas.

Senator CASH—Thank you.

Senator HUMPHRIES—Have you heard of speed dating? This is speed questioning.

Senator Arbib—It has been moving at lightning speed.

Senator HUMPHRIES—The National Council on Intellectual Disability is on the warpath about what they say is a decline in numbers of people with intellectual disability being employed under the Commonwealth open employment program. Is that you or is that FaHCSIA?

Ms Golightly—The open employment program is ours. It is currently the Disability Employment Network.

Senator HUMPHRIES—What I might do is send you a copy of the fact sheet that they are distributing at the moment, which argues that there has been a 3.9 per cent decline in people with intellectual disability being offered employment under the open employment program and that the number of people—

Senator Arbib—Sorry, Senator Humphries; are you talking generally or in terms of government positions?

Senator HUMPHRIES—It is not made clear in this criticism. I assume—

Senator Arbib—Sorry; I thought you said at the start that it was in relation to government. I beg your pardon.

Senator HUMPHRIES—It may or may not be government. I just do not know from what the council is saying. You can have a look. I am happy for you to address the issues they raise there about what they say is a decline in employment for people with intellectual disability and a dramatic difference between the rate of employment of people with intellectual disability between Sydney and Melbourne. It is half the rate in Melbourne that it is in Sydney.

Ms Golightly—I would need to look at that to see what they have based that on.

Senator HUMPHRIES—That is fine. I will send it to you. You might take that on notice.

Ms Golightly—Certainly.

Senator HUMPHRIES—The National Partnership Agreement on Indigenous Economic Participation is yours.

Mr Carters—Yes.

Senator HUMPHRIES—Can you take on notice what has been achieved so far under each of the four elements described in the objectives of that national partnership agreement, please.

Mr Carters—Yes, we will.

Senator HUMPHRIES—Give me an idea of what is happening with that. I want to know how much money has been committed or spent by DEEWR in funding RTOs to train Aboriginal people since December 2007. I want to ask whether, under that program, a particular company called ISP was awarded funding and whether it is true that ISP was awarded a contract to train 12 people over eight weeks and that that contract was for \$185,000. I am sorry, I cannot give you a location, but can you take that on notice, please, and verify whether or not that is the case. Do you have a figure actually here for how much is being spent by DEEWR funding RTOs to train Indigenous people?

Ms Paul—I think we are taking it on notice.

Senator HUMPHRIES—All right. If ISP is not one of the companies that are funded to train Aboriginal people in terms of that contract I just described to you, can you tell me if there are any other contracts that ISP is involved with and how much they have received under those contracts.

Ms Paul—Sure.

Senator HUMPHRIES—Lastly, can I please find out how many jobs for Indigenous Australians have been created so far under Mr Andrew Forrest's Australian Employment Covenant. I would like to know—as much as we can describe them, perhaps only in a broadbrush sense—where those jobs have been created and some idea of who the employers might be. I do not need to know necessarily every name of every employer, but I would like a broad indication of what kinds of areas these people are finding employment in.

Ms Paul—Yes, I will do that.

Senator Arbib—So you want that last one on notice as well?

Senator HUMPHRIES—Yes. If you have not got the information, yes, take it on notice, please.

CHAIR—On that basis, we will adjourn tonight's proceedings and resume at 9 am tomorrow. Thank you.

Committee adjourned at 10.59 pm