



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS  
LEGISLATION COMMITTEE

ESTIMATES

**(Budget Estimates)**

TUESDAY, 1 JUNE 2010

CANBERRA

BY AUTHORITY OF THE SENATE

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**SENATE EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS****LEGISLATION COMMITTEE****Tuesday, 1 June 2010**

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

**Participating members:** Senators Abetz, Adams, 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, Heffernan, Humphries, 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, Back, Bilyk, Brandis, Cameron, Cash, Collins, Cormann, Crossin, Fisher, Humphries, Marshall, Mason, Ronaldson and Xenophon

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

Senator Arbib, Minister for Employment Participation

Senator Carr, Minister for Innovation, Industry, Science and Research

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

Ms Lisa Paul, Secretary

Mr Robert Griew, Associate Secretary, Strategy

Mr Ewen McDonald, Deputy Secretary, Corporate

Mr Tony Cook, Deputy Secretary, OECECC

Dr Michele Bruniges, Deputy Secretary, Schools

Mr Michael Manthorpe, Deputy Secretary, BER

Ms Kathryn Campbell, Deputy Secretary, Tertiary Youth and International

Ms Sandra Parker, Deputy Secretary, Employment

Mr John Kovacic, Deputy Secretary, Workplace Relations

**Corporate and network**

Ms Lisa Paul, Secretary

Mr Ewen McDonald, Deputy Secretary

Mr Craig Storen, Chief Finance Officer, Corporate, Finance Group

Mr George Kriz, Chief Legal Officer, Corporate, Legal, Investigations and Procurement

Mr Simon Gotzinger, Acting General Counsel, Corporate, Legal, Investigations and Procurement

Ms Helen Willoughby, Group Manager, Corporate, Communication

Ms Susan Smith, Group Manager, Corporate, Delivery and Network

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Ms Paul McHugh, Acting Branch Manager, Corporate, Delivery and Network  
Ms Fiona MacDonald, Acting Branch Manager, Corporate, Delivery and Network  
Mr Benjamin Wyers, Acting Group Manager, Corporate, People Group  
Ms Christine Silk, Branch Manager, Corporate, People Group  
Ms Sue Saunders, Branch Manager, Corporate, People Group  
Ms Tina Daisley, Acting Branch Manager, Corporate, People Group  
Dr Alison Morehead, Group Manager, Social Policy Unit  
Ms Lynne Stevenson, Branch Manager, Indigenous Employment Program  
Mr Glenn Archer, Chief Information Officer and Group Manager, Corporate, IT Services

**Outcome 1—Office of Early Childhood Education and Childcare**

Ms Lisa Paul, Secretary  
Mr Tony Cook, Deputy Secretary  
Ms Vicki Rundle, Group Manager, Outcome 1—OECECC, Early Childhood Development  
Ms Kathryn Shugg, Branch Manager, Outcome 1—OECECC, Early Childhood Development  
Ms Maddona Morton, Branch Manager, Outcome 1—OECECC, Early Childhood Development  
Ms Ngaire Hosking, Group Manager, Outcome 1—OECECC, Indigenous Pathways and Early Learning  
Mr Matthew Hardy, Branch Manager, Outcome 1—OECECC, Indigenous Pathways and Early Learning  
Mr Russell Ayres, Branch Manager, Outcome 1—OECECC, Indigenous Pathways and Early Learning  
Ms Robyn Calder, Branch Manager, Outcome 1—OECECC, Indigenous Pathways and Early Learning  
Ms Helen Lamming, Acting Branch Manager, Outcome 1—OECECC, Indigenous Pathways and Early Learning  
Mr Ben Johnson, Group Manager, Outcome 1—OECECC, Early Childhood Programs  
Mr Murray Kimber, Branch Manager, Outcome 1—OECECC, Early Childhood Programs  
Mr Mark Wright, Acting Branch Manager, Outcome 1—OECECC, Early Childhood Programs  
Ms Robyn Shannon, Branch Manager, Outcome 1—OECECC, Early Childhood Programs  
Ms Amanda Brown, Acting Branch Manager, Outcome 1—OECECC, Early Childhood Programs

**Outcome 2—Schools**

Ms Lisa Paul, Secretary  
Dr Michelle Bruniges, Deputy Secretary  
Dr Evan Arthur, Group Manager, Outcome 2—Schools, Digital Education and Youth Transitions  
Ms Rhyan Bloor, Branch Manager, Outcome 2—Schools, Digital Education and Youth Transitions  
Ms Helen McLaren, Branch Manager, Outcome 2—Schools, Digital Education and Youth Transitions  
Ms Catherine Wall, Group Manager, Outcome 2—Schools, Lifting Educational Outcomes  
Ms Louise Hanlon, Branch Manager, Outcome 2—Schools, Lifting Educational Outcomes

Mr Matt Davies, Branch Manager, Outcome 2—Schools, Lifting Educational Outcomes

Ms Margaret Banks, Branch Manager, Outcome 2—Schools, Lifting Educational Outcomes

Ms Gabrielle Phillips, Branch Manager, Outcome 2—Schools, Lifting Educational Outcomes

Mr Stephen Goodwin, Branch Manager, Outcome 2—Schools, Lifting Educational Outcomes

Ms Janet Davy, Group Manager, Outcome 2—Schools, National Curriculum, Assessment and Reporting

Mr Tony Zanderigo, Branch Manager, Outcome 2—Schools, National Curriculum, Assessment and Reporting

Mr Craig Robertson, Group Manager, Outcome 2—Schools, Infrastructure and Funding

Ms Leonie Horrocks, Branch Manager, Outcome 2—Schools, Infrastructure and Funding

Mr David De Silva, Branch Manager, Outcome 2—Schools, Infrastructure and Funding

**Outcome 2—Building the Education Revolution**

Mr Michael Manthorpe, Deputy Secretary

Mr Anthony Parsons, Group Manager, Outcome 2—Schools, Building the Education Revolution, Program Management

Ms Gillian Mitchell, Branch Manager, Outcome 2—Schools, Building the Education Revolution, Program Management

Ms Kylie Emery, Acting Group Manager, Outcome 2—Schools, Building the Education Revolution, Strategic Management

**Outcome 3—Tertiary, Youth and International**

Ms Lisa Paul, Secretary

Ms Kathryn Campbell, Deputy Secretary

Ms Nicky Govan, Branch Manager, Outcome 3—Tertiary Youth and International, National Resources Sector Employment Taskforce Secretariat

Ms Margaret McKinnon, Group Manager, Outcome 3—Tertiary Youth and International

Mr Michael Maynard, Group Manager, Outcome 3—Tertiary Youth and International, Youth and Industry Skills

Mr Daniel Owen, Branch Manager, Outcome 3—Tertiary Youth and International, Youth and Industry Skills

Ms Katy Balmaks, Branch Manager, Outcome 3—Tertiary Youth and International, Youth and Industry Skills

Ms Jan Febey, Branch Manager, Outcome 3—Tertiary Youth and International, Youth and Industry Skills

Ms Donna Griffin, Branch Manager, Outcome 3—Tertiary Youth and International, Youth and Industry Skills

Ms Robyn Priddle, Branch Manager, Outcome 3—Tertiary Youth and International, Youth and Industry Skills

Mr David Hazlehurst, Group Manager, Outcome 3—Tertiary Youth and International, Higher Education Group

Ms Julie Randall, Branch Manager, Outcome 3—Tertiary Youth and International, Higher Education Group

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Ms Susan Bennett, Branch Manager, Outcome 3—Tertiary Youth and International, Higher Education Group  
Ms Jenny Chadwick, Branch Manager, Outcome 3—Tertiary Youth and International, Higher Education Group  
Mr Jason Coutts, Branch Manager, Outcome 3—Tertiary Youth and International, Higher Education Group  
Ms Catherine Vandermark, Branch Manager, Outcome 3—Tertiary Youth and International, Higher Education Group  
Ms Jennifer Taylor, Group Manager, Outcome 3—Tertiary Youth and International, Tertiary Skills and Productivity  
Mr Neil McAuslan, Branch Manager, Outcome 3—Tertiary Youth and International, Tertiary Skills and Productivity  
Ms Maryanne Quagliata, Branch Manager, Outcome 3—Tertiary Youth and International, Tertiary Skills and Productivity  
Mr Richard Millington, Acting Branch Manager, Outcome 3—Tertiary Youth and International, Tertiary Skills and Productivity  
Ms Linda White, Branch Manager, Outcome 3—Tertiary Youth and International, Tertiary Skills and Productivity  
Mr Colin Walters, Group Manager, Tertiary Youth and International, International  
Mr John Barbour, Acting Branch Manager, Outcome 3—Tertiary Youth and International, International  
Ms Tulip Chaudhury, Branch Manager, Outcome 3—Tertiary Youth and International, International  
Mr Jason Coutts, Branch Manager, Outcome 3—Tertiary Youth and International, International  
Mr Vipin Mahajan, Branch Manager, Outcome 3—Tertiary Youth and International, International  
Ms Di Weddell, Branch Manager, Outcome 3—Tertiary Youth and International, International

**Outcome 4—Strategy**

Ms Lisa Paul, Secretary  
Mr Robert Griew, Associate Secretary  
Ms Margaret Kidd, Group Manager, Outcome 4—Strategy, Job Strategies  
Mr Mark Roddam, Acting Group Manager, Outcome 4—Strategy, Economic Strategies  
Ms Sue Dawson, Group Manager, Outcome 4—Strategy, Strategic policy  
Ms Jo Wood, Group Manager, Outcome 4—Strategy, Indigenous Economic Strategies  
Dr Alison Morehea, Group Manager, Outcome 4—Strategy, Social Policy  
Ms Alex Gordon, Branch Manager, Outcome 4—Strategy, Social Policy  
Ms Rosemary Addis, Group Manager, Outcome 4—Strategy, Social Innovation  
Ms Jenny Harrison, Victorian State Manager  
Ms Helen McCormack, Branch Manager, Victorian State Office

**Outcome 4—Employment**

Ms Sandra Parker, Deputy Secretary  
Ms Dianne Fletcher, Group Manager, Outcome 4—Employment, Procurement and Business Partnerships

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Ms Margaret McKinnon, Group Manager, Outcome 4—Employment, General Employment Services  
Mr Stuart Watson, Branch Manager, Outcome 4—Employment, General Employment Services  
Mr John Manthey, Branch Manager, Outcome 4—Employment, General Employment Services  
Ms Ingrid Kemp, Branch Manager, Outcome 4—Employment, General Employment Services  
Ms Linda Laker, Branch Manager, Outcome 4—Employment, General Employment Services  
Ms Fiona Buffinton, Group Manager, Outcome 4—Employment, Specialist Employment Services  
Ms Alison Durbin, Branch Manager, Outcome 4—Employment, Specialist Employment Services  
Ms Sharon Stuart, Branch Manager, Outcome 4—Employment, Specialist Employment Services  
Mr Derek Pigram, Branch Manager, Outcome 4—Employment, Specialist Employment Services  
Ms Marsha Milliken, Group Manager, Outcome 4—Employment, Income Support  
Ms Margaret Sykes, Branch Manager, Outcome 4—Employment, Income Support  
Mr Stephen Moore, Group Manager, Outcome 4—Employment, Employment Systems and Relationships

**Outcome 5—Workplace Relations**

Ms Lisa Paul, Secretary  
Mr John Kovacic, Deputy Secretary  
Ms Michelle Baxter, Group Manager, Outcome 5—Workplace Relations, Safety and Entitlements  
Ms Helen Marshall, Federal Safety Commissioner, Outcome 5—Workplace Relations, Safety and Entitlements  
Mr James Hart, Branch Manager, Outcome 5—Workplace Relations, Safety and Entitlements  
Ms Flora Carapellucci, Branch Manager, Outcome 5—Workplace Relations, Safety and Entitlements  
Mr Derren Gillespie, Branch Manager, Outcome 5—Workplace Relations, Safety and Entitlements  
Mr Jeff Willing, Acting Group Manager, Outcome 5—Workplace Relations, Workplace Relations Implementation  
Ms Helen Bull, Branch Manager, Outcome 5—Workplace Relations, Workplace Relations Implementation  
Mr Matthew Gardiner, Acting Branch Manager, Outcome 5—Workplace Relations, Workplace Relations Implementation  
Ms Kate Driver, Acting Branch Manager, Outcome 5—Workplace Relations, Workplace Relations Implementation  
Ms Colette Shelley, Acting Group Manager, Outcome 5—Workplace Relations, Workplace Relations Policy

Mr Paul Dwyer, Acting Branch Manager, Outcome 5—Workplace Relations, Workplace Relations Policy  
Ms Rachel Livingston, Acting Branch Manager, Outcome 5—Workplace Relations, Workplace Relations Policy  
Ms Jody Anderson, Branch Manager, Outcome 5—Workplace Relations, Workplace Relations Policy  
Ms Jan Rees, Acting Branch Manager, Outcome 5—Workplace Relations, Workplace Relations Policy  
Mr Jeremy O’Sullivan, Chief Counsel, Outcome 5—Workplace Relations, Workplace Relations Legal  
Mr Peter Cully, Branch Manager, Outcome 5—Workplace Relations, Workplace Relations Legal  
Mr David Bohn, Branch Manager, Outcome 5—Workplace Relations, Workplace Relations Legal  
Ms Elen Perdikogiannis, Branch Manager, Outcome 5—Workplace Relations, Workplace Relations Legal  
Mr Henry Lis, Branch Manager, Outcome 5—Workplace Relations, Workplace Relations Legal

**Australian Curriculum, Assessment and Reporting Authority**

Dr Peter Hill, Chief Executive Officer  
Mr Robert Randall, General Manager, Curriculum  
Mr Peter Adams, Acting General Manager, Assessment  
Mr David Wasson, Acting General Manager, Reporting

**Australian Building and Construction Commission**

The Hon. John Lloyd, Commissioner  
Mr Ross Dalgleish, Deputy Commissioner  
Ms Heather Hausler, Assistant Commissioner  
Mr John Draffin, Assistant Commissioner  
Mr John Casey, Chief Financial Officer

**Australian Institute for Teaching and School Leadership**

Mr Tony Mackay, Chair  
Mr John McCarthy, Acting Chief Executive Officer

**Australian Learning and Teaching Council (ALTC)**

Dr Carol Nicoll, Chief Executive Officer

**Comcare**

Mr Paul O’Connor, CEO  
Mr Steve Kibble, Deputy CEO

**Fair Work Australia**

The Hon Geoff Giudice, President  
Mr Tim Lee, General Manager  
Mr Dennis Mihelyi, Director  
Ms Bernadette O’Neill, Director  
Mr Brendan Hower, Director  
Mr Terry Nassios, Director

**Fair Work Ombudsman**

Mr Nicholas Wilson, Fair Work Ombudsman  
Mr Alfred Bongi, Customer Service GM  
Mr Michael Clark, Executive Director Contact Centre/AVR  
Mr Leigh Johns, Chief Counsel  
Mr Michael Campbell, Executive Director WR Policy and Education  
Ms Ann Smith, Executive Director Knowledge Management  
Mr Bill Loizides, Field Operations Group Manager  
Ms Natalie James, Group Manager Fair Work Implementation Strategy  
Mr Mark Scully, Finance and Reporting CFO  
Mr Steven Ronson, Executive Director

**Safe Work Australia**

Mr Rex Hoy, CEO  
Ms Amanda Grey, Branch Manager  
Mr Wayne Creaser, Branch Manager  
Mr Drew Wagner, Branch Manager  
Ms Justine Ross, Branch Manager

**Skills Australia**

Mr Robin Shreeve, CEO  
Ms Sue Beitz, Branch Manager, Secretariat

**CHAIR (Senator Marshall)**—I open this public hearing of the Education, Employment and Workplace Relations Legislation Committee. On behalf of the committee I wish to acknowledge the traditional owners and custodians of the land on which we meet today and pay my respects to their elders, both past and present. The Senate has referred to the committee the particulars of proposed expenditure for 2010-11 and related documents for the Education, Employment and Workplace Relations portfolios. The committee must report to the Senate on 22 June 2010 and has set Friday 30 July 2010 as the date by which questions taken 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. If anyone needs assistance the secretariat has copies of those rules. 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, and which I now incorporate into *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)

The committee will begin today's proceedings with cross-portfolio and then we will follow the order as set out in the circulated program. I welcome the Minister representing the Minister for Education, Employment and Workplace Relations, Senator the Honourable Mark Arbib and the departmental secretary, Ms Lisa Paul, and other officers of the department. Minister, do you have an opening statement you would like to make this morning?

**Senator Arbib**—No.

**CHAIR**—Ms Paul, do you have an opening statement?

**Ms Paul**—No thank you.

**CHAIR**—We will go straight to questions.

**Senator MASON**—Minister, Ms Paul, good morning. I have got a cold, Minister, so I have been told I may lose my voice at any time.

**Senator Arbib**—We would not want that to occur.

**Senator MASON**—We will all be better off.

**Senator ABETZ**—That would be a national emergency.

**Senator MASON**—Minister, or Ms Paul, as you know, usually in the cross-portfolio issues, I just touch on a few of the contracts that the department enters into.

**Ms Paul**—Yes.

**Senator MASON**—I am not sure if I have flagged three or four but I will only ask questions on just three this morning if that is all right?

**Ms Paul**—Yes, sure.

**Senator MASON**—This should not take long. The first one is CN282322 about overseas removals and storage.

**Mr Storen**—That contract is with Allied Pickfords, an organisation that does uplifts and removals. That relates to the services we provide for our staff who are posted overseas. The contract covers a five-year period. It has been put into AusTender for a one-year extension to cover the total five years. Our staff who are posted overseas have similar provisions to staff in other agencies, DFAT et cetera. When they have an overseas posting there is uplift and storage of their household belongings and so forth.

**Senator MASON**—How many people is that for?

**Mr Storen**—The number varies. As at 30 June 2009 we had 14 officers posted overseas. You could imagine during the course of a three-year period there is turnover and movement. In a single year you could imagine it being up to six, seven or eight individual postings in there.

**Senator MASON**—Six to eight per year?

**Mr Storen**—It would vary each year.

**Senator MASON**—That is a about a four-year period?

**Mr Storen**—I think it is from 2006.

**Senator MASON**—It is the end of December so really it is 2007, 2008, 2009 and 2010, so it is roughly four years and a week let us say, or thereabouts. Six to eight a year, let us take the average and say it is seven, that is 28 people divided into \$600,000. I should have brought my calculator Ms Paul.

**Ms Paul**—Of course this is an estimate and not the actual cost.

**Mr Storen**—This is an estimate of how much would be spent.

**Ms Paul**—It is not the actual cost. It is the outer envelope it is the—

**Senator MASON**—It is the overall amount.

**Mr Storen**—It is the overall amount.

**Senator MASON**—How many people do you have overseas? Whereabouts do people in your department go overseas?

**Ms Paul**—It is the international education function. I have got officers in about 24 locations.

**Senator MASON**—Really?

**Ms Paul**—Yes. Remember—

**Senator MASON**—No, I am interested I did not know that.

**Ms Paul**—Yes, remember international education is Australia's third largest export industry.

**Senator MASON**—I know that.

**Senator ABETZ**—This is a job application coming up.

**Ms Paul**—I see. They are of course where our key markets are so we have got quite a few offices through Asia, as well as some in other places.

**Senator MASON**—Ms Paul, would that be right that I have met people, I think attached to your department in fact a very charming lady in Malaysia last year?

**Ms Paul**—Yes, absolutely.

**Senator MASON**—Yes she was very, very good, excellent.

**Ms Paul**—Yes, she is terrific.

**Senator MASON**—She would be one of these people?

**Ms Paul**—She would be, that is correct.

**Senator MASON**—The next one is CN278189, which is the provision of temporary accommodation for relocation of employees. Have you got that one?

**Mr Storen**—That is correct. That is with Clifton Apartments in the CBD of Canberra. That relates to the accommodation for our graduate intake. At the commencement of every year the department has quite a significant graduate intake. The vast majority are from outside of the Canberra district so, similar to other agencies, we locate them for three weeks within the city area until they find accommodation and so forth. This is a three-week accommodation deal for up to 100 graduates. I think this one was for around 60-odd graduates who were located here until they—

**Senator MASON**—About 60 is it, roughly?

**Mr Storen**—Roughly 60 for this particular accommodation.

**Senator MASON**—Up to three weeks, yes?

**Mr Storen**—Sixty-three graduates it covered for up to three weeks until they find alternative arrangements within Canberra.

**Senator MASON**—What sort of star is it? The minister would stay at five-star, I stay at three-star, how do you—

**Ms Paul**—I think Clifton is about three-star. Having been there several times my guess is it is about three.

**Senator MASON**—I see, all right.

**Ms Paul**—But it is nice and close to our national office headquarters.

**Senator ABETZ**—It is all about logistics.

**Senator MASON**—I understand that. You have roughly 60 graduates coming into the department in a year?

**Ms Paul**—We had 100 come in this year and these would be the ones who need to move. Of course some come from Canberra.

**Senator MASON**—Sure, I appreciate that. This is slightly off the topic, but you still have a big graduate intake into the department?

**Ms Paul**—Yes.

**Senator MASON**—Is that right across the APS?

**Ms Paul**—We take 100, I am not sure how many other departments take. When you say right across the APS, most of these people are coming in from private sector or straight from university.

**Senator MASON**—Yes, sure I appreciate that. It is a good thing. I think it is a very good life experience for anyone to be recruited as a graduate into the APS, Ms Paul. I think it is a very good thing.

**Ms Paul**—That is what they say. They certainly say that to us, yes.

**Senator MASON**—The final one I have is CN259836. I think we have had a chat about these before, Ms Paul, and it relates to the promotional merchandise. Can you tell me about that?

**Mr McDonald**—Yes.

**Senator MASON**—Mr McDonald, yes, we have been here somewhere before have we not with the promotional material?

**Mr McDonald**—We have.

**Ms Paul**—For many, many years actually, Senator.

**Mr McDonald**—This is material for National Youth Week, which has been going on since the year 2000. You might recall we have discussed this in the past.

**Senator MASON**—Yes, I do.

**Senator JACINTA COLLINS**—Larry Anthony I think it was.

**Senator MASON**—Pardon?

**Senator JACINTA COLLINS**—Larry Anthony. He was the minister for youth too.

**CHAIR**—It is only 10 past nine. Senator Mason you have the call and I will discourage other people from assisting you. Mr McDonald, please.

**Mr McDonald**—This contract was for the provision of calico bags, shoulder bags for people during National Youth Week. The selection of the products each year—

**Senator MASON**—Calico shoulder bags, Mr McDonald? Is that trendy?

**Mr McDonald**—Well, yes I would say they are trendy because they have been selected by an independent panel and the panel encompasses state and Commonwealth representatives as well as young people from across jurisdictions, across the country. Each year they determine what is the best product for National Youth Week.

**Senator MASON**—Mr McDonald, have you got one that you could show me?

**Mr McDonald**—No, I have not got one, but it is a cotton bag that has a shoulder strap that you would see students wearing, for example, in universities and the like. The reason bags were picked this year is that they are a practical product. You can put material in it that you take to the event. They are also quite environmentally friendly and of course they are reusable over time. That is the basis—

**Senator MASON**—What is the article cost?

**Mr McDonald**—About a dollar each, so the total contract is about—

**Ms Paul**—Thirty-three thousand.

**Senator MASON**—They are environmentally friendly, Ms Paul?

**Mr McDonald**—They are environmentally friendly. They are made of cotton, they are reusable, and they have on them the website that students go to. What we are trying to do is encourage people to access the activities during Youth Week. Those activities are both at a national and local level. The product itself is part of that.

**Senator MASON**—What other promotional items does the department have?

**Ms Paul**—I do not think we have any other promotional items.

**Mr McDonald**—No.

**Senator MASON**—Is that it?

**Ms Paul**—As far as I know, this one is, as Mr McDonald said, determined by an external group to help promote the things which are on offer during National Youth Week to Australian young people. They include the National Youth Talent competitions and trying to keep young people engaged in education and so on. I am not aware of any other promotional things.

**Senator MASON**—In the past, though, Ms Paul, the department has had other things.

**Ms Paul**—There may be other things but I would have to take it on notice. We can do that if you like.

**Mr McDonald**—For National Youth Week, I am aware there is a small pen as well, but that was it. There was a small pen in the bag was the total products that I am aware for National Youth Week.

**Senator MASON**—It is hardly overdoing it. I would have thought that the department would have had all sorts of pictures of, I do not know, pictures of the minister or you, Ms Paul.

**Ms Paul**—I really do not think so.

**Senator Arbib**—It is not like the old days.

**Senator MASON**—Not like the old days. Thank you very much.

**CHAIR**—Senator Cormann.

**Senator CORMANN**—Thank you, Mr Chairman. Who makes sure that the information that is on the departmental website is consistent with the information that is in your portfolio budget statements?

**Mr McDonald**—The material is loaded onto our website by our communications people. Are there particular products that you are referring to that are not consistent?

**Senator CORMANN**—I did not get to the area yesterday, so I am trying to get a bit of clarification from you here today. On the departmental website in relation to the National Green Jobs Corps program it identified a \$79.6 million investment over two years in young Australian job seekers, whereas on page 112 of your portfolio budget statements it talks about a \$77.2 million program over three years. Would there be an explanation for that?

**Mr Storen**—There could be a range of explanations. We can take it away and look at it for you. Sometimes the numbers are calculated on different bases. Sometimes we look at underlying cash and fiscal balance, and that can occasionally have minor variances, which this sounds reasonably like—what were the two numbers again?

**Senator CORMANN**—It was \$77.2 million over three years in the budget papers.

**Mr Storen**—Yes, I have got that one.

**Senator CORMANN**—Which would seem to be less than \$79.6 million over two years on your website. The description of the program is exactly the same: a 26-week environmental training program offering young people, et cetera.

**Mr McDonald**—We will have to look at that. I cannot respond to that at the moment. We will check it and let you know.

**Senator CORMANN**—Thank you very much. This might be a bit of a naive question, but in terms of contracts, I see that on 1 March you entered into a \$329,700,000 contract with the Department of Human Services for the provision of disability management services and employment support. Is that just a standard rollover that happens on a regular basis?

**Mr McDonald**—I do not have the background on that one.

**Ms Paul**—What did you say it was for? I am sorry I did not hear that.

**Senator CORMANN**—It is \$329,700,000; 1 March 2010 to 30 June 2012. DEEWR entering into a contract with the Department of Human Services CRS Australia, formerly known as the Commonwealth Rehabilitation Services.

**Mr Storen**—That is correct. That would have been part of the new disability employment services which commenced on 1 March 2010. There are a range of services that were discussed late yesterday afternoon when that was being done.

**Senator CORMANN**—I guess the reason I am asking here is because this is a contract that is entered into by your department with another government department.

**Mr Storen**—That is correct. This department has the administered funding to pay for the services under the Disability Employment Program. One of the providers—

**Senator CORMANN**—So they are just dispensing the money on your behalf?

**Mr Storen**—One of the providers under the program is the Commonwealth Rehabilitation Services, CRS Australia, who is mentioned in that description you gave. They are part of the Department of Human Services portfolio. This department has the contract on behalf of the Commonwealth, and manages the finances and the accountability through the budget papers and appropriations on behalf of the Commonwealth. DHS are the provider under that arrangement.

**Senator CORMANN**—What you are saying here is that CRS Australia has got one of the contracts across the whole?

**Ms Paul**—That is right.

**Senator CORMANN**—What is the total contract value of this program again?

**Mr Storen**—It is quite significant.

**Senator CORMANN**—Well, \$329 million seems to be significant.

**Mr Storen**—The total disability employment service funding in 2010-11 is \$752 million, \$752.783 million.

**Senator CORMANN**—That is right, we spoke about that yesterday. Understand about the program, this is over a two and a half year period. So the Commonwealth provides directly 30 per cent of the services?

**Ms Paul**—I am not sure who the other providers are; we could be reminded. We do not have those people here now. We did cover this yesterday. CRS Australia is a major provider.

**Senator CORMANN**—Are you saying that this was part of a competitive tender where others were able to compete for the same business?

**Ms Paul**—In the reform of the disability employment services, some parts were rolled over, some parts were—

**Senator CORMANN**—There is somebody sitting behind you that seems to know.

**Ms Paul**—Oh, that is helpful. Some parts were rolled over, some parts were put out for tender. CRS Australia has always had a large slice of the business and they retain a large slice of the business.

**Senator CORMANN**—But did they obtain that large slice of the business as part of a competitive tender where they competed with others, or were they—

**Ms Paul**—I cannot recall which piece is which unless someone wants to help me out. I will take it on notice. We could have dealt with this easily yesterday, I am sorry, Senator.

**Senator CORMANN**—This is part of the contracts that I was told we usually look—

**Ms Paul**—That is fine, I will take it on notice and I am happy to get back to you.

**Senator CORMANN**—In terms of the trades training centre contracts with state governments or secondary schools individually, how is that managed? Do you enter into

individual contracts with individual schools, or do you enter into a contract across a whole state?

**Ms Paul**—I am not entirely sure. We can certainly help you out on Thursday or I could try to get an answer—

**Senator CORMANN**—So would you rather I raise this on Thursday? The reason I have raised it here is because I did not want to be told on Thursday you should have raised it with the proper section.

**Ms Paul**—No, quite so, that is fine. If I can get it for you earlier and you are here I am happy to give it to you. It will be an easy answer, I just do not have it to hand.

**Senator CORMANN**—Are you planning any advertising campaigns between now and the end of the calendar year in the Department of Education, Employment and Workplace Relations?

**Mr McDonald**—There is one proposed campaign.

**Senator CORMANN**—What is that?

**Mr McDonald**—The proposed campaign is the child-care rebate.

**Senator CORMANN**—How much is allocated for that campaign?

**Mr McDonald**—The estimate is up to \$800,000.

**Senator CORMANN**—How much of that is allocated in 2009-10 and how much of that is allocated for the next financial year?

**Mr McDonald**—I am fairly sure it is all 2010-11.

**Senator CORMANN**—You are fairly sure?

**Mr McDonald**—I will check with the CFO. I do not have that detail with me but the proposed—

**Senator CORMANN**—Do you have any details that we can talk about in cross-portfolio or what are we meant to be asking questions about?

**Ms Paul**—No, that is fine, we are talking about it now.

**Mr McDonald**—Certainly I can talk about it.

**Senator CORMANN**—When is the advertising campaign proposed to start?

**Mr McDonald**—The proposed campaign will be assessed against the government's guidelines. The first part—

**Senator CORMANN**—There is no national emergency exemption being sought?

**Ms Paul**—No.

**Senator CORMANN**—When is it going to start?

**Mr McDonald**—The campaign guidelines provide that it will start once it has been assessed through the guidelines. The first part of that is research associated with the campaign. There is then consideration of that by the Independent Communications Committee. When that is complete there is then a sign-off of the campaign to commence. I

cannot give you an exact date, although I would say it will be most probably in the first quarter of the 2010-11 financial year.

**Senator CORMANN**—Have you contracted any agency yet to put the campaign together?

**Mr McDonald**—No, the first step would be that there is some research undertaken by a company, and in this case I think we have just engaged the company of the panel. The finance department has a panel of suppliers.

**Senator CORMANN**—So who have you contracted to do the research?

**Mr McDonald**—Excuse me?

**Senator CORMANN**—Who has contracted to do the research?

**Mr McDonald**—I believe it is ORIMA Research.

**Senator CORMANN**—What is the value of the research contract?

**Mr McDonald**—I do not have that detail, but Ms Willoughby might. This is just recently. When I say recently, it has just in the last week been—

**Senator CORMANN**—How was it initiated?

**Mr McDonald**—There is a panel of providers that the department of finance has that the departments draw from. They obtain quotes.

**Senator CORMANN**—Yes, Mr McDonald, but who initiated the fact that we were going to have an advertising campaign on the childcare rebate?

**Mr McDonald**—The campaign is similar to the 2008 campaign that was done on the childcare tax rebate, where it is about building awareness of the rebate for families and potential families so that they are aware of the rebate and can access it. The last time that was done was around the middle of the year in 2008. This is a follow-up awareness campaign.

**Senator CORMANN**—Pardon, was that in 2008?

**Ms Paul**—I think again my recollection is that the evaluation of that last campaign recommended that it be repeated at some time in the future to keep awareness up, because people come and go.

**Senator CORMANN**—Sometime in the future or just before the election, Ms Paul?

**Ms Paul**—The evaluation would not have gone to that, of course.

**Senator CORMANN**—To that specific detail, no, I would not have thought it would.

**Ms Paul**—Of course not.

**Senator CORMANN**—But I mean by the sounds of it, it is not a very advanced campaign then?

**Ms Paul**—Correct, that is right.

**Senator CORMANN**—So you would not expect it to be up and running before the end of the calendar year, would you?

**Mr McDonald**—Senator, there is no reason it would not be up and running before then.

**Senator CORMANN**—There is no reason why it would be?

**Mr McDonald**—No.

**Ms Paul**—Would not be?

**Mr McDonald**—There is no reason why it would not be. It goes to the components of the campaign and those components are informed by the research that is undertaken. So at this stage the mix is not known, but you can imagine depending on the mix of that campaign the time frame would be different depending on what that is.

**Senator CORMANN**—But I mean what are you going to get for \$800,000? Newspaper advertisements, not much television, I would have thought?

**Mr McDonald**—As I said, we do not yet know what the mix will be. That is the purpose of the research.

**Senator CORMANN**—Could there be more money allocated to it if the research says the mix has to be lots of television at family-friendly times?

**Mr McDonald**—At the moment the campaign is estimated up to \$800,000. That is what has been allocated for it, that is what we will be doing in terms of the research, and that is the sort of media mix that you would be looking for as a result of that. At this point it is very new. It is at the point where it is right at the front end of consideration under the government's guidelines.

**Senator CORMANN**—When you say 'very new', you ran a campaign in 2008. Was that campaign insufficiently successful to repeat just the same campaign you already had?

**Ms Paul**—I think it was successful and the evaluation said because people come and go out of the system it was wise to repeat it at a later date.

**Senator CORMANN**—Yet you start from scratch again with research?

**Ms Paul**—You have to let people know. Yes you do, because each time you do it you need to find out what are going to be the best ways of reaching people. That is always the case with a campaign.

**Senator CORMANN**—When you say there is no reason why it could not start before the end of the year, what is your best estimate as to when the campaign would start?

**Mr McDonald**—My best estimate, and it is only an estimate, would be the first quarter of 2010-11.

**Senator CORMANN**—The first quarter of 2010-11?

**Mr McDonald**—The first quarter of the financial year, and that is still subject—

**Senator CORMANN**—Are we talking July, August, September?

**Mr McDonald**—Senator, that is the first quarter. I am saying at the moment, until you go through in accordance with the communication guidelines, you cannot actually forecast the outcome of that until we go through the process. The first part of that process is the research.

**Senator CORMANN**—You mean the government could tell itself that it cannot run this campaign?

**Mr McDonald**—No, the communication guidelines provide for an Independent Communications Committee.

**Senator CORMANN**—Who is on that Independent Communications Committee?

**Mr McDonald**—That Independent Communications Committee is headed by Allan Hawke and it has Barbara Belcher on it and one other person, I cannot recall.

**Senator CORMANN**—Yes, it no longer involves the Auditor-General, does it?

**Mr McDonald**—That is correct.

**Senator CORMANN**—Would you expect that the committee is going to take a critical view of your campaign or do you think you are going to get it past that committee?

**Mr McDonald**—I think the committee will apply the guidelines to our campaign in a fair and equitable way.

**Senator CORMANN**—Yes, as it should of course. If an election is called in the first quarter, is that going to impact on the timing of that campaign?

**Ms Paul**—It could impact. Elections can always impact on timings of campaigns.

**Senator CORMANN**—Let me rephrase the question. If the campaign is already underway, would it be interrupted during a campaign—

**Ms Paul**—It might be, that is always a call at the time. It is a call that I make in part in consultation with the Prime Minister and cabinet department.

**Senator CORMANN**—I guess for no reason other than there is going to be so much advertising: the \$38 million campaign to sell the super tax on mining and the \$16 million campaign to sell the National Broadband Network as well as all the political advertising. It might be a very expensive time to buy advertising space, Mr McDonald. When do you expect to contract the agency to put together the actual campaign itself? You are in the research phase, so when do you expect to contract?

**Mr McDonald**—We do not know, Senator, until the research is complete.

**Senator CORMANN**—You do not know but you think that you are going to be ready to get going in the first quarter. You are going to be very—

**Mr McDonald**—That is on the basis of past experience of how long a campaign takes to get in place. We cannot actually forecast at the moment the outcome of the consideration by the Independent Communications Committee.

**Senator CORMANN**—I see. Moving on from this, is that the only campaign that you are planning at present?

**Mr McDonald**—Yes, Senator.

**Senator CORMANN**—Is there a marketing component for Jobs Services Australia built into their contracts?

**Ms Paul**—No, I do not think so.

**Senator CORMANN**—Do Job Services Australia not have to advertise their services in any particular way?

**Ms Paul**—No, the advertising that was done for Job Services Australia was on the transition, the change from Job Network to Job Services Australia last year. There is no further plan.

**Senator CORMANN**—Yes, going through some of the more general corporate questions.

**Mr Storen**—Excuse me, Senator, you asked about the National Green Jobs Corps and the two numbers?

**Senator CORMANN**—Yes.

**Mr Storen**—If you would like I could explain the variation in the two numbers.

**Senator CORMANN**—That would be fantastic.

**Mr Storen**—The \$79.6 million which you have quoted from the website is the total cost of the budget measure. That includes the cost of the departmental effort to implement and administer the measure as well as the funding of the measures to suppliers and so forth. That is the \$79.6 million.

**Senator CORMANN**—Over three years, no that is \$79.6 million over two years, that is right. So the \$77.2 million over three years is the actual cost of the program, is it?

**Mr Storen**—That is correct, Senator.

**Senator CORMANN**—Do you agree that it would be good to have consistent information on these things? It raised dumb questions like this one, but I guess it wastes a bit of time.

**Senator ABETZ**—Nothing could stop that.

**Senator CORMANN**—Where was I? I was just going to go through general corporate questions. What is the overall staffing level of the departments as at 31 May 2010?

**Mr Storen**—I have figures for 31 March 2010, our last quarter. The total staffing numbers for the department was 6,064.

**Senator CORMANN**—Is 6,064 a slight increase since last year?

**Mr McDonald**—Yes it is.

**Senator CORMANN**—What has caused the increase? What are those people doing?

**Mr McDonald**—There are peaks and troughs in the staffing throughout the organisation depending on recruitment processes we go through. At different points in time it will be lower or higher depending on the exit and turnover rate in the department. People are undertaking functions right across the department in either a policy program or corporate work.

**Senator CORMANN**—Yes. Last year on 30 June 2010 it was a nice round 6,000.

**Mr McDonald**—Yes.

**Senator CORMANN**—Can you remind me what it was on 30 June 2008?

**Mr McDonald**—No I cannot, but I would be able to ascertain—

**Senator CORMANN**—I am just trying to understand whether there are peaks and troughs or whether there are just peaks, Mr McDonald?

**Mr McDonald**—No, Senator, I do not believe there are peaks. It is just at a point in time, because 31 March is a point in time.

**Senator CORMANN**—Yes, sure, so do you expect that number to go down over the next little while?

**Mr McDonald**—The number will change according to the budget and we need to work within the budget, but there are always different forms of employment. For example, the number I gave you was people. Some of those people could be part-time workers for example, some will be full-time workers and that goes on the number that equates to your budget because the costs will be different for each of those.

**Senator CORMANN**—Sure. So the 6,064, that is bodies, is it, rather than FTEs.

**Mr McDonald**—That is correct, yes.

**Senator CORMANN**—So 6,064 bodies. What proportion of them are part-time employees?

**Mr McDonald**—Part-time is around about 11 per cent.

**Senator CORMANN**—Which is pretty much the same as it was?

**Mr McDonald**—Yes.

**Senator CORMANN**—So that has not caused it?

**Mr McDonald**—That breakdown is fairly consistent over a long period of time in organisations. You tend to get that sort of split: 90-10.

**Senator CORMANN**—You are not able to tell me which outcomes branches those 64 additional employees have gone into?

**Mr McDonald**—No, sorry, I cannot. It varies across the department. Each of the—

**Senator CORMANN**—Sixty four people, is one per cent. That is a fair number.

**Mr McDonald**—Yes.

**Senator CORMANN**—They cannot hide somewhere, in a cupboard or something.

**Mr McDonald**—No, Senator. I think the recruitment processes take a while to go through and to complete. They are merit based selections. I would imagine that that increases right across the agency.

**Senator CORMANN**—Each area they get spread across all of the outcomes? Everyone gets one.

**Mr McDonald**—No. Each year each area is allocated a budget to work to in terms of their staffing. During that year they will have people depart that area to another area in the department or outside the department and they need to go through and fill those jobs. At a point in time the actual number could be lower and then it would increase as that job is filled.

**Senator CORMANN**—Have you got an approved staffing level for the department, an overall approved level as opposed to people actually in positions?

**Mr McDonald**—Yes we do have a—

**Ms Paul**—We have a resourcing level.

**Mr Storen**—If I could just make one observation, Senator, before I move on to the approved staffing level.

**Senator CORMANN**—You want to be helpful and provide me with some advice

**Mr Storen**—As Mr McDonald said, the number you get depends on the point in time. With a base of 6,000 it is going to move around; one percentage point is not unusual. As at 31 December, there were about 5,970. We have 6,064 now. Having a look at a breakdown of the profile the increase is actually all graduates. As at December we had about 12 graduates; as of 31 March we had 111 graduates, which is 99 more.

**Senator CORMANN**—Now you are being helpful.

**Mr Storen**—I think Mr McDonald, in saying it is across the department, is correct because graduates are actually allocated across the department. A quick look at the data suggests that graduates is the point in time, which is why point in time staffing is not—

**Senator CORMANN**—Sure, understood, that makes sense. Graduates that start say in December to March 2009-10, do they leave within a year? How many of them leave? How many of them would you expect to stay and how many of them leave?

**Ms Paul**—Our graduates?

**Senator CORMANN**—Yes.

**Mr McDonald**—Our retention rate is fairly strong.

**Senator CORMANN**—Of graduates?

**Mr McDonald**—Mr Wyers will have more detail in relation to that. Our retention rate is quite good.

**Mr Wyers**—I would need to take on notice to get complete details on our retention rate. The last time I looked at the figures we had a more than 90 per cent retention rate up to two years and more than 70 per cent after four years, by recollection.

**Senator CORMANN**—Presumably you recruit graduates every year?

**Mr Wyers**—Yes.

**Senator CORMANN**—How many of them, roughly, 100 every year?

**Mr Wyers**—We had 100 this year. I think last year we had about 80-odd.

**Senator CORMANN**—The number of graduates coming in is increasing. Whether it is graduates, whether it is people that you hire from other organisations or whether you get them from outside the public service, they are essentially new bodies in are they not? Graduates are just one way that you can increase the size of the organisation.

**Mr Wyers**—Yes.

**Senator CORMANN**—So, if you keep bringing new graduates in, and not as many of them are leaving as you are bringing in, you are going to continue to grow?

**Ms Paul**—That is true.

**Senator CORMANN**—That is a mathematical fact.

**Ms Paul**—That is right. The number of them will continue to grow so there is an alumni effect but of course we have natural attrition each year too.

**Senator CORMANN**—It would be interesting to have the figures actually at exactly the same time of the year so that we can adjust for these effects, so 30 June 2007, 30 June 2008; I have got 30 June 2009 and then I have got the figure for now that you are able to give me.

**Mr Storen**—With that question we can do back to 2008 but 2007 is a bit difficult because the department did not exist.

**Senator CORMANN**—Because your department changed, yes, fair enough. What is the earliest that you can give me that? When did the department change? That was the beginning of 2008, was it?

**Ms Paul**—The end of 2007.

**Senator CORMANN**—The end of 2007 or the beginning of 2008. If the first figure I can get is January 08 and then from June 08 which is forward on an annual basis. What is the current turnover across the whole department?

**Mr McDonald**—The current turnover is around nine per cent.

**Senator CORMANN**—How does that compare to your peers?

**Mr McDonald**—It would vary department to department but basically—

**Senator CORMANN**—Is there not a benchmark across the Australian Public Service?

**Ms Paul**—No, there is not.

**Senator CORMANN**—I think there should be. You do not know whether you are particularly good or particularly bad?

**Mr McDonald**—We do some benchmarks across a whole range of organisations, not just the APS, to see how our attrition rate is going. Basically across all organisations with the change in the economy, attrition rates reduced, and that included us. I would say it is a fairly consistent rate of attrition.

**Senator CORMANN**—Yours is pretty consistent? When the graduates come in, they are on the graduate program for 10 or 11 months?

**Mr McDonald**—Yes, they commence in early February and exit in December of each calendar year.

**Senator CORMANN**—When you say exit in December then they either go into the department full-time as a fully fledged public servant or—

**Mr McDonald**—That is what would happen to them. They would go—

**Senator CORMANN**—Do you offer all of them to go into the department?

**Mr McDonald**—Yes, there is a framework that Mr Wyers can talk more about but basically there is a program of development they need to go through and then of course they are assessed, as all public servants, are against the entry requirements to the public service.

**Senator CORMANN**—Did you start as a graduate, Mr McDonald?

**Mr McDonald**—No, I actually started in the Victorian Public Service, Senator.

**Senator CORMANN**—Very good and then you joined the AFL?

**Mr McDonald**—Yes, I am a very keen follower of the AFL, a very keen follower as everyone well knows. It is one of my passions being a Victorian.

**Senator CORMANN**—Are there any branches in your department that have particularly high turnover rates compared to others?

**Mr McDonald**—I think we looked at this previously in response to a question on notice and I think it was quite consistent over the organisation as a whole.

**Senator CORMANN**—It is a pretty flat nine per cent?

**Mr McDonald**—It is pretty flat. It will go up and down marginally in different places and again that is a point in time thing. It is hard to get a definitive—

**Senator CORMANN**—There is no area in the department that stands out?

**Mr McDonald**—No.

**Senator CORMANN**—Not like the Prime Minister's office would stand out?

**Senator JACINTA COLLINS**—Not in comparison to the Leader of the Opposition's office.

**Senator CORMANN**—Actually not true, not true. What is the average age of your staff? Do you know?

**Mr McDonald**—That is a good question. We can take that on notice. We would know. I cannot answer that now; I do not have that off the top of my head.

**Senator CORMANN**—That is not something that somebody has asked before, is it?

**Ms Paul**—No, we have not had that question before but we have got the information. We can come back to you.

**Senator CORMANN**—Yes—again, I would be interested to see a trend line to the extent that you can assist me with that.

**Mr McDonald**—We certainly build in demographic data as part of the workforce plans that we do across the organisation. Obviously, you have to factor in people that are coming into retirement age and the like as part of your planning. So, yes, we do it, so we can provide it.

**Senator CORMANN**—What is the typical retirement age of a public servant in your department?

**Mr McDonald**—That is another good question.

**Senator CORMANN**—I can see a smile there.

**Mr McDonald**—They can retire from age 55 on, as you know, and some of it is affected by the age at which they can access their retirement benefits. People are in different super schemes, and that has an impact on when is the best time for them to depart the organisation. A lot of personal circumstances come into play.

**Senator CORMANN**—Is the department doing anything to try to retain its officers for longer?

**Mr McDonald**—We certainly have a retention strategy for our employees, and part of that is our approach to employment. We have an approach that cares for people. We support people in the organisation. We have a whole range of strategies to do that. We also have quite a detailed performance framework around that to assess people, and development is also part of that process. We are very supportive of people in our organisation; they are our most important asset.

**Ms Paul**—For example, a move to part time might well be part of the approach for someone who is thinking about retirement but not wanting to make that total break. That is a fantastic response.

**Senator CORMANN**—Your department would be very flexible in making arrangements?

**Ms Paul**—Yes, we are very flexible.

**Senator CORMANN**—Is it the same in terms of women who might want to stay in touch? You have a good—

**Ms Paul**—We have more women than men in the department. It is about a 60-40 split.

**Senator CORMANN**—Ms Paul, have there been any changes in the ranks of the senior executive service since we last spoke?

**Ms Paul**—I am sure there would have been in the normal course of events.

**Senator CORMANN**—Can you talk us through some of the major changes?

**Ms Paul**—In terms of personnel?

**Senator CORMANN**—Personnel changes, yes.

**Ms Paul**—We would have had a small number of new SES start with us. We would have had a few retirements, probably. Would you like us to get you the numbers on notice? I do not have the numbers in my head.

**Senator CORMANN**—Yes, okay.

**Ms Paul**—It is a large cohort. We can get you some figures.

**Senator CORMANN**—There have not been any restructure related major shifts, reshuffles, that you want to share with us?

**Ms Paul**—No.

**Senator CORMANN**—Nothing on the books?

**Ms Paul**—Yes, on the books we face some resource constraints in the coming year and so on, so we are going through some restructuring, refocusing and reprioritisation. That has been known for some time. In a department as large as this there is always some refocusing depending on the top priorities. I will give you an example. Yesterday we spoke about the transition to Job Services Australia—the tender process, the systems developments and so on. That required an enormous influx of resources at that time. It was similar for the Disability Employment Services tender and so on. Those resources now drop off as we do not need that size team. So those people either were engaged on a non-ongoing basis—for example, in the IT area there is quite a bit of that—or have moved to somewhere else in the department. We have quite a lot of internal mobility, as everyone does. Everyone goes through the same sort

of thing, with ons and offs according to priorities and the major loads at any time, and you have to be flexible enough to respond to that.

**Senator CORMANN**—You expect the overall figure of 6,064 to go down?

**Ms Paul**—That is right.

**Senator CORMANN**—By how much?

**Ms Paul**—It is a bit hard to say. The portfolio budget statement gives the number 525. That has been reported. It depends on how we take that. It is about eight per cent. Our natural attrition is nine per cent and we will put our people first. People may move around inside the department. In terms of the overall structure of the department, no, I do not expect to be making changes.

The department has been organised this way from when it was created. It is organised on what you might call a life cycle basis. We have major strands for early childhood, schooling, post-schooling education, employment, unemployment and workplace relations across the whole department, and of course the corporate area also crosses the whole department. It makes sense. That structure was achieved in mid-2008 as kind of the last piece of bringing together two whole departments and a large part of a third department. I think that structure is robust and I do not intend to change its nature.

**Senator CORMANN**—Is 525 a fair number of staff?

**Ms Paul**—The resourcing changes represent about eight per cent of department's resourcing. It depends how we choose to take that. We have been working on this, these things have been known to us, for some time now. It is exactly for the reasons I named, like having been through a major tender and so on.

**Senator CORMANN**—Which areas do you expect the 525 staff to come from?

**Ms Paul**—Of course, natural attrition will take care of it pretty well, primarily.

**Senator CORMANN**—It is the bad luck of the draw? If somebody retires in one area, they will just not be replaced—it is bad luck? If you have an old person in your area—

**Ms Paul**—It is not a case of bad luck; it is a case of actually doing the workforce planning for it. That is what we are going through now and have been going through for some time. This is always the case; every department does this. You move staff to where the priority areas of work are or where the pumps of work are, depending on where you are.

**Senator CORMANN**—What is the total number of external consulting firms that have been used by the department over the last financial year?

**Mr McDonald**—Mr Kriz will be able to help you with that.

**Mr Kriz**—Which figures would you like on the consultancies, Senator?

**Senator CORMANN**—Maybe we could start off with the total number of external consultancy firms the department has used in the past year and then work our way back from there.

**Mr Kriz**—In this financial year there are 155 active consultancies. Those are consultancies that have been put on this year or that have continued from previous years.

**Senator CORMANN**—You are not in a position to tell me how many have commenced in the 2009-10 financial year?

**Mr Kriz**—Yes—around 90. Of course, we have not got the numbers to the end of the financial year.

**Senator CORMANN**—Is that 90 from 1 July to 31 May?

**Mr Kriz**—The only reason I am hesitant is that, as we put more data onto AusTender, the numbers change, of course. That is why I am saying—

**Senator CORMANN**—So it will be at least 90?

**Mr Kriz**—Yes.

**Senator CORMANN**—It is more likely to be more?

**Mr Kriz**—It will be more.

**Senator CORMANN**—Okay. Can you give a dollar figure for the 155 active ones and the 90 ones that have commenced this financial year?

**Mr Kriz**—The total contract value of the 155 active ones is \$37.95 million, and the expenditure in respect of those for the same period is \$14.27 million.

**Senator CORMANN**—Are you able to provide a list of those active consultancies on notice?

**Mr Kriz**—Yes, we can. The data is of course on AusTender.

**Senator CORMANN**—How does that compare with previous years?

**Mr Kriz**—It is a decrease. I have data here going back to 2005-06. There is basically a decrease in each year in every category.

**Senator CORMANN**—Can you give us some numbers, maybe on notice? Just give it to us on notice for the previous three or four years and then I can pass on to my colleague, Senator Cash.

**Senator CASH**—I also just have some general questions in relation to staffing. The first area is in relation to staff employed in the IT area. These questions were actually asked by me at the last budget estimates, so I would like to take it back 12 months or thereabouts. How many IT staff does the department employ currently and how does that compare to our last budget estimates?

**Mr McDonald**—I would have to take that on notice. I do not have that, sorry. Mr Archer is here and he will be able to help you. He is our chief information officer.

**Mr Archer**—As at the end of April 2010, total IT staff of the department numbered 954. That is not including contractors.

**Senator CASH**—Thank you very much and I will get to that shortly. How does that compare to the previous 12 months?

**Mr Archer**—I do not have that number in front of me but I would think that is slightly higher.

**Senator CASH**—When you say slightly, do you mean 10, 20, 30 per cent?

**Mr Archer**—Possibly five per cent.

**Senator CASH**—Can I ask what the reason is for the increase in the number of IT staff?

**Mr Archer**—That was primarily associated with the conversion of contractors.

**Senator CASH**—That we spoke about at the last estimates hearing?

**Ms Paul**—This arises from Gershon recommendations which recommended agencies convert, as Mr Archer is saying, contractors to permanent staff, and we have adhered to that.

**Senator CASH**—That five per cent would represent previous contractors who are now permanent staff within the department?

**Ms Paul**—Correct.

**Senator CASH**—In terms of a breakdown of the number of IT staff employed by the department, are you able to provide me with a breakdown of the IT staff who are employed on a full-time, part-time and casual basis?

**Mr Archer**—There is a previous question on notice related to this to a previous year. Certainly we can look to update those numbers, yes.

**Senator CASH**—If you could update the figures for me that would be greatly appreciated. In terms of the total expenditure on IT subcontracting over the last 12-month period, or basically since the last estimates, do you have that figure with you?

**Mr Archer**—I do not have it with me but again we previously obtained that number for you and we can certainly take it again.

**Senator CASH**—If you could update that figure as well that would be greatly appreciated. Turning now to leave taken by staff in the department; again, these questions have been asked at the previous budget estimates hearing. Are you able to give me any indication of levels of leave taken by the officers in this department, particularly in relation to stress leave?

**Ms Paul**—We can talk to you about unscheduled absences probably. I do not know that we would be able to talk about stress leave. It would depend on whether there was a Comcare claim and so on.

**Senator CASH**—My understanding is that you monitor sick leave, carer's leave and other leave within the department. Are you able to give me a breakdown of the types of leave taken by the department over the last 12-month period so we can compare it with the last estimates hearing?

**Ms Paul**—We will be able to. We may have some of it here.

**Senator CASH**—Are you able to take on notice the number of staff who have taken stress leave?

**Ms Paul**—We would need to go to the Comcare statistics. We could do that for you.

**Senator CASH**—Thank you very much. Is someone going to give me those figures?

**Mr McDonald**—We are just checking whether we have them.

**Ms Paul**—We are still onto it.

**Senator CASH**—Thank you.

**Mr McDonald**—Mr Wyers is just having a look in his folder.

**Senator CASH**—One of the figures that I am looking for is the level of sick leave compared to this time last year.

**Mr Wyers**—We monitor what we call unscheduled absences. Those absences go to sick leave and carer's leave; they are a range of things you do not plan for. Our current usage of unscheduled absences is 12.77 days per employee.

**Senator CASH**—12.77 days per employee?

**Mr Wyers**—That is right.

**Ms Paul**—Per year.

**Senator CASH**—How does that compare with the previous year? For example, can I give you the information that I received at the last estimates? It was tracking at about 1.82 days per employee for the period January to March of last year, which was a reduction from 1.94 days per employee from the same quarter the previous year. You have given me a 12-month figure.

**Mr Wyers**—The first figure you quoted, 1.82: could you just remind me which quarter that was, please?

**Senator CASH**—The period January to March 2009.

**Mr Wyers**—I will need to explain that there is a lag time for these unscheduled absences which comes from the fact that people will not lodge their leave until sometimes further down the track because they were not actually at work. That number now is 2.62. It was at 1.82 and it is now 2.62.

**Senator CASH**—So there has been a considerable increase?

**Mr Wyers**—There has, yes, and that will be due to the delay in people actually lodging those applications into the system that we actually extract the data from.

**Mr McDonald**—Senator, 2009 was quite an unusual year because of the H1N1 flu, the swine flu. There was quite a different approach to responding to that. For example, people were encouraged to stay home when they had flu-like symptoms because people were quite concerned. I think 2009 is a bit of a different sort of year. We are closely monitoring that through our people in leadership committee as we move forward and have put in some additional preventive measures this year to try and address that.

**Senator CASH**—What are those additional preventive measures?

**Mr McDonald**—Some of the preventive measures we use are health checks in some areas—so people are getting tested for their blood pressure and their general health—and also encouraging an active physical lifestyle. We have also looked at access to flu preventive shots if people wish to have them. We are also looking at other things across the board; for example, making sure that people are able to use flexible work practices where they have caring responsibilities for older parents or children. We are looking quite actively across the board at those issues. We are suggesting that 2009 is different but we are monitoring it closely to see whether in fact that was the case.

**Senator CASH**—In relation to the 12.77 days per employee taken as miscellaneous leave over the past 12 months, what is the number of miscellaneous leave days allowed under the agreement?

**Mr McDonald**—Under our collective agreement?

**Senator CASH**—Under your collective agreement for these employees.

**Mr Wyers**—The collective agreement I believe provides for 18 days accrued personal leave each year.

**Senator CASH**—That accrues?

**Mr Wyers**—That accrues, so in one year people may take more than 18, in other years less.

**Senator CASH**—Is there any information kept by the department of the number of hours outside normal working hours that are worked by employees of the department—that is, overtime?

**Mr Wyers**—Yes, there are. We can source that for you. I do not have that with me.

**Senator CASH**—You do not have that with you?

**Mr Wyers**—No, we will take it on notice.

**Senator CASH**—Would you be able to provide that and by way of a comparison to the previous year as well? Thank you very much. Finally, just a follow-up question from the previous estimates period regarding moving to industrial agreements covering officers in the departments. I would like an update in terms of what agreements are currently in place for officers of the department and whether there are any negotiations underway to transition officers to other agreements. Basically it is a follow-up question.

**Mr McDonald**—We have one collective agreement in the agency for all our staff and that is in place for another 18 months.

**Senator CASH**—And that is for all of the staff?

**Mr McDonald**—That is for all staff below the SES, yes.

**Senator CASH**—Again following up from the previous estimates, are there any staff remaining on Australian Workplace Agreements or individual agreements?

**Mr McDonald**—I think there is a very small number that are either still on leave from the department or we are waiting for them to return. When people return to the department we offer them to go on to the collective agreement and likewise when AWAs reach their expiry date they come under the collective agreement.

**Senator CASH**—Are you able to take on notice to provide the numbers in relation to the numbers left on AWAs or individual agreements?

**Mr McDonald**—Yes.

**Senator CASH**—The only other question I have is in relation to the 12.77 days per employee for miscellaneous leave. How does that compare—you probably will need to take this on notice—to employees in other departments?

**Mr Wyers**—Senator, in the *State of the service report* they do provide some comparative data we can use.

**Senator CASH**—Thank you very much. Was that the *State of the service report*?

**Mr Wyers**—*State of the service report* put out by the Australian Public Service Commission. They report that the median for large APS agencies, which is what we compare ourselves to, was 12.44 days.

**Senator CASH**—So yours is slightly higher?

**Mr Wyers**—Slightly higher, yes.

**Senator CASH**—What do you put that down to?

**Mr McDonald**—At the moment we have put it down to the flu last year that I talked about. Whether that was particularly associated with us or some of our unique characteristics, our geographic spread for example and the like, is some of the analysis we are doing. There are a number of agencies higher than us so we are close to the average.

**Ms Paul**—It is a fraction of a day.

**Mr McDonald**—We would like to try and get that back down a little bit but at the same time make sure that we are not getting a situation of presentee-ism where people are turning up at work because they are not well, because that then has a flow-on effect to everybody else. People are quite conscious about that in this environment with the flu and the like. It is slightly higher than where we would like it and we are working on that.

**Ms Paul**—As Mr McDonald says, we encourage people to take leave when they are not well. I do not want people feeling that they need to come to work if they are not well. I do like the word presentee-ism for that; I think it is really important that people take advantage of their leave entitlements if they need them.

**Senator ABETZ**—I do not have any questions under cross-portfolio per se but with the Chair's indulgence I was wondering if I could ask a question of Ms Paul and if you cannot answer it just take it on notice. Has the department considered any amendments to the Fair Work Act 2009? I know I should have asked that last night.

**Ms Paul**—I will take it on notice.

**Senator ABETZ**—Yes but surely you must know as the head of the agency whether or not the government is considering any amendments to the Fair Work Act?

**Ms Paul**—Not that I am aware of at present, but I am happy to take it on notice.

**Senator ABETZ**—What about in the space of paid parental leave?

**Ms Paul**—I think it is a matter for government and I am happy to take it on notice.

**Senator ABETZ**—Did your department give any evidence to a Senate committee just recently saying exactly that, that the government was considering, and your department was considering, amendments to the Fair Work Act on paid parental leave?

**Senator Arbib**—I hardly understand how this fits into cross-portfolio.

**Senator JACINTA COLLINS**—We covered this last night, Senator Abetz.

**Senator ABETZ**—Yes, I know. I indicated all that and accept that, but that does not mean just because we are sitting today rather than last night that this information has slipped out of Ms Paul's head. She must know.

**Ms Paul**—I am happy to stand by what we have said before and if you would like more information I am happy to take it on notice.

**Senator ABETZ**—If you could, please, I would be much obliged. Thank you.

**CHAIR**—I would like to ask about the work and job expos. Can someone give me an update on how they are going?

**Ms Paul**—Maybe. The Centrelink expos?

**CHAIR**—Yes.

**Mr McDonald**—Just before we commence, I have an update to Senator Cash's question on AWAs: at the moment we have 20 people remaining on AWAs in the department.

**Senator CASH**—Thank you very much for that.

**Mr Griew**—As at 27 May, 17 Keep Australia Working job expos have been held. These are subsequent to the Keep Australia Working forums that were referred to in estimates yesterday. These expos are run in collaboration with Centrelink. Centrelink has previously run expos where they bring in employers in the local area, usually an area with some form of labour market difficulty. They are fantastic actually, it is a large community event. They will bring in local employers, local community groups. You get sometimes literally thousands of job seekers. They have a big board with lots of jobs up. Local identities will speak. There will be local entertainers. It is quite a community festival. The 17 that we have run collaboratively in the priority employment areas have been attended by over 75,000 people and we estimate they have connected some 6,500 job seekers with jobs. Those will be jobs that employers put up on the boards locally. We also get local TAFEs, universities, community education organisations.

The format is that the expos, as I said, are run by Centrelink. There is a schedule where they have run them through their different priority areas. They will contact all of the local businesses and local identities, community leaders, local government, and state and federal representatives as well, and then we will monitor the number of jobs up on the job boards. We will try to monitor the number of connections Centrelink is able to estimate are made with job providers. They will follow up with job seekers. I have some data here which is the base of the estimate of the number of jobs connections that have been made. I could run through a few, if you would like me to do so. It is quite impressive. One in Canterbury Bankstown on 23 October in Liverpool was attended by 9,000 people. There were 120 exhibitors. There were some 1,000 job vacancies, and the estimate was that about 500 people were connected with jobs, including apprenticeships and traineeships. Just to pick another one at random, on 6 May in Ballarat-Bendigo, over 3,000 people attended. There were 60 exhibitors. Some 550 job vacancies were advertised, with 100 in the defence forces, out of interest, who were represented there, and the estimate was that 300 people were connected to jobs. There were 17 of these held. We think they are very good, especially in these areas that have gone through quite significant labour market challenge.

**CHAIR**—How are the locations determined?

**Mr Griew**—We are working through our priority employment areas with the local employment coordinators. They play a role, and we tend to work through Centrelink to find very proactive local Centrelink managers who work with our local employment coordinators, and they will try to drag in the local chambers of commerce, local government and TAFE training providers and so on. The locations are within those areas, and within the areas, we would select where we have really good local engagement.

**CHAIR**—Are more planned?

**Mr Griew**—We are on the closing run of them. I may have here the number left to be planned. I could certainly provide that on notice. They are nearly done now. There would be a handful more.

**CHAIR**—Where have they been? So far you have told us about two, and there are 17 in total? Can you just go through the list quickly?

**Mr Griew**—North-west and northern Tasmania in Launceston, Liverpool, Canterbury-Bankstown, Townsville, Cairns, Whittlesea in north-western Melbourne, Bankstown, Elizabeth, Lismore, Wollongong, a place called Tumbi Umbi in Central Coast Hunter, Dandenong, Rockingham south-west of Perth, Port Macquarie, Ballarat and Shepparton, Bundaberg, Ipswich, Gympie, a place called Bokarina in Caboolture, Penrith, Cairns, Maitland, Parramatta and Geelong. What I have done there is I have answered your previous question. The ones from Bokarina, Penrith, Cairns, Maitland, Parramatta and Geelong are the ones that are planned to complete the series.

**CHAIR**—When was the Whittlesea one?

**Mr Griew**—Whittlesea was 11 December.

**CHAIR**—That was one of the main bushfire affected areas. Was it pre or post the bushfire?

**Mr Griew**—Definitely post. That was on 11 December 2009.

**CHAIR**—Did the impact of the bushfires have an impact on the employment in the area?

**Mr Griew**—It absolutely did. That is one of the reasons the government allocated specifically some of the jobs fund money in discussion with the Greens and Senator Fielding to projects in the bushfire reconstruction areas. I had gone to the Keep Australia Working forum out there where it was a very strong local community event, with the local member, Fran Bailey, and the Speaker of the House of Representatives there, and we were very impressed by how strong the community determination was to get jobs up through reconstruction projects. I was not at the job expo, the subsequent event, but I seem to remember being told that it was successful also.

**CHAIR**—How did they advertise? How did job seekers actually find out about the expos?

**Mr Griew**—They would be advertised through Centrelink events, and through community media. These are local community events. Small businesses would put up signs, I would imagine. I am not involved in the day-to-day organisation of these things. They are done by Centrelink, but I would imagine it would be a very local kind of affair.

**CHAIR**—Is the view that actually holding the expo generates more job vacancies than there otherwise would be, because of the event itself, or is it simply a way of actually bringing some of these things together all in one location?

**Mr Griew**—I think that is a really interesting question. As we have gone around doing these forums, and then as the expos have happened, there are two local dynamics that I think promote more local employment. One is the motivational effect on local businesses, a kind of optimism, if you like to have a go. Certainly Lindsay Fox and Bill Kelty were very instrumental in kind of whipping up local enthusiasm in the events that they came to early on in this, and in the couple of expos they have attended. The other is a determination to capture local employment opportunities by local businesses, with stimulus projects, for example. Often one of the things we see at these events is local businesses and local training organisations collaborating to make sure that they get the local business by putting together the best team to tender for the work, and then to employ local people into that work. This has been quite explicit when we have put them together in these forums.

**CHAIR**—Has the Apprenticeship Kickstart program been a feature of the expos?

**Mr Griew**—Yes. Apprenticeship Kickstart has been very popular. It hit the targets in the first three months.

**CHAIR**—Can you provide an update of where we are at with the Apprenticeship Kickstart program?

**Mr Griew**—We aimed, with Apprenticeship Kickstart, when it was—

**Senator CORMANN**—Is this part of the cross-portfolio?

**Senator JACINTA COLLINS**—It is, actually. It is employment and it is training.

**Senator CORMANN**—I can start asking some question about employment and training, too? I am happy to go back to the employment services contract.

**Senator JACINTA COLLINS**—That is why it is a cross-portfolio. It is across both—

**Senator CORMANN**—If that is the definition of cross-portfolio, I am going to go back to it.

**CHAIR**—No, if it is not cross-portfolio, I am happy to ask it in the appropriate place. Is it a cross-portfolio?

**Senator ABETZ**—They will make it cross-portfolio now.

**CHAIR**—I just assumed it is effectively—

**Senator CORMANN**—I am very happy with that definition of cross-portfolio, as long as I can go back to things I did not get to yesterday morning, because there was a limited amount of time made available to Outcome 4.1. That is fine.

**CHAIR**—All right, if that is the end of cross-portfolio, that is fine.

**Senator CORMANN**—Well, it is not the end of cross-portfolio, because I still have questions in cross-portfolio.

**CHAIR**—Okay. We will make sure that they are definitely cross-portfolio, then. Let us proceed with Senator Cormann, and we will see how we go.

**Senator CORMANN**—Thank you very much, Mr Chairman. What is the department's hospitality spend for the year to date?

**Mr McDonald**—Mr Storen will be able to help you with that, Senator.

**Mr Storen**—I do not have the year to date number. I have the answer we have provided to a previous question on notice which takes it up to 18 February 2010.

**Senator CORMANN**—Can we get the year to date figures perhaps? The answer to the question on notice is that detail, location, purpose and cost of all of the events?

**Mr Storen**—That is correct. The answer goes to the hospitality year to date spend, which at the time was \$48,054.81. It then describes the event, date, location and purpose for any event over \$1,000 and provides you with a breakdown between the different functional areas of the department for the smaller events. We can update that answer—

**Senator CORMANN**—If you could provide us, on notice, with an updated detail of the department's hospitality spend year to date. I am keen to get the date, location, purpose and cost of all the events. Is that all departmental hospitality only or does that include hospitality for ministers and parliamentary secretaries?

**Mr Storen**—It includes the minister's offices. There are two answers: one goes to the total and the other one goes to minister's offices.

**Senator CORMANN**—If you could perhaps also provide us with all of the hospitality for ministers and parliamentary secretaries year to date for this financial year, that would be great.

**Mr Storen**—Senator, earlier you asked about the contracting arrangements with trade training centres in schools. I could go to some of that detail now if you wanted me to.

**Senator CORMANN**—If it is appropriately part of cross-portfolio I am very happy to.

**CHAIR**—Would it be cross-portfolio?

**Mr Storen**—The detailed underpinnings of how the program works is really a matter for the schools program people.

**CHAIR**—Then we will do it in the schools program.

**Senator CORMANN**—But the contracts themselves you can talk about now, can you not?

**Mr Storen**—I can talk about the general contracting arrangements that apply.

**Senator CORMANN**—Yes, because I will ask questions about it later in the week, in terms of the underpinnings. I am interested in contractual arrangements that are in place.

**Mr Storen**—In relation to the Trade Training Centres in Schools program, we have overarching funding agreements with state and territory departments of education. For each successful government school project there is a project specific schedule that forms part of that funding agreement. There would be a funding agreement with the New South Wales state education authority, and for each successful New South Wales government school there would be a project specific schedule. That project specific schedule is developed and signed by the respective delegates, one from this department, and for government schools it is generally a representative of the state or territory education department. In respect of the non-government sector it is different because of the organisational operational changes. There is a master

funding agreement with the Block Grant Authority for each successful application and for each successful non-government school there is a school project agreement that incorporates a project specific schedule for that school. The school project agreement is entered into between the Australian government and the entity which is legally able to enter for the school. For Catholic schools that is the diocese office or the Catholic Education Commission. For independent schools it is often the principal.

**Senator CORMANN**—You have overarching agreements for government schools with each of the states and territories, and they are already in place?

**Mr Storen**—For approved projects, yes.

**Senator CORMANN**—Only for approved projects, or do you have an overarching agreement and each approved project is put onto a schedule?

**Mr Storen**—Yes, there is an overarching agreement and then as projects are approved—

**Senator CORMANN**—Which is already in place?

**Mr Storen**—That is correct.

**Senator CORMANN**—Then, for the non-government sector, you have got an umbrella agreement as far as the Catholic Education Commission is concerned—or the diocese?

**Mr Storen**—Or the relevant authorities.

**Senator CORMANN**—Then, for independent schools, you have got a school-by-school contractual arrangement, do you?

**Mr Storen**—Yes.

**Senator CORMANN**—How many schools will be covered as part of the umbrella contract with state and territory governments?

**Mr Storen**—I have seen some numbers recently in the portfolio budget statements on the number of projects in schools. It really sits within the schools outcome.

**Senator CORMANN**—The election commitment was for 2,650 of them.

**CHAIR**—We will take that question in the schools outcome.

**Senator CORMANN**—I guess what I am trying to get at is: with the contracts that you have entered into, do they specify for each state the number of expected schedules to the contract?

**Mr Storen**—We can take that level of detail on notice.

**Senator CORMANN**—Okay.

**Mr Storen**—The schools people will be here on Thursday.

**Senator CORMANN**—In terms of the contracts, the schedules are required to execute a contract with a particular state government in relation to a specific project, are they not? Is that what you are telling me?

**Mr Storen**—In the government system, there is a separate schedule for each successful school project.

**Senator CORMANN**—To execute, essentially, the contract between the Commonwealth and the relevant state government for a particular project, that schedule has to be agreed to?

**Mr Storen**—Yes.

**Senator CORMANN**—The delegate of the minister at the federal level is able to sign off on that; is that right?

**Mr Storen**—That is my understanding, yes.

**Senator CORMANN**—Who is the delegate? At what level in the department is the delegate located?

**Mr Storen**—We can come back and tell you that.

**Senator CORMANN**—That would be good. Are there any exit clauses in those agreements?

**Mr Storen**—Once again, we will take that on notice, and if we can provide you the answer on Thursday we will.

**Senator CORMANN**—I would also like to get the following information on notice: how many schedules have been formally agreed to across all of the government schools; how many individual contracts have been entered into on the non-government side of things; what are the relevant exit arrangements, if applicable; what payments have been committed to under the contracts to date; and what would be the cost to the Commonwealth if it were to make a decision to get out of those contracts.

**Ms Paul**—We may be able to answer some of that information on Thursday.

**Senator CORMANN**—Now you have a bit of a heads-up as to where I am going. I am sure you are not surprised about where I am going.

**Ms Paul**—Thank you. No, that is fine.

**Senator Arbib**—You are just showing you want to get rid of the trades training centres. We know exactly why you are—

**Senator CORMANN**—Replace them with something better—better targeted and more cost-effective.

**Senator Arbib**—Something better! You only trained 3,000 students last time.

**Senator CORMANN**—How many students are you training in trades training centres in schools, Minister? There was one operational at the beginning of the year.

**Senator Arbib**—They have not yet been fully rolled out yet.

**Senator CORMANN**—ATCs had not been fully rolled out yet either, Minister, and I think you know it.

**Senator Arbib**—Australians will know that you are going to get rid of these trades training centres.

**Senator CORMANN**—You know it, Minister—and replace it with something much better.

**Senator Arbib**—And also the training places, going back to Work Choices. You have got a great agenda on skills and training.

**Senator CORMANN**—You spent more on over-priced school halls than on technical education.

**CHAIR**—We are in cross-portfolio questions, as you pointed out, Senator.

**Senator CORMANN**—I am getting provoked by the minister, Chair. I think I need some protection!

**Senator Arbib**—I was just making the point.

**Senator CORMANN**—I need some protection from a very abusive minister!

**Senator ABETZ**—Non-responsive, deliberately provocative commentary from the minister should not be tolerated by the chair, either.

**Senator Arbib**—I think it was important to know why the senator was asking—

**Senator ABETZ**—What you think is not relevant.

**CHAIR**—You forget, Senator Abetz, that I used to sit on this side of the table when you were the minister.

**Senator ABETZ**—What you think is irrelevant; it is what the standing orders require. You cannot do what you want; it is not a trade union meeting.

**Senator Arbib**—I can make comments during this session.

**Senator ABETZ**—Only if they are relevant.

**CHAIR**—You can, and you ought to correct the record when misinformation is put before the committee. Now, is there a question? Is it in cross-portfolio?

**Senator CORMANN**—Yes. It is indeed in cross-portfolio. It relates to the cost of community cabinets.

**Senator ABETZ**—So we can correct misinformation from the minister?

**Senator Arbib**—You are not getting rid of the trades training—

**Senator CORMANN**—We are replacing them with something much better.

**Senator Arbib**—That is misinformation. That is really misinformation there.

**Senator CORMANN**—We are replacing them with something that is more effective in providing technical education and training.

**Senator Arbib**—Much more effective? You have got to be joking.

**Senator CORMANN**—And you know it. Well, your trades training centres are a joke, Minister.

**Senator Arbib**—What was the average cost per student for 3,000 students?

**Senator CORMANN**—Ms Paul, regarding community cabinets; what was the cost of the minister's travel and expenses for the community cabinet meetings held since additional estimates? Has somebody got that cost for us?

**Mr Storen**—It is a regular question you ask and we need to go to the department of finance to get the costs of the minister's travel, so we will undertake to update that for you.

**Senator CORMANN**—There is no cost to the department as a result of community cabinets?

**Mr Storen**—Yes, there are two elements of cost: the cost of the minister's travel to community cabinet, and we secure that information from the Department of Finance and Deregulation, which we will do; and there is also the cost of officials who travel to the community cabinets.

**Senator CORMANN**—How many officials have been travelling with the minister to community cabinet meetings since the additional estimates?

**Mr Storen**—It varies from community cabinet to community cabinet, but we can provide an answer to that on notice, as we have done in the past.

**Senator CORMANN**—That is good. Please also provide us the cost of the travel and the total cost of community cabinets to the department. Another question that I am sure you are expecting because it would be a regular feature is: what is the total number of reviews completed and ongoing in this financial year in your portfolio?

**Mr Storen**—We will take that on notice again.

**Senator CORMANN**—So you are not able to provide that now? You have not got somebody sitting behind you that is able to—

**Mr Storen**—Not with an up-to-date answer for you on that one. As you would appreciate, with the diverse range of activities in the department we need to go out and collect—

**Senator CORMANN**—You are not being very helpful. How many reviews—

**Senator Arbib**—No, that is not right, Senator.

**Senator CORMANN**—It is right.

**Senator Arbib**—The official just said that he will go away and try and get that information for you. He is being helpful, so—

**Senator CORMANN**—And we are going to get that information before the election, Minister?

**Mr McDonald**—You will get the information by the time—

**Senator CORMANN**—Why is the minister not answering? You were not the minister when I last looked.

**Mr McDonald**—You will get that information.

**CHAIR**—The committee have determined when we require answers to questions taken on notice to be back.

**Senator CORMANN**—The minister might well know when the election is going to be, unlike you and me. He is the Prime Minister's golden boy.

**Senator Arbib**—I am smiling because I think that is funny. There is only one person who knows when the election is. You know who that is, and it ain't me.

**Senator CORMANN**—I am sure you would be No. 2—even before the Prime Minister's wife, I am sure.

**Senator Arbib**—Right. Is that the case, is it? Is that the case?

**Senator ABETZ**—The one responsible for burning houses is the one that makes the decision!

**Senator CORMANN**—Indeed. So can you tell us how many reviews have been initiated over the last—

**Ms Paul**—We will be able to, yes, Senator.

**Senator CORMANN**—So you are not even able to tell us how many have been initiated?

**Ms Paul**—We do not have that information with us, but it is easily to hand, and if we can get it for you during these estimates we will.

**Mr McDonald**—We would have provided an answer on notice in February to that question and we can update that answer for you.

**Senator CORMANN**—Thank you very much. In terms of payment of accounts, has the department paid all of its accounts in accordance with government policy—that is, accounts have to be paid within 30 days?

**Mr Storen**—This is a survey we undertake regularly. The answer is we have a percentage of over 96 per cent that we meet within the 30-day period.

**Senator CORMANN**—What would be the reason for those that are not paid within 30 days?

**Mr Storen**—A variety of reasons. Probably the most outstanding one is that accounts need to be followed up to confirm that the goods and services were provided. Sometimes it takes a little while to confirm that the precise goods and services were provided and get the appropriate sign-off by the officers in the department who were responsible.

**Senator CORMANN**—Is the 96 per cent in terms of the number of accounts or in terms of the dollar value?

**Mr Storen**—We regularly look at both statistics, but it is really the number of accounts that we keep an eye on.

**Senator CORMANN**—Can you provide us, on notice, the proportion of accounts which have been paid on time, those which have not, and the proportion or the dollar value which has and which has not been paid within the 30 days. Would you be paying interest for any overdue amounts, post 30 days?

**Mr Storen**—I will have to take that on notice. It depends on the nature of the account and the relationship with the vendor.

**CHAIR**—We will now suspend for the morning break. We will resume at 10.45 am.

**Proceedings suspended from 10.29 am to 10.48 am**

**Comcare**

**CHAIR**—We are now dealing in portfolio agencies, and the first agency before us is Comcare. Mr O'Connor and Mr Kibble, welcome.

**Mr O'Connor**—Good morning.

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

**Mr O'Connor**—No, Senator.

**CHAIR**—Thank you. We will go straight to questions.

**Senator ABETZ**—I thought you were going to—

**CHAIR**—I am happy to start. I think we spoke to you last time, and you provided a question on notice about the notional five per cent superannuation deduction. Has there been any further consideration? I also asked questions of the department in terms of the policy formulation side of this notional five per cent superannuation deduction. Now, I think I spoke to you first last time—

**Mr O'Connor**—Correct.

**CHAIR**—And the department second, so I am just wondering since that has there been any discussions, and has there been any view on the effectiveness of this five per cent notional superannuation deduction?

**Mr O'Connor**—As Mr Kibble shared at estimates last time, the information remains as we provided, and the percentage share of superannuation and the number of claims across—I think it was about 1,600 claimants—but I do not believe there is anything further to update.

**CHAIR**—Of the 391 invalidity retirees, 13 have had a return to work assessment and five have had a rehabilitation plan. Does that actually mean that they have returned to work? What are the numbers, there?

**Mr O'Connor**—I will get Mr Kibble to comment on that.

**Mr Kibble**—Senator, we do not have any updated figures in terms of whether or not they have returned to work.

**CHAIR**—Do we know if any of the 391 have returned to work?

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

**CHAIR**—Okay. Even so, 13 in total have had an assessment or a rehabilitation plan out of 391. That is a very small percentage. Have any indicated that the fact that they are being penalised five per cent is an incentive for them to get a rehabilitation plan or a return-to-work plan?

**Mr O'Connor**—Not that I am aware of.

**CHAIR**—There is still no evidence that this five per cent penalty is creating miraculous recovery of injuries and desire to return to work?

**Mr O'Connor**—Those perspectives are not being shared by the injured federal workers.

**CHAIR**—I must say I am still struggling to accept the policy rationale that a five per cent penalty for people that are invalids will somehow assist them in recovery. The figures that you have provided to me certainly do not seem to be backing that up either. You cannot seem to tell me whether any of the invalids have in fact been able to return to work at all.

**Mr O'Connor**—As Mr Kibble said, we will take that question on notice, but the policy perspective is with the department.

**CHAIR**—Thank you. We will move on to another matter. What prosecutions have you conducted in recent times and who were they against?

**Mr Kibble**—Comcare has initiated 16 civil court proceedings in relation to alleged breaches of the OHS Act since 2004. The reason why we have used 2004 as the dividing line is because before that time, under the act, we could not take court proceedings against the Commonwealth, so we have taken 16 actions since 2004. Recent prosecutions include a matter in relation to a federal agent of the Australian Federal Police for a breach of his individual duties of care. That matter is still before the court. We have also taken proceedings against the department of immigration and Subsee Explorer Pty Ltd. They were both in relation to the fatalities with the loss of the *Malu Sara* in the Torres Strait in 2005. Those two matters are still before the court. We prosecuted Linfox Australia following a severe personal injury suffered by a Linfox employee in Western Australia in 2007, and last Thursday the Federal Court determined that Linfox had breached the OHS Act, and imposed a penalty of \$150,000 on Linfox.

**CHAIR**—Where does that sit in terms of the maximum fine available?

**Mr Kibble**—The maximum civil penalty that a court can impose is \$242,000.

**CHAIR**—Right, so that is over the halfway mark?

**Mr Kibble**—Yes.

**CHAIR**—How many of your prosecutions have been resolved, and how many are still on foot?

**Mr Kibble**—Of the 16, 10 matters have been finalised.

**CHAIR**—Successfully?

**Mr Kibble**—Yes, either through a court judgement and the awarding of a penalty against the employer, or on several occasions we have resolved the matter through an enforceable undertaking.

**CHAIR**—How many have been resolved through a court hearing?

**Mr Kibble**—Seven of those matters have been resolved through a court hearing.

**CHAIR**—Did they all result in fines?

**Mr Kibble**—They all resulted in fines against the employer, yes.

**CHAIR**—Maybe on notice you could just give me a breakdown on who they were, and what the fines were?

**Mr Kibble**—Yes.

**CHAIR**—In terms of the court undertakings, did they involve a financial penalty or simply some other form of undertaking?

**Mr Kibble**—The enforcement undertakings we have accepted have all been in the form of a commitment by the employer concerned to go above minimum compliance with the act, to improve their training, their systems of safety, to commit to programs of communication, supervisor training, et cetera. We are happy to provide evidence in relation to the types of enforceable undertakings we have accepted. As part of that process they are all published on

our website. We do see the enforceable undertakings as a very useful tool to achieve improved safety outcomes for the benefit of federal workers.

**CHAIR**—In terms of the private sector employers that are covered by Comcare, what do you do in terms of ensuring an adequate, or a continually improving occupational health and safety record?

**Mr O'Connor**—There are a couple of parts to our activity in the enforcement of that regulation. The 29 companies that operate nationally that are licensed by the Safety, Rehabilitation and Compensation Commission, the SRCC, are the ones that Comcare regulates in the private sector. Under the terms of their licence condition they need to meet the standards that are imposed, which are not only to comply with federal law, but also to meet the terms of that licence, which include a regular testing of the adequacy and the efficacy of those prevention strategies and compliance with federal law, and that is also matched with the testing, through audit, of their compliance with rehabilitation and claims management arrangements as well because we have an integrated scheme. Those federal employers, private sector as well as government premium paying agencies and the Australian Defence Force, are also required under federal law to advise Comcare and notify us of any safety events or incidents that occur in their workplaces around Australia. We would investigate some of those incidents and make the appropriate enforcement responses, or work with the employer to try and strengthen and improve the safety systems that are in place. Comcare also has embarked on a range of proactive interventions across federal workplaces, and we are on track to inspect about 1,000 worksites around Australia in the scheme this year. This includes a mixture of both private sector licensees, as well as the government owned coverage areas, and as a result of those proactive inspections, a range of safety improvements are also identified and shared with those employers.

**CHAIR**—Do you have a benchmark in terms of both private sector employers and the government employers, of what would be adequate? Do you have a category of poor performance that you are targeting, and if you do, how do you actually determine that? Do you look at the accident frequency rate? Claims levels?

**Mr O'Connor**—Let me answer that in two parts. The first is that for the licensees, if that is the focus that we are looking at with regard to the private sector employers in the scheme, as a term of their licence by the SRCC, there are three tiers that are applied. The first tier is for new entrants, those who are perhaps struggling with compliance. The second tier is for more improved, better performing systems and processes. The top level, the third tier, is the best performers in the scheme. In that sense the SRCC does rank and evaluate, based on Comcare's interventions and audits, relative performance within the scheme. There is movement between those tiers to reflect the safety record, and the levels of compliance with federal law across both work health and safety, rehabilitation and the claims management.

Comcare looks at, and is moving, to a stronger base of intervening, looking at the number of notifiable incidents, and that will be triggering interventions as well. These would occur where we see there are hotspots in terms of an increase, or a significant movement in the number of safety incidents that require investigation. There are also a number of proactive strategies that we are, in conjunction with state and territory regulators, looking to implement. It might be falls from heights, forklift safety, et cetera, a number of safety initiatives that are

being rolled out not just across the federal scheme, but across state and territory regimes as well. The final area that would inform us is to actually look at our claims performance; to look at the track record where federal workers are harmed and to make sure that where we see deteriorating or poor performance in our claims results, that that also informs us of the type of things that we need to be looking at for an improvement of workplace health and safety with those employers who are not getting the safety message.

**CHAIR**—Where does the John Holland Group fit in that scheme?

**Mr O'Connor**—John Holland Group have been licensed by the Comcare scheme since 2007. They are a strong performer with regard to work health and safety, and the commission through Comcare evaluates its performance not just in work health and safety but also in the rehabilitation of its harmed workers and the claims management support. With regard to occupational health and safety compliance, we have seen in the last 12 months a substantial improvement in the occupational health and safety record for the three John Holland companies that are licensed under the Comcare scheme. So they have been responding to a number of safety incidents across their three work groups.

Since 2007 we have also seen a substantial increase in the amount of work and the number of employees covered under the John Holland licence. If we look at last financial year, there were about 250 safety incidents reported to Comcare—notifiable incidents under federal law. In this year alone we have seen that drop down to about 154 to date. If I recall—and we can certainly take this on notice and share with you the precise figures—broadly in some of the areas we have seen an improvement. For example, in John Holland Rail we have seen an improvement of about 67 per cent in their occupational health and safety record compared to this time last year. That is across the three groups. There are three quite discrete businesses within the John Holland Group and they have variable levels of performance, but each of the three licensees has in the last 12 months improved its safety record. We also test that as a condition of its licence, or the three licences, with the commission, and Mr Kibble can comment about the testing of that with John Holland.

**CHAIR**—Could you do that, but could you also address the issue of severity as opposed to frequency, because I think you actually need to look at both things together.

**Mr Kibble**—Yes. Just to carry on from the CEO's comments, on behalf of the commission, we audit all the licensees, including John Holland. They would have an annual audit of their injury prevention systems as well as the claims management and rehab systems, and where they are non-compliant they are required to bring those systems into compliance. John Holland's record against the audits is very, very good. Their compliance levels are about 95 to 98 per cent. So they are, on that level, a good performer compared to other licensees.

**CHAIR**—But, in terms of the claims, do you actually categorise them into severity or is it really just numerical claims that matter, regardless of what it is for?

**Mr O'Connor**—Both the safety incidents and the claims that might result from those safety incidents can be categorised according to severity. Certainly with the John Holland Group of companies, the three entities that are licensed, some of the safety incidents have been serious and in fact resulted in the deaths of federal workers. So there is a range in severity of safety incidents, including the death just over a year ago of a worker in Western

Australia on a mining site. The year before there was the death of a worker at Dalrymple Bay. So there are fatalities there. There are also—

**CHAIR**—Have these resulted in prosecutions?

**Mr Kibble**—I will just give you some detail. As the CEO mentioned, an employee of John Holland Pty Ltd died at the Dalrymple Bay Coal Terminal in May 2008. Comcare initiated civil proceedings and, in a Federal Court judgement in December 2009, the court declared that John Holland had breached the law and imposed a penalty of \$180,000. In relation to other incidents, there was an incident—

**CHAIR**—Just before you go on to the other incidents, what impact did the incident you have just mentioned have on the job? It is one thing for someone to die and a fine to be applied, but can it happen again?

**Mr Kibble**—It was part of the process of the Comcare investigation, so obviously the civil court proceedings are one outcome the investigation, but also the Comcare investigator is required to provide a report to the employer and to Comcare. The report to the employer would detail his findings about the safety incident, what the failings were, what the breaches were and also recommendations for improvement to ensure that it does not happen again. In this case, there were a range of recommendations, and John Holland has, as far as I am aware, implemented all of those recommendations. As far as I am aware, there have been no serious incidents involving John Holland on that project. That project has now finished, but there were no other serious injuries as far as I am aware at that project.

**CHAIR**—What about the second incident?

**Mr Kibble**—The other incident was with John Holland Rail Pty Ltd, where a contractor working at the St Kilda light rail reconstruction project down in Melbourne suffered a serious crush injury to his hand in 2007. That matter is still before the courts. I will not go into any further detail on that.

**CHAIR**—I thought the other incident was another death.

**Mr Kibble**—No, that matter is still under investigation in Western Australia.

**Mr O'Connor**—Correct.

**Senator ABETZ**—Arising from Senator Marshall's questions, when did the Comcare action against Linfox start?

**Mr Kibble**—We filed proceedings on 25 November 2009.

**Senator ABETZ**—It is just coincidence, but I happen to note that Linfox was the venue of choice of the minister for the launching of Fair Work Week. That is just an interesting aside, which some people might find interesting. When you run a big business like Linfox, I assume that, regrettably and unfortunately, incidents like that which you have outlined occur because where humans are involved there will continually be problems. I do not make any adverse comment about Linfox. I just note that Linfox was the venue of choice.

**Senator Arbib**—Why make a point of it?

**Senator ABETZ**—I beg your pardon?

**Senator Arbib**—Why make a point of it?

**Senator ABETZ**—You are a fine one to comment on that, Minister.

**Senator Arbib**—I am asking you: why make a point of it?

**Senator ABETZ**—I would have thought that, given your previous demand to be able to make comments, I am just making a comment freely on the evidence. I asked a question as to when the proceedings were brought. I have now been told that those proceedings were brought—and therefore it is on the public record, I assume—prior to the minister launching Fair Work Week at Linfox. Can I move on? Does Comcare have a debt recovery section?

**Mr O'Connor**—Yes.

**Senator ABETZ**—You may have been advised by the department of this, or not. No? I tried to ask the department some questions and they denied all knowledge. The department and I conspired together, thinking it might be Comcare's responsibility, so tell me if it is or is not. Somebody with a workplace injury settled their compensation but needed to draw upon that compensation to have some further medical attention but they could not access it. They claim this is because somewhere in DEEWR—we suspect possibly Comcare—clearance had not been given—which is required in this case under Queensland legislation; the insurer must have clearance before they can forward any funds.

**Mr O'Connor**—That could be a compensation claim under the Comcare scheme, possibly. We would be happy to take that on notice and provide specific information.

**Senator ABETZ**—It has since been resolved, which is good. However, these people, having everything finalised, were of the view that they did not have a debt, but it took two months for the fact that they did not have a debt to get through. Albeit, it seems I was emailed about this on 10 March 2010, as was Ms Gillard, and by 12 March everything seemed to be resolved. Chances are that Ms Gillard's office got things moving, and good on them for doing so. I am just wondering: did you have any problems with your systems in February-March that would have meant a delay?

**Mr O'Connor**—Not that I am aware of—no.

**Senator ABETZ**—That is what the email claims. Chances are that it was not you guys. I will have to find out some more details. Thank you for that. In moving to the national occupational health and safety system and subsequent transfer of all self-insured licensees to the national system, will there be any increases in regulatory complexity for non-government licensees?

**Mr O'Connor**—We understand that the workplace relations ministers have flagged the idea or opportunity of the potential transfer of regulatory activity to states and territories when and if there is the implementation of the model work health and safety laws. That idea of the transfer of those regulatory activities to states and territories has been discussed in workshops with the licensees. We have also, with the department, been consulting with senior officials in states and territories to try and understand what might be some of the consequences and the impacts of that, including either an increase or decrease in regulatory burden and an increase or decrease in the costs associated with that. No final position has been established by the department with senior officials, but I understand that is an activity that will be coordinated by the department on an ongoing basis with other state and territory officials, with the requirement to report back to workplace relations ministers in due course.

**Senator ABETZ**—Most officials sitting at tables try to pre-empt follow-up questions, and can I say you have done exceptionally well in that answer. You have knocked out about three or four follow-up questions. It is very rare that officials get it so right, but you have, so I thought that should be put on the public record.

**Senator Arbib**—That is a big compliment coming from Senator Abetz, let me tell you.

**Senator ABETZ**—No, no, no—look—

**Senator Arbib**—That is a big compliment.

**Senator ABETZ**—When harshness is required—but I am more than happy to pay compliments when they are due, and Mr O'Connor is due one.

**Mr O'Connor**—Thank you, Senator.

**Senator Arbib**—I do not know how big a compliment it really is.

**Senator ABETZ**—No, no, no—it is genuine, and thank you. Are there any mechanisms where an existing self-insured licensee may seek an exemption from the transfer? Has that been discussed or considered as well?

**Mr O'Connor**—No, that has not been considered or discussed inasmuch as the terms and conditions of how that proposed transfer might work has yet to be resolved. Certainly we are working to assumptions with all of the discussions that we have had those licensees. As part of our consultation with all of the employers who are affected by this potential change idea that is being explored by workplace relations ministers, we are assuming in all of those discussions and workshops, for the sake of exploring how it might all work, if it were to come into play, that we were working to the premise or the assumption that all of those licensees would transfer. It is a matter for the workplace relations ministers advised by the department and other senior officials of states and territories to be able to determine the policy framework for that.

**Senator ABETZ**—A communique of the WRMC, the Workplace Relations Ministers Council, of December last year states that 'consultation will occur with licensees and other stakeholders'.

**Mr O'Connor**—Correct.

**Senator ABETZ**—Licensees is pretty easy for me to understand, but stakeholders—who are they, and how were they identified or determined to be stakeholders?

**Mr O'Connor**—The first of those would be Safe Work Australia, our colleague agency that is responsible for the coordination of all of the work health and safety and workers compensation arrangements across Australia. The department would be one of course, and also other state and territory regulators. We have also discussed these ideas with the ACTU, because as the peak body representing Australian workers who would be affected by that, we were interested to get insight as to how this proposed changed idea might impact federal workers, as well as getting an insight from the licensees themselves. We have also flagged this potential change with other stakeholder groups, including the Self Insurers Association. That is a group of a number of self-insurers, a peak body. They are not all self-insurers in the Comcare scheme but a number of them are. We have also raised it in principle with our legal

stakeholders in a consultation forum, letting them know that this is something that is on the radar that we might be discussing.

**Senator ABETZ**—The involvement of the ACTU clearly makes sense. The employer counterpart is the Self Insurers Association—would that be a fair descriptor?

**Mr O'Connor**—It is a proxy of common interest for that, but I need to highlight—

**Senator ABETZ**—From the employer point of view?

**Mr O'Connor**—But not all licensees are members of that Self Insurers Association as yet, because it is a relatively new association.

**Senator ABETZ**—And not all workers are members of a union and the ACTU, but, for a convenience point of view, the ACTU and the Self Insurers Association, if you like, are the two representative bodies, although undoubtedly they both struggle with membership.

**Mr O'Connor**—I accept that they are broadly representative. I cannot comment on the second.

**Senator ABETZ**—That is fair enough. Thank you for that. In relation to—with all these acronyms you will have to assist me—SRCC, the Safety Rehabilitation—

**Mr O'Connor**—and Compensation Commission.

**Senator ABETZ**—Safety Rehabilitation and Compensation Commission—thank you.

**Mr O'Connor**—That is our federal coregulator.

**Senator ABETZ**—It has been indicated to me that I should be asking some questions here of you in relation to a consultancy report prepared for you in relation to the way in which occupational health and safety training might be delivered. Are you aware of that?

**Mr O'Connor**—Perhaps I—

**Senator ABETZ**—Australia's safest workplaces: guidelines for health and safety representatives—

**Mr O'Connor**—Oh, yes.

**Senator ABETZ**—Training in the Commonwealth jurisdiction?

**Mr O'Connor**—Yes, this was for guidelines for health and safety arrangements—yes.

**Senator ABETZ**—Yes, in April 2010.

**Mr O'Connor**—Correct.

**Senator ABETZ**—Thank you for that. It has been suggested to me that this is quite a prescriptive document in relation to the way training should be developed or delivered.

**Mr O'Connor**—With regard to—

**Senator ABETZ**—With regard to the requirement that the training be face to face, classroom style.

**Mr O'Connor**—Yes.

**Senator ABETZ**—It seems to me that the Australia education system generally requires certain outcomes, and how it is delivered, be it by a Christian parent controlled school, a

Catholic school, the state system, a Rudolf Steiner school—all different methodologies. However, what people are interested in is what happens at the end. What do people get at the end of the training? It seems to me that there have been other models that have delivered exceptionally well in this space of training. I might refer you to the new Workplace Learning Safe Design Pty Ltd. Are you aware of them?

**Mr O'Connor**—Not specifically, but I understand they are one of a number of providers.

**Senator ABETZ**—Yes, and as I understand it, they have an excellent record, and have provided thus far 40 courses, including my favourite: the Australian Broadcasting Corporation, the CSIRO, the Australian Bureau of Statistics, the Social Security Appeals Tribunal, IP Australia, the Australian Federal Police, and indeed, the Commonwealth Rehabilitation Services itself. Also the Department of Defence, Australian Submarine Corporation, and private organisations, just to balance up the ledger, including Linfox, amongst others. As I understand it, Comcare has not ever raised one single concern about the conduct nor the quality of the course delivered by Safe Design Pty Ltd. Is that right?

**Mr O'Connor**—I am not aware of any concern, but I will take that on notice in case there is any.

**Senator ABETZ**—All right. That is my understanding. Can you also take on notice whether it is correct that Comcare have never found it necessary to attend another course for the purpose of course review. When I say 'another course', they initially went to one just to see how it operated. As I understand it they were perfectly satisfied and have never bothered to come back to another course. Can I have that confirmed for me as well? It seems now that the SRCC has approved revised training guidelines that narrows the delivery methods to the point that all learning must happen in the classroom. Are you aware of that?

**Mr O'Connor**—Yes. If I am not mistaken, those commission guidelines take effect from the end of April this year, once they were approved by the SRCC following consultation by Comcare. My understanding is that, in the formulation of that document, we are adopting the agreed national standards that are set by Safe Work Australia and the expected movement towards a requirement for face-to-face training especially foreshadowed as part of the rollout of the model work health and safety laws.

**Senator ABETZ**—But what is the important issue here—that it be face-to-face training or the actual outcome at the end of the training? Surely it is the outcome at the end of the training, whether it be in the classroom face to face or whether it be delivered through some other mechanism that achieves just as good an outcome or, as has been suggested to me, even better. So why this determination to make it happen in the classroom and apparently thereby saying that there is no other acceptable way to learn?

**Mr O'Connor**—We concur with the importance in the focus on outcomes based learning. My understanding is that these guidelines were developed in alignment with and adopting the national standards that were set and agreed by all states and territories and the federal government in Safe Work Australia's determinations.

**Senator ABETZ**—But that does not make it right, and it does not answer the question, with respect, as to the outcome that we want at the end of the day. It does not answer the question as to whether three, four or five days in the classroom is just as effective as a more, if

I might say, innovative flexible model that new Workplace Learning Safe Design Pty Ltd has developed with huge support from both Commonwealth agencies and the private sector, both being satisfied with their innovative way of delivering the learnings.

**Mr O'Connor**—Yes.

**Senator ABETZ**—But they are now going to be wiped out of the market because it does not conform to this nearly manic approach of one size having to fit all, and you cannot have anything other than straight out classroom learning. What research and what intellectual grunt went into the determination that it can only be delivered through the classroom?

**Mr O'Connor**—I will take that on notice.

**Senator ABETZ**—Thank you. How much notice was actually given of the change to the guidelines? As I see it, basically what it has done is put a small business out of business because they have not even really been given much time to develop or to change their methodologies to this system, and I do not understand why it all has to be in the classroom. However, I dare say being an innovative business, if they are the rules, to stay in the marketplace they can change and adapt and adopt to the new guidelines irrespective of how restrictive and, with respect, unhelpful they are. I am sure they could adapt, but one wonders why businesses such as this were not told, 'As of a certain date this is the way the training has to be delivered,' rather than making it a decision such as this that has now prejudiced a good, innovative, out-of-the-square-thinking little business.

**Mr Kibble**—We will provide an answer on notice in relation to the transition arrangements, just to make sure that we have the details for you. You mentioned a consultant's report which Comcare commissioned on behalf of the SRCC, and as part of that process the consultants consulted with a range of people, including the providers of the training.

**Senator ABETZ**—Yes, that is correct.

**Mr Kibble**—In providing advice to the commission about the draft guidelines, Comcare also consulted with a range of parties, including those who had provided information to the consultants. So they consulted with those people about the draft guidelines, including the particular area that you have been focusing on.

**Senator ABETZ**—How many approved providers are currently accredited to deliver training to any organisation?

**Mr Kibble**—I will have to take that on notice.

**Senator ABETZ**—If you could. Is there any particular player in this field that this 'one size fits all' will assist in relation to their business model for the delivery of training?

**Mr O'Connor**—We will take that on notice.

**Senator ABETZ**—Would you agree that a broad number of providers with different methodologies might well be the best way to deliver training so that you can mix and match and develop the outcomes that I would have thought we would all want?

**Mr O'Connor**—Certainly a commitment to outcomes based learning is a key principle, but also a key principle for us is to make sure that these requirements and guidelines do align with the national expectation that has been set in place by Safe Work Australia in advance of

the model work, health and safety laws to be rolled out. That is a tripartite involvement; employer, union, as well as state and territory regulators participated in the establishment of those guidelines that these SRCC guidelines are also in part responding to.

**Senator ABETZ**—I hear what you say, but I trust we are both firmly agreed that it is the outcomes that we are married to as opposed to the methodology of achieving those outcomes and, unless there is a sustainable body of work that says that the classroom method is the only way of delivering this training, one wonders why this straightjacket was placed on training other than that it might assist a particular training model and a particular training provider. To that end, are you aware if any trade unions have spin-off companies that deliver training?

**Mr O'Connor**—In regard to the first comment, the response we will provide on notice will address the background of the requirements. With regard to the second question, I am broadly aware that some trade unions do have related training companies, but I have no knowledge of whether or not they are involved in these types of training programs. We can again provide on notice a list of those training organisations that are accredited.

**Senator ABETZ**—If you could, I would be pleased. Then surprise me with the answer to this question, which I am sure you will have to take on notice: is the methodology used by the trade union movement spin-off companies, as I have described them, classroom methodology? If you could find that out for us as well on notice, that would be very helpful.

**Mr O'Connor**—I will.

**Senator ABETZ**—In 2009, did you commission research on health and safety representative, HSR, training?

**Mr Kibble**—There are a couple of aspects here. In relation to the HSR training guidelines which we have been discussing, in providing their report the consultant did conduct a survey of HSRs and, from memory, about 400 responded. That response was included in the consultant's report to Comcare and the commission. Separately, Comcare undertook a survey of HSRs about a range of issues approximately 12 months ago, and about 670 or 700 HSRs responded to that.

**Senator ABETZ**—'HSRs' being?

**Mr Kibble**—Health and safety representatives.

**Senator ABETZ**—From what areas—only the public sector?

**Mr Kibble**—No. The survey included all employers in the scheme—Commonwealth government bodies and also the licensees.

**Senator ABETZ**—Would it be fair to say that only 13 per cent of the responses were from the private sector?

**Mr Kibble**—I would have to take that on notice.

**Senator ABETZ**—All right. In relation to the other 87 per cent, the figures are highly skewed in favour of the tax office. They comprise well over 30 per cent of the responses. If you could, please take that on notice. If you have done a survey with many HSRs, that is all good, but, if only 13 per cent come from the private sector and over 30 per cent come from

one particular department, the evidence that is obtained from something like that may well be skewed and not necessarily reflective.

**Mr Kibble**—Yes, we will have to clarify which survey it is. We will go back and have a look at the respective—

**Senator ABETZ**—Thank you; I appreciate that. Are you familiar with the 2010 SRCC guidelines on training accreditation, in general terms?

**Mr Kibble**—I have them with me.

**Senator ABETZ**—That is even better. Does that also stress, apart from adult learning, practical activities?

**Mr Kibble**—Yes, I think that is fair to say.

**Senator ABETZ**—Are we going to get the emphasis on all of these practical activities within the four walls of the classroom? Can I say there was another training scheme that sought to do this that the minister might have some recollection of. It led to most unfortunate results, but we will not go there. It just seems to me that classroom training without practical activities and training will be a severely limited training scheme.

**Mr Kibble**—If I could just clarify my answer—and we have canvassed some of these issues already—the guidelines require:

Full courses should comprise a minimum of 35 hours face to face training over a minimum of five days, with some flexible options available to accommodate the needs of the HSR. Providing that flexible arrangements offer the minimum of 35 hours of face to face training and include the mandatory practical skills development activities.

So there is a minimum there, but the training courses can go beyond that in a range of ways to ensure that the training is of the highest quality. But I will come back to you on that.

**Senator ABETZ**—In the SRCC, at paragraph 2.10—and possibly you can assist me with that, Mr Kibble, but I do not seem to have it with me—it said:

Employers, union representatives, HSRs and training providers have expressed concerns that a number of courses of varying lengths have been accredited, and that the length of the training, not its suitability or content, is often the factor determining which course a HSR will attend.

**Mr Kibble**—Yes, Senator, the guidelines state that.

**Senator ABETZ**—What would be wrong with HSRs actually deciding what kind of training, including the length, is suitable for their needs?

**Mr Kibble**—The guidelines go on to say, straight after that sentence:

Unless special circumstances can be established, it is the desire of the SRCC that the duration of a course of training for HSRs should be consistent and standardised amongst providers.

**Senator ABETZ**—Not the outcomes but the methodologies?

**Mr Kibble**—It also went on to say:

In determining the appropriate length of time for a course of training, the SRCC has considered the need to ensure that HSRs are provided with ample opportunity for group/peer learning and networking and knowledge and practical skills development opportunities. This includes ample time for questioning, challenging, reflecting, clarifying and interacting with other participants.

**Senator ABETZ**—Just in case you have not gathered this, I have concerns about this one-size-fits-all approach. You have taken a lot of questions on notice, and I thank you for that. I suppose the question I want to raise is: why was there such urgency or need to bring this system and the changes in so quickly that it has left at least one highly credible private provider very flatfooted in the marketplace? I still await the answer in relation to how the trade union movement delivers its training, because I suspect that the straightjacket will give them a substantial market advantage—which, of course, will be described to me as serendipity and just a coincidence. We will wait and see the outcome of that. Thank you for that session. The questions on notice were all answered, which is good.

A report on 14 May 2010 about an unfortunate accident, titled ‘Mendooran, Dunedoo to farewell crash victims’, stated:

A spokesman for federal workplace safety agency Comcare said it was working with the Independent Transport Safety and Reliability Regulator and WorkCover NSW to investigate the incident.

Do you know the one I am talking about?

**Mr O’Connor**—Yes.

**Senator ABETZ**—Good. It stated further:

“Due to the tragic and complex nature of the incident and the many jurisdictions involved, Comcare’s investigation is likely to take some time to conclude ...

This, on the face of it, is fair enough. How long do you think it might take? Are you making appropriate progress with this matter? Are there any sorts of stumbling blocks such as lack of support or help from a particular federal or state body?

**Mr McDonald**—This tragic accident led to a death and serious injury. Comcare has implemented an agreement it has in place with the state regulators that are also involved in investigating the circumstances of this rail crash. Those collaborative arrangements were pre-defined because we were anticipating, based on previous experience, that the complexity of the incident, as well as the involvement of more than one regulator, could potentially lead to delays in investigation outcomes and the appropriate justice outcomes that might be needed. We were able to invoke that agreement. Our investigators were able to attend the incident and coordinate with all of the other state regulators that were involved, and continue to be involved. We expect this will take months not years, but due to the complexity of the incident, and to have a deep and proper understanding of the causes that may have contributed to this fatality and this incident, it will take some time. We can certainly advise you more fully on notice about all of the steps that have been taken to this date and the anticipated timeframe, but there are certainly no barriers that we are aware of because of the excellent cooperation between Comcare and the state regulators.

**Senator ABETZ**—In that case, do not bother taking it on notice. If you are telling me, and I am satisfied by that, that there are no problems or roadblocks, do not bother doing that. Thank you for your offer. There was a story in my local media and that of Senator Bilyk’s on 28 April, ‘Safety probe of NBN’. Part of the story was:

Commonwealth occupational health and safety body Comcare is also involved because national construction giant John Holland is the lead contractor for the project.

Are you aware of the case I am talking about?

**Mr O'Connor**—Yes.

**Senator ABETZ**—As I understand it, there were no major issues in relation to this, and I think NBN told me at their estimates last week—it seems an eternity ago—that everything had been resolved satisfactorily. I just want confirmation from Comcare that, from your perspective, that is the case?

**Mr O'Connor**—That is the case. We have been working closely with Workplace Standards Tasmania to make sure there are no safety gaps that emerge in the rollout of the NBN program. Our people have been on site working hand in hand with the Workplace Standards Tasmania teams and the John Holland employees, as well as subcontractors on site, to make sure there is a deep and thorough understanding of both the state and federal law requirements that apply to the safety expectations, including electrical safety, something for which Workplace Standards Tasmania also has accountability. But we are working again together to make sure that there are no safety gaps in the rollout of this project between state and federal jurisdictions.

**Senator ABETZ**—I understand that work stopped for a fortnight whilst workers and contractors were retrained. Who paid the workers during that period? Do you have any knowledge of that?

**Mr McDonald**—I do not have knowledge of who paid those workers during the period that activity on the site was stood down. I believe it was a shorter period than two weeks.

**Senator ABETZ**—It may well have been.

**Mr McDonald**—We can confirm the time, because that sounds like a longer time than I recall. The reason that workers across the site were stood down following these two particular safety incidents was because the John Holland systems and processes required the retraining and re-induction of their employees and contractors on that site to make sure that they understood the importance of complying with both state and federal law in this matter. So work was stopped; people were reminded and retrained in the necessary standards.

**Senator ABETZ**—Thank you for that. That basically confirms what NBN told us at their estimates. I turn now to an article in the *PS News*, 'Comcare calculations add up to problems.' You are undoubtedly aware of that article? Allow me to read the first paragraph:

Comcare has been urged to check and double-check its calculations of compensation payments following an investigation by the Acting Commonwealth Ombudsman.

Have you been sharpening the pencil and getting out the rubber, or buying a new calculator? What was the issue, and how have we overcome these issues that have been identified by the Ombudsman, if indeed you agree with the Ombudsman's assessment?

**Mr McDonald**—Indeed, we did agree with the Ombudsman assessment. We welcomed the scrutiny. We apologised to the federal workers who were affected by the mistakes that had been made in the calculations. A number of responses were implemented and continue to be the centre of our attention to make sure that federal workers can rely and have confidence and faith in Comcare's calculations. The mistakes that emerged in the two cases that the Commonwealth Ombudsman shared with us and made specific comment of defective administration on were quite different in how they came about. However there was a common

issue, if you like, in terms of Comcare in previous years not being able to check and have the systems in place. We have made changes to our information technology and training and manual systems to make sure that those types of errors do not occur again.

We have also gone back to that period of time when those federal workers experienced those difficulties and mistakes, and are looking to test a range of other calculations that were made in that period of time, because I am working to the assumption that these may not have been one-off mistakes and I want to manage the risk that in fact perhaps this was a common experience or was experienced by more than one federal worker. We are going back in time looking at our records and doing some sampling of earlier payments to make sure that we do have as high a confidence as we can have in those circumstances. Certainly we worked with those particular workers involved and collaborated with the Ombudsman to be able to fix the problem of those particular circumstances. I am also thankful that the scrutiny of the Commonwealth Ombudsman and the publishing of its report and our response, and our working with the Superannuated Commonwealth Officers' Association, have brought to light some other federal workers who potentially might be affected due to mistakes, and we are working through that.

**Senator ABETZ**—I commend you for doing that. Well done. Without knowing the full detail of the underpayments, if it is shown that this is a systemic problem, what does that potentially do to your financial exposure, or is it too early to make any wild educated guess on that?

**Mr McDonald**—It is probably too early to make an informed estimate, but certainly—

**Senator ABETZ**—I did not ask for an informed; I asked for a wild educated guess.

**Mr McDonald**—I prefer informed.

**Senator ABETZ**—Yes, I do not blame you.

**Mr McDonald**—We expect that this would be a fairly minor impact in terms of cash payments compared to the many hundreds of millions of dollars each year that Comcare pays out to injured federal workers.

**Senator ABETZ**—There was also a comment that claimants have no avenue for redress if you underpaid them due to an error. Will there be, or is there now, an appeals mechanism or another mechanism whereby people who want to question Comcare's calculations can have that tested without going via the Ombudsman?

**Mr O'Connor**—There are two parts to our answer to that question. First, with respect to the two federal workers who were highlighted in the Ombudsman's report, we have been able to find solutions under federal law to be able to address their needs. One has been resolved, and we continue to be in discussions with the other person affected to make sure that the response—and it has a financial limit on it—addresses that particular federal worker's needs and concerns. It is fair to say—and this is the subject of the Ombudsman's report—that the conventional compensation for a defective administration scheme that applies to most parts of government decision making because of the way federal law works does not apply to Comcare's decision making. We agreed with the Commonwealth Ombudsman, Professor John McMillan, that we should be working together to try to identify a solution that is more sustainable that is available to all federal workers under our scheme, be they federal workers

employed by the government or federal workers who might be affected by a mistake made in the claims management decisions of the 29 licensed self-insurers in our scheme. With respect to those two particular federal workers, we were able to find remedy and we are working through some separate solutions for other federal workers.

However, more generally, and this is the second part of the answer, if a federal worker neither understands nor accepts the calculations that have been made by Comcare, we encourage that federal worker to speak with the claims support officer to clarify that. There is also the ability to ask for a reconsideration of the initial decision with regard to, not so much liability, but the entitlement to compensation. If the federal worker and their representatives are still either unclear or not satisfied by that explanation or calculation, they also have the right of merits review before the Administrative Appeals Tribunal.

**Senator ABETZ**—What you have done since the Ombudsman's report, in the absence of contrary evidence, seems to be excellent and well done. One would assume that these two workers would have been bouncing around in or with Comcare to try to resolve these issues before finally, I assume—and I do not know the details—out of frustration they went to the Ombudsman to resolve it. Are you satisfied that Comcare had appropriately looked after these two workers in listening to them and their concerns? I would have thought if Comcare had behaved in a manner that one might have expected it to say, 'Look, there is a discrepancy; let us sit down and work this through,' there would not have been the need for these workers to go to the Ombudsman?

**Mr O'Connor**—That is correct. We were not satisfied with our performance. We did not do the right thing by these federal workers over time. I have thanked them for their perseverance and patience to be able to continue to raise those issues, and they did not just with ourselves but with the Department of Finance and Deregulation. Also, in one of the cases, over a number of years the worker made representations to members of parliament et cetera without any satisfactory response. Soon after joining Comcare last year, I met with Professor John McMillan. We had a frank discussion about the difficulties that some federal workers do experience. He was able to highlight to me these two particular matters that were underway. I gave him my commitment that we would do what we could to review those matters. We did, and we were able to find a solution.

**Senator ABETZ**—Again, well done. I turn now to the harmonisation of Australia's occupational health and safety systems.

**CHAIR**—Just before you do, Senator, I thought the second part of Senator Abetz's question was what you have put in place now to ensure that complaints can be dealt with promptly?

**Senator ABETZ**—Yes, thank you.

**Mr O'Connor**—We would hope that there is not the need for federal workers to be so frustrated that they need to seek the support and assistance and intervention of the Commonwealth Ombudsman, but we do respect that in some cases that is something they do invoke. We do encourage face to face and telephone discussions with federal workers who are affected, and others who are affected by Comcare's decisions. We encourage people to take up those rights of review, either informal or reconsideration internally, or to see merits review as

well. We are also on the look out to examine all of the Ombudsman's examples of where systems break down. Even if it is in another agency, Comcare can reflect on what might have happened if that circumstance had occurred in our agency. We also have changed the way we are responding to complaints and concerns that are raised either with our staff or with me directly, or with the commission, or through ministers or members of parliament. We have quite a responsive and quick-acting mechanism now to be able to respond to those concerns. We have also re-established a connection with the Superannuated Commonwealth Officers Association to make sure that they now know and understand that if any of their members have concerns with our decisions, they can also be flagged with us for direct intervention so that we can be confident that those federal workers affected do understand and accept the decisions that have been made.

**Senator ABETZ**—Hopefully you personally, by the sounds of it, are driving a change of culture within Comcare. Also, are you pointing out in a possibly 'in your face' way to claimants that if they are dissatisfied with a result there is an appropriate way of further discussing their concerns? Do you put in letters to them that if they are not satisfied with a result, or they think you have made a mistake, you are more than happy to discuss it with them?

**Mr McDonald**—Yes. That has been our procedure, and we are reinforcing that. We are also embracing the interests of federal workers to make sure that our people continue their excellent work in supporting people who are coping with change and challenge and disability following a workplace incident. We certainly hope not to be in the face of federal workers, but to be working with them and their representatives to be able to work through the issues, have a common understanding, and be empathic and caring in terms of how we respond in a timely way to their concerns. That is our continuing challenge.

**Senator ABETZ**—Just in case there was a misinterpretation of 'in their face', I meant make it absolutely clear to them, not in a negative way but in a positive way, that they could not miss the fact that they do have an opportunity to question and engage with Comcare. From what you tell us, that is the case.

**Mr McDonald**—That is our plan. If there is any circumstance where a federal worker does not have the experience, we certainly encourage them to come forward and work with us directly or through their representatives.

**Senator ABETZ**—Are you involved with the harmonisation of Australia's occupational health and safety system?

**Mr McDonald**—We are affected by it. We support the work of Safe Work Australia in the department, but we are not a member of—

**Senator ABETZ**—The chances are that it is Safe Work Australia that I might want to ask about the harmonisation of the laws and how that is progressing. Would that be correct, Chair?

**CHAIR**—I think that is probably the appropriate area.

**Senator ABETZ**—All right. Well, I am ready for Safe Work Australia.

**CHAIR**—They are on the program for directly after lunch.

**Senator ABETZ**—I am sure they are here.

**CHAIR**—Any other questions?

**Senator ABETZ**—I am sure they are here, and if that is the case, I suggest we keep on with the program.

**CHAIR**—We have actually scheduled it so the agencies know when they are to arrive. I do not want to get too far ahead of the program because it just means that we end up having to break—

**Senator ABETZ**—Are they here or not?

**CHAIR**—I do not know.

**Senator ABETZ**—Can we find out, please? Yes, they are.

**CHAIR**—Anyway, if there are no further questions for Comcare, we will finish with Comcare. We will take a short suspension. I will have a discussion with the Deputy Chair, but it is my preference to stick to the program. We will have a short suspension.

**Proceedings suspended from 11.59 am to 12.03 pm**

**Safe Work Australia**

**CHAIR**—We are still in portfolio agencies, and we will now deal with Safe Work Australia. Welcome, Mr Hoy and Ms Grey. Do you have any opening remarks you want to make to the committee?

**Mr Hoy**—Thanks, Chair. No, no opening statements.

**Senator BILYK**—Could you update us on how you are going in the drafting of the model occupational health and safety regulations as part of the national harmonisation of occupational health and safety laws?

**Mr Hoy**—We are well advanced in developing the model work health and safety regulations and the priority codes of practice. This follows the completion of developing the Model Work Health and Safety Act. We are part way through developing the model regulations and the priority codes. Just to cover the areas we are working on: there will be model regulations covering administrative arrangements to support the model act, major hazards facilities, licensing of high-risk work, workplace hazardous chemicals, occupational diving, noise, working in confined spaces, performing manual tasks and induction training for construction work. There may well be more, depending on finishing this process.

At the same time we are developing model codes of practice. The priority areas to date are risk management, consultation, manual tasks, noise, plant and workplace facilities, chemical labelling and safety data sheets, asbestos removal and management, confined spaces and construction related hazards. Our timetable is to develop those and have them considered by the Workplace Relations Ministers Council in October-November this year prior to them going out for a four-month public comment period, starting around that time.

**Senator BILYK**—Sorry, what was the time line for that?

**Mr Hoy**—October-November 2010. The public consultation period will run for four months. We will then assess the public comments and finalise the model regulations and

codes of practice. They will then need to be agreed by the Workplace Relations Ministers Council in the first half of next year, prior to being approved. Once approved, they then become the model regulations and priority codes of practice. The timetable we are working to is a COAG timetable. We aim to have those finalised by the middle of 2011 so that all the jurisdictions—Commonwealth, states and territories—can then adopt them and the model act in their own jurisdictions by the time line of December 2011.

**Senator BILYK**—I have some specific concerns in regard to my home state of Tasmania and the impact that the new laws might have. Currently, Tasmania is the only jurisdiction where the common law right to refuse unsafe work is in the act. That states:

Where an employee has reasonable grounds to believe that, as a result of work being carried on at a workplace, there is a risk of imminent and serious injury to, or imminent and serious harm to the health of, any person, an employee may refuse to work ...

That is under section 17. As I understand it, the model law only gives a worker the right to refuse work if they believe they would expose themselves to serious risk or their own health. It does not provide protection to other workers or the general public if they are carrying out work. I think that puts a whole lot of people in an unsafe situation. A lot of those people would not be able to take action for themselves. Could you clarify that for me? Have I been reading that correctly? I might not have. If so, how can we get around that dilemma?

**Ms Ross**—Yes, that is correct. The model bill actually provides the right for an individual worker to cease work if it is considered unsafe. That is actually consistent with the exception to the taking of industrial action in the Fair Work Act. The decision of the WRMC was to make that consistent with the Fair Work Act. There is also the right of the HSR to direct that unsafe work ceases. In that situation, the HSR would direct that the work would cease.

**Senator BILYK**—Is that only if it is going to have an effect on themselves, or can they make that call if it is going to impact on visitors to the site or contractors?

**Ms Ross**—The HSR would be able to direct that work cease in relation to the workers on site or other persons that may be at the workplace.

**Senator BILYK**—So everyone would be covered by it?

**Ms Ross**—That is right.

**Senator BILYK**—If I am a health and safety representative and I see something that I think is going to cause a problem, not necessarily to me—in fact, maybe not to me at all, but to other people—

**Ms Ross**—To other workers or other persons that might be at the workplace? You could direct that work to cease.

**Senator BILYK**—Thank you for clarifying that. Also, I am a bit concerned about some of the definitions within the model law. They may well have been tidied up since I last looked at it, so I am happy for you to correct me, but they state the words:

A health and safety representative is not personally liable for anything done or omitted to be done in good faith ...

I just have concerns about the words ‘in good faith’. ‘Potential liability’ implies a health and safety representative has a duty under the act other than those of a normal worker, which they

do not. And there is no remuneration or personal gain or benefit; they do the job as an extra load, usually. So the inclusion of that clause to me opens a bit of a Pandora's box. Will an error of judgment lead to liability, or will failure to act because the worker is far too busy to be vigilant lead to liability? I am just a bit concerned about that definition and how tight it is or how much leeway there is for health and safety representatives to be unfairly targeted because of those words 'in good faith', which are used a lot in the political world, I know.

**Ms Ross**—Yes, they do get used a lot, and I guess this is the type of thing that, in an explanatory memorandum, we would probably clarify what we mean by 'in good faith'. I guess the idea is not to provide absolute total blanket immunity, so it is supposed to cover a HSR who would be acting within the scope of their authority or in their role as a health and safety representative.

**Senator BILYK**—Who would be the people to determine whether or not good faith had been applied, whether or not people were acting in good faith?

**Ms Ross**—I guess that would be for the courts to determine whether the HSR had been acting within good faith.

**Senator BILYK**—That does not make me actually feel any better about the issue of the clause being there. What is the rationale behind that?

**Ms Ross**—The rationale behind it is to provide immunity for the HSR but to in a sense qualify that immunity to the degree that is appropriate. So a HSR cannot just go off on a frolic and act in any type of way and there be no consequences whatsoever.

**Senator BILYK**—My concern is more that they might not notice something and then be held responsible.

**Ms Ross**—I think they would probably be acting in good faith; it is not supposed to capture that type of situation. Well, it is supposed to capture that type of situation. It is supposed to provide immunity in that situation, and there is actually another clause in the bill that makes it clear that the HSR is under no type of duty to perform a function or exercise a power.

**Senator BILYK**—What clause is that?

**Ms Ross**—It is in with their powers. I do not know it off the top of my head.

**Senator BILYK**—Could you take that on notice and let me know what clause it is?

**Mr Hoy**—If we can find it while we are speaking, we will let you know.

**Ms Ross**—It is actually clause 68(4) and states:

Nothing in this act imposes or is taken to impose a duty on a health and safety representative in that capacity.

It is in with their powers and functions.

**Senator BILYK**—Thank you for that. Also in relation to that, with respect to the issue of training, as I understand it, still currently in Tasmania, four days training on re-election of health and safety representatives is going to be replaced by one day a year training in the model act. My concern is while one day a year refresher is a good idea, I still think that the

opportunity to retrain when re-elected is also important. Where is this issue at, if other people have these concerns?

**Ms Ross**—The training will be covered in the model regulations, and a draft that has been circulated within Safe Work Australia for consideration actually has five days training, one day refresher training and then any further retraining agreed between the health and safety representative and the person conducting the business or undertakings.

**Senator BILYK**—Is that training compulsory? If you are elected as a health and safety representative, is your employer obligated to let you attend that training?

**Ms Ross**—Yes. There is a mechanism within the bill that, if there is any dispute about the provision of that training, that can be sorted out by the regulator. The regulator can make a determination about the training.

**Senator BILYK**—Sorry, can you repeat that for me?

**Ms Ross**—The way that it operates is if there is any dispute about a HSR's right to attend training, that can be resolved by the regulator.

**Senator BILYK**—Is that first five days going to be compulsory?

**Ms Ross**—It is compulsory in the—

**Senator BILYK**—Does the employer get to say, 'No, I do not think you need to do it'?

**Ms Ross**—No, the employer cannot do that. It is compulsory in the sense that it is an entitlement for the HSR. The HSR, in order to exercise certain powers, like directing that unsafe work ceases or issuing a provisional improvement notice, has to undergo that training, and that is why there is a mechanism to resolve any issue about the provision of training.

**Senator BILYK**—What if I was a health and safety representative and I had my five days of training, and then the next election or however they are determined I was not the health and safety representative, but five years later I became the health and safety representative again; would I still only entitled to the one-day refresher?

**Ms Ross**—I think you would have to undergo the five days of training again.

**Senator BILYK**—What requirement will there be to make sure that that happens? An unscrupulous employer could just as easily say, 'You have done the training. You did it in 2005, so you do not need it again. You are only entitled to the one-day refresher.'

**Ms Ross**—Training is available upon election, so if you have been elected, you were not a health and safety representative and you were elected as a health and safety representative, so your entitlement to be trained would then kick in.

**Senator BILYK**—We hope.

**Ms Ross**—No, that is the way it would work. You were not a health and safety representative; you were elected as a health and safety representative, and you are entitled to be trained.

**Senator BILYK**—Okay. Is it correct that the worker's right to cease work that they consider to be dangerous is inferior or less than to the Fair Work Act when hazards and risks could be fatal under occupational health and safety reasons?

**Ms Ross**—We have tried to align with the Fair Work Act. The Fair Work Act operates a bit differently because it is an exception to the taking of industrial action under the Fair Work Act.

**Senator BILYK**—Just going back to definitions, I had concerns with some definitions—for example: the difference between an ‘officer’ and a ‘worker; what constitutes ‘substance’ or ‘workplace’ or ‘serious incident’? Have they been tidied up in the last couple of months?

**Ms Ross**—There have been a few minor changes to those definitions, but in substance they have not changed.

**Senator BILYK**—To me, some of those definitions lack clarity or content, especially substance and workplace. Is that something the public can make comment on in the consultations?

**Ms Ross**—In relation to the regulations, I guess they would be able to make some comment that the definitions in the act are not sufficient in relation to some of the regulations. They would be able to make that type of comment during the public comment period for the regulations. But nothing has been brought to my attention that there is actually a problem with the definition of substance as it is currently defined in the model bill.

**Senator BILYK**—I will talk to the people that have contacted me and get them to have some input.

**Ms Ross**—Yes, I think so.

**Senator BILYK**—In regard to the public consultation, I presume that you do not have any dates or venues organised yet, but do you intend to go to Tasmania?

**Mr Hoy**—The public consultation process is that we advertise that the model regulations and priority codes are out for public comment. We will be sending them out widely through our members.

**Senator BILYK**—Can you expand on that for me?

**Mr Hoy**—There will be advertisements in the two Tasmanian newspapers.

**Senator ABETZ**—Be very careful; there are three.

**Mr Hoy**—Are there three?

**Senator ABETZ**—Which one have you crossed out?

**Senator BILYK**—Good comment, Senator.

**Mr Hoy**—The *Mercury* and the *Examiner*, so you will need to tell me what the third one is.

**Senator BILYK**—The *Advocate* for the north-west coast.

**Senator ABETZ**—In that marginal seat of Braddon, that all political parties are very interested in.

**Mr Hoy**—We will also be putting all of this material on our internet site so that the public can actually look at this and provide comments back to us through that medium. As to the dates, I cannot give you the firm dates yet.

**Senator BILYK**—I understand that. When we look at definitions like ‘as far as reasonably practicable’ what sorts of provisions will there be to make sure that employers do not use some of these words as a legal escape route to evade some of their duties and responsibilities?

**Mr Hoy**—Sorry, what sorts of words do you mean?

**Senator BILYK**—Some of the words that were in the model clause, such as ‘as far as reasonably practicable’.

**Ms Ross**—Which is commonly found—

**Senator BILYK**—I know they are commonly found words. In a previous life, I have had to argue whether those words meant what people said they meant, so I have a concern with definitions that are so broad ranging that people decide they will use them as an escape route.

**Ms Ross**—I actually think that, unlike some current occupational health and safety legislation operating throughout Australia, we actually give quite a bit of detail on what ‘reasonably practicable’ means. It is also intended that we will produce an interpretive document that will be adopted by the regulators in each state and territory which will clarify for the duty holders how to meet that standard.

**Senator BILYK**—When would that interpretive document be developed? Would that be developed early enough for people to look at in consultation processes in regard to definitions and other things?

**Mr Hoy**—Yes, it will. The other thing we are doing to go with the model act is developing an explanatory memorandum. That will cover some of the issues you are talking about.

**Ms Ross**—But it is unusual to actually find the details of what constitutes ‘reasonably practicable’ set out so clearly within legislation.

**Senator BILYK**—Sure. One thing I forgot to ask with respect to the training—and I cannot really imagine that it will happen, but I have known of a place where it has happened previously, but not generally—an employee was elected as a health and safety representative. He did not apply to do any training, so therefore did not get any training. I want to be clear as to where the onus will be. Will it be on the health and safety representative or will it be on the employer to make sure that their health and safety representatives are offered appropriate training at least?

**Ms Ross**—I guess it is a bit of both, really, but it is an obligation of the employer or the person conducting the business or undertaking to make sure that the health and safety representative is able to attend training.

**Senator BILYK**—What happens if you are elected and have not had your training yet, but you see an area of concern where you want to put up a provisional notice or something?

**Ms Ross**—You would not be able to do so.

**Senator BILYK**—If an employer chose to delay someone’s training, what would be the process?

**Ms Ross**—That is what I was talking about before. There is a mechanism to involve the regulator.

**Senator BILYK**—What is that mechanism?

**Ms Ross**—That can be referred to the regulator, and the regulator has to appoint an inspector to come out to determine the matter.

**Senator BILYK**—Who would refer that?

**Ms Ross**—I will have a look, but I think the health and safety representative could refer that matter to the regulator.

**Senator BILYK**—How will they know how to do that?

**Ms Ross**—Again, that would be part of the information that regulators usually provide to health and safety representatives about their duties and their functions.

**Senator BILYK**—But they have not been trained. How will they know what their rights, roles and responsibilities are as health and safety representatives?

**Ms Ross**—Some regulators produce guidance type material, and the intention is to produce some guidance type material on the consultation arrangements under the bill, including health and safety representatives. So they do know that they have an entitlement to training and of the consequences of not being trained. Again, like the model bill and regulations that have been developed, this will be model guidance which then will be adopted by each state and territory, so it will be uniform guidance.

**Senator BILYK**—Okay, but I am an employee, and for the first time people have said to me, ‘We think you would make a good health and safety representative, so why don’t you put your hand up for it?’ I put my hand up and I get elected. I have never done it before, and do not know anything about what my rights and responsibilities are. How do I know to go to the regulator to get a copy of what my rights and responsibilities are? How do I find that out? My employer is not a particularly nice person, hypothetically for this case. They are not going to tell me.

**Mr Hoy**—As part of the implementation of the act, Safe Work Australia will be developing model training for HSRs, et cetera, in association with the vocational education training sector. We have not actually done that yet, because our focus has been on developing the legislation. Once we do this, that will be made available to all the jurisdictions so that when they enact the legislation, they can also have this training material and guidelines to assist particular representatives in the way that you are asking.

**Ms Ross**—It is in clause 72(5) that either party can ask the regulator to appoint an inspector to decide the matter. I think as part of the guidance that we actually would be developing, it would be some sort of information statement to the HSR to inform them of these types of matters.

**Senator BILYK**—I have been told that if there is a fatality or serious injury, and it is enforceable with undertakings with an occupational health and safety regulator, they do not actually have to have any consultation with the family of the deceased or the injured. Is that correct?

**Ms Ross**—The bill does not really cover that at all.

**Senator BILYK**—I did say it is what I have been told.

**Ms Ross**—It is not the type of thing that you would probably currently find in any occupational health and safety legislation. It is more something that you might find in the prosecution guidelines that a regulator might produce. I know that in Victoria they have some information that they might provide, but this would probably be another thing that we would be looking at as well.

**Senator BILYK**—In regard to some guidelines?

**Ms Ross**—In regards to whether those provisions about how you deal with families would be included in the prosecution enforcement guidelines or in some sort of guidance.

**Senator BILYK**—I look forward to seeing all of those. Thank you.

**Senator ABETZ**—You are involved, courtesy of Senator Bilyk's questioning, in harmonising Australia's occupational health and safety system, and this has been described as providing a uniform set of laws; is that the terminology that is being used?

**Mr Hoy**—That terminology has been used, yes.

**Senator ABETZ**—Is it true that 58 jurisdictional notes are contained in the Model Work Health and Safety Bill?

**Mr Hoy**—My colleague will give you the number.

**Senator ABETZ**—First of all, are there jurisdictional notes?

**Mr Hoy**—There are jurisdictional notes.

**Senator ABETZ**—What is the number, please?

**Ms Ross**—Again, I can take that on notice, because I do not know the number off the top of my head.

**Mr Hoy**—But I assume you have counted them, Senator, so I accept your figure.

**Senator ABETZ**—I have not; I rely on a paper by a Siobhan Flores-Walsh that you may be aware of. Anyway, if you can take that on notice. Suffice to say it is more than just a handful?

**Ms Ross**—It is more than a handful, yes.

**Senator ABETZ**—I understand that each jurisdictional note requires individual states and territories to specify how they will deal with certain issues, is that correct?

**Ms Ross**—Yes, it will allow them.

**Senator ABETZ**—Those notes also allow them to amend and sometimes delete entirely provisions of the model bill, is that also correct?

**Ms Ross**—That is probably correct as well, yes.

**CHAIR**—I think we will leave it there and break for lunch.

**Senator ABETZ**—Just before you do, probably yes?

**Ms Ross**—Yes.

**Senator ABETZ**—It is yes? I do not want to trick you. If you want to take it on notice for a definitive answer that is fine, but at this stage your answer is yes, subject to coming back to us on notice?

**Senator Arbib**—No, you are back after lunch, so after lunch we can give you that definitive answer.

**Senator ABETZ**—Or just to close off this question, if you can do that?

**Ms Ross**—Yes, I can do that.

**Senator ABETZ**—Thanks a lot.

**Proceedings suspended from 12.30 pm to 1.30 pm**

**CHAIR**—We will resume these estimates hearings. We are in portfolio agencies and we have Safe Work Australia with us. I understand Senator Abetz is doing the questioning. Mr Hoy, do you have an answer for Senator Abetz or did we resolve that prior to the break?

**Mr Hoy**—Yes.

**Senator ABETZ**—I thought we had. The answer was yes, subject to any correction on notice; is that right? I do not want to put words into anybody's mouth.

**Ms Ross**—That some jurisdictions allow for the deleting of a clause?

**Senator ABETZ**—Yes.

**Ms Ross**—Yes, they do, and in most cases this would only be where there would be duplication with existing laws operating within the jurisdiction.

**Senator ABETZ**—Mainly, but not only?

**Ms Ross**—I might need to take that on notice. I would have to analyse all the jurisdictional notes.

**Senator ABETZ**—As I understand it, and correct me if I am wrong, many of the jurisdictional notes deal with fundamental issues that produce fundamental jurisdictional differences, including judicial approaches to the interpretation of the occupational health and safety laws. For example, in one jurisdiction it might be the Supreme Court that deals with the matter but in another jurisdiction it might be the Magistrates Court.

**Mr Hoy**—What we were tasked to do was to develop model work health and safety legislation. Our process does not include harmonising or trying to do anything about the judicial systems within the particular states. There was a specific purpose for judicial notes and a number of these were included at the request of the parliamentary counsel. The act was drafted by the parliamentary counsel's committee, which are all the parliamentary counsels from the Commonwealth, state and territories.

They allow the local drafters in each jurisdiction to make a small number of specified technical amendments to the model act to prepare for its introduction and implementation. They are technical amendments designed to ensure the workability of the model provisions in each jurisdiction without affecting harmonisation. More specifically, they are required to accommodate local drafting protocols, clarify interaction of the Model Work Health and Safety Act with local laws and the work health and safety laws of other jurisdictions, remove duplication of the Model Work Health and Safety Act in local laws, clarify the scope of the Model Work Health and Safety Act within each jurisdiction, establish appropriate institutional arrangements and enable jurisdictions to adopt the model provisions dealing with dangerous goods and high-risk plants. That is the purpose.

**Senator ABETZ**—I understand the purpose and know the purpose. I am trying to ascertain whether those purposes are going to be met by the mechanism being sought to be implemented? Can you tell me whether the jurisdictional notes deal with issues such as judicial approaches to the interpretation of the occupational health and safety laws.

**Mr Hoy**—My advice is no, they do not.

**Senator ABETZ**—What about the time and costs associated with prosecutions?

**Ms Ross**—No.

**Senator ABETZ**—Will each jurisdiction have its own costs, scale and orders?

**Ms Ross**—Yes.

**Senator ABETZ**—If I bring an action in the Magistrates Court in one jurisdiction as opposed to a Supreme Court jurisdiction elsewhere, there will be different schedule of fees and rates that would apply.

**Mr Hoy**—I imagine that is correct.

**Senator ABETZ**—Yes. In other words, times and costs associated with prosecutions will vary. What about the application of penalties?

**Mr Hoy**—They will be consistent under the model act.

**Senator ABETZ**—The penalties in the legislation might be consistent.

**Mr Hoy**—How they are applied may be different.

**Senator ABETZ**—Yes. The judicial application of the range of penalties may be applied differently.

**Mr Hoy**—I am advised by my colleague that Western Australia might be different.

**Senator ABETZ**—We might see some others are different at the end of it all.

**CHAIR**—Western Australia is different.

**Senator ABETZ**—It is indeed. It is very solid.

**CHAIR**—We can all agree on that!

**Senator CASH**—Absolutely.

**Senator ABETZ**—Absolutely—place 1 to the Liberal Party at the last election, in defiance of the national mood! I would say they are different with a capital 'D'. We like that difference. We celebrate that difference.

**Senator BACK**—It is a courageous statement, in current company!

**Senator ABETZ**—Enough frivolity. What about the exercise of a prosecutor's discretion, where we will have a number of varying prosecutorial officers around the country?

**Ms Ross**—I mentioned before lunch that there will be common or mirror prosecution enforcement guidelines. They will be developed and then those guidelines will be adopted by each of the regulators.

**Senator ABETZ**—Of course each prosecutor or head of prosecution section—this is human nature—will take a different approach to exactly the same guidelines. That would be a fairly objective assessment, would it not, that that is likely to happen?

**Mr Hoy**—That may be the case.

**Senator ABETZ**—And the regulators' approach to enforcement may also vary?

**Mr Hoy**—We anticipate that that would be consistent.

**Senator ABETZ**—Has it been foreseen that courts of divergent status may well interpret and apply the OH&S laws differently?

**Ms Ross**—We have, and that is why we are developing a model explanatory memorandum so that all courts will be able to take notice of that explanatory memorandum to aid in consistent interpretation.

**Senator ABETZ**—I am sure the bench, if I can use that general term, will be greatly aided by the explanatory memorandum.

**Ms Ross**—We also expect the courts will consider precedent, that they may not be bound to follow precedent but that they will do so.

**Senator ABETZ**—That is a very interesting point, to be bound by precedent. Why should the County Court in Victoria consider itself to be bound by the industrial court in New South Wales or bound by the decision of a magistrate? Going on precedent and the common law they would not consider themselves so bound, would they?

**Ms Ross**—That is correct, but that is how the system operates.

**Senator ABETZ**—I am aware of that. As a result, if judges in Victoria, because it is in the County Court, do not consider themselves to be bound by industrial court magistrates, then could you not have separate bodies of precedent law being developed because a County Court judge in Victoria considers himself or herself to be a superior legal creature, if I can use that terminology, than a magistrate in the industrial court in New South Wales? They could say, 'It's very interesting to have this magistrate's decision, but I'm not bound by it and I won't be bound by it.' Yet another magistrate in New South Wales will be bound by that decision. That therefore will allow a body of separate jurisprudence to develop in the various jurisdictions, will it not?

**Mr Hoy**—That is possible, yes.

**Senator ABETZ**—What about the regulations and the codes or the regional amendments that will be allowed in the bill?

**Mr Hoy**—I mentioned the regulations to Senator Bilyk earlier this morning. That is still a work in progress, as are the priority codes.

**Senator ABETZ**—But each state—

**Mr Hoy**—These will be subject to an agreement by the Workplace Relations Ministers Council. They will be model regulations and codes of practice. Again, each state, territory and the Commonwealth will need to enact them, similar to the Model Work Health and Safety Act.

**Senator ABETZ**—Mr Hoy, the key word there is ‘similar’ as opposed to ‘identical’. Is that correct?

**Mr Hoy**—They are model laws. Under the intergovernmental agreement, states, territories and the Commonwealth have committed themselves to enact the model laws.

**Senator ABETZ**—Yes, which we have just heard we are not sure allow for a number of jurisdictional notes or differences. We are still to be told on notice how many there are, but we have agreed that there are more than just a handful.

**Mr Hoy**—Our count, depending on how you count them, could be between 54 and 67.

**Senator ABETZ**—Being conservative, as I am, 58 is on the lower side of that. As I admitted before, that count was not done by me but by Siobhan Flores-Walsh in an article submitted to the *Australian* on 30 April. With those jurisdictional notes, those mechanisms for different applications in the various jurisdictions—we are not talking about a handful but about literally four or five dozen differences with different judicial bodies undertaking the task—I think we may unfortunately see a divergence growing, but we will wait and see what happens. I wish you well in your endeavours. That is me for Safe Work. Thank you.

**CHAIR**—Senator Bilyk.

**Senator BILYK**—I understand the development of the harmonised safety laws was begun in 2006 under the previous government and that one of the main components was to reduce the regulatory burden on business. I do not have any problem with that, but I do have some concerns that it might end up being at the expense of workers’ rights and conditions. As an aside, would you have the numbers on how many deaths there are annually in the workplace?

**Mr Hoy**—Yes.

**Senator ABETZ**—You have a book of interesting facts.

**Mr Hoy**—Yes. I would be happy to make one available.

**Senator ABETZ**—Thank you very much. You predicted my next question.

**Mr Hoy**—I normally should not do that!

**Senator ABETZ**—I do not mind if they get it right, and you have, so well done!

**Mr Hoy**—In 2006-07 there were 295 people killed by working. A further 93 people died while travelling to and from work, and 65 were killed as bystanders to work activity. That is the latest data that we have available.

**Senator BILYK**—That is deaths, but what about serious injuries?

**Mr Hoy**—Serious injuries are a lot more than that. I have that information, so I will just check. Would you like to keep asking questions?

**Senator BILYK**—The next couple of questions relate to that. What would the cost to the Australian society be based on those figures, as a proportion of GDP? Are you able to tell us that? I have heard the figure of six per cent. I am not sure if that is right or not.

**Mr Hoy**—Yes. That was an estimate that we made in updating some earlier work that was done by Access Economics—six per cent of GDP.

**Senator BILYK**—What part of that cost would be borne by employers on average? I know they are all averages, but could you give me a percentage?

**Mr Hoy**—I am not sure about the answer to that. I will have to take it on notice.

**Senator BILYK**—I would be interested in the cost to employees as well, to make it 100 per cent.

**Mr Hoy**—I am not sure that it is broken down to that level.

**Senator BILYK**—You can take those on notice. I am also interested in what happens at a temporary worksite regarding health and safety reps. I am talking about things like construction sites or logging sites. What is the requirement of an organisation or business to have a health and safety rep?

**Ms Ross**—That type of site would be considered as a workplace under the bill, just like any other workplace. The same requirements would apply. A worker could request the person conducting the business or their employer for an HSR to represent their interests.

**Senator BILYK**—For example, if I am a logging contractor, have three or four people working for me and I am up the back of Tasmania somewhere—we will not mention any names in case we upset any political parties—am I obligated to have a health and safety rep there?

**Ms Ross**—As an employer you are obligated to have a health and safety rep.

**Senator BILYK**—There at the site?

**Ms Ross**—Yes. The process of electing health and safety representatives is where determinations are made about work groups. A health and safety representative is elected in relation to work groups.

**Senator BILYK**—What is a work group?

**Ms Ross**—The work group is only formed for the purpose of electing a health and safety representative, because it is the work group that elects the health and safety representative.

**Senator BILYK**—Could I be the employer and have these people working in fairly dangerous situations but not have an employee who is a health and safety rep and so never have a health and safety rep go there?

**Ms Ross**—One of the workers in that group might request—

**Senator BILYK**—They might—but is there a compulsion that somebody has to be there? That is the question.

**Ms Ross**—If there is a work group and that work group has elected a health and safety representative, that health and safety representative will be one of the workers and will be there with that work group.

**Senator BILYK**—I am still not clear what a work group is. If I am an employee of a local council and I work in the sewerage department area, is that a separate work group to the rest of council that might work at a depot, in offices, in childcare centres or at a tip site?

**Ms Ross**—Work groups are formed by negotiation between workers and the person conducting the business or undertaking. It may be the case that there are different work groups for different areas of the business or undertaking.

**Senator BILYK**—What is the requirement for those negotiations? To use the example of local government, which is an area I am pretty familiar with, what requirement is there on the local governing body to ensure that I have a health and safety rep who knows the area I work in and understands the specifics of the area I work in as opposed to just having, say, a white-collar worker based inside council and someone outside? Talk me through the process of how those negotiations would take place in local government.

**Ms Ross**—I will just generically talk you through the process. A request is made by a worker for a HSR because they want someone to represent their interests. Then there is a process of determining work groups—

**Senator BILYK**—What is that process, though?

**Ms Ross**—That is all set out in the bill. It starts at clause 51. There is a process for determining work groups. Then clause 52 sets out what the negotiation should be for agreements in relation to work groups. The regulations then set out some matters to be taken into account, like the—

**Senator BILYK**—I just need to get this clear in my mind. Who is involved in those negotiations?

**Ms Ross**—The negotiations will take place between the person conducting the business or undertaking and the workers who will then form that work group or those workers' representatives. Those workers can choose to be represented in those negotiations.

**Senator BILYK**—For example, if the childcare workers working in a specific local government area wanted to be specifically represented—say they have three childcare centres in a specific, large local government area and each of those childcare centres wanted their own specific health and safety rep—would they go to the general manager and negotiate with them? To me 'negotiation' does not mean that they have to be able to have their own on-site rep there.

**Ms Ross**—No, but the health and safety representative is usually one of the workers in the group.

**Senator BILYK**—What I am trying to get to is: how clear is it—or is it not clear at all—that the person who is going to be representing a specific group of workers needs to understand that part of the workforce?

**Ms Ross**—Their health and safety representative will be part of that work group, so they will understand it because they will be part of the group.

**Senator BILYK**—Is there a limit as to how many occupational health and safety reps you can have in one work group?

**Ms Ross**—The number of health and safety representatives and deputy health and safety representatives to be elected is actually one of the factors to take into account when negotiating work groups.

**Senator BILYK**—What does ‘to take into account’ mean? You need to specify more for me.

**Ms Ross**—That is, for the purpose of the negotiation, to determine how many—

**Senator BILYK**—But, basically, the employer has the call to say no; is that right?

**Ms Ross**—The employer has?

**Senator BILYK**—Yes.

**Ms Ross**—No, the—

**Senator BILYK**—The employer can say, ‘No, you cannot have a rep there’.

**Ms Ross**—No. There is a process also in here at clause 54 on what happens when there is a failure in negotiations. Again, as we talked about before, it is a similar type of process where any party can actually ask the regulator to appoint an inspector to help determine the matter. I guess it anticipates that some of these things can actually end in a stalemate situation.

**Senator BILYK**—How many regulators will there be? I am sorry, I am not sure if this was asked before or not.

**Ms Ross**—As it is currently in Australia, the bill has no effect on the number of regulators. It provides for the regulator to be established but it is not supposed to upset the existing arrangements in relation to regulators.

**Senator BILYK**—I am also interested in the process regarding risk management procedures. Would employers need to have risk management strategies in place? If so, how would they be measured and how would they be checked?

**Ms Ross**—There is a general duty under the bill for employers to manage risk. That is in clause 17.

**Senator BILYK**—But they will not have to have any specific written risk management policies or procedures?

**Ms Ross**—That is probably the detail that will be included within the regulations.

**Mr Hoy**—That is to have a plan—

**Senator BILYK**—It will be enforceable through the regulations?

**Mr Hoy**—Yes, through the regulations.

**Senator BILYK**—It will not just be a code of practice; it will be enforceable through the regulations?

**Ms Ross**—There will be a code of practice but in relation to some areas of the regulations there will be a duty to—

**Senator BILYK**—Do we know what areas they will be?

**Ms Ross**—They will be the high-risk areas. I might have to take it on notice in relation to what areas will actually have the duty to assess risk.

**Senator BILYK**—If you could get back to me on that, that would be good.

**Ms Ross**—The regulations are at the moment still a work in progress. I could only answer in relation to the areas that we know at the moment.

**Senator BILYK**—If you would take that on notice and let us know that would be greatly appreciated. What provisions as to privacy will there be in regard to issues such as drug and alcohol testing? I might say here that a union has contacted me about cases where an employer attempted to enforce surveillance of urine testing. I am happy to use that as a hypothetical if you want. What provisions will there be for the workers' privacy?

**Ms Ross**—There are certain provisions in the bill that deal with certain aspects of privacy, such as the information that a health and safety representative might gain as part of exercising their powers or performing their functions. The same applies for union right of entry as to any personal information. The bill does not specifically deal with privacy in relation to drug and alcohol testing, but that is a matter for privacy laws, of course.

**Senator BILYK**—There is a bit more than privacy laws involved. What happens if a worker is not happy with the level of privacy? Hypothetically, if a worker is asked to give a urine sample but asked to do in front of other people and they fail to comply, what is the procedure then?

**CHAIR**—In front of other people?

**Senator BILYK**—In front of another person. This is real life example. It is not actually hypothetical. I am happy to say it is hypothetical for the case today, but it is not.

**Mr Hoy**—The answer is that it is not dealt with in the model act.

**Senator BILYK**—I am also interested in the disqualification issues around health and safety reps. Who determines if they are to be disqualified?

**Ms Ross**—I will just find that provision. There is a process in here that allows an application to be made to a court.

**Senator BILYK**—Who would make the application? Would it be the employer?

**Ms Ross**—I think it allows an employer to make it. It allows the regulator as well. I think it may also allow another person who may be affected.

**Senator BILYK**—If you are disqualified for any reason, does that mean you are disqualified for life or is there a quantum that courts can apply? As I read it, it said whether or not a person should be disqualified but not that there was any time period attached.

**Ms Ross**—No, it does not go into that amount of detail but I think—

**Senator BILYK**—Does it not say that it only allows whether or not a person can be disqualified and that you can apply to the court to determine whether or not a person shall be disqualified?

**Ms Ross**—I will just take a look at it. You would then have to look at whether they are eligible. It says, 'Any person adversely affected by the exercise of a power or the performance of the function or the use of disclosure of information—'

**Senator BILYK**—Can you just tell me again what the eligibility was?

**Ms Ross**—As to who can make the application? It is a person affected by the exercise of a power or the performance of a function or the use or disclosure of information. That is trying to get at the privacy aspects of certain information that they may come across in the course of exercising powers or performing functions. It says that the court ‘may’ disqualify. The court has a discretion so we are not trying to interfere with the court’s discretion.

**Senator BILYK**—Is it a short clause? Can you just read it to me, please?

**Ms Ross**—Yes. It is:

If the [designated court or tribunal] is satisfied that a ground in subsection (1) is made out, the [designated court or tribunal] may disqualify the health and safety representative.

**Senator BILYK**—That then goes back to the original question: does that mean that if you are disqualified you are disqualified for life and you cannot run as a health and safety rep again?

**Ms Ross**—Yes. There is the eligibility to be elected. Then you have to go to clause 60 and the eligibility to be elected. You are not eligible to be elected if you have been disqualified under clause 65.

**Senator BILYK**—No matter what you were disqualified for?

**Ms Ross**—That is right. If you are disqualified you are not eligible to be elected.

**Senator BILYK**—That clarifies that, thank you.

**Mr Hoy**—I have those statistics for you. In 2006-07 there were 134,105 workers’ compensation claims for serious work related injuries or illnesses. The preliminary data we have for 2007-08 show there were 131,110 serious workers’ compensation claims.

**Senator BILYK**—Will you take on notice those other questions about costs and—

**Mr Hoy**—I will just check. That estimate we referred to earlier was an updated estimate of work Access Economics did. I think it was in 2005-06. It was \$57.5 billion. That is the estimate of the cost of work related injuries and illnesses to the community. That was 5.9 per cent of GDP. I am advised that it is not possible to break up the cost of that estimate to employees and employers.

**Senator BILYK**—Thank you for that.

**CHAIR**—Mr Hoy, I was interested in the 62 bystanders that you said had been killed. I never actually heard that. How are bystanders dealt with? What is the definition of a bystander in the first place?

**Mr Hoy**—I think I will get Mr Creaser to answer these.

**Mr Creaser**—The bystanders are basically those people that are not part of the work process, but are injured or killed as a result of a work activity. Probably, the majority of bystanders that we have recorded as fatalities are people involved in car accidents where there is, say, a heavy vehicle from a workplace that is involved in an accident with a car or another vehicle which has people that are not at work and where those people are killed.

**CHAIR**—Where do they fit in a jurisdictional concept? Who investigates the death of a bystander and who would prosecute—not necessarily on their behalf, but in terms of safety issues?

**Mr Creaser**—That depends on the circumstance of the accident. The majority of motor vehicle accidents at the moment are usually investigated by the Road Traffic Authority or equivalent body in the jurisdiction, so any prosecution action would be taken as a result of that. If it is as a result of a work accident—say, a construction site where something falls into a public place and injures or kills somebody—then it would be the relevant work safety authority that would conduct the investigation and run a prosecution against the party that—

**CHAIR**—So those bodies have the jurisdictional ability to investigate those matters, even though they are not actually employees?

**Mr Creaser**—That is correct. Because the accident or incident arises out of a work related matter then they have the power to investigate those.

**CHAIR**—And prosecute?

**Mr Creaser**—Yes.

**CHAIR**—Could you just give us the break-up of the death figures again?

**Mr Hoy**—It was 295.

**CHAIR**—That is all in the book, too. You might give us all a copy of that.

**Mr Hoy**—I will give you a copy of the book. In 2006-07, 295 people were killed while working. A further 93 people died while travelling to and from work and 65 were killed as a bystander to work activity.

**CHAIR**—Can you tell me how many existing laws are in place now that deal with occupational health and safety and how many regulations? What are we replacing with this harmonised system?

**Ms Ross**—We are not in a sense replacing because it is—

**CHAIR**—I understand each parliament will have to actually enact them and hopefully enact them in the model form, but there is no guarantee of that, is there? I understand the process and, being on this committee for quite some time, we have in fact inquired into similar type issues and I guess a common theme has always been, particularly from employers, that if they work across boundaries there are inconsistent laws, different laws, different regulations and different standards and there has been this desire to actually get one set of laws that apply. How many are we actually replacing?

**Ms Ross**—We are not replacing, in a sense. Each jurisdiction will still have its own occupational health and safety law; I guess there will be a consistent set of rules, though. One of the things that we also want to achieve is harmonised numbering, so you go to one of the most important clauses in the bill, which is the primary duty of care, wherever you open that up—whatever jurisdiction you are in—it will be section 19.

**CHAIR**—Let me put it in a slightly different way. What sort of efficiencies do we expect to actually result from a harmonised system? Has there been any work done on the amount of lessening of the red tape, the efficiency for business in only having one—potentially one—set of rules to apply even though, yes, I agree, they will be different laws, but the same set of rules?

**Mr Hoy**—A regulation impact statement was prepared for Safe Work Australia by Access Economics and they concluded that there was a net benefit to the community through the model legislation. The problem when they actually undertook this was it was in advance of the legislation being enacted, so there were lots of estimates actually made. In fact, that statement is actually published on our website, if you wanted to have a look at it.

**CHAIR**—If it is on the website, that is all right.

**Mr Hoy**—Do you wish us to find out how many state and territory and Commonwealth laws and regulations there are? Somebody will have the number; it is just that we do not off the top of our heads.

**CHAIR**—If that work is being done already, it would be useful if you could give it to us, but I do not necessarily expect you to go out and count every one. That work has probably been done by somebody, maybe the same person who did your counting.

**Mr Hoy**—I think it is also in the RIS, so we will have a quick look at that too.

**CHAIR**—Does anyone else have questions for Safe Work? We will take a short suspension while we find out whether Fair Work Ombudsman is here and then we will resume.

[2.10 pm]

**CHAIR**—We now have with us the Fair Work Ombudsman. Welcome. Do you have any opening remarks you would like to make to the committee before we commence with questions?

**Mr Wilson**—We do, if it is appropriate at this stage.

**CHAIR**—Yes, it is appropriate.

**Mr Wilson**—Since the last time we appeared before this committee in February our work has been driven, firstly, by the needs of employers and employees with the introduction of modern awards and, secondly, with the smooth transition of the state system referrals by Queensland, New South Wales, South Australia and Tasmania. Since February we have continued to work closely in these tasks with Fair Work Australia, the major unions, peak employer associations and the referring state governments.

I am pleased to say that these partnerships have assisted us greatly in what we have been able to achieve. The frontline of our workload has been the Fair Work Infoline. In the first four months of 2010 our advisers have answered over 375,000 calls with about a third of those calls coming from employers, the majority of these from small businesses. Our anecdotal experience is that the questions asked by callers are well informed and considered and come from a base of some knowledge about existing entitlements. Notwithstanding that, our experience is that callers are hungry for timely and accurate information, and that is why we have also concentrated on developing and releasing self-access tools.

When it was introduced, our web based pay check system immediately started taking over 10,000 searches a week and is now about to reach 15,000 completed searches a week. This week we are broadening the pay check service from just the top nine modern awards to about 70 modern awards covering 640 premodern awards. We estimate that this expansion will cater for the questions of more than 85 per cent of callers to the Fair Work Infoline seeking information about wages entitlement.

In the next fortnight the service will be expanded further with a new web based award finder search tool. It enables searchers to find applicable modern and premodern awards. We will also be releasing payroll checks aimed at small and medium businesses who need a spreadsheet of rates for their payroll. Foundation for these services has been the work we have done with the ACTU and the peak employer associations, the Australian Chamber of Commerce and Industry and the Australian Industry Group, in developing and releasing this morning our guidance note 7, which comprehensively sets out our advisory policy on a number of critical modern award interpretation issues.

Now that we have settled these in conjunction with the social partners, we can confidently roll the determined positions into our new advisory tools. I am confident that this large body of preparatory work means we can respond carefully and meaningfully to industry's needs over the next few months. My senior staff and I would now be pleased to take your questions on these and other relevant matters.

**CHAIR**—Are those opening remarks available to be tabled?

**Mr Wilson**—They are.

**CHAIR**—If we could do that, thank you.

**Senator ABETZ**—Are you satisfied with the quality of advice that is being provided to small business from the Fair Work Ombudsman's office?

**Mr Wilson**—We are. We work very carefully with our Fair Work Infoline to monitor the quality of calls and, when we find problems within the advice that we have given to people or that the relevant information which underpins the information changes, we make sure that the changes to the advice are made as quickly as they possibly can be. The point I would make is that the volume of activities that we conduct means that inevitably there are issues of interpretation or debate, but we certainly, in general, are very satisfied with the quality of the information.

**Senator ABETZ**—What about the timeliness of the advice being proffered; are you satisfied with that?

**Mr Wilson**—Yes, we are. The situation that I could advise you of with our infoline is that the handling time with our telephone calls bounces around considerably; however, it is the case that the average handle time over recent months at least has been in the nine- to 10-minute range. I am sorry, I need to correct that; I have given you the wrong information. That is the length of the call but the speed with which we answer the calls on average has been from about 1.2 minutes to four or five minutes.

**Senator ABETZ**—The infoline clearly is one mechanism, but what about if questions or matters that are more complicated are emailed through to you? Are you satisfied with the timeliness in relation to those responses and how it is going? We have just been told about the infoline; I now want to move on to where questions are actually emailed in and then a written response provided.

**Mr Clark**—There are a number of mechanisms from which we can receive email enquiries. The primary one is our website, through our 'contact us' web form. We have a service standard of resolving inquiries within 48 hours and we have been tracking very well in

achieving that. There is also a mechanism available, which Ms Smith can provide more information on, which supports invited industry bodies with transitional information. There are a number of those avenues. Additionally, we have a web chat capability on our website, 'Live help', which is available to employees and employers. It is a close-to-immediate response in a real-time chat environment where people can seek assistance.

**Senator ABETZ**—You say these answers are provided and with a relatively quick turnaround. Would some of those answers be framed with the terms 'may', 'probably' and 'legal advice should be sought in relation to your inquiry'?

**Mr Clark**—Our usual practice is to provide as accurate a response as we can, based on the information provided to us. We have deliberately created the web form on our website to collect as much information as possible to allow us to provide as accurate a response as we can. When we receive those inquiries, we inevitably need to phone the inquirer from time to time to seek additional information. But I am confident, based on the information that is given to us, that we are able to answer questions as accurately as we possibly can.

**Senator ABETZ**—The question was: do those answers sometimes include terms such as 'may', 'probably' or 'go seek legal advice'?

**Mr Clark**—Certainly some of those answers would include those terms, based on the fact that we are responding to the information that has been provided to us. If there is any uncertainty in that, we feel that it is better to err on the side of caution than to give incorrect information.

**Senator ABETZ**—Which is, of course, of great benefit to the small business that finds itself subjected to a Fair Work Ombudsman audit at a later stage! You are sometimes unable to provide definitive advice on an issue that a small business is seeking advice about. Then, one day, undoubtedly, the Fair Work Ombudsman will have a definitive view on a particular circumstance and potentially undertake an audit on the basis of its new understanding of the regime. Is it a matter of concern to you and the people that you work with that this is an enforcement body which sometimes does not know the answers and yet is required to undertake the auditing of small business to ensure compliance—that there are circumstances where the Fair Work Ombudsman itself is unsure as to the full application of the law or certain provisions applying from the modern awards?

**Mr Wilson**—There are several propositions within that question. I would like to take those in turn. In relation to advice given in relation to a request for general advice that we receive through the telephone service or through an email, I do not think that we would be able to hold that advice out as definitive in any circumstances, because we are obviously reliant on the information that is being put to us. The average length of telephone calls might be 10 minutes and of emails might be 100 words, so it is quite difficult to put definitive advice back to someone as a result of that.

**Senator ABETZ**—If I may interrupt there, say they act in good faith on the advice given in a telephone call, which you are saying is not necessarily definitive advice, and you pop along six or 12 months later to do an audit. If they say, 'Hang on a moment; I had a discussion with one of your people, Mr Wilson, and he told me that was all okay,' could your officer say, 'Yes, but that was couched in such terms that it was not definitive advice'?

**Senator Arbib**—Can we let Mr Wilson finish what he was saying before you add another question?

**Senator ABETZ**—We can have interaction.

**Senator Arbib**—You asked a number of questions. Mr Wilson was giving you an answer, but you jumped in with another question. It is important that Mr Wilson gets a chance to answer the question.

**Senator ABETZ**—We are getting on exceptionally well without you. We were not being rude in interrupting.

**CHAIR**—The minister makes a good point, Senator Abetz. We have plenty of time—we are a little bit ahead of schedule. You should make sure that the questions are answered fully and then move on from there.

**Mr Wilson**—I can answer both aspects of the question together. The way that we work with auditing is, obviously, that we try to build compliance within the workplace within an industry or region. If we came to examine a circumstance where an audit or an investigation was required and it was put to us that the workplace acted in good faith on advice given by us six or 12 months previously, we would obviously go back and check that to try to ascertain exactly what those circumstances were. If we were satisfied that they had been acting in good faith and the premise of the advice was sound, that would probably be the end of the matter. If, however, the information that had been given to us through the email or the phone call was wrong—and they were not actually a retail shop but a warehouse or there was something of a profound nature like that—then clearly the inspector's obligation would be to point that out to the workplace and expect rectification.

**Senator ABETZ**—Where does the Fair Work Ombudsman get its advice from? Is it all in house or do you have a panel of experts that you draw upon for particular issues, and, if you do, how are they selected?

**Mr Wilson**—I will ask Ms Smith to answer that.

**Ms Smith**—The advice that we prepare is by and large in-house advice. We have a large number of staff who have had a great amount of experience in workplace relations over many years. We take escalations from the contact centre, from the email inquiry line and from some direct external lines for industry bodies and unions. Where we have a query that we are uncertain of, for various reasons, we have our internal legal team, headed by Mr Leigh Johns, provide a response. There are odd occasions where we need to go externally for another view, but that is a rare thing and we do that through a panel that Mr Johns could speak more about.

**Senator ABETZ**—Can you take on notice who is on the panel and how they were selected?

**Mr Johns**—I can answer those questions.

**Senator ABETZ**—We have time constraints, so can you take that on notice?

**Mr Johns**—Yes.

**Senator ABETZ**—Can you tell me whether Payroll News, at payrollnews.com.au, is on that panel?

**Mr Johns**—They are not. There are 20 law firms on the panel.

**Senator ABETZ**—Does the Fair Work Ombudsman broadcast to the world at large, a bit like Senator Carr did once at question time? Has anybody got an idea on this one? Does it ever happen within the Fair Work Ombudsman's office that they broadcast to the world at large?

**Mr Wilson**—As a modern learning organisation we seek information from quite a few different sources. When it comes to forming views about what particular parts of the legislation or awards might mean, obviously we go through the processes that Ms Smith and Mr Johns have outlined. There are some circumstances where, obviously, we speak with the wider industrial relations community. I am not aware of the website that you refer to, but it might have turned up in there recently. We have sought consultation from the community generally about the guidance note that I referred to publishing this morning. When we released that in late April we issued an invitation at large for advice about how the community felt about certain propositions in the draft.

**Senator ABETZ**—Can you advise whether somebody in the Fair Work Ombudsman emailed the editor of payrollnews.com.au, under the subject 'Ask an expert': 'We are hoping someone is able to provide some interpretation on Easter Tuesday in Tasmania. I've included the relevant clause from our collective agreement', and then there is a whole host of things added. There are questions about alternative readings. It says 'if we take "observed generally" to mean "by a cross-section of the community"' and, 'It would be appreciated if some advice could be provided.' It finishes with 'Regards' et cetera.

**Mr Wilson**—Are you reading from an email from a staff member?

**Senator ABETZ**—I will not mention their name. It is from the assistant director of the payroll and entitlement section.

**Mr Wilson**—In the Fair Work Ombudsman's office?

**Senator ABETZ**—Yes. That is what I have been provided with. I cannot vouch for it, of course. But this sort of behaviour does not engender confidence in the small business community that the Fair Work Ombudsman has a handle on some of the things that might potentially lead to requirements for back pay or even the application of penalties. The Fair Work Ombudsman cannot get assistance internally and seems to be scratching around all over the place for a source, if the information I have here is correct.

**Mr Wilson**—It is entirely possible that someone may have decided that was the best way to obtain advice for a particular question they had. We will find that out for you, but I will put it in the context that we are an organisation now of around 860 staff, we have a payroll section and they may have had a question that they were not sure about the answer to. It would be a bit of an unusual step to go outside of the organisation, but it is entirely possible that it happened.

**Senator ABETZ**—It does not say much about Mr Johns's section in the Fair Work Ombudsman for them to go broadcasting to the outside world rather than seeking the specialist advice of Mr Johns. I am sure they did not intend such a reflection, and I am sure that the advice Mr Johns's section provides is high-class advice. It unfortunately adds to the impression that the Fair Work Ombudsman—and I do not mean this in a derogatory sense; it

is tough to come to grips with a new regime—is still scratching around to come to terms with what various awards and other provisions mean. If you guys, with your huge legal team, have that sort of difficulty, I invite you to spare a thought for the cafe owner who may have never gone past grade 10.

**Mr Wilson**—We will take a look at that matter—and I certainly do spare a thought.

**Senator ABETZ**—Thank you. We had mousepads discussed yesterday. Whilst I must say postcards are somewhat more sensible than mousepads, I understand the Fair Work Ombudsman produced a blue postcard entitled ‘Fair conditions on a fair playing field is fair enough’ It says: ‘I mean, fair’s fair: fair work.’ How much did they cost and have Australia Post’s profits been boosted because people are madly mailing these around to their friends?

**Mr Wilson**—I cannot answer that last part of the question.

**Senator ABETZ**—I withdraw it. That is fair enough.

**Mr Wilson**—We will check on the cost of those materials. I do not have that information.

**Senator ABETZ**—How many were produced?

**Mr Wilson**—What I can say is that is a stock-standard campaign that we are running, and there have been several of them over the past year. But I will obtain details and provide those to you.

**Senator ABETZ**—There is one accolade. The fact that you used PEFC-certified paper for it is to be noted and I welcome it.

**CHAIR**—What is the objective of the campaign?

**Mr Wilson**—It is one of a number of campaigns that we run periodically to make sure the community has some sort of understanding of the workplace relations system and where they can turn to for assistance. Over the past couple of months we have run a number of these rolling campaigns, aimed particularly at people such as school leavers, university students, young workers and international students. The objective is basically to make sure that people can find out basic information about what we do and where they can turn to.

**CHAIR**—So this is to make people aware of your existence, as opposed to educating anyone on any particular subject?

**Mr Wilson**—It can be both. For example, in respect of young workers, I believe we distributed in the first couple of months of this year about 20,000 postcards aimed at 18- to 24-year-olds, and the response was quite good.

**Senator JACINTA COLLINS**—How were they distributed?

**Mr Wilson**—The company that distributes them I believe is called Avant Card. You might have been in a cafe and seen those display board of postcards. It is a fairly cheap but effective means of getting information to people.

**Senator ABETZ**—Now I am very interested in how much, because they appear on a very regular basis, I am sure—if I have got this right—to make donations to the Australian Greens in the Australian electoral returns. We will see if they are one and the same company.

**CHAIR**—That might be the paper explanation.

**Senator ABETZ**—They would have used FSC, I am sure, if they could have, but on this occasion they used the right one. But that is a side issue.

**Senator JACINTA COLLINS**—When did they go out, or do you need to take that on notice, too?

**Mr Wilson**—I have to take on notice which ones went out at which times, but we have run out several of them over the past year, I believe.

**Senator JACINTA COLLINS**—I would be curious about the print run, the method of distribution and the overall costs.

**Mr Wilson**—Of course.

**Senator ABETZ**—Chances are they are a bit cheaper than mouse pads, if that is what you are getting at. As I told you yesterday, Ms Gillard is personally using them and autographing them. I think she ought to be making a contribution. Do I call it SIAP, the Shared Industry Assistance Project? That is designed to be a \$2.7 million education or information campaign?

**Mr Wilson**—It is to provide information and education to the community. We are at the early stages of that program.

**Senator ABETZ**—Closing of applications will be on 15 June; is that correct?

**Mr Wilson**—That is correct.

**Senator ABETZ**—When do you think the decision will be made in relation to the successful tenderers? Is that what I call them—tenderers, bidders?

**Mr Bongi**—Applicants.

**Senator ABETZ**—All right—successful applicants. Thank you.

**Mr Bongi**—We expect decisions to be made at the end of June, so 30 June. As you indicated, applications close on 15 June. We will use the two weeks—

**Senator ABETZ**—How long have the successful applicants got to gear themselves up to then engage in their activities?

**Mr Bongi**—The guidelines indicate a time frame. We require our first performance report two months after the execution of the agreement, so around 27 August we want to see their implementation plan. Four months after—in other words, around 29 October—we expect final material to be developed and presented for approval and for publishing on our websites. The final performance report is six months from the start, so at the end of this calendar year, on 31 December, we expect materials to have been delivered, seminars to have been completed, feedback on materials received and ongoing access to materials via the organisation and via our websites.

**Senator ABETZ**—It would be fair to say that the delivery of these seminars et cetera will take place between 29 October and the end of the year?

**Mr Bongi**—Yes.

**Senator ABETZ**—This is to inform businesses and other people in the community about the modern award system?

**Mr Bongi**—To assist those industries in transition, yes.

**Senator ABETZ**—Of course the transitional provisions will have already started on 1 July and we will be rolling out this campaign from about 1 November, so it will be July, August, September, October—four months into it—that some of these businesses might get the first contact and educative advice on not only what they should be doing but possibly what they should have been doing for the previous four months?

**Mr Bonggi**—That is in terms of this particular program, but of course there are other things that are happening—

**Senator ABETZ**—I accept that, but I do not think that anybody at this stage has asserted that, albeit best endeavours have been made, everybody has been reached with these educative programs. How many applications have you received to date?

**Mr Bonggi**—Closing time has not been—

**Senator ABETZ**—I know. That is why I said ‘to date’.

**Mr Bonggi**—I am not aware of having received any application.

**Senator ABETZ**—Are we getting some interest? You will not be going to your post office box on 15 June and finding it empty and saying, ‘Oh my goodness, how do we spend this money?’; you have had indications that there are interested parties in the marketplace?

**Mr Bonggi**—We certainly have had interest. I would be very disappointed if that did not eventuate in applications by closing.

**Senator ABETZ**—You have got all the standard clauses here, but I am sure they will not be applied too harshly in relation to incomplete forms and things like that. If a page is accidentally left out of an application that is forwarded to you—

**Mr Bonggi**—It depends on what the page is.

**Senator ABETZ**—But the normal practice would be that you would say, ‘We have received an application. It seems to have a page missing. Can you get it to us within 24 hours?’ rather than using that as an excuse to not consider them all?

**Mr Bonggi**—But this is not a tender process as such, so it does not have the same process.

**Senator ABETZ**—I assume this is a similar coincidence as we had with Fair Work Australia last time, that certain things were released the day before estimates or actually on the day of estimates. I refer to the media release issued today, the guidance note on modern awards. I assume that this is coincidental, but of course it makes it very difficult for an opposition senator to try to go through the documentation and ask questions on the same day. Just so that I understand the documentation that has been released, I was told that the Fair Work Ombudsman has released a guidance note on modern awards. Can you confirm that the guidance note runs to 29 pages; is that correct?

**Mr Wilson**—Before I do that I can just take you to the coincidence of the date? As to the proposition that it was coincidental with the date of estimates, we flagged on 29 April when we sought community consultation that we would be releasing it on 1 June, which we have done. Now, these things happen. But, if you asked me the question about the length of it, I will take your word that that is the number of pages. My version is not numbered.

**Senator ABETZ**—There are 29 pages; is that correct? Then there is a schedule of six pages?

**Mr Wilson**—My version is not numbered, but I will take your word for it.

**Senator ABETZ**—I want to make sure that I am dealing with the right document.

**Ms James**—Perhaps I can assist. the guidance material itself runs to 29 pages and there are some attachments behind the guidance note itself, including the model transitional provisions themselves.

**Senator ABETZ**—We have six pages of a schedule, four pages of a glossary and then 11 pages of an addendum.

**Ms James**—I have not counted those pages, but that sounds about right. The addendum is actually a document outlining the Fair Work Ombudsman's consideration of the 15 submissions we received in our public consultation process on the guidance note. We hope it will assist some of those submitters in understanding how it is we have formed the views that we have in the final document that was released today.

**Senator ABETZ**—I am sure the local cafe proprietor will be delighted to go through 50 pages of this sort of information—

**Ms James**—Perhaps I can comment on that? The document contains a number of illustrative examples to set out and explain how it is we have gone about interpreting the model transitional provisions. The document is not intended for the local cafe owner; the document is intended to set down the principles that we are applying so people who are interested in the principles—perhaps the cafe owner, I would hazard a guess, might not be interested in the principles—

**Senator ABETZ**—Why not?

**Ms James**—I suspect the cafe owner will be far more interested in just finding out what rate of pay he or she needs to pay his or her staff. What we anticipate with respect to those queries that they will come to our online tools, our online calculators or to the Fair Work info line where they will be able to receive that information in a user-friendly way. The guidance note is more of a theoretical or conceptual document, if you like, setting out our principles. You may have noticed that in response to our process a number of stakeholders have decided to initiate proceedings before Fair Work Australia to seek some clarification of some areas around the model transitional provisions. The document is not designed to be a tool that small business people use. We have other tools that will achieve that outcome, which I am sure that Ms Smith can outline to you if you would like.

**Senator ABETZ**—This is a bit unfair, Ms James, I understand that this is your last estimates, so I am not allowed to be too difficult in my questioning—

**Ms James**—You may do your best, as you always do, as I would expect.

**Senator FISHER**—You had better serve it up to Ms James, otherwise she will serve it up to you.

**Senator ABETZ**—No. Could I take you to the guidance note at page 28, paragraphs 11.4 and 11.5. In 11.5 we are told that FWO considers that the proceedings before FWA offers the

best opportunity to resolve areas of ambiguity in the model transitional provisions. I assume, therefore, the ombudsman agrees that there are areas of ambiguity in the transitional provisions.

**Ms James**—What we would say is that in our consideration of the model transitional provisions and in the submissions we received to our public consultation process and in observing the public commentary on the model transitional provisions that there are a number of contrary views on some aspects of how they operate. We have said that we consider the best way for these matters to be resolved to be through Fair Work Australia proceedings and we understand that the parties intend to commence such proceedings. We think that is a good thing. However, we would also say that the Fair Work Ombudsman needs to form a view based on the law as it stands and we have done so. We have articulated that view in the guidance note. That will remain our view unless and until we have reason to change it. One reason to change it would be reviewing relevant Fair Work Australia decisions.

**Senator ABETZ**—The media release at the second paragraph says, ‘The note details the Fair Work Ombudsman’s interpretation,’ which is fair enough. I accept it is just an interpretation and you do not put it stronger than that, but that does not give much confidence to small business that that may necessarily be the view that is taken by Fair Work Australia. If Fair Work Australia takes a contrary view, what are you going to do to the businesses that did rely on your interpretation at the time, acted upon it and then found that in acting upon your interpretation they have in effect been acting illegally?

**Mr Wilson**—The circumstance I suppose I do need to point to is that paragraphs 11.4 and 11.5 fit within the view articulated in paragraph 11.1 where we say that our view is that overtime is not included in the model transitional provisions and is therefore not subject to phasing arrangements. It is particular to that. The possibility that a matter could go back to Fair Work Australia, other than in the application that is averted to in 11.5 is, all things considered, fairly low. It is possibly more likely that it goes to a court, as opposed to Fair Work Australia.

To come to the proposition that you are putting, we can only implement the law as we see it at the time that we see it. If a decision of the court takes a contrary view or Fair Work Australia makes a variation and backdates that, we are obliged to put that to the employer in the way that you propose. Short of that, our view would be to say, ‘You’ve taken the approach that you were advised to, and that is sufficient.’

**Senator ABETZ**—It is good to hear that. Can we have it accepted that FWO agrees that there are areas of ambiguity in the model transitional provisions?

**Mr Wilson**—The area of ambiguity that we are pointing out in paragraph 11.5 is particular to overtime, but I am also happy to say that, if people perceive other areas of ambiguity, then quite clearly the preferred alternative would be to go back to Fair Work Australia.

**Senator ABETZ**—We believe that the best way to resolve this particular area of ambiguity is courtesy of a trade union action before Fair Work Australia.

**Mr Wilson**—Or an employer organisation, yes.

**Senator ABETZ**—In this case, in 11.4 you note that union stakeholders intend to apply to obtain clarification and you then say in 11.5 that this offers the best opportunity to resolve areas of ambiguity.

**Ms James**—We would say that the proceedings before Fair Work Australia that can result in decisions that vary awards to make them clear offer the best way to resolve any areas of ambiguity in the provisions. I do not know that it matters who initiates them. I would say that in the development of the guidance note we had a number of meetings with peak bodies, with employer organisations and unions, and we discussed a number of these sorts of issues. I gather that the parties had been discussing for some time that someone may initiate proceedings, but I am not sure that it matters much who initiates them. What matters to the Fair Work Ombudsman is the outcome of those proceedings, which we hope will be a decision that either varies the award or provides clear guidance as to how it should be interpreted on this point.

**Senator ABETZ**—You are relying on a private party. I happen to agree with you, whether it is an employer initiated application or a union initiated application, which is neither here nor there, but you are relying on a private application to resolve ambiguities in the model transitional provisions. I would have thought that in the provision of laws and requiring people to abide by rules, laws and regulations, you would want a greater degree of certainty than that, rather than the enforcing agency simply saying, ‘We don’t really know what the answer is, but if one of you chaps would like to take it to a court, that might help us come to a determination on the matter.’ That does not provide certainty.

**Ms James**—I think this is a great example of the work that the Fair Work Ombudsman has done in partnership with the parties. Some might say a regulator’s role is to sit on the sidelines, be passive, interpret the law as it sees it and wait. In this case we have actively worked with the parties on this issue. All of the parties have worked very well together and they agree that we want to ensure as much certainty as we can in this area.

We would note that it is not necessarily appropriate for a regulator to be seeking to initiate proceedings and under the Fair Work Act—I do not know if we still use the language of ‘standing’—some parties that are formally covered by awards and have the capacity to make these applications. We are not one of those persons. We are not a person who can make such an application.

**Senator ABETZ**—I have no criticism of the Fair Work Ombudsman in this situation. The government and the minister have developed the rules and so on, and that is where the buck stops. It appears the uncertainty in the community can only be resolved by courtesy of either unions or employers taking an action to remove that which the regulator itself sees as not an area but in fact areas—plural—of ambiguity. We will move on. Has a case been filed in relation to this issue?

**Ms James**—I believe it has.

**Senator ABETZ**—When do we think that might be resolved?

**Ms James**—That would be a matter of programming before Fair Work Australia.

**Senator ABETZ**—Yes, but experience would tell us that it will not be resolved before 1 July.

**Ms James**—I do not think we would be expecting that to be the case.

**Senator ABETZ**—Therefore, there will be employers not knowing how these areas of ambiguity will be resolved until after 1 July; is that correct?

**Ms James**—The Fair Work Ombudsman has put a position out there and we would anticipate that the parties would follow our advice as long as it stands, so to speak. I do not think it serves to speculate too much about the nature of the decision that might come out of Fair Work Australia. I gather that what is being put to them is an application to vary the award to insert some extra clauses. The question of how that applies, whether it applies from a certain date or retrospectively, I imagine is going to be a matter of argument in those proceedings. If the variation is prospective, as many are, then it is simply an issue for the Fair Work Ombudsman to quickly take on the result of that decision and to advise people as quickly and as efficiently as we can. If people take a little time to adjust, then we would apply a sensible approach to any compliance issues that arose.

**Senator ABETZ**—Minister, are you able to explain what a transitional minimum wage instrument is?

**Senator Arbib**—You have the Fair Work Ombudsman here. You can ask them questions. Do you need me to explain to you the make-up of Fair Work Australia's policy?

**Senator ABETZ**—I do.

**Senator Arbib**—I do not think it is a serious question.

**Senator ABETZ**—Just to assist you, in the glossary part of this document we are told about the transitional minimum wage instrument and that the following types of instruments are transitional minimum wage instruments: an Australian pay and classification scale APCS, referred to as a transitional APCS from 1 July 2009, which are commonly related to as pay scales; the standard federal minimum wage, FMW, referred to as the transitional standard FMW from 1 July 2009; a special federal minimum wage referred to as a transitional special FMW from 1 July 2009; and the 20 per cent default casual loading in the Australian Fair Pay and Conditions Standard, referred to as the transitional default casual loading, from 1 July 2009. Just in case that is not quite clear enough for you, Minister, this term is defined in subitem 5.3 of schedule 9 to the FW(TPCA) Act.

**Senator Arbib**—You had the answer in the first place.

**Senator ABETZ**—It is very simple for all of our friends in small business to follow this terminology. Ms James, you told us about the consultations and I have some of the consultation papers with me. It would be fair to say that there were a number of criticisms of the draft document that was circulated and, interestingly enough, Unions NSW took a lot more robust approach than the fairly pathetic and compliant approach by the ACTU. Unions NSW was willing to discuss issues such as take-home pay orders, whereas the ACTU just thought it was all wonderful strongly endorsing under the take-home pay orders. Unions NSW at least had the decency to say that there is a general lack of detail on how the process operates and that the turnover or basis is not clearly defined.

**Senator Arbib**—I will pass on your regards to Unions NSW. I am very surprised you are quoting from them, given before the last election they were the main enemy of the Howard

government and the main protagonist against Work Choices. That is a big turnaround with your personal—

**Senator ABETZ**—I have met with both Unions NSW and the ACTU, so you should not be surprised that I am interested in what they write as well.

**Senator Arbib**—I am very interested to hear what they say about you as a possible minister in going back to Work Choices.

**Senator ABETZ**—That was a Freudian slip and I look forward to them commenting on me as minister as well. That is very kind of you.

**Senator Arbib**—Prospective minister.

**CHAIR**—Let us get back to some serious questions.

**Senator ABETZ**—As a result of all of this consultation, the Fair Work Ombudsman took on board a lot of these comments. Are you aware of the Australian Industry Group's press release of today titled 'Industry alarmed about Fair Work Ombudsman interpretation on modern awards'?

**Ms James**—Yes.

**Senator ABETZ**—They describe your interpretation as alarming. Undoubtedly, they will be going along to Fair Work Australia as well to argue their particular point of view in relation to this and ultimately we can see who is right in relation to the argument. Can you see the picture that has been painted; there was ambiguity on your own admission, and then an interpretation provided, which has now spooked, in this case, an employer group in relation to the interpretation provided? It looks as though they are taking your advice, as it was in 11.4 and 11.5 of that guidance document, and they are going to go to Fair Work Australia and make an application to make some variation to come to grips with what the interpretation should be. Would you agree that there is still a lot of uncertainty out there in relation to the interpretation of this new regime?

**Mr Wilson**—This one is an area where we think there is no uncertainty and that is why we have written the guidance note in the way that we have. Notwithstanding that, the AiG has put to us their view and we have had a fairly lengthy debate about the merits of that view. It is, for the reasons that we discussed with them, why we held to the original draft and consolidated within the guidance note that we have published. That view is informed very much on our understanding of the case law on the subject. The Australian Industry Group has the right to disagree with us and to take such action as they wish through Fair Work Australia, which obviously the media release this morning indicates they will be doing.

**Senator ABETZ**—In this media release, in the second last paragraph, the AiG states:

This issue will be extremely important from 1 July 2010 when the phasing in of—

and I just want to get this clear—

higher and lower wage rates, penalties—

Et cetera—

under modern awards commences.

According to the ombudsman, as of 1 July 2010, in some areas lower wage rates will be phased in; is that correct?

**Mr Wilson**—From 1 July the wage based transitional arrangements need to commence within most modern awards and the workplaces working under those awards. It is obviously the case that, because of the mechanics of the transitional arrangements, it is possible for the absorption and transitional arrangements to go in different directions.

**Senator ABETZ**—What does different directions mean? Is it up and down?

**Mr Wilson**—It is up and down.

**Senator ABETZ**—Yes, higher and lower.

**Mr Wilson**—Clearly the cumulative effect of that, in any given case, is difficult to predict at this stage unless, obviously, you are running an individual payroll and the hours of work that people work. If people apprehend or have suffered a reduction in pay, the capacity for them to make a take-home pay order application to Fair Work Australia is there and it is up to Fair Work Australia to talk about how that process is expected to roll out.

**Senator ABETZ**—The take-home pay order, of course, is to ensure that anybody that might be legally paid a lower wage as a result of modern awards can have that legally lower wage at that time built up again to what the pre-existing wage level was?

**Senator JACINTA COLLINS**—Can I just clarify, because this relates to questions you were asking yesterday, too. Where does this legal interpretation you are running actually come from?

**Senator ABETZ**—I am sure the Fair Work Ombudsman has no different view of the question. We are agreed that there will be some lower wages payable under the modern award system—subject to, of course, the event that a take-home pay order is sought and obtained, but in the absence of a take-home pay order—

**Senator JACINTA COLLINS**—There are take-home pay provisions in awards.

**Senator ABETZ**—If that is the case, can you tell us how a take-home pay order could ever be relevant if the awards cover all those possibilities that Senator Collins is talking about—if it is all covered in the awards in any event?

**Senator JACINTA COLLINS**—No, I did not say that. I said there are take-home pay provisions in awards.

**Senator ABETZ**—In that case, there are certain circumstances where you need take-home pay orders, because the awards do not cover it off.

**Mr Wilson**—I think it is a matter of record that there have been a couple of applications, if not more, to Fair Work Australia for take-home pay orders. I am not aware that Fair Work Australia has determined those to any great extent at the moment, but clearly the possibility to make applications for the orders does exist and the process is well known in terms of the legislation and also the model transitional clauses. The advice that we would be putting to people is that clearly, if there is an apprehension that the combined effect of the transitional arrangements means that there could otherwise be a wage reduction, the capacity is there for a

worker, or their representative, to make application to Fair Work Australia and to have that preserved.

**Senator ABETZ**—The system of take-home pay orders was to protect against that very reality that somebody could be paid below the level they had previously received, given the—as I think you described it—volatility or moving up and down in the wage scales as a result of award modernisation.

**Mr Wilson**—At the moment, I am not certain that it is a reality, as you describe it. It is probably more a possibility or eventuality, but certainly the mechanisms are there, they are a matter of record and what approach Fair Work Australia takes to it is yet to be seen.

**Senator ABETZ**—Just so I get this clear, suppose I am an employer and the new modern award tells me that, surprisingly, I can pay less than I previously paid. Legally I can pay that lower sum until such time as there is a take-home pay order made or something included in the modern award saying that I have to maintain the same wage level as previously existed.

**Senator Arbib**—I do not think that is what the department was saying last night.

**Senator ABETZ**—I wanted to hear it from the ombudsman.

**Senator Arbib**—That is fine. I just want to put on the record that the department said last night that they would take that question on notice. You are stating it as truth. I am just putting on the record that the department said it would answer it on notice.

**Senator ABETZ**—That is a very clever intervention to try to stop the ombudsman from answering what we all know to be the fact, because if what the department asserted last night is correct you would not have bothered with take-home pay orders.

**Senator Arbib**—No, it is not an intervention. I am making a statement for the record and making sure that the record notes the events of last night.

**Senator ABETZ**—It was admitted finally last night that some people could be paid less and that is why we did need the take-home pay order mechanism, because otherwise it would be a silly nonsense to have this regime of take-home pay orders if nobody needed them.

**Senator Arbib**—Coalition senators supported take-home pay orders. Last night I went through this—Mr Keenan is quite supportive of it.

**Senator ABETZ**—Of course we did. There is a deficiency in your system that Professor Andrew Stewart has highlighted. He asked, ‘Why didn’t you simply have a provision saying that you have to maintain the rate of pay rather than putting unions and workers through the expenses of getting take-home pay orders?’

**Senator Arbib**—We had that debate last night, and also you put on record that you did shirk the reform yourself when you were in government; the coalition shirked it.

**Senator ABETZ**—I did not at all.

**Senator Arbib**—Yes, you did.

**Senator ABETZ**—That is once again your fantasy land. You keep living in it, but allow me to ask the Fair Work Ombudsman—

**Senator Arbib**—We will check that on the *Hansard*. You said it yesterday; we will check it.

**CHAIR**—The *Hansard* is available for everyone to see. Senator Abetz, have you got a question? Where were we?

**Senator ABETZ**—Can the Fair Work Ombudsman advise us whether or not an employer could be penalised if, when confronted with a modern award they say: ‘The modern award rate is lower than the existing basis on which I pay. Therefore, I will pay under the modern award until such time as there is a take-home pay order made against me’?

**Mr Wilson**—The eventuality that you outlined we deal with in our guidance note published today to clause 7, in some detail, which talks about take-home pay orders and over-award payments.

**Senator ABETZ**—Which section? Section 7?

**Mr Wilson**—Section 7.

**Senator ABETZ**—Yes, I am there.

**Mr Wilson**—This is by definition our guidance to the community now. Quite clearly, I guess, the most salient subparagraph is 7.3, which indicates that there may be consequences if an employer reduces an existing employee’s pay. It then articulates a couple of circumstances. That is our advice and we are yet to see how the take-home pay orders will be utilised by Fair Work Australia, but clearly we would need to bear that in mind as we give advice to employers and employees.

**Senator ABETZ**—So 7.3 countenances—and thank you for drawing my attention to it—that there may be circumstances where somebody is paid less and, if an employee suffers a reduction in take-home pay, the employer may be subjected to an application for a take-home pay order. In the event that the employer is not subjected to a take-home pay order, would the employer in this scenario be acting legally in paying the lesser sum as per the modern award?

**Mr Wilson**—As the paragraph continues, our advice is that, in addition, employers should consider whether they have any contractual obligations to maintain existing rates of pay, and remedies are available to employees at common law if an employer unilaterally reduces rates of pay of existing employees.

**Senator ABETZ**—Let us assume then that there is no contractual obligation. In those circumstances, would the employer be acting legally until such time as a take-home pay order is made? ‘In addition employers should consider whether they have any contractual obligations’ suggests that will not be the case with every employer. Therefore, there must be some employers who do not have such a contractual obligation. In those circumstances they would be acting legally in paying the lesser sum, until such time as a take-home pay order is made or ordered. That is correct, is it not?

**Mr Wilson**—I do not know if it is. It depends on the nature of the take-home pay order.

**Senator ABETZ**—No.

**Mr Wilson**—It does. Clearly it depends on the nature of the take-home pay order.

**Senator ABETZ**—There is no take-home pay order in existence. That is why the person is taking the take-home pay order: to have their income brought back to where it was. Until such time as the take-home pay order is made, would the employer have been acting legally and within the law in paying his worker a lesser sum if there were no other contrary contractual obligations?

**Mr Wilson**—Your proposition is the payment until such time as a take-home pay order is made. Without knowing the form that Fair Work Australia chooses to make its take-home pay orders in, I do not know the answer to that question.

**Senator ABETZ**—Mr Wilson, with great respect, you do. Are you saying that somebody can be found to have been acting illegally when no take-home pay order was in existence? I fully accept it if Fair Work Australia—and I would not blame them, quite frankly—were to make take-home pay orders retrospective, but until such time as the order is made the employer, in the absence of other contractual obligations, would be acting legally in paying his or her worker less than previously and according to the current modern award, which allows for that lesser payment.

**Mr Wilson**—That is what I am alluding to: that I do not know what the policy of Fair Work Australia about retrospectivity might be or what it could be. I am not trying to—

**Senator ABETZ**—Are you saying that a take-home pay order could include in it a penalty against the employer for having paid according to the modern award?

**Senator Arbib**—That is not what Mr Wilson said.

**Senator ABETZ**—I am sure he can answer for himself as an independent authority.

**Senator Arbib**—That is not what he said.

**Ms James**—I am not sure that penalties as such are what we are discussing. Retrospectivity and/or orders for back pay could be within the contemplation of take-home pay orders.

**Senator ABETZ**—I fully agree with that, but no illegality is being undertaken by the employer whilst paying according to the modern award, which is a lesser sum than previously; there is no contractual obligation requiring otherwise in the absence of a take-home pay order.

**Ms James**—I think that, with due respect, it is a very pedantic discussion to talk about what may or may not be unlawful. The take-home pay order is a remedial mechanism—

**Senator Arbib**—She is right; it is.

**Ms James**—or a mechanism for obtaining remedial orders in the event that these events occur.

**Senator ABETZ**—I know that.

**Ms James**—The legislation and the modern awards state quite clearly that it is not intended that take-home pay—bearing in mind that that is an holistic concept, not a line-by-line concept, in terms of what pays are made up with—is not to be reduced. We do not yet know—and we are speculating about—the nature of the orders that may emerge out of Fair Work Australia. I do not know that it is appropriate for us as a regulator to be speculating

about what they might look like, what they may or may not do and what may or may not be unlawful, when we do not know the nature of those orders. The propositions you are putting to us are difficult for us to answer honestly because we are talking about hypothetical situations, and I am not sure that they are appropriate for us to be answering.

**Senator ABETZ**—Unfortunately, I might happen to be an employer and you say, ‘Well, it’s not appropriate to answer that,’ and the employer might say: ‘I have no contractual obligation as outlined in 7.3. There is a new modern award. I haven’t been subjected to a take-home pay order. Therefore, what is there legally stopping me from paying that lower sum as per the modern award?’

**Senator Arbib**—This is exactly the same hypothetical debate we got caught up in last night.

**Senator ABETZ**—And you, Ms James, and the Fair Work Ombudsman, who are advising employers on a regular basis, cannot answer that question.

**Mr Wilson**—I think that until we see more information about the form of take-home pay orders it is difficult for us to go further.

**Senator ABETZ**—It is, Mr Wilson—and you know this, with great respect—disingenuous to refer to the take-home pay order, because the question is predicated on the absence of a take-home pay order. In the absence of a contractual obligation referred to in paragraph 7.3 of your guidance note or memorandum, paying according to the modern award, which is a lower sum than the previous sum, would be legal.

**Senator Arbib**—Can I just say, Mr Wilson and Ms—

**Senator ABETZ**—I am sorry, but we have the independent statutory authority here, which—

**Senator Arbib**—That is the case; they have clearly answered your question. You do not like the answer. I am sorry, but that is the answer Mr Wilson and Ms James have now provided.

**Senator ABETZ**—No, I am asking the question—

**Senator Arbib**—Chair, I would say the question has been answered.

**Senator ABETZ**—I am asking what advice would be given to an employer who says: ‘I am not subjected to a take-home pay order. I don’t have any of these contractual obligations that you refer to in paragraph 7.3. The modern award allows me to pay less so I am going to pay less.’ Would that employer be in breach of any of the Fair Work legislative framework in the absence of a take-home pay order and in the absence of a contractual obligation?

**Mr Wilson**—I am advised that it would be difficult, if not impossible, to imagine a circumstance where there is not a common law obligation to maintain the pay. Our first proposition to the person would be that that is more than likely to be the circumstance. It would then be our second proposition that the worker is certainly entitled to make a take-home pay order, and until we see the jurisprudence of Fair Work Australia on the subject it probably would succeed.

**Senator ABETZ**—If it is difficult to foresee such a circumstance, such an outlandish proposition that I have put, can you explain why we have take-home pay orders? If every employer is going to be subjected to this contractual obligation in any event, why on earth did we need the take-home pay order regime let alone these clarifying regulations that were just dropped late last month, earlier this month—no, in May.

**Senator Arbib**—I think the question has been answered.

**CHAIR**—We have covered this at length both last night and again now.

**Senator ABETZ**—So, all of this regime of take-home pay orders, according to the Fair Work Ombudsman, is very difficult to understand or see how it could possibly arise?

**Senator Arbib**—No, that was not the answer at all. That was not the answer at all.

**Senator ABETZ**—And the employer that wins will not be giving advice—

**Senator Arbib**—Nothing is—

**CHAIR**—You ought not just repackage the evidence that has been given and put it as if that was what was said. As I draw everyone's attention to—and it has been referred to a few times—the *Hansard* is there and the evidence will speak for itself.

**Senator ABETZ**—It is, absolutely, and I assure you, Minister, it will be circulated widely.

**Senator Arbib**—Yes, I am sure it will be, as will yours.

**Senator ABETZ**—There is some very good work that the Fair Work Ombudsman does. All the work that the Fair Work Ombudsman does is good, I am sure, but is sometimes constrained by certain frameworks within which they have to operate, but can I quickly turn to the issue of my letter to you and the speech in the Senate relating to the Church of Scientology?

**Mr Wilson**—Certainly.

**Senator ABETZ**—I understand an inquiry is underway. Thank you for your letter in response to me. And being very conscious of the fact that an inquiry is underway, can you give us an update within the constraints that would be appropriate in the circumstances?

**Mr Wilson**—I will ask Mr Steven Ronson to respond to that question.

**Mr Ronson**—I have been advised that on 8 March 2010 the ABC's *Four Corners* aired allegations that the Church of Scientology had not paid members for work performed. As is our usual practice we considered, in light of these allegations, whether compliance activity was required, and I can confirm that we have commenced an investigation into the Church of Scientology.

**Senator ABETZ**—Is it proceeding? When do you think you might have it completed?

**Mr Ronson**—That is a very difficult question to answer. I am reluctant to discuss any details of the investigation for fear of prejudicing it.

**Senator ABETZ**—I accept that an inquiry is underway.

**Senator XENOPHON**—I understand your reluctance. Can you indicate whether you are receiving the cooperation of the parties you have sought to interview in relation to this inquiry?

**Mr Ronson**—I think it is best if I do not disclose any details relating to the investigation.

**Senator XENOPHON**—Can you indicate whether there have been any challenges to your jurisdiction in terms of your inquiry?

**Mr Ronson**—I think it is best if I do not disclose any information.

**Senator XENOPHON**—I guess, finally, in case it is third time lucky, could you indicate the sorts of resources that are being used by your office to look at this?

**Mr Ronson**—Again, I think it is best if I do not disclose any details.

**Senator XENOPHON**—Would it be prejudicial to indicate whether you have one or half a dozen?

**Mr Ronson**—I fear any remark would be prejudicial.

**Mr Wilson**—We can certainly advise that we take the complaints and the information received from you and Senator Abetz seriously and we are ensuring that there are appropriate resources being provided and would continue to be provided. Obviously in relation to the entities being investigated we need to deal with them in a proper manner as well, but we can certainly commit that we will provide proper resources—

**Senator XENOPHON**—And I understand the need for procedural fairness, natural justice and the like. Can you indicate, given your previous history of any similar inquiries, what an approximate timeframe would be? Would it be likely to be this year or next year for any conclusion to that inquiry?

**Mr Wilson**—I would have thought as a wild stab that this calendar year would be a feasible period. The investigation, and indeed the complaints, surround whether or not people have been paid appropriately. In the case of a church that is not an immediately simple issue, but it is one obviously that is a threshold issue and it is one that we would be committing to test and, depending on where that goes, it may take a bit longer.

**Senator XENOPHON**—Will you also be looking at any allegations of children working in the organisation in terms of any potential breaches there?

**Mr Wilson**—I will not speak to that one in detail of the investigation. We do not confirm or deny whether that might be what we are doing. But what I would say as a matter of policy is that the assertion that people are children and underpaid of itself means nothing to an investigation. Children can obviously be quite properly employed in certain circumstances and have rights of employment along with everyone else. What that means in terms of this particular investigation I would prefer not to say.

**Senator CAMERON**—In response to questions on notice put to you at the last budget estimates, you indicated that Fair Work Australia had recovered \$726,426 in the building and construction industry for employees in the six month period from 31 January 2010. You also indicated that your predecessor had dealt with 4,962 complaints, finalised 4,640 complaints and recovered \$5,732,922. How does this compare with other major industries, such as manufacturing, retail and hospitality? I read the lips and it is a ‘take it on notice’, is it?

**Mr Wilson**—Yes, we will take that on notice. I am afraid that we are not that resourced. Can you just repeat, please, the industries you were interested in?

**Senator CAMERON**—Any major industry, but manufacturing, retail and hospitality.

**Mr Wilson**—Certainly in relation to retail and hospitality that should not be a difficult task. As to manufacturing, I am not sure whether we code.

**Mr Loizides**—Yes.

**Mr Wilson**—We do. Do we have that information with us?

**Mr Loizides**—No. I can break it down in terms of numbers of complaints at the moment, but I cannot break it down into those other metrics. I can tell you, for example, in the retail industry we received from 1 July 2009 to 30 April 2010 2,800 complaints. In transport/warehousing it is 1,100 complaints; construction, 1,100-odd; and manufacturing, about 1,000. We can provide those metrics to you on notice.

**Senator CAMERON**—I suppose the areas I would be interested in are manufacturing, retail, hospitality, transport and agriculture.

**Mr Loizides**—We can provide those.

**Mr Wilson**—For what period do you want them?

**Senator CAMERON**—I suppose to make a comparison in the six months to 31 January 2010, and if you can provide the comparison in the period from 27 March 2006 to 30 June 2009—the period you have reported in your answers to questions on notice.

**Mr Wilson**—I think we can do that.

**Senator CAMERON**—You also responded in relation to phoenixing in the building and construction industry that really it was not an issue that you have responsibility for, but you had made some referrals to ASIC in relation to this. I asked how many referrals had been made and you said you could not report on the number of referrals. Why can't you report on the number of referrals on such an important issue?

**Mr Wilson**—I must admit I am puzzled about that as well.

**Senator CAMERON**—You answered this to question No. EW0960\_10. You said, 'The Fair Work Ombudsman does not keep specific data on referrals to the Australian Taxation Office.' I just wonder, why?

**Mr Wilson**—I apologise for the look of confusion. We certainly recall that information and the response to you. We are not attempting to be disingenuous. Extracting that information from our database to actually find out those occasions where we have written to ASIC over that length of time would be a difficult, if not impossible, task. Notwithstanding that, I would have thought we could probably do better than simply say that we cannot tell you anything. At the risk of offending you, if we can take that on notice and try to come back—

**Senator CAMERON**—I am not easily offended.

**Mr Wilson**—But we will try to come back with a better answer.

**Senator CAMERON**—I am not sure I am after a better answer. I am after an appropriate answer. If you do not have that information for the past few years, can you ensure that the number of referrals is collated from now on so that if I ask the question again you can tell me the number of referrals?

**Mr Wilson**—Certainly. We should be able to commit to that in the future.

**Senator CAMERON**—This is the confusing area. I refer to the issue of referrals for sham contracting. I have just had a look at a website called Construction Matters. Construction Matters is a magazine. They say they are a living source of news and information for building industry professionals throughout Australia. What they say in this magazine is that the Fair Work Ombudsman is responsible for investigating sham contracting arrangements. This is a magazine which says they are a living source of news and information on the issue of sham contracting. We had a bit of a debate on this at the last estimates where you indicated there was some arrangement entered into between the Fair Work Ombudsman and ABCC in relation to sham contracting; is that correct?

**Mr Wilson**—That is correct.

**Senator CAMERON**—The answer that you gave, which is EW0867\_10, is that the Australian Building and Construction Commission generally has responsibility for the investigation of allegations of sham contracting within the building and construction industry. That is what you have given me in response to my question. I want to draw your attention to the fact that the ABCC, in a response to me, in EW0977\_10, at the same round of estimates, indicated that they had referred four sham contracting issues to the Fair Work Ombudsman. If the industry is unsure, if the industry is saying, 'We think it's the Fair Work Ombudsman,' and the ABCC is saying, 'It's the Fair Work Ombudsman that referred four of these issues to you,' then why are you responding to me and saying it is an issue for the ABCC? I am totally confused about this.

**Mr Loizides**—It depends on the scope of the allegations. If it is on a major building site with multiple contractors involved, it is more appropriate for the ABCC to investigate those particular matters. However, in some circumstances where there are allegations of sham contracting on small building sites, or what we would refer to as cottage industry, we may be the more appropriate authority to investigate those.

**Senator CAMERON**—This is the first time I have heard this. Why was that not outlined at the last estimates?

**Mr Loizides**—I was not at the last estimates. I cannot remember if I presented.

**Mr Wilson**—My recollection of the last estimates is that the questions you put were put on notice to us. I do not recall a significant debate at the last occasion.

**Senator CAMERON**—I ended up putting them on notice because I could not get the questions answered in the session.

**Mr Wilson**—I suppose it depends on the question that you are asking. If you are asking: what was the fate of those four matters that the ABCC—

**Senator CAMERON**—I have not asked that yet, but I will come to that, so keep it in mind. I am not asking that at the moment. I am asking: how do we deal with the confusion? Have you ever tabled the written arrangement that you have between you and the ABCC at estimates?

**Mr Wilson**—I believe we have. Either Mr Lloyd or myself has tabled it. I would need to check.

**Senator CAMERON**—Can you check, because I must say that I am not sure. If you have not, can you table that agreement? How does the union movement know where to go to with a specific issue? Has there been any advice from the Fair Work Ombudsman that delineates this cottage industry versus a multiple contractor approach?

**Mr Loizides**—As part of the agreement the senior officers of the ABCC and I, for example, would consult on the matter and make a determination on who is the best agency to investigate those particular circumstances.

**Senator CAMERON**—Is that part of this agreement?

**Mr Loizides**—From memory, the agreement talks about consultation between the two agencies, yes.

**Senator CAMERON**—The agreement does not delineate who does what?

**Mr Loizides**—No.

**Senator CAMERON**—Is that confusing? The industry cannot make a call and say: ‘This is how it works. This is the agency I should go to’—is that correct?

**Mr Wilson**—No, I do not believe it is.

**Senator CAMERON**—Can you tell me why not?

**Mr Wilson**—From my recollection, the agreement refers to matters that raise issues of systemic compliance in relation to building industry participants within the meaning of the ABCC legislation or going to the ABCC. It then refers all other matters, including money matters, going to what was the Office of Workplace Services, which is when the agreement was prepared. The conversation that I believe we have had from time to time with both construction companies and unions has been exactly that point. If it is a building industry participant and a systemic matter, then the ABCC has carriage and other matters come to what is now the Fair Work Ombudsman.

**Senator CAMERON**—Why does an organisation that writes generally to the construction industry and describes themselves as a leading source of news and information does not make that delineation and have on their newsletter simply that people should come to you?

**Mr Wilson**—Firstly, I do not know that publication. However, in terms of the invitation that sits behind the question, I am certainly prepared in our organisation to take that on and to ensure that the industry is, between ourselves and the ABCC, better informed about which matters go where.

**Senator CAMERON**—The ABCC still have on their website that they deal with sham contracting arrangements. They have fact sheets on sham contracting arrangements on their website. I have been involved in the industry a long time. You guys do not seem to understand the importance of dealing with sham contracting arrangements, because you do surveys, you say that the survey shows nothing and that there is not a problem here, and yet anyone who is involved in the industry knows that sham contracting is about ripping off the tax system and individual employees. And yet there is this juggling act between ABCC and Fair Work Ombudsman in relation to who does what. Can you understand why I am confused and frustrated about this?

**Mr Wilson**—I can, and I certainly understand and appreciate what it is that you are saying. In relation to the messaging about which matters go where, that is certainly something we are happy to take on as a task and try to improve. In relation to the earlier part of your question about surveys, I am not sure I would accept that proposition. We speak to people about their experiences and we do use surveys. There have been instances where we have taken matters to court that relate to sham contracting, and I am happy to bring some evidence to the table about what action we have in the courts about sham contracting.

**Senator CAMERON**—That would be helpful.

**Mr Wilson**—In relation to the proposition that we take surveys and then stop at that, the difficulty we face—

**Senator CAMERON**—No, that is not what I put to you.

**Mr Wilson**—That is the proposition that I heard.

**Senator CAMERON**—No. I did not say you stop at that.

**Mr Wilson**—If I can continue, the difficulty we have—

**Senator CAMERON**—Please do not verbal me.

**Mr Wilson**—No, we will not. The difficulty we have with investigations involving sham contracting is the difficulty in obtaining real evidence that we can do something with. We always take matters further if we have that evidence. It might be appropriate if I could call upon Mr Johns to talk about the litigation we presently have on foot about sham contracting, which might give you some insight.

**Senator CAMERON**—I do not have a lot of time. How long will this take?

**Mr Johns**—I can inform you that we have commenced four matters involving sham contracting. The difficulty in these matters is the assessment that needs to be made as to whether or not the defence that is available in section 900(2) might be available to the alleged wrongdoer. We have to make an assessment about whether or not that defence would be available to them.

**Senator CAMERON**—I am happy for you to provide on notice the details of why it is so difficult for you. I am happy to come back and have a look at that at the next estimates. For the purposes of the time limits that I have at the moment, I cannot go through every individual case and look at the arguments in that case. If you want to give the committee that on notice, I am happy to have a look at that and then I might be in a position to come back and take up further questions with you next round. I would ask if you could do that.

**Mr Johns**—I am very happy to do that.

**Senator CAMERON**—The four cases that you talk about, are these the four that the ABCC has said that they have referred to you?

**Mr Johns**—I would have to take that on notice. We do sham contracting matters not just in the building and construction industry. We have litigated other matters in other industries in relation to sham contracting, so there may not be a complete overlap.

**Senator CAMERON**—Can you tell me what happened to these four ABCC matters that were referred to you?

**Mr Johns**—I will take it on notice.

**Mr Wilson**—If I can clarify one aspect, the work we do in relation to sham contracting, I would say, falls into capital ‘S’ and small ‘s’ sham. There are some which relate to the specific provisions of the sections of the act that Mr Johns has referred to, ‘S’, and then there are some which relate to circumstances where workers have been termed contractors when at law they are employees, but they do not fit the full sham contracting provisions. We will clarify that for you.

**Senator CAMERON**—I am happy for all of that to be clarified, because it is an issue that needs clarification. Quite clearly, the ABCC have statutory responsibility in this area. Is it your understanding that the ABCC have given up or are not fulfilling their statutory responsibility and that you have adopted that responsibility in a voluntary agreement?

**Mr Wilson**—No, that is not my understanding.

**Senator CAMERON**—What is it, then? They have a statutory responsibility on sham contracting and you have said that you have an agreement. That means they do not pursue it and you pursue it. How is that not the ABCC giving up their statutory obligations to another agency?

**Mr Wilson**—The proposition that I have put is that I do not know, in any detail, the work that the ABCC undertakes in sham contracting. I could not say what they do. What I can say in relation to our work, and particularly the agreement with the ABCC, is that the specific agreement is that matters that do not raise what I call a systemic issue for a building industry participant come across to the Fair Work Ombudsman. That is different from the proposition that you are putting to me.

**Senator CAMERON**—I am not sure I am quite clear on what you are saying there. I will have a look at the *Hansard* transcript and come back to you on that. How many referrals have you had from the ABCC on sham contracting since you last appeared at estimates?

**Mr Wilson**—I could not tell you on sham contracting. We will take that on notice.

**Senator CAMERON**—You know I have been here each time you have been along. I have asked you questions about sham contracting and referrals. This is a contentious issue. You cannot honestly say to me that you cannot tell me if you have had any referrals?

**Mr Wilson**—I cannot personally, no.

**Senator CAMERON**—Do you not have one officer here who can tell me if there has been a referral from the ABCC since your last estimates appearance?

**Mr Lozides**—I can answer that.

**Mr Wilson**—Is the proposition that you put, ‘How many referrals from the ABCC?’ or is the proposition, ‘How many referrals in relation to sham contracting’? They are quite different questions.

**Senator CAMERON**—From the ABCC.

**Mr Lozides**—We have received six referrals this financial year.

**Senator CAMERON**—Since?

**Mr Loizides**—From 1 July.

**Senator CAMERON**—Did you have discussions with Mr Lloyd or one of his officers in relation to those referrals?

**Mr Loizides**—No, I have not.

**Senator CAMERON**—You told me that you sit down and have these discussions, but in relation to those six matters that did not happen?

**Mr Loizides**—The response I gave previously was in regard to sham contracting. Where it is a standard wages and conditions matter, as per the agreement, that is referred to us.

**Senator CAMERON**—What I am asking you is about referrals in relation to sham contracting.

**Mr Loizides**—I have had no discussions in this financial year regarding sham contracting.

**Senator CAMERON**—And no referrals. Discussions and referrals are different things.

**Mr Loizides**—Can I take that one on notice?

**Senator CAMERON**—You cannot tell me if you have had any referrals from ABCC?

**Mr Loizides**—In regard to sham contracting this financial year?

**Senator CAMERON**—Yes.

**Mr Loizides**—No, I cannot answer that. I will take that on notice.

**Senator CAMERON**—Is there an officer here responsible for sham contracting that can tell me if you have had a referral? Do you have one officer here on that issue?

**Mr Wilson**—No, we do not.

**CHAIR**—Do you have much more, Senator Cameron, because we are due for a break?

**Senator CAMERON**—I have two quick questions.

**CHAIR**—We will try to deal with them quickly.

**Senator CAMERON**—What, if any, is the rule of the Fair Work Ombudsman in enforcing payment of market salaries to 457 visa holders, including recovery of back pay? Is that your responsibility?

**Mr Wilson**—I will ask Mr Campbell, who is the executive director of our policy and education group and who is responsible for this area, to reply.

**Mr Campbell**—With regard to the market rates program attached to the new 457 visa arrangements, our role is to enforce any underlying instrument that might attach to those visa holders. We do not have an exclusive jurisdiction to enforce the market rates aspects of that regime. That enforcement mechanism rests with DIAC at this point in time. I do not pretend to be an expert on the legislation that enables DIAC's new role in that space, but I am aware that their secretary can appoint other public servants as inspectors under that legislation to enforce their laws.

**Senator CAMERON**—This sounds eerily similar to the problem we have with ABCC and the Fair Work Ombudsman, unless there is some clarity established. How does someone know where to go on this issue? Can they come to you?

**Mr Campbell**—Certainly. I can say that over the last two financial years we would have recovered about \$2 million for visa holders under that regime—under the former 457 regime. We have good relationships with DIAC and community organisations. We do a lot of work with international student groups and other forums that engage with migrant workers to make sure that, if they have some concern, they will come to us.

**Senator CAMERON**—Why the good relationships? If a 457 visa worker has a problem and wants it investigated then they can go to their union or come to you and you will undertake an investigation?

**Mr Campbell**—Where we have jurisdiction to do so, we will, yes.

**Senator CAMERON**—There have been reports of widespread subcontracting arrangements in the Northern Territory which are an abuse of the sham contracting issue. Has the Fair Work Ombudsman looked at subcontracting in the Northern Territory?

**Mr Loizides**—Yes, we have.

**Senator CAMERON**—What has been done?

**Mr Loizides**—We have conducted a number of investigations. I cannot recite the number of employers, but we are in the process of conducting an investigation into those allegations.

**Senator CAMERON**—Is that a singular investigation or multiple investigations?

**Mr Loizides**—It is an investigation into multiple employers.

**Senator CAMERON**—An investigation into multiple employers.

**Mr Loizides**—That is correct.

**Senator CAMERON**—Have you considered doing a survey in relation to sham contracting in the Northern Territory?

**Mr Loizides**—Can you clarify that?

**Senator CAMERON**—You have been involved in surveys on sham contracting elsewhere. Have you given any consideration to conducting surveys on the incidence of sham contracting in the Northern Territory?

**Mr Loizides**—No, not in that broad sense.

**Senator CAMERON**—I will ask you to take this on notice. Given the reports of the widespread sham contracting, why have you not given any thought to that and whether you would consider conducting such an investigation?

**Mr Loizides**—I will take that on notice.

**Senator CAMERON**—Thank you.

**Proceedings suspended from 3.49 pm to 4.04 pm**

**CHAIR**—We will resume these estimates hearings. We are with the Fair Work Ombudsman. Mr Wilson, while other senators arrive, could you tell me what your position was prior to your being the Fair Work Ombudsman?

**Mr Wilson**—How far back do you want to go?

**CHAIR**—The previous one.

**Mr Wilson**—Before July 2009, I was the Workplace Ombudsman.

**CHAIR**—Is this a fairly similar role?

**Mr Wilson**—The organisation has doubled in size since then. It has brought in the old Workplace Ombudsman, and the Workplace Authority joined in July. They are roughly equal size organisations. The Workplace Authority, of course, are pre the agreements and they run the infoline and information services.

**CHAIR**—Were you automatically appointed to your new position?

**Mr Wilson**—No, I was not. It was an advertising process.

**CHAIR**—How did you get it?

**Mr Wilson**—I wrote an application in response to an advertisement, I think, and then there was the usual interview process.

**CHAIR**—Thank you. Senator Abetz has some questions.

**Senator ABETZ**—On to some good work—or some ‘other’ good work, I should say—that the Fair Work Ombudsman does, and that is collect wages that should have been paid. As a result of the February estimates, you provided me with some information. This is interesting in that it might, in fact, have a wrong date on it: ‘Wednesday, 10 February 2009’. I dare say it should have been 10 February 2010. Yes, it cannot be 10 February 2009, because the table tells me about 1 July 2008 and 30 June 2009. Anyway, you gave me a very comprehensive and detailed list of the businesses that have been prosecuted and the amount of money collected for wages due and payable. Using a convenient cut-off date, if you have such a date, could you give me an update on how much in all you have collected?

**Mr Wilson**—We do.

**Senator ABETZ**—What date is that?

**Mr Scully**—That is 30 April 2010.

**Senator ABETZ**—How much have we collected to date?

**Mr Scully**—We are holding just over \$1.25 million in unclaimed moneys.

**Senator ABETZ**—Is that the amount in unclaimed moneys?

**Mr Scully**—Yes.

**Senator ABETZ**—For how many workers?

**Mr Scully**—That is for just under 5,000 workers; the exact number is 4,983 workers.

**Senator ABETZ**—Right; for about 5,000 workers. Thank you for that. Since the inception, how much have you collected in total?

**Mr Scully**—Our figures go back to 1 July 2008 and there is just under \$1 million.

**Senator ABETZ**—No.

**Mr Scully**—No; I beg your pardon.

**Senator ABETZ**—It must be more than that.

**Mr Wilson**—Can I just ask for a clarification? Are you asking about the moneys that are unclaimed or the total recoveries that we have made?

**Senator ABETZ**—I was asking about the figure collected, but the figure that I was originally given was \$1.25 million unclaimed, as I understood it.

**Mr Scully**—That is correct.

**Senator ABETZ**—I am now moving on—if I am not making myself clear, my apologies—to how much you have collected since you started in this business of collecting due wages. It must be, what, \$30 million, \$40 million or \$50 million?

**Mr Wilson**—I do not have the exact number available from the period 27 March 2006, when we started the office workplace services. Mr Bonggi is just providing us with the information: from 27 March 2006 until 30 April 2010, we recovered a total of \$107 million—

**Senator ABETZ**—\$107 million?

**Mr Wilson**—It was \$107,216,223.

**Senator ABETZ**—That is a lot. Out of the \$1.25 million that you hold, for want of a better term, ‘in trust’, please tell us—and take this on notice—how much of that money has been unclaimed for three months, six months, nine months, 12 months and 24-plus months, if they are appropriate delineations. If you do it in six-month gaps, so be it; but, if you have some convenient delineation in which you can provide that to us, please provide that on notice.

**Mr Scully**—I can give that information to you now, if you wish.

**Senator ABETZ**—I do not need it now and time is going to tick on. If I could ask you to give me that information, that would be helpful in giving me an update. What is happening with and for the Terang hardware store and with the involvement of the Fair Work Ombudsman there?

**Mr Wilson**—I will ask Mr Ronson to speak to that question.

**Senator ABETZ**—How did you become aware of the Terang hardware issue, if I may ask?

**Mr Ronson**—On 5 February 2010, an article appeared in the *Australian*; that was how we came across the matter.

**Senator ABETZ**—That is how you were made aware of the matter, but what engaged you in the matter; was it as a result of a phone call from the department?

**Mr Ronson**—I can only speak from my experience. The article appeared in the morning. What was interesting about the Terang matter was that it presented, if you like, as a self-disclosure. It was an unusual article.

**Senator ABETZ**—Perhaps I may interrupt you there. We had some evidence last night from the department that somebody had made contact to advise you—when I say ‘you’, I mean the ombudsman’s office and not you personally—that Mr Rudd had been on the Neil Mitchell program saying that the matter would be attended to.

**Senator Arbib**—No; that is not what was said last night, if I remember.

**Senator ABETZ**—The department—

**Senator Arbib**—Said that they made contact—

**Senator ABETZ**—With the ombudsman's office.

**Senator Arbib**—With the Fair Work Ombudsman; that is right.

**Senator ABETZ**—That is right.

**Senator Arbib**—But you just added to that that they had relayed the Prime Minister's interview. That was not what was said.

**Senator ABETZ**—They had been made aware of the Prime Minister's interview, because we had a little jovial session that these people do not sit by the radio tuned into 3AW, if you recall—

**Senator Arbib**—I do recall.

**Senator ABETZ**—You do recall that; good—but they were, nevertheless, aware of the prime ministerial interview. But, whether the Prime Minister had undertaken an interview or not, did the department ring you in relation to this matter?

**Mr Wilson**—I am not sure whether they rang me, but certainly I had exchanges or conversations—whether verbally or by email, I am not quite sure—with the department on that particular day. I cannot recall the time at which they came through or the sequencing; but I do recall that, by the time I had the first interchange with the department, we had already had a conversation with the inspectorate about some activity.

**Senator ABETZ**—But was the first contact or discussion on that day about this matter—whether verbal or written; and I do not know how you can have a written discussion but, with the new world of technology, I understand what you mean—initiated by the department to you, by the department contacting the ombudsman or by the ombudsman contacting the department?

**Mr Wilson**—I would have to check my records about what came first, but my recollection is that—

**Senator ABETZ**—So what are you: the chicken or the egg?

**Mr Wilson**—I think I am both at the moment. But my recollection is that we, the Fair Work Ombudsman, had seen the media article—I think you said it was in the *Australian*, Steve?

**Mr Ronson**—Yes.

**Senator ABETZ**—Yes.

**Mr Wilson**—We had seen the press clipping, and my recollection is that the interest of the organisation had been piqued already by the time the department had made contact with us.

**Senator ABETZ**—Right; the department made contact with you. That was the point I was trying to get at. So the department made contact with you and then some interaction followed. As a result of that, did any officers go down to Terang or ring the Terang hardware store?

**Mr Ronson**—Yes. On 5 February, which was the day of the article, one of our inspectors would have made initial contact with Terang.

**Senator ABETZ**—'Would have made' or 'did make'?

**Mr Ronson**—Sorry; made contact.

**Senator ABETZ**—Was that for the purpose of helping to resolve the situation? Let me withdraw that. Are you aware that the Prime Minister on 3AW later that day said that he would send—I think the term was—'Julia's people' down to Terang to try to resolve the issue for these—

**Senator FISHER**—The office of Fair Work.

**Senator ABETZ**—Yes, to assist. Were you ever made aware of that?

**Mr Ronson**—Yes, I was quite aware of that.

**Senator ABETZ**—What did you do as a result of that?

**Mr Ronson**—It might be best if I explain it this way: it is an interesting article that appeared because, as I said before, it is almost a self-disclosure of noncompliance. The article indicates that there may be noncompliance with not only the Fair Work Act but also the Workplace Relations Act. It is not typical for these sorts of articles to appear. It is not normal for employers to come forward and disclose that they may be non-compliant. However, because it was an indication rather than an admission, we felt that the most appropriate initial response was not necessarily to conduct or commence an investigation but to approach with a more inquiry based model. So that first call was effectively a call to Terang to explain our role.

**Senator ABETZ**—On what date was that?

**Mr Ronson**—That was 5 February. Then, on 8 February, we arranged to visit the store. We felt that it was important to conduct a site visit to assist in determining the applicable award coverage.

**Senator ABETZ**—Do you or do you not know what time of day that visit was?

**Mr Ronson**—I am sorry; on 8 February, it was to arrange to visit.

**Senator ABETZ**—To arrange to visit.

**Mr Ronson**—On 12 February we visited the store.

**Senator ABETZ**—Do you or do you not know what time of day that occurred?

**Mr Ronson**—I do not have that information in front of me.

**Senator ABETZ**—Did you undertake it personally, Mr Ronson?

**Mr Ronson**—No.

**Senator ABETZ**—It was your officers then?

**Mr Ronson**—Yes.

**Senator ABETZ**—With whom did your officers speak?

**Mr Ronson**—They met with, provided information to and discussed information with the general manager, Mr Charlie Duynhoven.

**Senator ABETZ**—Was that the only person with whom discussions were held?

**Mr Ronson**—I do not have the complete information of the site visit in front of me. In the information I have in front of me, I have no other names.

**Senator ABETZ**—What happened after that visit on the 12th?

**Mr Ronson**—On 25 February, the employer was requested to take part in a self-audit of their compliance and—

**Senator ABETZ**—Was there a telephone conversation on 22 February?

**Mr Ronson**—I do not have that information in front of me. There may have been.

**Senator ABETZ**—Tell us about 25 February?

**Mr Ronson**—The information I have is that, on 25 February, the employer was requested to take part in a self-audit. The reason that decision was taken was that the Fair Work inspectors had found the employer to be extremely cooperative and very eager to assist the Fair Work Ombudsman, with respect to its compliance activity at the broadest level, and the fair work inspectors determined that a self-audit was appropriate. They asked the employer to do a sample period—this is not unusual—and that was to audit, in the first instance, the period 5 to 26 October 2009.

**Senator ABETZ**—Was that provided to them in the form of a letter dated 25 February?

**Mr Ronson**—I do not have that information in front of me, but that may have been the case.

**Senator ABETZ**—That letter opens up by saying to Mr Duynhoven:

As discussed in our telephone conversation on Monday, 22 February 2010, I am seeking your participation in an audit of employee entitlements.

That is why I asked you whether there was that further conversation on the 22nd. Anyway, I suppose that it would be quite unreasonable for there to be this self-exposure in a newspaper if the person or the business thought they had been doing anything wrong until that time. That would be a fair assessment, wouldn't it? It would hardly be likely that somebody would come out publicly and say, 'Guess what; I've been in breach of an award.' That is not part of your experience in this area, is it?

**Mr Ronson**—It is not common.

**Senator ABETZ**—In your activities, did you discuss the matter with any employees? When I say 'you', I mean your office.

**Mr Ronson**—My understanding is that the Fair Work inspectors did not have any conversations with employees.

**Senator ABETZ**—All right; that covers that off.

**Senator FISHER**—Since the matter was raised in February, have you or the Fair Work Ombudsman had any discussions with any of the employees involved?

**Mr Ronson**—My understanding of this particular matter is that there were no conversations with employees—which, I need to say, is not unusual for an audit methodology—because there were no complainants, as such.

**Senator FISHER**—Indeed. In respect of the audit, Senator Abetz has referred to your organisation's letter of 25 February, which referred to a discussion with the general manager

on 22 February. Are you aware of allegations that, in fact, the press found out about the audit before the business did? Also, can you comment on such allegations?

**Mr Ronson**—I am sorry; could you repeat that?

**Senator FISHER**—Are you aware of allegations that the press found out about the proposed self-audit before the business was advised of it? Also, what is your comment on such allegations?

**Mr Ronson**—I have no knowledge of it; the information in front of me does not disclose that particular sequence.

**Senator FISHER**—Can you take it on notice to comment on that and to see whether you have any further information that might shed some light on that?

**Mr Ronson**—Certainly.

**Senator FISHER**—Thank you. At any time, was FWO contacted by the Deputy Prime Minister or the Prime Minister or his office in respect of this matter?

**Mr Ronson**—I would probably need to refer the Fair Work Ombudsman to that question.

**Mr Wilson**—I am sorry, Senator; I missed that question.

**Senator FISHER**—Mr Ombudsman, was the Fair Work Ombudsman contacted by the Prime Minister or the Deputy Prime Minister, or his or her office, about this matter at any time from when it was first raised back in February until now, some four months later?

**Mr Wilson**—I do not believe that I have had conversations with the minister's office on the subject.

**Senator FISHER**—Or the Prime Minister's office?

**Mr Wilson**—Not that I am aware of. I am sorry; that was vague. The answer is no.

**Senator FISHER**—At any stage, has Fair Work Australia been instructed or requested to contact any of the workers involved? This goes back to Senator Abetz's question.

**Mr Wilson**—Your question was—

**Senator FISHER**—I am sorry; the Fair Work Ombudsman.

**Senator Arbib**—Would you just repeat that question?

**Senator FISHER**—At any stage, in the four months since the dispute unfolded, has the Fair Work Ombudsman been requested or instructed to speak with one or more of the workers involved?

**Mr Wilson**—We have received no instruction on that matter.

**Senator FISHER**—I understand from your—

**Senator ABETZ**—What about 'or request'?

**Mr Wilson**—Or, secondly, request.

**Senator FISHER**—I understand from your answer to—

**Mr Wilson**—If I can elaborate, the point I was trying to make a little earlier was that the sequencing in the matter overlaps. To my understanding, we had already initiated some sort of

action and there was then a dialogue between ourselves and the department. I cannot speak for others about what they did or did not ask me to do, but there have not been directions or requests to us in terms of our action.

**Senator FISHER**—In any event, I understand your answer to Senator Abetz to be that, in the four months since the dispute unfolded, there has been no interaction between the Fair Work Ombudsman and any of the employees involved. Is that right?

**Mr Ronson**—Yes.

**Senator FISHER**—Regarding Mr Ronson's answer about a self-audit, I understand that such an audit would not necessarily involve the workers concerned. Indeed, if the Fair Work Ombudsman's role essentially is to enforce existing laws and educate people about compliance, would you see any role for the Fair Work Ombudsman in resolving this matter for the workers, for the future? Is there any role for the Fair Work Ombudsman in that?

**Mr Wilson**—I am not quite sure what you mean by 'role'.

**Senator FISHER**—There may or may not be underpayment. That is a matter that is properly within the province of the Fair Work Ombudsman. There may or may not be underpayment or breach of industrial instruments through behaviour to date. But the allegation is that an assurance was given by the Prime Minister and the Deputy Prime Minister that the Office of Fair Work, whoever that may be, will 'work it through' and 'speak with the employer and the young people later today'—that is what the Prime Minister told Neil Mitchell on 2 February—and 'will have its officers deal with these folk, employer and employees, and see what we can work out'. It may not be part of the role of the Fair Work Ombudsman to work out things for the future. To date, you have a role in respect of enforcing laws and fixing things up; but what role does the Fair Work Ombudsman have in helping these kids get their jobs back? I am told by the Liberal candidate for Wannan, Mr Tehan, that all these kids want is to get their jobs back. Despite the reassurances from the Prime Minister and the Deputy Prime Minister, nobody has spoken to these kids about what they want in the process. Is that part of the role of the Fair Work Ombudsman or not? It may not be, but then I just wonder who else it would be?

**Senator Arbib**—I am sorry; can I—

**Senator FISHER**—Is that part of the role of the Fair Work Ombudsman?

**Senator Arbib**—That is fine, and I am sure that Mr Wilson will want to answer that. I just want to make the point though that there are requests in to vary the award, which point the department made last night.

**Senator ABETZ**—Yes, we know that.

**Senator Arbib**—Of course, you know that, but—

**Senator FISHER**—Big deal, Minister; thank you. Mr Wilson?

**Mr Wilson**—The question was lengthier than that, and that certainly is part of the 'no'. We took the matter in this way: it was a self-disclosure by the employer that potentially they did not know the obligations cast by the pre-existing award and they did not then agree with the obligations cast by the new modern award. We took it in the first instance primarily as a conversation with the employer about what their rights and obligations might be. My

understanding of the history of the matter is that also, at some point around that time, a conversation was initiated through the media, perhaps by the employer but certainly by the employer representatives, that there may be benefit in taking an application to Fair Work Australia to amend the award. My understanding is that that application is still on foot; I am not aware that it has been determined. Within all that, we saw our role as being to ensure that there was compliance and to keep out of the way of Fair Work Australia while they were making the determination that is presently on foot.

**Senator FISHER**—Given the public interest in this matter, would you see it as being appropriate for the Fair Work Ombudsman to brief your minister about the outcome of this particular incident?

**Mr Wilson**—I am not aware of whether we have been briefed formally on the subject.

**Senator FISHER**—If that is so, would you contemplate informing your minister that there has been no contact between your organisation and the employees concerned so that at least the government becomes aware that your agency has not been able to assist in fulfilling that part of the Prime Minister's and the Deputy Prime Minister's promise? Let us connect some dots here. Would you contemplate doing that?

**Mr Wilson**—In terms of connecting the dots, the contemplation that we would put is that we need to brief our minister in the way that we see fit. I am then constrained, obviously, in terms of the Public Service Act, in what I can discuss regarding our conversations with our minister—and, of course, we are mindful of that. But, when we make our briefings, we have to determine what relevant information is; and, of course, we will do that.

**Senator FISHER**—It is probably not relevant that you have not spoken to these kids, but the trouble is that nobody has, despite the promises.

**Mr Wilson**—Yes.

**Senator FISHER**—Thank you.

**Senator ABETZ**—Perhaps I can follow up quickly. Can you please give me the time when, on 5 February, the first contact was made by the department with your office? If you do not have that now, please give it to us on notice. Then—chances are that this question goes to you, Mr Ronson—can you tell me what time of day the Ombudsman first made contact with the Terang hardware store?

**Mr Ronson**—We will take those matters on notice.

**Senator ABETZ**—That would be an interesting sequence to know. I agree with the Ombudsman when he says that your officers or the Ombudsman is involved in pursuing rights and obligations; that is clearly the role of the Ombudsman. But it is not within your charter, in fact, to resolve the sorts of issues that would enable these young people to get their jobs back; that is not within your charter, is it?

**Mr Wilson**—I suppose that it depends very much on the circumstances in which someone said to us that they had lost their job. So, clearly, in some instances, it may be that the best thing we can do is to give them some advice about how they can make an unfair dismissal application to Fair Work Australia or how, in other instances, there is jurisdiction where we may choose to investigate claims of an unlawful termination.

**Senator ABETZ**—That is interesting, because you heard about Terang hardware through the media and then you rang the employer to pursue an audit. You undoubtedly know through the media also that these young people, these students, have now lost their after hours work, but you have not bothered to contact them to ascertain whether they might have some legal rights to pursue. That is just an interesting observation that I make, following Senator Fisher's comments that no contact had been had.

**Mr Wilson**—No, I would not agree with that proposition.

**Senator ABETZ**—With the students? You have had contact with the students?

**Mr Wilson**—No. I would not agree with the proposition that you put before that. The circumstance in which these people find themselves is that the employer is demonstrably agitating their claims through the employer group and perhaps through the candidate for parliament whom you have mentioned. It is also the case that, based upon what has appeared in the press, it appears that some of the workers have been agitating that through the same means as well. I think there comes a point where we say, 'Look, we can't add anything to that particular circumstance,' and I think that was the view that we took certainly by at least April.

**Senator Arbib**—And, again, Fair Work Australia have an award variation in front of them right now.

**Senator ABETZ**—Yes, thank you; we know of that. That is completely irrelevant, Minister.

**Senator Arbib**—No, it is not completely irrelevant.

**Senator ABETZ**—No. These interventions are singularly unhelpful and they do not put you in a good light either.

**Senator Arbib**—It is important in terms of minimum hours; it goes to minimum hours.

**Senator ABETZ**—Just so we are clear: there was no contact with the students by the Fair Work Ombudsman.

**Mr Wilson**—That is Mr Ronson's evidence.

**Senator ABETZ**—And are you aware that the Fair Work Ombudsman was aware that these students had lost their after school work?

**Mr Ronson**—Yes.

**Senator ABETZ**—But, despite that—

**Senator Arbib**—And there is an award variation in place that is being considered by Fair Work Australia.

**Senator ABETZ**—All right. If this is such an important issue, can I ask the Ombudsman: what is your involvement in the application that is before Fair Work Australia in relation to this award variation?

**Mr Wilson**—We have no involvement in that matter.

**Senator ABETZ**—Thank you. That is what I thought the answer would be. Very helpful, Minister, and a very silly intervention.

**Senator Arbib**—No. In fact, it is very important to those young people, I am sure.

**Senator ABETZ**—In no way, shape or form can these people be involved or have initiated or made claims regarding this application before Fair Work Australia. You must have known that. If you did not, at least you have learned something from the—

**Senator Arbib**—There is a variation that is being considered by Fair Work Australia, and you know that.

**Senator ABETZ**—We knew all that beforehand. We are talking to the Fair Work Ombudsman.

**Senator Arbib**—I am making a point.

**Senator ABETZ**—We are talking to the Fair Work Ombudsman, who does not have the capacity to bring applications or to intervene in this application. So how this relates to the Fair Work Ombudsman is, quite frankly, beyond us—

**Senator Arbib**—I am just making a point for you.

**Senator ABETZ**—but stop winding the clock down with these silly interruptions.

**CHAIR**—I do not think they are. It goes to the question on foot and it is about explaining the position, and I think that is fair.

**Senator ABETZ**—Chair, we would not expect you to say anything different and that also does not help us.

**CHAIR**—I know, because you want to hear only what you want to hear. I am interested in ensuring that everyone gets to put on the record the answers to the questions asked so that all the evidence is there before the committee and not just what you or other senators might like to see or hear.

**Senator JACINTA COLLINS**—Or some political candidate—

**CHAIR**—That is right.

**Senator ABETZ**—And the evidence is overwhelming that the Fair Work Ombudsman cannot and has not involved the office in this application before Fair Work Australia.

**CHAIR**—I have made the point a few times: all the evidence is on *Hansard* and it stands for itself and not how other people might like to repackage it or form a view of it.

**Senator ABETZ**—That is all very helpful, thank you.

**CHAIR**—Thank you.

**Senator ABETZ**—Perhaps we can move on to the difficulties being experienced by most newsagents in relation to paper delivery—which modern award applies?

**Mr Wilson**—I am afraid that is one that is a little bit beyond me at the moment. I will ask Ms Smith to endeavour to answer that.

**Ms Smith**—With that particular question, I think I would have to have more detail on the state and the newspaper as well as some more information.

**Senator ABETZ**—I am sorry: which?

**Ms Smith**—You have asked what modern award newsagents are covered under?

**Senator ABETZ**—Yes.

**Ms Smith**—I would need a little more information regarding whether they are under modern awards or still under division 2B—

**Senator ABETZ**—These are the newspaper delivery people for newsagents. At this stage, they might be under the retail modern award or the distribution modern award, or they might be award free. This has not been able to be clarified for the Australian Newsagents' Federation, but I understand that later this year the ombudsman is to embark upon a national audit campaign of retailers, including newsagents. This is one of these examples where newsagents say, 'Just tell us what we should be paying under; we have three options,' and nobody is able to clarify it for them.

**Senator Arbib**—Don't they have an application in front of Fair Work Australia at the moment; isn't that the case?

**Senator ABETZ**—And what do they do in the meantime, Minister? You do not understand. People do not stop delivering papers until Fair Work Australia has finally made a determination; people still expect their papers by 6.30 in the morning. Delivering a job lot of three months worth of newspapers when Fair Work Australia has finally made its determination will not be serving anybody's interests. These good, solid citizens, men and women of Australia, want to know whether they are award-free, under the distribution modern award or under the retail modern award. They do not care which it is; they just want an answer and they are not getting one.

**Senator Arbib**—And that is what Fair Work Australia is—

**Senator ABETZ**—Yes; but what do they do in the meantime?

**Ms Smith**—I cannot specifically answer that. I will have to take on notice which award they are under. But I would say also that we have instituted for industry organisations and unions a special email line to my unit on specific questions that come up where perhaps they are not clear and they want some more information. I would have to see if I have that query on hand and, if so, whether we have responded to it as yet.

**Senator Arbib**—Can I just check on this? I think I have some information that Fair Work Australia varied the award last week and made it the modern retail award. Is that right? I think that is the case.

**Senator ABETZ**—Is it?

**Senator Arbib**—Yes.

**Senator ABETZ**—I am asking the questions; you are to answer them.

**Senator Arbib**—Let me just double-check.

**Senator ABETZ**—And was it backdated?

**Senator Arbib**—Let me double-check. Fair Work Australia varied the award to make it clear that it is the modern retail award. The decision was last week.

**Mr Wilson**—That is consistent with our advice as well.

**Senator ABETZ**—Have we had any occasion where the Fair Work Ombudsman, in writing 'breach letters'—if I can use that term—to an employer in relation to a determination of contravention, has had to say that their letter of contravention subsequently has been

withdrawn, a further contravention letter dated such-and-such was issued and then a final contravention letter dated such-and-such was issued? I am asking whether the Ombudsman has had three cracks at finally getting a contravention letter right.

**Mr Wilson**—If you wish to give us more detail, we will find the answer to that question. But, without detail as to the employer that you are referring to, it would be impossible for us to find that information.

**Senator ABETZ**—Has that ever occurred?

**Mr Wilson**—You have had my answer.

**Senator ABETZ**—Has it ever occurred? It must be within your knowledge—

**Mr Wilson**—No, it is not. I have taken the question on notice.

**Senator ABETZ**—It is not within your knowledge. What about Mr Ronson's knowledge?

**Mr Wilson**—I have taken that question on notice.

**Senator ABETZ**—I have asked Mr Ronson whether it is in his knowledge.

**CHAIR**—The Ombudsman has taken it on notice.

**Senator ABETZ**—No; this is not how estimates works, Mr Wilson. Why is it—

**CHAIR**—Yes, it is. You do not go around just picking anyone in the room and demanding an answer to that question. Mr Wilson has taken it on notice. The question has been taken on notice, so move on.

**Senator ABETZ**—This is Mr Ronson's department and he may well be seized of the information. Why can't he tell us whether there has ever been a circumstance where the Ombudsman's office has had to have three cracks before it finally got its contravention letter right?

**CHAIR**—Because Mr Wilson has taken it on notice—

**Senator ABETZ**—That is ridiculous.

**CHAIR**—so that they can give you a proper, informed answer. That is the purpose for which things are taken on notice.

**Senator ABETZ**—Mr Wilson, there are advisers around you and other people that may be seized of an answer. Would you be willing to consult with them to see if they can advise you as to whether that—

**CHAIR**—The question has been taken on notice, Senator Abetz, so move on.

**Senator ABETZ**—No. This question as to whether he wants to avail himself of the advice that is available to him has not been taken on notice. If he has to take that on notice, we will know exactly what game is being played.

**Senator Arbib**—That is just ridiculous, Senator Abetz; that is silly.

**Senator ABETZ**—Are you willing to advise yourself—

**Senator Arbib**—That is silly, Senator Abetz.

**Senator ABETZ**—No, it is not.

**Senator Arbib**—It is. He has taken the question on notice, Senator.

**Senator ABETZ**—These people have not come to the hearing for a day out from the office.

**Senator Arbib**—This is just theatrics now, Senator.

**Senator ABETZ**—They have come here to assist.

**Senator Arbib**—This is just theatrics, Senator.

**CHAIR**—Move on, Senator Abetz.

**Senator Arbib**—You have said that you were worried about time running out; please.

**Senator ABETZ**—Mr Ronson, have you ever in your experience—

**Senator Arbib**—Senator, the question has been taken on notice and you know it. The chair has told you that. Please move on.

**Senator ABETZ**—No. There are people here that I suspect know or, in fact, do know the answer. All right, Mr Wilson; why are you taking it on notice and refusing to ask those around you that may be seized of that information?

**Mr Wilson**—It is my view that your question is so broad it is not capable of an answer at the moment—

**Senator Arbib**—Fair enough.

**Mr Wilson**—and you are putting to us a proposition—

**Senator ABETZ**—Are you taking it on notice—

**CHAIR**—Now you are not even letting Mr Wilson answer the question you have asked. Just wait and you will get your answer on this one.

**Mr Wilson**—I am putting the proposition that the question is too broad for us to answer. If you wish to particularise it, we will take it on notice; or, if it is so particular that it is obvious, we will answer it today. But, in the absence of that, I suggest that it is not possible for me to answer it. If you have a position about a particular matter where you think we have given those three breach notices, we are happy to look at that.

**Senator ABETZ**—To your knowledge, has every determination of contravention letter gone out and never needed amendment or to be withdrawn?

**Mr Wilson**—No, that would not be my evidence.

**Senator ABETZ**—And, in your experience, you know that those contravention letters have needed withdrawing on the odd occasion.

**Mr Wilson**—Yes, that is my evidence.

**Senator ABETZ**—Has it ever been your experience that they have had to be withdrawn on two occasions in connection with the same employer?

**Mr Wilson**—I do not know. You need to understand that there are hundreds, if not thousands, of these issued a year—

**Senator ABETZ**—Of course, and it is likely that errors occur; I accept that.

**CHAIR**—Just let Mr Wilson complete his answer, please, Senator Abetz.

**Mr Wilson**—but the task that you would set for us of investigating all of the breach notices that we have issued over the past undefined period would be quite substantial, and I think it is reasonable that I ask you to particularise the period and the circumstance that you are referring to.

**Senator ABETZ**—All I am asking you is whether, in your experience, you have ever known it to be the case that a determination of contravention has had to be withdrawn and reissued. You have indicated that you know that to have been the case. I then asked whether you have ever known it, in the one case, to have been withdrawn on two separate occasions.

**Mr Wilson**—I do not have a personal recollection of that, but that is not to say that that has not occurred.

**Senator ABETZ**—Thank you. Would there be people sitting with you who may actually have direct experience of having knowledge of that; and, if there are such people, would you be so gracious as to allow them to share that knowledge with us?

**Mr Wilson**—If Mr Ronson wishes to amplify, he may.

**Mr Ronson**—My comment was going to be that it would require further particulars.

**Senator ABETZ**—Sorry?

**Mr Ronson**—I would require further particulars as to the complaint in question.

**Senator ABETZ**—Look, do not worry about a particular complaint; I am only asking in the broad whether it has ever occurred that a determination of contravention has been withdrawn, had to be reissued, had to be withdrawn and then a final one issued.

**CHAIR**—That question has been taken on notice. We are back to a question that has been taken on notice.

**Senator ABETZ**—No. Mr Ronson, do you have any general experience of that?

**Mr Ronson**—It would not be common.

**Senator ABETZ**—I fully agree with that; and most of your correspondence, can I say, is very good. But you countenance that that is a possibility?

**Mr Ronson**—It is a possibility.

**Senator ABETZ**—Thank you. That, of course, indicates some of the very real difficulties that you, as an office, operate under in seeking to determine the exact nature of a contravention.

**Senator Arbib**—Is that a comment or a question? It sounded like a comment. It was your interpretation, but it was not a question.

**Senator ABETZ**—I hope that the need to withdraw contravention letters on two occasions is not as a result of just straight out sloppiness in the office but as a result of the difficult technical detail—

**Senator Arbib**—That was a serious question, though, Senator.

**Senator ABETZ**—that the Fair Work Ombudsman has to deal with, and that is what I am exploring with Mr Ronson. Very, very helpful, might I add, is Mr Ronson. We were having a good discussion without your intervention, Minister.

**Senator Arbib**—We have heard it officially today: a witness getting the big gold star from Senator Abetz.

**Mr Wilson**—A contravention letter may be withdrawn for a number of reasons.

**Senator ABETZ**—I know that and I accept that as well.

**Mr Wilson**—But I need to put those reasons on record. The reasons that a contravention letter may be withdrawn include a mistake as to the facts of the investigation. The party who has received the letter may point out that the period of hours that people have worked is, in fact, not what is being asserted in the contravention letter; or it may be that some other material fact has been changed, such as our having chosen an incorrect award. Those kinds of mistakes do occur occasionally.

**Senator ABETZ**—Look, I fully agree that there is a whole host of reasons why that broad scenario—which at first was not countenanced but is now being countenanced as a possibility that can be commented on, which I do appreciate—might apply. But could one of those reasons be the technical detail? These things do get complicated from time to time. That is a fair and objective sort of observation, isn't it, Mr Ronson?

**Mr Ronson**—I think it is fair to say that about industrial relations over a long period, in connection with the interpretation of awards, industrial instruments and agreements.

**Senator ABETZ**—And these breaches of contraventions, in fact, may well apply to the previous regime, so I am not trying to comment on the particular regime under which we operate today. But can I now ask the Fair Work Ombudsman: has the office ever informed the unions or a union of its determination prior to informing the company of its determination in a matter?

**Mr Wilson**—I do not know.

**Senator ABETZ**—Sorry?

**Mr Wilson**—I do not know.

**Senator ABETZ**—Would it be an appropriate practice if, prior to—in this case—the employer being notified that a determination of contravention was to be issued, an officer of the Ombudsman were to notify the union first?

**Mr Wilson**—I cannot recall whether that would be in specific contravention of our investigation processes, but certainly I would see that as not an appropriate way to be communicating.

**Senator ABETZ**—Not appropriate.

**Mr Wilson**—Not appropriate. But, as to whether it has occurred, I do not have knowledge. But, again, if you have knowledge, I invite you to put it to us.

**Senator ABETZ**—I will potentially pursue that further. If somebody has a complaint about the Ombudsman, to whom do they complain or how do they deal with it? We had the issue with Comcare this morning regarding the difficulties they had where a person who then

complained had to go to the Commonwealth Ombudsman to complain. I just wonder what happens if somebody is not satisfied, let us say, with the way in which you have calculated wages. They can go to Fair Work Australia, I assume, and have the matter resolved.

**Mr Wilson**—Mr Campbell can come forward and I will invite him to answer the question, as it goes to our review processes and internal reviews.

**Mr Campbell**—A party to our investigation has a number of channels through which to make a complaint about the conduct or outcome of an investigation. Internally, we have a very robust two-stage review process. In the first instance, a complainant or respondent to an investigation can write to the Fair Work Ombudsman and ask that they have a file review conducted. Our standing correspondence goes out to claimants and respondents, articulating that that opportunity exists for them. If a claimant or a respondent feels aggrieved by a decision made by a fair work inspector and that is not resolved through the course of the investigation, they can put that in writing and the file will be reviewed, firstly, through the tier 1 process. The tier 1 process escalates the complaint up through the management chain to an appropriate director—a senior operative within the Fair Work Ombudsman—to review the matters and evidence on the file and then make a determination about whether or not the finding or determination of the inspector was the appropriate one.

**Senator ABETZ**—Is all that information on your website?

**Mr Campbell**—It certainly is.

**Senator ABETZ**—Under what heading would they look, do you know?

**Mr Campbell**—We would have ‘contact us’ information to that effect. Certainly guidance note 8, which has been published recently, sets out the Fair Work Ombudsman’s processes—

**Senator ABETZ**—Yes. But on your home page regarding how to make a complaint, is there a heading?

**Mr Campbell**—I would say that it is there, although it may not be. I am sorry; I have just been informed that it is on the website. I cannot draw you to it at this point in time, but I would say—

**Senator ABETZ**—On the home page?

**Mr Campbell**—Senator, if you would just let me finish—that it is on the final correspondence we send through to claimants and respondents. They have the opportunity to exercise that right when they receive the correspondence setting out the final position.

**Senator ABETZ**—But, if somebody were to ring your information line, for example, and not be helped and they wanted to complain about that, they would not be in receipt of correspondence.

**Mr Campbell**—Under those circumstances, you are not talking with respect to an investigation; you are talking about a general complaint about service.

**Senator ABETZ**—Yes; just a complaint as to how the Ombudsman may have gone about things. Look, please take that on notice; I do not need a detailed answer.

**Mr Campbell**—I did raise three points and I am at the final one. Obviously, as public servants, our decisions and actions are reviewable by the Commonwealth Ombudsman.

Complaints are made to the Commonwealth Ombudsman about our conduct and then it is up to the Commonwealth Ombudsman to assess the issues raised. I can say that we have a very small number of confirmed determinations by the Commonwealth Ombudsman that we have been in error or acted inappropriately.

**Senator ABETZ**—I would have thought that to be the case from what I gather around the community. My question was just general in how you go about it. There is nothing to follow up on in relation to this, as it just goes to general information: who is dealing with the McDonald's case? This is where a commissioner took it upon herself to make referrals, I understand.

**Mr Wilson**—She did, indeed.

**Senator ABETZ**—Mr Ronson will be allowed to tell me, I trust, that an investigation is taking place and he cannot tell us any more. Is that right?

**Mr Ronson**—I am sorry; I will just clarify this. Are you referring to Commissioner Mckenna's referral?

**Senator ABETZ**—You got it in one.

**Mr Ronson**—We have noted that referral and we are currently considering whether compliance activity is required and, if so, of what sort it will be.

**Senator ABETZ**—So you are still determining whether to—I think the correct term is—'undertake a formal investigation'. You are considering whether to take that next step. Is that correct?

**Mr Ronson**—Yes. It may be an investigation, it may be an audit or it may be another form of compliance activity.

**Senator ABETZ**—Thank you for that. I understand that, as part of the education program, the Ombudsman went around to universities.

**Mr Scully**—We did.

**Senator ABETZ**—Would you agree with me in general terms that students, hopefully, represent the most intelligent and savvy sector of the community in relation to what might be their workplace rights and entitlements?

**Mr Wilson**—I will go along with that proposition.

**Senator ABETZ**—So how much money was spent on this and why was priority given to university students as opposed to, let us say, doing a bit more in relation to making sure that small business people comply? They are the ones who most likely will be employing these university students.

**Mr Campbell**—Perhaps I can assist you here. I am not fully abreast of the school leavers campaign, but I would say, probably contrary to your assertions—

**Senator ABETZ**—I am sorry. This was not the school leavers campaign; this was university students.

**Mr Campbell**—The orientation week.

**Senator ABETZ**—Yes; so you have a number.

**Mr Campbell**—I am sorry. To your first proposition that people at university are the most well-educated and well-versed people in being aware of their workplace rights, I would probably say that is not correct. I would say that people entering the workforce for the first time after school would probably have a greater need for knowledge than a person who has been in the workforce for some years. I say that because work experience, to varying degrees, tends to shape one's knowledge of workplace relations. So I think the Fair Work Ombudsman targeting those who are just entering the workforce is an entirely valuable exercise and one which, I think, makes a worthy contribution.

**Senator ABETZ**—So you think university students—first-time entrants into the workforce—have not had previous experience in undertaking work while at high school or during the summer vacation. Look, that is interesting. It is your opinion, and that is fair enough. Can I ask the Ombudsman whether, given some of the circumstances and the delayed educational activities et cetera, compliance enforcement of modern awards will be pursued with vigour; or will there be a degree of leeway in understanding that there is still a degree of confusion and ambiguity and the need for clarification et cetera?

**Mr Wilson**—Most certainly we take the view that there should be a flexible compliance approach taken in relation to modern awards; we need to be fair and flexible. We do not think that is particularly dissimilar to our investigation policy over recent years. We are certainly very mindful that the content of modern awards is not absolutely fixed, even now. Clearly, some of the things that we have been talking about today indicate that there are still variations to come. The work that we will be doing with industry, certainly over the next six to 12 months, is designed to build knowledge of what obligations and entitlements might exist. In some instances, we certainly see quite egregious noncompliance on the part of businesses, and that has nothing to do with the commencement of modern awards or otherwise. Clearly, in those instances, we would expect strong and firm compliance activity to be taken. But obviously, in those instances where people are engaging with their rights and entitlements and obligations but do not yet fully appreciate it in minute detail, we will be taking an educative and proper approach with them.

**Senator ABETZ**—Moving right along, can I ask: which award do you have the most questions about or in what industry sector do you have the most questions? Would it be the cleaning award?

**Mr Wilson**—Ms Smith, can you help us on that?

**Ms Smith**—I can, if you will just give me one moment to get to that particular detail.

**CHAIR**—Do you know that we are finishing at five, which is in two minutes?

**Senator ABETZ**—Yes. That is why I am moving right along.

**Mr Wilson**—A number of calls that we—

**Senator ABETZ**—Look, perhaps you could take that on notice.

**Mr Wilson**—We will take that on notice. We have, off the top, five or so industries.

**Senator ABETZ**—Take it on notice and list the various awards for me; that would be very helpful. Also, on notice, could you please advise us of your 'expanded' role, as I understand it,

with paid parental leave? You will now have a role in investigating complaints in relation to that area; is that correct?

**Mr Wilson**—Obviously, that is dependent upon the passage of the legislation and the things that go with it.

**Senator ABETZ**—Please take that on notice—

**Mr Wilson**—Sure. We will ask for the appropriate—

**Senator ABETZ**—because the government, at taxpayers' expense, has already prepared a document telling us, at page 23, that the role of the Fair Work Ombudsman is to 'work with employees' et cetera and then 'will have a role under the paid parental leave legislation to investigate complaints'. I am just wondering whether you have received extra funding in this budget to deal with that.

**Mr Wilson**—We will take that on notice.

**Senator ABETZ**—All right. I will ask quickly, on notice: the last time around, you told me that there were 1,687 articles available to Fair Work Infoline staff. Can you tell me how many have been produced now for the Fair Work Infoline staff?

**Mr Wilson**—We will take that on notice.

**Senator ABETZ**—Thank you very much.

**CHAIR**—Thank you, Mr Wilson, and thanks to your officers.

**Senator FISHER**—Can I just ask—

**CHAIR**—No. We are out of time, Senator Fisher. Thank you for your appearance before the estimates today and we will see you in November, I think. We will now move on to Fair Work Australia. We will take a very short suspension while Fair Work Australia arrives in the committee room.

#### **Proceedings suspended from 5.00 pm to 5.05 pm**

#### **Fair Work Australia**

**CHAIR**—We will resume these estimates hearings. We are in portfolio agencies and we now have before us Fair Work Australia. Welcome, Justice Giudice and other officers. Do you have any opening remarks you would like to make to the committee before we commence with questions?

**Mr Giudice**—Yes, I do. Thank you, Chair and senators, for the opportunity to make an opening statement. There are two matters that I want to deal with. The first relates to incorrect statements made in the public arena concerning my appearance at estimates. The second concerns the situation that now exists as a result of the Senate resolution of 28 October 2009. That resolution dealt with Senate estimates.

In relation to the first matter, there were a number of misleading statements concerning the statutory nature of the position of the President of Fair Work Australia and related matters. For those involved in the cut and thrust of politics, misrepresentation of one's position may not be an unusual experience. Despite that, the record should be corrected because of the importance of the issues involved, and there are quite a few corrections required. It was widely stated that

I had refused to appear before this committee. As honourable senators who are members of this committee know, that was not the case and that has been acknowledged by the chair, Senator Marshall, in a letter dated 21 October 2009. It is my view that it is inappropriate that the President of Fair Work Australia appear at estimates, and I made this view known to the committee. Never did I indicate that if the committee wished me to attend I would refuse to do so. It was also stated that I had claimed to have the protections enjoyed by a member of the High Court and that such a claim was false. As members of this committee also know, all members of Fair Work Australia do have the protection and immunity of a justice of the High Court. Section 580 of the Fair Work Act reads:

An FWA Member has, in performing his or her functions or exercising his or her powers as an FWA Member, the same protection and immunity as a Justice of the High Court.

It is relevant that the High Court has described the immunity of judges in relation to judicial decisions as an immunity from disclosing any part of the decision making process and that the purpose of the immunity is to ensure that judges may be free in thought and independent in judgment. That is an extract from *Herijanto v Refugee Review Tribunal*, reported in volume 170 of the Australian Law Reports at page 379, paragraphs 13 to 16. In my respectful submission, the same principle applies to members of Fair Work Australia.

It was also widely reported that Fair Work Australia is a government agency or department of which the president is the head. This is also incorrect. Members of Fair Work Australia are not public servants. The president and all of the members are appointed under the Fair Work Act itself. Unlike a public servant such as the head of an agency or department, the president of Fair Work Australia is required to act independently of the minister and the executive government. This is made explicit in section 583 of the Fair Work Act. That section reads:

The President is not subject to direction by or on behalf of the Commonwealth.

It is important to note that the general manager—

**Senator RONALDSON**—On a point of order, Chair. If this is going to be a lengthy statement, I just wonder whether this might be better off being tabled. It will then enable committee members to look at the statement, and, if they have got some questions at a later stage, they can ask them. It is an important matter. I do not know how long the statement goes for. I presume it is in a form that can be tabled for the public record. Perhaps if that was done we might save some time and give committee members and others the opportunity to peruse the statement and then ask any questions as appropriate.

**CHAIR**—It is not a point of order. It is a suggestion you are making.

**Senator RONALDSON**—It is a request.

**CHAIR**—I have invited Justice Giudice to make some opening remarks to the committee and I will ask him to finish those remarks. If he is able to table that statement at the end of his remarks, that would be useful for the committee also.

**Mr Giudice**—I think that I had just reached the point where I was about to quote section 583 of the Fair Work Act. That section reads:

The President is not subject to direction by or on behalf of the Commonwealth.

It is important to note that the general manager is not subject to direction by the Commonwealth, either, except in relation to matters specified in the act, and section 659 deals with that.

Of course, Fair Work Australia, like every other Commonwealth court and tribunal, is a portfolio agency for budget purposes. The president, however, is not the head of the portfolio agency; it is the general manager who has that responsibility. The president does not have any accountability under the Commonwealth's arrangements for regulating budgets and expenditure. While the president can give directions in relation to the manner in which Fair Work Australia is to perform its functions, exercise its powers or deal with matters—and that is in section 582—the power to give directions to the general manager is limited.

The general manager is not required to comply with a direction from the president if compliance with the direction would be inconsistent with the general manager's performance of functions or exercise of powers under the Financial Management and Accountability Act 1997 or if the direction relates to the general manager's performance, functions or exercise of powers under the Public Service Act 1999. In other words, it is clear that it is the general manager who is responsible for financial management and accountability and staffing matters, and that remains the case no matter what direction the president gives. These provisions are in section 658 of the Fair Work Act.

There is also a significant part of the statutory scheme which has apparently been ignored in the public discussion, and that is the guarantee of freedom from outside influence in the performance of functions. This parliament has enacted strong protection for Fair Work Australia members. Those protections are directed to ensuring that they exercise powers and carry out functions free from outside interference. Section 674 creates a number of offences, each with a maximum penalty of 12 months imprisonment. Those offences include the following: conduct which insults or disturbs a member of Fair Work Australia, recklessly using insulting language towards a member of Fair Work Australia, the use of words either by writing or speech that are intended to improperly influence a Fair Work Australia member.

I will now address the second matter. On 20 October 2009 the Senate agreed to a resolution that, relevantly, the President of Fair Work Australia appear before the education, employment and workplace relations committee to answer questions whenever the committee meets to consider estimates in relation to Fair Work Australia. This resolution, in my respectful view, has put the independence of Fair Work Australia at serious risk. The requirement to appear and answer questions in the parliament puts pressure on the exercise of powers and carrying out of functions, including decision making, of the tribunal. The conclusion might be drawn, whether it is correct or not, that powers have been exercised in a particular way or a particular decision made because of questions that have been asked or that might be asked by members of this committee.

When I appeared here before honourable senators on 10 February last I was asked many questions concerning the proceedings and decisions of Fair Work Australia or the Australian Industrial Relations Commission. Some of those questions appeared to directly challenge the qualifications of members of the tribunal, various decisions they had made and the reasons for them. Another unfortunate result of this situation is that the President of Fair Work Australia is answering questions in an intensely political environment. One cannot in any sense criticise

senators for being political. The parliament is the centre of our political life. But the head of a court or an independent tribunal like Fair Work Australia should not be put in a position where whatever answer is given may be turned to political advantage by one political interest or another.

The maintenance of public confidence in the independence of Fair Work Australia depends in large part upon the tribunal not being involved in political debate. It is my view, with great respect to those who think otherwise, that the present situation is simply unsustainable. It involves an ongoing risk of significant damage to public confidence in the independence and impartiality of the tribunal. The tribunal must be, and be seen to be, free from outside influence in exercising its powers and carrying out its functions. This is a fundamental principle and it applies equally to relations with the parliament as it does to relations with executive government.

The options available to me to resolve this situation are limited. It seems therefore that the proper course is to raise the matter with the committee today with the plea that the members of this committee and all honourable senators reconsider the resolution of 29 October 2009. The principle at issue here is above politics. If honourable senators are aware of the true legal position and the impact of the situation upon the independence of Fair Work Australia, I am hopeful that they might take appropriate action. When I refer to the true legal position, I mean three things in particular: first, the widespread misconception, now exposed as false, that Fair Work Australia is a government agency rather than an independent tribunal; second, the fact, apparently not recognised earlier or at least not given any weight, that all of the members of the tribunal do have the same immunities and protections as justices of the High Court; and, third, the fact that the president has no authority whatever in relation to the management of budgets and expenditure.

That concludes the opening statement. I thank honourable senators once again for the opportunity to make it, and I can make a copy of that available.

**CHAIR**—Thank you. The committee will consider those matters. The committee did in fact consider some of these issues at the conclusion of the last round of estimates and have included some comments in our report to the Senate. You have provided a substantial amount of new information that was not before us previously and we will seek some advice on how to progress those matters from here.

**Mr Giudice**—Thank you. I was not aware of the things you have just indicated.

**Senator JACINTA COLLINS**—We will make available a copy of our report.

**CHAIR**—The committee did decide the following at paragraph 2.17 of our report to the Senate on the additional estimates of 2009-10:

The President's statement about his role at FWA follows on from correspondence with the committee during 2009 about which Fair Work Australia executives are best placed to appear and answer estimates questions. At the time of that correspondence, the committee accepted Justice Giudice's view that the general manager of Fair Work Australia was the appropriate representative. Having regard to the questions asked of Fair Work Australia during the additional estimates hearings, the committee is still of that view.

Then it says at 2.18:

However, the committee notes that the Senate order of 28 October 2009 is of continuing effect.

But we will continue to pursue this matter.

**Mr Giudice**—Thank you. Is that a public document?

**CHAIR**—That is a public document.

**Senator Arbib**—I suggest that maybe the statement be passed along to the President of the Senate just for his information.

**CHAIR**—I think we will resolve to table the document so it will form part of these proceedings. I will have the committee do that. We will however, given the continuing order of the Senate, now proceed to questions.

**Senator RONALDSON**—In relation to issues that were discussed at the last couple of estimates hearings regarding the member for Dobell, Mr Thomson, and the Health Services Union, would you please take on notice the following: what is the cost of the inquiry to date? How many officers of Fair Work Australia are currently working wholly or substantially on this inquiry? What APS levels or equivalent are these officers at? If you would take those on notice I would be grateful, in line with the question on notice last time.

**Mr Lee**—I am sorry, that was different from the question on notice last time. There was a question on notice on the last occasion about the resources and cost.

**Senator RONALDSON**—I am quoting from the question on that, so what is different about it? There was some prelude in it about the Australian Electoral Commission, but in relation to the costs I am quoting from the question on notice:

What is the cost of the inquiry to date? How many officers of Fair Work Australia are currently working (wholly or substantially) on this inquiry? At what APS levels (or equivalent) are these officers?

And you answered it for me. I just want an update.

**Mr Lee**—I am sorry; I missed the update part.

**Senator RONALDSON**—Just for the public record, what date were the matters concerning the Health Services Union and the member for Dobell first referred to FWA? I do not seem to have that on my notes anywhere and I just think, for clarity, it would be useful.

**Mr Lee**—Mr Nassios is the delegate carrying out the functions in respect of this and, as you are aware from last time around, there are a number of matters that he cannot deal with, given the nature of the proceedings, but I will ask Mr Nassios if he is able to comment on that.

**Mr Nassios**—The inquiry into the Health Services Union national office commenced on 6 April 2009.

**Senator RONALDSON**—By whom was that reference made and what were the specific issues that the FWA was asked to inquire about?

**Mr Nassios**—Information came to our attention; there was certainly no person that required us, or asked us, to conduct a investigation or inquiry.

**Senator RONALDSON**—What were the specific issues that you took on notice in that first event on 6 April?

**Mr Nassios**—If I answer that question, I would have to say I would have to rely on the previous grounds in which I would be seeking privilege.

**Senator RONALDSON**—I might come back to that, but do you recall that in the question on notice EW08910\_10 we inquired about the legal advice in relation to the allegations regarding Mr Thomson and the HSU? Do you recall that I asked the following specific questions:

When was that legal advice written? When was that legal advice received by Fair Work Australia? And, who was the author of that legal advice?

The only response you gave me was:

The FWA has engaged the services of a senior executive lawyer at the Australian Government Solicitor to assist in conducting its inquiry.

What was the issue about answering my question as to when the advice was written and when it was received by? What is the state secret in relation to that matter?

**Mr Nassios**—In answering your question I have tried to answer it in a complete manner. The AGS is assisting me in the inquiry and investigation as a totality.

**Senator RONALDSON**—Was it an oversight?

**Mr Nassios**—No. In answering your question I am unable to say that there is any legal advice, specifically, in relation to the allegations that you have asked about in that particular question.

**Senator RONALDSON**—So you are pleading again that you cannot answer a simple question as to whether you have had legal advice?

**Mr Nassios**—No, on this occasion what I am saying is that the AGS solicitor has been assisting me for a period of time. I do not actually believe there is a particular individual item of advice that the question is directing my attention towards.

**Senator RONALDSON**—Surely you must be able to say when it was received by Fair Work Australia and when it was written. I just cannot see what the issue is with a really basic question such as that.

**Mr Nassios**—I do not think there is any specific advice; that is what I am trying to answer.

**Senator RONALDSON**—No specific advice?

**Mr Nassios**—No.

**Senator RONALDSON**—So what did the AGS actually provide you with?

**Mr Nassios**—They have assisted me with the conduct of the inquiry and the investigation that is involved. Certainly they have been available to me to ask questions and certainly been available to me in conducting various proceedings.

**Senator RONALDSON**—To give you advice?

**Mr Nassios**—Yes, but much of that advice is of a verbal nature.

**Senator RONALDSON**—So, if much is, there must be some that is not, so when did you receive that written advice?

**Mr Nassios**—I will go back and see if there is any specific written advice. I do not believe there is any specific advice of the nature that you are asking in that question.

**Senator RONALDSON**—I am sure you used the word ‘much’ advisedly, rather than ‘all’, so you will take that on notice, will you?

**Mr Nassios**—Yes.

**Senator RONALDSON**—Do you also recall a question on notice, EW0904\_10, in which I inquired about a list of specific credit card charges and charges to various HSU accounts that allegedly were incurred by Mr Thomson? And I presume you are also familiar with question on notice DW0881\_10 that inquired about allegations that Craig Thomson used HSU money to fund the Coastal Voice that Mr Thomson used for election campaign purposes. I presume you will recall your nonresponse to those questions where you claimed: ‘The provision of information would be harmful to the public interest.’

Are you aware that the specific inquiries of both questions on notice were derived from the media, the first from a *Sydney Morning Herald* article published on 8 May 2009 and the second from a *Sydney Morning Herald* article published on 10 April 2009. In effect, these have been on the public record for well over a year, so how would the provision of that information be harmful to the public interest?

**Mr Nassios**—I believe it would be harmful on the basis that in the event that my now investigation was to find that there were contraventions of the Fair Work (Registered Organisations) Act, it may well be that some of those prosecutions of the contraventions would be jeopardised.

**Senator RONALDSON**—This inquiry, according to the media, has now taken a different course of action. It was reported last week in the *Age* on Thursday the 27th in an article by Mark Davis:

In other developments, a spokeswoman for Fair Work Australia said the regulator had recently started a formal investigation into the HSU’s national office.

Fair Work Australia had previously been making preliminary inquiries into whether there were “reasonable grounds” for an investigation under the Fair Work (Registered Organisations) Act.

The spokeswoman said Fair Work Australia had decided in March to move from this preliminary inquiry phase to an investigation.

That is correct?

**Mr Nassios**—That is correct.

**Senator RONALDSON**—When was that decision made?

**Mr Nassios**—On 26 March.

**Senator RONALDSON**—What is involved in that upgraded investigation?

**Mr Nassios**—It provides me with the power to compulsorily require persons to attend before me and also to make documents and material available to me.

**Senator RONALDSON**—Which were powers that you did not have before?

**Mr Nassios**—Correct.

**Senator RONALDSON**—When is this formal inquiry due to be completed?

**Mr Nassios**—It would be very difficult for me to say with any certainty; I would be merely speculating.

**Senator RONALDSON**—That decision was made by whom?

**Mr Nassios**—By me.

**Senator RONALDSON**—Can you just go through the extra powers again, please?

**Mr Nassios**—Predominantly, it is the capacity for me to compulsorily require witnesses to attend before me.

**Senator RONALDSON**—Yes, and for you to compulsorily request documentation relevant to your inquiry.

**Mr Nassios**—That is correct.

**Senator RONALDSON**—And the nature of that material, I presume, will be at your determination as to whether you think those documents might be relevant.

**Mr Nassios**—Correct.

**Senator RONALDSON**—Can you describe difficulties, if any, that you have faced in obtaining information either during that initial inquiry or the now formal investigation in relation to this matter?

**Mr Nassios**—I can certainly describe a difficulty on occasion in finding the location of a witness. Certainly that is a difficulty we have had. We have subsequently found the particular witness we were seeking, but in terms of other difficulties, no, there have not been any difficulties.

**Senator RONALDSON**—Is this witness a material witness to these examinations?

**Mr Nassios**—Yes.

**Senator RONALDSON**—And is this material witness a current or former member of the Health Services Union?

**Mr Nassios**—At this point, on the grounds of privilege, I should not answer that question.

**Senator RONALDSON**—Has Mr Thomson himself been requested to be interviewed?

**Mr Nassios**—Again, on the grounds of privilege, I should not answer that question.

**Senator RONALDSON**—Mr Thomson would be very much a material witness to this investigation.

**Mr Nassios**—I would think as a former national secretary of the union that that would be an accurate statement.

**Senator RONALDSON**—And you are unable to say whether he has been interviewed?

**Mr Nassios**—What I am saying is that on the grounds of privilege I do not think I should answer that question.

**Senator RONALDSON**—Do you recall a question on notice EW0879\_10? You are not denying that Mr Thomson has been interviewed, that there has been a request for an interview or that he has refused to be interviewed?

**CHAIR**—The witness has—

**Senator Arbib**—You have crossed the line there, Senator, with that one.

**CHAIR**—said he does not want to answer questions about the current and ongoing investigation because it has the potential to impact upon the investigation. That is a normal grounds of not answering a question. It has been made; I have not heard anyone object to it and I think we should leave it there.

**Senator RONALDSON**—How long did the informal investigation go on for?

**Mr Nassios**—I am sorry?

**Senator RONALDSON**—Had the informal investigation been going on since 6 April 2008?

**Mr Nassios**—That is correct, yes.

**Senator RONALDSON**—I presume it is not going to take two years for the formal investigation to be finalised.

**Mr Nassios**—I would not imagine so. Nevertheless, if I may, to give you a bit of an idea as to what is required, even though I have compulsory powers I am still required to give every individual 14 days notice prior to their attendance. In the event that I do find contraventions have occurred, I think it is imperative upon me to provide some sort of procedural fairness to persons in which findings of an adverse nature are made. It is for that reason that I am saying I cannot give you a specific period as to when this would be finished.

**Senator RONALDSON**—How many witnesses have you requested to appear before you?

**Mr Nassios**—Again, on the grounds of privilege, I—

**Senator RONALDSON**—I do not accept all of your pleas in relation to privilege, but I will take them at face value. This is hardly a privilege question. How many witnesses have you requested to appear before you? How can that possibly be argued as a—

**Senator Arbib**—Chair, I think Senator Ronaldson has been given a fair bit of latitude here, latitude he probably—

**Senator RONALDSON**—I think I have actually been remarkably generous.

**Senator Arbib**—You have. The official has taken it as a matter of privilege, so I think really—

**CHAIR**—I am not to know whether answering that question may interfere with the investigation. Mr Nassios is the one in the best position to make that call. He has made the call; I am happy to accept it.

**Senator RONALDSON**—I mean, honestly, I could have a private meeting, I suppose, and request that—but clearly, Chair, you are not going to give me the authority to do that. How many witnesses have refused to appear before you?

**Mr Nassios**—None.

**Senator RONALDSON**—So you are happy to say that no witnesses have refused to appear before you, but you are claiming privilege in relation to the question, ‘How many witnesses have you requested?’ How can you possibly say that one question and one answer is not privileged and the other one is?

**Senator JACINTA COLLINS**—Because he is trying to be as generous as he can.

**Senator RONALDSON**—That is very generous, Senator Collins. Perhaps the witness could answer the question as opposed to your gratuitous advice in relation to this matter.

**Mr Nassios**—My concern in answering your first question is that it would obviously be knowledge to people that I have interviewed and it would obviously be knowledge to those persons who communicate with others as to who has been interviewed. My concern is that if I give you a figure people may in some way be able to ascertain that I have actually interviewed people that they would not otherwise be aware of.

**Senator RONALDSON**—How could they possibly ascertain that?

**CHAIR**—Regardless of that, Mr Nassios, as I have said, is in the best position to determine that. He has claimed that he does not want to answer that question on the basis that it may impact upon the investigation; we have accepted that.

**Senator RONALDSON**—If they are as good as that, I suspect they will be good enough to know exactly who it is. I cannot think what the expression is, but they would be able pluck it out from the never-never. Do you recall question EW0879\_10, in which I inquired about the Slater and Gordon and BDO Kendall audit reports? Did I inquire on this question on notice about the content of those reports? The answer to that is no. I only asked whether they were received by the FWA and, if so, on what dates. I presume that you acknowledge that you have a copy of the BDO Kendall report.

**Mr Nassios**—Last time I indicated that I should not answer that question.

**Senator RONALDSON**—On what basis? How can that possibly be privileged? I am not asking you for the contents of the report; I am asking whether you have received a copy of the BDO Kendall report which is absolutely material to your investigation. If you have not received that, I then question how you can possibly conduct an appropriate inquiry in relation to this matter. Have you got the report or not?

**Senator Arbib**—Mr Nassios said—

**Senator RONALDSON**—I appreciate that is privileged.

**CHAIR**—Then why pursue it? You are saying you appreciate that it is privileged but you are pursuing it anyway. You are really going beyond the means.

**Senator RONALDSON**—I did not say that.

**CHAIR**—That is what I heard.

**Senator Arbib**—You said you appreciated it was privileged.

**Senator RONALDSON**—I am not going to interrupt you, Chair.

**CHAIR**—Move on.

**Senator RONALDSON**—No.

**CHAIR**—Yes.

**Senator RONALDSON**—I said that the contents were privileged. I acknowledge that, and that is why I did not ask what the contents were. That is why the question on notice did not ask what the contents were. That is why the question on notice asked if you have received it, not what was in it. So you are still refusing to answer that question?

**Mr Nassios**—That is asking me what evidence, material or information I may have received, and I do not believe I should answer that question.

**Senator RONALDSON**—Depending on the outcome of your inquiry, what are the options available to you?

**Mr Nassios**—There are several possibilities. In the event that a contravention has been found to occur, I have to give notice to the national office of that contravention. In terms of further actions, it is a matter for the general manager to determine whether the HSU national office would be requested to take specific action, whether to apply to the Federal Court for particular orders or whether to refer the matter to the Director of Public Prosecutions for action in relation to possible criminal offences.

**Senator RONALDSON**—So the HSU do their own thing: the Federal Court or the DPP—

**Mr Nassios**—Correct. In terms of the HSU, it is not to do their own thing but it is certainly to take remedial action of some description.

**Senator RONALDSON**—You would be aware that the AEC has referred this matter to the DPP for advice.

**Mr Nassios**—Yes.

**Senator RONALDSON**—I am mindful of the time. I presume you are unable to answer the question as to what the BDO Kendall report said about the state of the union's affairs during the time that Mr Thomson was in charge?

**Mr Nassios**—I am not speaking of any report on the grounds of privilege.

**Senator RONALDSON**—I presume you are also familiar with questions on notice EW00\_83, EW00\_84, EW00\_85, EW08\_93 about whether Craig Thomson, Pauline Fegan, Criselee Evans, Matthew Burke and Jeff Jackson have been interviewed in relation to this matter. You refused to answer that question on notice. Are you in a position to do so now?

**Mr Nassios**—No.

**Senator RONALDSON**—You appreciate that those questions on notice did not ask what the substance of those interviews were, but whether they had been interviewed. Are you still refusing to answer that?

**Mr Nassios**—That is correct.

**Senator RONALDSON**—Are you aware that these people were named in press reports in relation to this matter?

**Mr Nassios**—Yes.

**Senator RONALDSON**—Are you aware of the documentation supplied by the HSU to the industrial registry and that Craig Thomson resigned the office of national secretary on 14 December 2007?

**Mr Nassios**—I am sorry, I did not hear the question properly.

**Senator RONALDSON**—Are you aware of the documentation supplied by the HSU to the industrial registry, and that Craig Thomson resigned the office of national secretary on 14 December 2007?

**Mr Nassios**—I cannot say that I am specifically aware of what the HSU would have lodged, but I am presuming that you are referring to a return that they have lodged.

**Senator RONALDSON**—Yes.

**Mr Nassios**—If that is the case then—

**Senator RONALDSON**—Are you aware that the deadline for lodgement of the 2006-07 political expenditure return was 17 November 2007?

**Mr Nassios**—To FWA or to the AEC?

**Senator RONALDSON**—To the AEC.

**Mr Nassios**—I am not aware of the requirements of the AEC.

**Senator RONALDSON**—If those two dates are correct then I take it you will acknowledge that Mr Thomson was still the national secretary of the HSU for almost an entire month after the lodgement date deadline. Would that be correct?

**Mr Nassios**—If that is what the notice according to HSUA says—

**Senator RONALDSON**—Are you also aware that the registered rules of the Health Services Union lodged with Fair Work Australia state that the national secretary shall:

... receive all moneys on behalf of the union and pay the same within seven days of receipt into the union bank account to the credit of the union and enter into a book kept for that purpose particulars of all amounts received and paid to such bank.

Is that correct?

**Senator Arbib**—I understand you are making a point of reading into the transcript for media reasons.

**Senator RONALDSON**—They are responsible for the—

**Senator Arbib**—I do not think this is a question to Mr Nassios. I do not think that he should be expected to answer it.

**Senator JACINTA COLLINS**—I think he is badgering the witness.

**CHAIR**—They do seem to be rhetorical types of questions.

**Senator Arbib**—Senator Ronaldson has achieved his goal. I do not think there is any need for Mr Nassios to answer the question.

**Senator RONALDSON**—Further:

The national secretary shall control and conduct the business of the union.

Is that correct?

**Senator Arbib**—Again, this is not a question of the official. This is an attempt by Senator Ronaldson to get on the transcript and get into the media.

**Senator JACINTA COLLINS**—It is worse than that. I think it is an attempt to impact on a current investigation.

**CHAIR**—Order! Order! Senator Ronaldson, have you finished?

**Senator ABETZ**—They are unruly.

**Senator RONALDSON**—They are unruly.

**CHAIR**—There is a general sense of unruliness.

**Senator RONALDSON**—It begs the question as to what the government has to hide. I will ask you, Minister.

**Senator Arbib**—There is an investigation on at the moment. You do not want to prejudice the investigation.

**Senator RONALDSON**—How about you hear the question and then you can invoke whatever—

**Senator JACINTA COLLINS**—He does want to prejudice the investigation.

**Senator Arbib**—This is about ensuring—

**Senator RONALDSON**—Am I allowed to ask my question, and then the minister can—

**Senator Arbib**—Mr Nassios has said he cannot answer those questions.

**Senator RONALDSON**—Is it different rules now? You pre-empt the question so you are not going to answer it.

**CHAIR**—No. You do not answer it first and then ask it. Senator Ronaldson, ask your question and we will see how we go.

**Senator RONALDSON**—Thank you very much. I am pleased that the estimates are working on that basis again. Why does the government refuse to answer quite clear questions not about process as opposed to content, but about substance and not procedure on the grounds that, ‘The provision of information would be harmful to the public interest’? I ask you: what could possibly be construed as harmful to the public interest in answering questions about whether certain documents have been seen by the FWA, rather than anything about their contents; whether certain persons have been interviewed by the FWA, rather than any details about the content of those interviews; and whether the FWA has looked into allegations that have long been in the public domain due to media coverage? Is it not true that what is happening here is a stonewalling by the government because one of its members is just about to face re-election? If you have nothing to hide, why are you not answering these quite specific questions about process as opposed to content?

**Senator Arbib**—That is more of a statement onto the transcript, rather than an actual question. I will just make the point again. There is an investigation underway by Fair Work Australia and I will not be saying anything, nor will the government, which may prejudice it.

That is what Mr Nassios has said, and it is also in terms of the processes of natural justice that need to run their course.

**Senator RONALDSON**—Thank you.

**CHAIR**—Senator Collins.

**Senator JACINTA COLLINS**—I would like to ask some questions about the new enterprise agreement. This is to you, Mr Lee. How is progress going there?

**Mr Lee**—In terms of?

**Senator JACINTA COLLINS**—Moving staff from various agreements onto that agreement?

**Mr Lee**—Are you talking about the Fair Work Australia Enterprise Agreement?

**Senator JACINTA COLLINS**—Yes.

**Mr Lee**—Our enterprise agreement?

**Senator JACINTA COLLINS**—Yes. I understand your confusion now.

**Mr Lee**—We obviously have the function of approving enterprise agreements.

**Senator JACINTA COLLINS**—We are talking about your own operations.

**Mr Lee**—In terms of our own enterprise agreement, I can tell you that we concluded negotiations earlier this year with employee representatives and union representatives. They were productive negotiations. As part of our strategy we were keen to move towards a common remuneration structure within the organisation and we saw moving towards an enterprise agreement as a way of doing that. As you would be aware, there were a number of organisations that came in to make up Fair Work Australia and there were a number of different terms of employment conditions that applied to those individuals. There was a reasonably lengthy negotiation process that we went through in order to conclude an agreement. Vice President Lawler approved that agreement on 10 May. It is a comprehensive enterprise agreement. It includes a range of pay increases for staff. It operates consistent with the government's bargaining framework and provides a term of duration until the end of June 2011, which is a requirement of the federal government.

**Senator JACINTA COLLINS**—Why is it so short?

**Mr Lee**—The government's bargaining framework requires us to enter into an agreement that had a particular termination date, so in terms of the processes I go through as agency head to get the agreement approved, we were—

**Senator JACINTA COLLINS**—Is that just for this first term, or is it envisaged that short terms are going to continue?

**Mr Lee**—I do not know what the government intends to do into the future, but in terms of the agreement that I am reaching here and now, I was required to comply with that and have done so. We are also asked to provide material that relates to the cost of implementing the agreement that the government considers and then indicates whether or not it approves us entering into its terms.

**Senator JACINTA COLLINS**—How many staff came from other agencies into this agreement?

**Mr Lee**—These are not the current staffing figures, but there were originally 215 employees from the Australian Industrial Registry, nine Workplace Authority employees and 31 employees from the Australian Fair Pay Commission secretariat.

**Senator JACINTA COLLINS**—How many were in the Fair Pay secretariat?

**Mr Lee**—There were 31. Through the machinery of government operation they all transferred to Fair Work Australia. There have been some increases in staff recently as a result of the expansion of the work and the functions that have been discussed here on previous occasions in order for us to be able to undertake those tasks.

**Senator JACINTA COLLINS**—What type of instruments have now come together into this one agreement? What was the nature of the various instruments?

**Mr Lee**—There were a range of instruments that applied before that included some Australian workplace agreements. There was a collective agreement that applied to the Australian Industrial Registry staff and some other individual arrangements.

**Senator JACINTA COLLINS**—Some other individual arrangements?

**Mr Lee**—There were some common-law arrangements, I believe, but I would have to—

**Senator JACINTA COLLINS**—Which agency was that?

**Mr Lee**—I would have to take that on notice and provide that information but, again, I do not want to be too definitive on this, but I think we have largely achieved the objective of having virtually all staff covered. I have actually just been handed the relevant material. The Australian Industrial Registry Agreement applied to around 228 employees, which was the old 195 staff in the AIR and the new staff. There was a collective agreement in the workplace authority. There were 47 staff covered by Australian workplace agreements and 12 staff covered by section 24 subsection 1 of the Public Service Act determinations.

**Senator JACINTA COLLINS**—Are they the common-law arrangements?

**Mr Lee**—That was the reference. They are not AWAs and they are not collective agreements, they were other arrangements; they were Public Service determinations. The objective has largely been realised of securing a common remuneration framework.

**Senator JACINTA COLLINS**—Which seems quite important given what is occurring through the award modernisation process across the board. Can you outline then for me the current staffing arrangements, the break-up of where it is placed?

**Mr Lee**—Yes. The current staff profile as at 30 April 2010 is that we have 301 staff engaged with Fair Work Australia. They are spread across a range of teams and obviously across states. Probably the most significant number of course is in Melbourne where a fair amount of the operation is conducted. The second is obviously Sydney and then there is a distribution of staff across the country more broadly than that.

**Senator JACINTA COLLINS**—Can you tell me the teams?

**Mr Lee**—Yes, there is a Tribunal Services and Organisations Branch that has 143 staff. The Victorian team is 40; the New South Wales team is 44. There is a Minimum Wage and Research Branch with a staff of 20.

**Senator JACINTA COLLINS**—Is that essentially what was the previous Minimum—

**Mr Lee**—Australian Fair Pay Commission Secretariat to a certain extent, but of course things are not static. There have been changes in the organisation. I would not want to represent them as the same staff. There have been staffing changes there. They are also undertaking other activities related to my obligations under section 653 of the act to report to government at the end of the day on the operation of various provisions—

**Senator JACINTA COLLINS**—These were the provisions that his honour referred to earlier, yes.

**Mr Lee**—and so they will have a role in that. Hence it is called the Minimum Wage and Research Branch. The Award Modernisation and Contact Centre Branch has 36 staff. The Corporate Services Branch has around 52 staff and the Unfair Dismissals Branch has in the order of 39.

**Senator JACINTA COLLINS**—I have a number of questions in relation to various aspects here but I might just focus at this stage on the unfair dismissal aspect. How is the telephone mediation trial working?

**Mr Lee**—I have with me Bernadette O'Neill, who is the director of the Unfair Dismissals Branch. It might be appropriate if she were able to fill in any general detail, but if you wish to do so before we go to any detail it is a conciliation service that is part of—

**Senator JACINTA COLLINS**—I am sorry, I should have said conciliation; you are right.

**Mr Lee**—Not mediation. There has been a shift, as has been discussed at this Senate committee previously, to look to have a voluntary process of unfair dismissal matters being dealt with at first instance by telephone conciliation. We have reported in the past that that has been conducted very satisfactorily from the organisation's point of view with good settlement rates. Ms O'Neill may want to make some further comment on that.

**Ms O'Neill**—There are probably just a couple of further things that I would add to Mr Lee's comments. Firstly, in terms of the arrangements for conciliation that have been in place since 1 July 2009, there were two significant, I guess, departures from previous arrangements that have some novelty. The first is that the conciliations are conducted by senior public servants whereas in the past that exercise has generally been undertaken by members of the tribunal. The second dimension is that the overwhelming majority of the conciliations are taking place over the telephone. That is in excess of 90 per cent of the conciliations are taking place via that form.

**Senator JACINTA COLLINS**—Just remind me before you go on, the senior public servants are called unfair dismissal conciliators; aren't they?

**Ms O'Neill**—They are. In terms of the question about how the process is working to date, the organisation is very encouraged at the results to date. In terms of the outcomes, in the order of 81 per cent of matters are being settled at the conciliation stage, which is obviously encouraging—

**CHAIR**—We might just leave it there and you can continue your answer after the dinner break.

**Proceedings suspended from 6.00 pm to 7.30 pm**

**CHAIR**—We are now hearing from portfolio agencies and before us now is Fair Work Australia. Senator Collins, I understand you were in the middle of some questioning.

**Senator JACINTA COLLINS**—I am in the middle of my questioning in relation to unfair dismissals, and I can continue if the opportunity exists. I think Ms O'Neill was in the middle of telling me a very good news story about the outcomes that are being effected through the changes to the unfair dismissals regime, so please continue. We had the 81 per cent resolution rate?

**Ms O'Neill**—Yes. That is arrived at from a total of just 6,871 matters that have been conciliated. So, 81 per cent of those have been settled at the conciliation stage. If you add in matters that are discontinued prior to the conciliation stage, that actually deals with 90 per cent of matters. I was just outlining earlier about the changes that have been introduced with the conciliation stage. Aside from the sort of numerical outcomes, that is one measure obviously in terms of the process, but because it is a voluntary process the views of the parties and the parties' experience with the processes is obviously also of great importance and interest to Fair Work Australia.

**Senator JACINTA COLLINS**—You say it is a voluntary process. Are you talking now about the telephone conciliation?

**Ms O'Neill**—I am talking about the conciliation stage; that is right. I think it is fair to say that, when the new system was introduced, particularly the telephone method, there was a degree of scepticism about the changes by a number of parties and there was some public comment to that effect. The system has now been in place for some 11 months. From feedback that has been obtained, that initial scepticism has declined significantly. We receive a lot of feedback now where parties will say, 'I never thought this process would work, but I have now experienced a number of them and I am pleasantly surprised with how efficient and effective the telephone conciliation process is.'

**Senator JACINTA COLLINS**—Are these larger employers or are they employer organisations or trade unions?

**Ms O'Neill**—It is an absolute mixed bag. What I am referring to there is unsolicited feedback that parties will just provide following a process, together with informal feedback with meetings with employers or employer associations, unions—

**Senator JACINTA COLLINS**—Do you plan formal feedback?

**Ms O'Neill**—We do. I myself and the head of the termination of employment panel have been involved in a number of seminars.

**Senator JACINTA COLLINS**—Is there a termination of employment panel?

**Ms O'Neill**—Yes.

**Senator JACINTA COLLINS**—There is a panel that deals exclusively with terminations, is there?

**Ms O'Neill**—That is right. In terms of the organisation of Fair Work Australia, aside from industry panel heads, there is a senior member, Senior Deputy President Acton, who is the head of the termination of employment panel. She and I and others have been involved in formal presentations, for example, to the Australian Industry Group and other employer and stakeholders about the process, but that feedback has generally been anecdotal, if I can put it that way. It is not sort of systematic in that sense. In addition to that, though, there have been complaints that we monitor and track, of course, and there have been a very small number of complaints involving the conciliation process—in the order of 18, as I understand it—since 1 July 2009. But essentially—

**Senator JACINTA COLLINS**—Eighteen complaints? Is that it?

**Ms O'Neill**—Yes. I should say just by way of explanation that there have been a couple of instances where there has been an administrative mishap or genuine mistake made, but a number of the issues that are in fact raised are really about a misunderstanding of the process. For example, a party might complain that the conciliator did not decide who was right or wrong or who was telling the truth, whereas that is not the role of the conciliator and it would be inappropriate to do so. So, when I say 'complaint' I am using it loosely in that sense. There is that sort of anecdotal feedback. There are the results in terms of the outcomes, but we have also just engaged external researchers to conduct—

**Senator JACINTA COLLINS**—Who are they?

**Ms O'Neill**—TNS. That is following an open tender process. TNS were awarded the contract to—

**Senator JACINTA COLLINS**—Did you have many submit?

**Ms O'Neill**—We had more than 20, which in my experience is a bigger number than in any sort of similar exercise and so we were able to be very selective—happily. I digress. What that project will do is have an absolute focus on the conciliation stage and it will involve a national survey looking at all of the parties, in particular applicants, both represented and unrepresented, respondents, as well as the views of representatives, legal register organisations and others as well as attempting to drill into the experience of metropolitan based parties as distinct from rural and regional based parties, and also, depending on the size of the respondent employer, small, medium and large employers. That will involve a national survey, which is being prepared at the moment. The focus of the research is around the conciliation process, but it will also look at the information and assistance that FWA provides to parties and potential parties about how to navigate their way through the process.

**Senator JACINTA COLLINS**—You mentioned the 6,821 conciliations. How many people have opted not to go through conciliation?

**Ms O'Neill**—I do not have that and I am not sure that I could, readily at least, obtain that. I can take it on notice and examine it if we can. Certainly in my experience, my observations and feedback are that it is a very minute proportion. In that event, the matter would simply be referred directly to either a jurisdictional hearing, where relevant, or a substantive arbitration.

**Senator JACINTA COLLINS**—It is important information to a review of how the system is operating and, as you stressed earlier, the conciliation path is voluntary. We do not have a sense for those that are not volunteering down that path. That is not the total picture.

**Ms O'Neill**—No. I could certainly identify the proportion of matters that are not conciliated. It is just that the reason for the conciliation not taking place may not just be confined to a party not wanting to participate. It may be because of unavailability, it may be—

**Senator JACINTA COLLINS**—That is fine, but I think that in an overall review that is information we need as well.

**Ms O'Neill**—At that level I would not anticipate that we would have any difficulty in obtaining that information.

**Senator JACINTA COLLINS**—In a sense, I would be hoping that something like the TNS survey would be encompassing that level of information as well, if we are going to look at a review of the overall system.

**Ms O'Neill**—It will. There is no reason in terms of the selection of the sample and how that will be developed that would exclude—actually, I am not certain about that, because it may only be parties that have participated in a conciliation and been part of the sample—

**Senator JACINTA COLLINS**—That are part of the research brief. I understand. I am just saying in terms of valuable information about how the system is operating; it might be worth making sure we have a broader understanding of those issues, which I think brings me to my next area.

**CHAIR**—I understand Senator Fisher has one question and maybe a follow-up question to you, Justice Giudice, in relation to your opening remarks.

**Senator FISHER**—Thank you for your opening statement referring to the Senate order to which the person in your position is subject. Was your opening statement based on any independent legal advice?

**Mr Giudice**—It is quite difficult to answer that question. It was based primarily on my own research.

**Senator FISHER**—Primarily?

**Mr Giudice**—Yes.

**CHAIR**—I understand there will be no further questions in relation to those matters so we will now proceed.

**Senator JACINTA COLLINS**—Mr Lee, going back to your characterisation of the various teams now within Fair Work Australia we will just discuss the unfair dismissal review process. I am interested in the minimum wages and research with emphasis on the research side of your operations now. Can you firstly give the committee an overview of your obligations under the act and where we are at in terms of how we are going to meet those?

**Mr Lee**—I can do that. Perhaps in terms of the second part of your question first. The act under section 653 requires that I undertake research and report upon a range of matters. I am required to report to the minister for the period July 2009 to June 2012, and that report will cover a range of areas, which are detailed in section 653 of the legislation. I would not propose to spell those out, but in summary it is—

**Senator JACINTA COLLINS**—I am very happy for it to be a very broad summary, as Senator Abetz is here and I understand he has some comprehensive questions.

**Mr Lee**—It covers individual flexibility arrangements, extensions of unpaid parental leave, and research into the circumstances into which employees have made requests to exercise their rights under those various provisions. I have had a research methodology paper prepared. I have had discussions with key stakeholders very recently about that in order to receive some feedback as to how I might go about conducting that research and now, moving to the next stage of preparation, using the research branch that you asked me about to commission the necessary research in order to enable me to fulfil my obligations to report within the relevant time period.

**Senator JACINTA COLLINS**—Are they commissioning external providers? Will it similarly be a tender type—

**Mr Lee**—That has not been decided as yet, but that may well be the outcome.

**Senator JACINTA COLLINS**—Is the detail for instance of the organisation that tendered for the termination work that TNS succeeded with commercial-in-confidence?

**Mr Lee**—The normal procurement guidelines apply to that process.

**Senator JACINTA COLLINS**—I am just exercising personal curiosity. Senator Abetz, are you ready?

**Senator ABETZ**—The Fair Work minimum wage panel is going to be making its announcement at 11 am on Thursday; is that correct?

**Mr Giudice**—I have no comment to make about that issue whatsoever.

**Senator ABETZ**—You have no comment to make that they are going to make an announcement on 3 June at 11 am?

**Mr Giudice**—Well, that is true.

**Senator ABETZ**—What was the difficulty—

**Mr Giudice**—Perhaps I anticipated another question. If I did, I apologise. But it is a matter on which I simply cannot comment.

**CHAIR**—About the decision itself.

**Mr Giudice**—Yes.

**Senator ABETZ**—I was not expecting a scoop for the evening news, that you were going to divulge what the wage increase was going to be.

*Senator Jacinta Collins interjecting—*

**Senator ABETZ**—That is nice. We are now agreed—

**CHAIR**—I know it is after dinner and everyone is excited.

**Senator ABETZ**—Only water was consumed.

**CHAIR**—I was not suggesting anything else, but if everyone could calm down Senator Abetz has the call.

**Senator ABETZ**—I do not want to go into the decision and what is likely to occur, albeit I think, courtesy of the airwaves, I may have commented in the public debate as to what might be a reasonable thing to occur, but we are not going there at all. A decision will be announced

on 3 June at 11 am and it has been indicated a statement will be provided. Will the panel subject themselves to any questioning or interaction with the media in relation to their decision? I do not want to go anywhere as to what the decision might be. It is only a process issue.

**Mr Giudice**—I would not anticipate so.

**Senator ABETZ**—As I understand it, the Fair Pay Commissioner in the past would engage in media discussion for the purposes of justification of how they came to the determination. He made himself available for that purpose of questioning. Of course, different body, different personnel, different approach—I accept that. I was just wanting to know whether the Fair Work panel would make itself similarly available to canvass matters in the decision after the decision has been publicly announced.

**Mr Giudice**—There will be a publication of full reasons for decision and, in my view, there should be no canvassing by any members of the panel of those reasons. They are the reasons. The published reasons will stand and there should be no additions to those published reasons by any member of the panel in any forum.

**Senator ABETZ**—Just so I understand the processes well, your determination in relation to that is—what is the term—the full and final determination, the last word on that, or would panel members, should they so deem it appropriate, be free to speak with the media about how they came to the decision, or if somebody wanted a particular paragraph to be expounded upon would that be open for them to do as individuals or would your determination on this be final?

**Mr Giudice**—I do not think I can add to what I have said. I cannot control what individual people might do. In my view, it would be highly inappropriate to engage in the sort of secondary explanation that you are asking about.

**Senator ABETZ**—In relation to coming to its determination, the Fair Work panel is entitled to engage or seek consultancies, reports and information. Could you advise as to what other informational sources it availed itself of in coming to the determination we are about to find out about?

**Mr Giudice**—I think that that will be dealt with in the reasons for decision. It is not a matter I would embark on.

**Senator ABETZ**—So we can anticipate then that in the decision there would be a list of people that had made submissions—sorry, the submissions made, I understand, are on the website and are public. But Fair Work Australia is entitled to commission its own independent research in certain areas to help inform itself, and that will be part of the decision somewhere as a footnote or whatever, as to the outside information apart from those submissions, that were proactively made, as opposed to those that Fair Work Australia sought?

**Mr Giudice**—The reasons for the decision will be published and I do not wish to elaborate. I do not think it is appropriate I elaborate, explain or predict in any respect what those reasons will contain. They will be the reasons.

**Senator ABETZ**—Yes, I do not want to go to the reasons at all, but I think we are entitled to know what other sources the minimum wage panel commissioned or sought to assist them in coming to the determination, whatever that may be.

**Mr Giudice**—The publicly available material indicates what research has been sought in connection with the review. What the panel might choose to take into account or rely upon is a matter that will be dealt with in the reasons for decision.

**Senator ABETZ**—Absolutely. The panel may well have commissioned a report and on reading it think it is a load of nonsense and completely dismiss it. I fully countenance that possibility, but I think we are still entitled to know what sources were sought out or were commissioned by the minimum wage panel in its preliminary deliberations.

**Mr Giudice**—Any material that was commissioned is listed on and appears on the part of the Fair Work Australia website dedicated to the annual wage review for 2009-10.

**Senator ABETZ**—So that which is sought by Fair Work Australia is on the website as well as, let us say, the submissions from AiG, ACTU and so on?

**Mr Giudice**—That is so.

**Senator ABETZ**—I was not aware of that. Thank you for that explanation. I think last time round we were told or we were hopeful—I do not want to put words into your mouth—that the award modernisation process would be completed by the end of March. How are we going on that, Mr Giudice? Can we say that that benchmark was achieved or were there a few extra matters that needed to be dealt with that have gone beyond the end of March?

**Mr Giudice**—What Fair Work Australia is required to do is deal with applications made to it in accordance with the relevant legislation. There were a significant number of variations sought to modern awards pursuant to powers that were formerly exercised by the Australian Industrial Relations Commission. Those applications were lodged before 31 December last year, and legislation was passed empowering Fair Work Australia to conclude the determination of those matters within a time frame that extended to 31 March this year. So far as I am aware, all of those applications were dealt with and determined prior to 31 March.

**Senator ABETZ**—So we did reach that benchmark and all that is now before Fair Work Australia are variations to those modern awards, but in general terms they have been bedded down to have the basic document concluded?

**Mr Giudice**—I could not say how to characterise the situation.

**Senator ABETZ**—Fair enough. How would you characterise it, then?

**Mr Giudice**—I would not. I would simply say there are a number of outstanding applications. I do not make value judgments about the process at all.

**Senator ABETZ**—This is possibly not a line of questioning for you, Mr Giudice, I am not sure. Who is in charge of the induction for new employees at Fair Work Australia? Who should I be asking? Mr Lee?

**Mr Lee**—That is correct.

**Senator ABETZ**—It has been indicated to me that induction for new employees takes about half a day; is that correct?

**Mr Lee**—The most recent induction was around that time, yes.

**Senator ABETZ**—And then, after that half-a-day induction, are any of them put on the front desk at Fair Work Australia?

**Mr Lee**—I would have to take that on notice. I could not tell you that.

**Senator ABETZ**—And specifically in Melbourne at your Fair Work Australia operation—what do I call it—offices?

**Mr Lee**—Front of counter.

**Senator ABETZ**—In Melbourne. Can you verify that there are still some agreements—and that might be back to you, Mr Giudice—lodged in December 2009 that are still awaiting assessment? Is that correct?

**Mr Giudice**—That is correct, yes.

**Senator ABETZ**—So what is their status? They will be dealt with according to the law as it applied before 1 January 2010?

**Mr Giudice**—I think the legislative requirement is that that be so, yes.

**Senator ABETZ**—Are we able to shed any light on why these agreements are taking so long to be assessed, or do we find that to be a reasonable assessment period—being, what, four or five months awaiting assessment?

**Mr Giudice**—I think with any change in system there will be a bedding-down process and a process of familiarity with all sides—the tribunal, the parties and so on—in dealing with applications. I would not be able to comment in relation to any particular agreement.

**Senator ABETZ**—And I would not want you to.

**Mr Giudice**—No. If I could make some very general observations that might assist. Where agreements are very close to the line, if I could put it that way, which in the case of agreements lodged during the bridging period is the no disadvantage test, delays can arise because of the calculations that an individual member might have to undertake or might have to seek from the parties to the agreement to try and gauge the application of the test. There might be a process of seeking undertakings, if the member feels that there is a problem. In some cases the member might indicate to the parties the problems that that member sees with the agreement as lodged, and might leave it to the parties to consider their position, whether they want to make some changes, go through the process again or make some undertakings. I think it is also fair to say—and this is just a general observation that might assist—that some matters have gone to full benches and where there are agreements before individual members that might be of a similar character or raise some similar issues, that also will lessen the speed with which matters are concluded. I would be hopeful that over time the processing will be quicker and individual members will be in a position to deal with agreements more quickly.

**Senator ABETZ**—Are you able to provide us—and I would assume you would take this on notice—with the number that were lodged before 1 January 2010 and how many are still awaiting their assessment?

**Mr Giudice**—We could take that on notice.

**Senator ABETZ**—Thank you for that. Then, if you could let us know as well, with applications or agreements lodged after 1 January 2010, are they in general terms experiencing a similar delay?

**Mr Giudice**—I could not really answer that without looking at the figures.

**Senator ABETZ**—If you could take that on notice for me, I would be much obliged. I have made a habit of asking this today, only as a result of, I think, Comcare appearing before us. If somebody has a complaint about Fair Work Australia, where do they take it? I do not have anything specific in mind, but if somebody says that they have not been dealt with appropriately, is there a set out regime or a document that is handed out or that is on the website or made available to people that interact with Fair Work Australia as to, you know, ‘Got a complaint about us? This is the process to follow’?

**Mr Giudice**—I am not sure whether there is a procedure on the website. If anyone rings the information line or otherwise makes contact there is a division within Fair Work Australia, depending on whether the complaint is about a staff member or about a member of Fair Work Australia. Complaints about a staff member are dealt with by the general manager.

**Senator ABETZ**—Mr Lee, do you have that fun job?

**Mr Lee**—I have.

**Mr Giudice**—I deal with complaints about members and respond personally.

**Senator ABETZ**—Thank you for that. Is any priority given to greenfield agreements for assessment or approval?

**Mr Giudice**—No, not in any formal or managed sense. There is no procedure. Bear in mind that every agreement shortly after it is lodged and entered into the system will be allocated to an individual member to deal with. The way in which the member manages that file is not going to be uniform across the organisation. It will depend on the views of the parties. For example, there may be a request for expedition. There may be some particular reason why the member takes the view it should be dealt with more quickly. There may be all sorts of factors that influence the speed with which the matter is dealt with.

**Senator ABETZ**—Like a normal court, if I can be as bold as to say, in relation to the handling of cases.

**Mr Giudice**—That is my point.

**Senator ABETZ**—I thought you might come in on that one.

**Mr Giudice**—I understood you.

**Senator ABETZ**—Mr Lee, if somebody comes along to your offices around Australia and says, ‘I’ve been underpaid,’ what would you do, because clearly I would assume that they are at the wrong shop and they should be at the Fair Work Ombudsman?

**Mr Lee**—That is right.

**Senator ABETZ**—What happens?

**Mr Lee**—In terms of the scenario you outlined, most of those types of inquiries either come through emails to our helpline—

**Senator ABETZ**—Emails?

**Mr Lee**—Emails or phone calls. We have a memorandum of understanding with the Fair Work Ombudsman where we try to facilitate a customer relationship so that if a person in that particular situation was to ring up and say, ‘I think I’ve been underpaid,’ once our operator has ascertained that this is a matter for the Fair Work Ombudsman the protocol is that they will ask the person whether they would like to be connected to the Fair Work Ombudsmen because that is the organisation that can deal with them, and generally they do and they are connected through.

**Senator ABETZ**—Without the complainant having to make another phone call?

**Mr Lee**—Without being given another phone number, yes.

**Senator ABETZ**—Do you have an internal database called CMS?

**Mr Lee**—Yes, we do.

**Senator ABETZ**—I am told it breaks down frequently. Does it break down from time to time?

**Mr Lee**—I would not be able to tell you the periods of outage. It has had some periods of outage. From my general observation, it has not been excessive, but there have been down times. If you would like details on that I can provide it.

**Senator ABETZ**—You can take it on notice. Do we measure it by hours or days down? Whatever timeframe is the most convenient.

**Mr Lee**—I would have to take that on notice as well. It is quite possibly hours.

**Senator ABETZ**—And whether it occasions any genuine delay in the processing of matters in Fair Work Australia?

**Mr Lee**—Indeed, yes.

**Senator ABETZ**—Thank you.

**Senator FISHER**—Can I ask a question about the case management system?

**Senator ABETZ**—Yes, of course. That is what CMS stands for.

**Senator FISHER**—One presumes; is that right, Mr Lee?

**Mr Lee**—That is correct.

**Senator FISHER**—What does the case management system achieve?

**Mr Lee**—In an organisation that processes large numbers of documents it provides a uniform database by which material can be entered and tracked as it moves through the organisation. It enables us to generate reports on the volume of material that has come through the organisation.

**Senator FISHER**—What sort of information do you track?

**Mr Lee**—The numbers of agreements that have been lodged, the types of agreements, the numbers of applications that have been made under various provisions of the act, and whether they are applications for protected action ballots or applications for orders to stop industrial

action or whatever it might be. As the material comes in, those applications are logged, and we have a basis for collating them.

**Senator FISHER**—How up to date is it? Does it have a time lag other than when it has outages that Senator Abetz referred to? If it is running smoothly how up to date is it?

**Mr Lee**—Material is entered as quickly as possible.

**Senator FISHER**—What does that mean?

**Mr Lee**—It means what it means. Material is entered as it is received, but it is not instantaneous because people have to physically press keys on a keyboard and enter the relevant information.

**Senator FISHER**—For example, you said it tracks agreements. How long after an agreement is approved would the agreement be entered on the case management system?

**Mr Lee**—I could not give an answer to that.

**Senator FISHER**—How do you know it is as soon as possible if you cannot answer that?

**Mr Lee**—The general approach of the organisation is to try to have material entered as soon as possible, after it is necessary to enter it. Mr Nassios might be able to give you some more detail.

**Senator FISHER**—Mr Nassios.

**Mr Nassios**—I would be struggling to give you an average time today. I could not give you that today. On a weekly basis we make data available to the counter staff and teams to tell them what is the average time in which they are lodging applications into the case management system. That could be, on occasion, up to five days.

**Senator FISHER**—Even if you were to answer that on notice, do you know?

**Mr Nassios**—Yes.

**Senator FISHER**—Mr Lee, I will come back to the earlier question. On what basis are you able to say it is as soon as possible?

**Mr Lee**—On the basis that staff are trained and directed to enter the material as soon as possible. It is important that we keep the database as accurate as possible. As Mr Nassios points out, sometimes that might take longer than others.

**Senator FISHER**—How do you know that is happening as soon as possible? How do you reassure yourself of that?

**Mr Lee**—Mr Nassios has outlined that there is a tracking of the time period that is taken to lodge the material. I can take all of that on notice.

**Senator FISHER**—Thank you. What do you do with that information?

**Mr Nassios**—I supply it to the managers of each of the teams around Australia. Each of our registry managers will have an idea as to what the time is. As best they can they have to allocate resources to ensure that we are doing it as quickly as we humanly can.

**Senator FISHER**—What processes are in place within Fair Work Australia to ensure the follow-through of it as soon as possible?

**Mr Nassios**—I would have to say that I am their manager, so I will chase them up. I do not know if that is the answer you were looking for.

**Senator FISHER**—I am looking for anything that reassures me that Fair Work Australia has a process in place to ensure that the data is entered, as Mr Lee has said. What were your words, Mr Lee?

**Mr Lee**—As soon as possible.

**Mr Nassios**—That data is produced every week and distributed.

**Senator FISHER**—How up to date is it? We go back to Mr Lee saying it is entered as soon as possible after the event that is being reported upon. This is about the efficient running of Fair Work Australia, is it not?

**Senator Arbib**—You are asking technical questions about a computer system. Mr Lee has said that he will take it on notice.

**Senator FISHER**—My next question is: is this related to the efficient running of Fair Work Australia?

**Senator Arbib**—Please explain your question?

**Senator FISHER**—Does the efficiency of a case management system assist, retard or is it irrelevant to the efficient running of Fair Work Australia?

**Mr Lee**—Are you talking about the CMS system?

**Senator FISHER**—Yes. That is what we started off talking about.

**Mr Lee**—I was ascertaining whether you are still interested in the time taken?

**Senator FISHER**—I am. I am interested in the case management system. Does the case management system assist in the efficient running of Fair Work Australia?

**Mr Lee**—Yes, it does.

**Senator FISHER**—Would it influence that efficient running the extent to which the data that forms part of the case management system is entered as soon as possible?

**Mr Lee**—As I said, it is desirable that it is entered quickly. As Mr Nassios said, he monitors that as that service team area manager. I presume that, if Mr Nassios is aware—and we have had these discussions on occasion—that there is a need to improve speeds in an area because there might be a need for more resource, then we take action accordingly or whatever it might be.

**Senator Arbib**—Do you have an example? Is there a point?

**Senator JACINTA COLLINS**—The rest of the committee is trying to understand what the issue is.

**Senator FISHER**—Why presume there is one? I am entitled to ask questions.

**CHAIR**—Yes.

**Senator Arbib**—You do not have any information? You are just asking questions?

**Senator FISHER**—I am asking for information. That is what the estimates is about.

**Senator Arbib**—I am asking that to allow Mr Lee to give you informed answers. Do you have any examples of backlogs or inefficiencies?

**Senator FISHER**—Can I proceed with my questions?

**Senator Arbib**—You can, but at the moment the questions are very hard to answer. These are technical questions about a computer system. If you have examples of inefficiencies then please provide them so that Mr Lee can give you an answer that corresponds.

**Senator ABETZ**—Minister, you would understand that people would not want their particular case to be identified in a place such as this. There has been a particular example of a delay.

**Senator Arbib**—I accept that, but at the moment Senator Fisher is saying there are no examples. She is talking in general about the system.

**Senator FISHER**—No. I have not said that.

**Senator Arbib**—So there are examples?

**Senator FISHER**—I am seeking reassurances about efficiency. Can I continue to ask about the case management system?

**CHAIR**—Let us come back to the questions. People are trying to ascertain if there is a purpose behind it.

**Senator FISHER**—Why are you so concerned?

**CHAIR**—To assist you, I suspect. You can ask your questions and the officers will answer them as best they can.

**Senator FISHER**—Thank you. What purpose is the case management system designed to achieve?

**Mr Nassios**—It is a workflow system.

**Senator FISHER**—Workflow?

**CHAIR**—Wait for the answer.

**Mr Nassios**—I will give you an idea. An application comes in and it will have the applicant and a respondent, for the sake of calling the other party something. We will put the contact details and the type of application into the system. The system has certain rules in which it will allocate the matter. That will ordinarily be to a panel head in accordance with what type of industry it is or type of matter. The case management system then produces the documentation that goes to part of that whole file. It will produce the notice of listing. It tends to produce a number of the more common form type letters and it helps with distributing the material to the parties as well, in terms of emailing, faxing and so on.

**Senator FISHER**—What processes does Fair Work Australia have in place to ensure that the case management system assists with workflow?

**Mr Nassios**—It has had a big history. It is not a new product. We have had a case management system since early 2000.

**Senator FISHER**—Fair Work Australia is a little more recent than that.

**Mr Nassios**—The system is the old AIRC system. It has been brought across, updated to reflect the new sections and certain other aspects relating to the Fair Work Act. At the moment we have a number of governance committees in relation to the system. We have a working group which comprises people from pretty much all of the areas within Fair Work Australia and they go through issues that are raised by persons. When we do have difficulties and problems and errors they go through those and we allocate the appropriate priority to ensure all of those issues are dealt with.

**Senator FISHER**—Is there a process that ensures that the case management system manages workflow and workload in respect of individual commissioners?

**Mr Nassios**—It certainly will know who a matter has been allocated to, yes.

**Senator FISHER**—That does not of itself manage workflow. How does the case management system assist with workflow and consider the workload of individual commissioners? What process does Fair Work have in place to ensure that outcome?

**Mr Nassios**—I can only tell you what the system contains. The details in terms of how members are allocated work are really up to the panel head members that would traditionally do the allocation of work.

**Senator FISHER**—Is there any system that tracks case flow between and amongst commission members?

**Mr Giudice**—As I think I outlined last time, each application which comes in is allocated through a panel head to a member of the panel. There are some differences in relation to the termination of employment applications, but any application that is not a termination of employment application will go to a panel head, who will then allocate that application to a member based on the panel head's judgment about who in the panel is best to deal with it. The panel head has an ongoing responsibility to monitor those allocations in a way that is likely to give people a manageable workload and make sure that applications are dealt with as soon as practically they can be.

**Senator FISHER**—Bearing in mind your responsibility under section 581 of the act for ensuring that Fair Work performs its functions and exercise its powers in a manner that is efficient, are you confident that it achieves that outcome with the systems you have in place?

**Mr Giudice**—So far as it is possible to do so on the information available to me, I would say the systems are efficient, yes.

**Senator ABETZ**—Senior Deputy President O'Callaghan made a decision or judgment in *Mr N v The Bakery* indicating that the checklist in relation to the small business fair dismissal code is of dubious value. Can I inquire who drafted the checklist. Was that Fair Work Australia? Did Fair Work Australia have any input into that document?

**Senator Arbib**—Who is the question to?

**Senator ABETZ**—To Fair Work Australia as to whether they had any input into that checklist.

**Mr Lee**—No.

**Senator Arbib**—I think I can answer that for you.

**Senator ABETZ**—I assumed you did not. Minister, if you could potentially—

**Senator Arbib**—I can give you the information now.

**Senator ABETZ**—This is a great Senate estimates. You do not even have to ask questions and the minister is answering them for you.

**Senator Arbib**—You asked a question.

**CHAIR**—There is no mystery in this. You actually asked someone else.

**Senator Arbib**—I am happy to take it on for you.

**Senator ABETZ**—I asked whether Fair Work Australia was involved in drafting a small business fair dismissal code checklist and Mr Lee has just answered, no.

**Mr Lee**—As far as I am aware. It pre-dates my appointment.

**Senator ABETZ**—If it needs to be corrected, come back to us.

**Senator Arbib**—Would you like me to assist you?

**Senator ABETZ**—Can you tell us that Fair Work Australia actually did have input into the checklist?

**Senator Arbib**—I can tell who did have input and who was actually involved.

**CHAIR**—If you do not want to know, that is fine.

**Senator ABETZ**—Can I ask you, minister, given the decision, what is the government doing to redress that, because as you might imagine—no criticism of the correct title—Senior Deputy President O’Callaghan undoubtedly made a proper decision but that has now potentially prejudiced a lot of small businesses who faithfully applied the checklist only to find out having applied the checklist they are still in breach because it is of dubious value as a determinant of whether the code has been complied with. All I need to know is, firstly, the government is clearly aware of it and, secondly, what are they doing to protect small businesses in this situation?

**Senator Arbib**—As well I will run through how the checklist and the code came about—

**Senator ABETZ**—A point of order, Chair. I know how the checklist came about and all the wonderful consultation with small businesses et cetera. That is not the question in any way, shape or form. We have known that. We have gone through that at past estimates. What we want to know tonight is: what is the government doing to address the problem that has now arisen as a result of a judgment, right or wrong, or a determination, right or wrong, by Senior Deputy President Mathew O’Callaghan.

**CHAIR**—If the minister can assist you with that then he should assist you.

**Senator Arbib**—I am happy to do that.

**Senator ABETZ**—But I do not need the background.

**Senator Arbib**—But I do want to run through in terms of—

**Senator ABETZ**—No. Point of order, Chair. The minister cannot use this opportunity to wind down the clock.

**Senator Arbib**—You are the one at the moment who is winding down the clock, because I am happy to give the answer.

**Senator ABETZ**—What is the government doing to assist small business as a result of this decision? I do not want to know what happened before the creation of the checklist and how the checklist was created. I want to know what the government is doing in response to this Fair Work Australia decision.

**Senator Arbib**—The checklist is there to assist and you know how it was put together.

**Senator ABETZ**—Yes, I know that, thank you.

**Senator Arbib**—Minister Emerson and all the small business groups and peak bodies were involved.

**Senator ABETZ**—Chair!

**CHAIR**—Can I just say this. You know the problem I have. I cannot direct people as to how to answer the question, but I will make this point. I think there has been a strong degree of cooperation with these witnesses, and the senator has asked for a very concise answer, and I would ask if the minister could assist in answering the question concisely. That would assist the proper running of the committee. But I also understand that answers need to be put in context and can be fulsome if they need to be. I just remind everyone of the cooperation that is being shown here.

**Senator ABETZ**—We have had a breakdown of cooperation, haven't we?

**Senator Arbib**—I am trying to answer the question, but context is important. I am advised the government continues to monitor the operation of the supporting material to the code and will consider making refinements if necessary. In terms of anything further, I am happy to take it on notice.

**Senator ABETZ**—Thank you very much for that, because Ms Gillard did say on 18 September 2008, 'As long as employers comply with the fair dismissal code the dismissal will be held to be fair.' Then of course a checklist was provided and that checklist now, according to this determination, may be deficient. But you are looking into it. I invite you, Minister, and the government to expedite this as a matter of some urgency. Turning to Fair Work Australia again, is there any agreed view in relation to the increases in the superannuation guarantee levy and its impact on wages? For example, does any increase in the superannuation guarantee generally lead to lower wages?

**Mr Lee**—That is not something that I would personally examine.

**Senator ABETZ**—You personally would not. For example, if the superannuation guarantee levy were to be lifted by dint of legislation from nine per cent to 12 per cent—we know it will not be paid for out of the resource super profits tax; that is clear—somebody will have to pay for it. Would it be seen in the general context of wage payments in relation to affordability and capacity to pay?

**Mr Giudice**—If any application were made in relation to that question or the question was sought to be raised in some other application dealing with another matter, obviously it would be determined based on the submissions and the material that was presented in that case.

**Senator ABETZ**—That was a very discreet answer and, if I might say, very proper. The Secretary of Treasury has provided some advice as to what his considerations are, but that is from an economic point of view, not from a determination point of view, which Fair Work Australia clearly has to deal with. Can I ask a questions that was taken on notice last time: when did this take-home pay order guide actually hit the website? I did ask what time and I was told very helpfully that the latest news link on the home page was added on 10 February. We happen to know that, because that is what our laptops were then showing and telling us, but I in fact asked what time. I still have not been told what time on 10 February.

**Mr Lee**—Our apologies. The question was when we put it onto the website, but I am happy to clarify. When we were here last time around and there was the discussion about the guide, the guide was available as of 9 February on the website—

**Senator ABETZ**—Can I—

**Mr Lee**—Just bear with me. I will give you a full answer. It was searchable through the search engine on the site at that time. However, it is correct that the link to the guide from the latest news on the front home page was posted—and I apologise for this—in the afternoon of 10 February. I do not have an exact time, but I accept that there would have been some confusion on your part; that was inadvertent, can I say, on my part and unintended. To the extent that there was confusion about the ability to access I apologise for that.

**Senator ABETZ**—I have to accept that. I still have some difficulty with—possibly not you personally—people sitting behind you possibly not being aware of the actual time and alerting you as to when it was put up. That was in the afternoon of 10 February?

**Mr Lee**—Yes.

**Senator ABETZ**—On 10 February can you tell us when that link was put up and searchable?

**Mr Lee**—I cannot give you the exact time, but I can tell you it was very late in the day, possibly even in the evening, so if you were looking during the day then you would not have found it.

**Senator ABETZ**—Once again, with the response that I received about that, especially from the minister and certain other senators, the time is a crucial issue. Just for what it is worth, I accept there may have been a misunderstanding, but from the Senate estimates on page 187, ‘Latest news, 10 February, new guide available, applying for take-home pay order.’ On notice, ‘When did Fair Work Australia put that on their website?’ And then over the page on 188, ‘What time today it was placed on the website.’ But if that was not followed or understood I have to accept that and we will move on, but I would be very interested in the times. EW1094\_10, unfair dismissal applications—you indicated that Fair Work Australia systems do not record the outcomes of conciliations as to distinction for the basis on which a compensation is agreed or paid. Have the systems been changed or could they be changed easily to allow for that to occur?

**Mr Lee**—The short answer is that they cannot be changed easily. Ms O’Neill might be able to add more.

**Senator ABETZ**—It seems to me that all you would have to do is have a category of compensation for back pay, compensation for unfair dismissal or a combination of the two and just tick a box. I would have thought that with modern technology being what it is today it would not be too hard to input that data, if that information was wanted to be found or obtained.

**Ms O'Neill**—The reason that it cannot be done is not a technical reason. The system could be achieved. It is the nature of the conciliation process. There are many different reasons why a respondent to an unfair dismissal application may decide to settle the matter and to pay some money to the applicant to settle the matter. For example, it may be that there is an issue of outstanding underpayments. It may be that there are minimum legal entitlements, such as notice, that have not been paid. There may simply be a judgment that the applicant has some merits to their case and a decision. All of the various factors are in the mixture in the conciliation process. It would be extremely rare for an employer to acknowledge liability in a conciliation process or in a settlement—that they did not do certain things that they should have. It is not practical, or it does not work that way, to apportion any agreement to pay money to various components that it might be in relation to.

**Senator ABETZ**—Not in all cases, and I fully accept that, but I would have thought in the vast majority of cases they could be delineated. In fact, we even had one commissioner from the bench, who will remain nameless, saying: ‘You want to pay two weeks, eight weeks or six weeks. Divide by two or something.’ That was the application of the minder in relation to determining that. We will not go any further with that. Mr Lee, can we have a list of the commission members and the number of cases they have dealt with since 1 January; the category of case—let us say unfair dismissal, a collective agreement, full hearing or whether they sat on an appeal—and the outcome of each case—for example, whether the unfair dismissal application was accepted or rejected, and whether the collective agreement was approved or not approved. You can take that on notice.

**Mr Giudice**—I think there would be grave difficulty in providing that kind of information—from a propriety point of view and not from a technical point of view.

**Senator ABETZ**—I can tell you they went through the Family Court, if I recall, to find out how many judgments were undertaken and how many hearings by judges and registrars there were. I might be wrong as to that, but I would have thought the workload and throughput of each commissioner should not be a problem.

**Senator FISHER**—What about on a no names basis?

**Senator ABETZ**—Let us not get into a difficulty here. Can you take it on notice and consider it?

**Senator Arbib**—They can give it a considered response.

**Senator ABETZ**—If you believe it is still improper, next time round we might have a discussion about it.

**Mr Giudice**—Is that the ruling?

**Senator ABETZ**—Take it on notice and let us know.

**CHAIR**—The question has been asked, and taking it on notice is merely a matter for you to then consider the question and respond appropriately.

**Mr Giudice**—I see. Thank you.

**Senator ABETZ**—I do not want to push that point now. How many take-home pay orders have been made, if any? I would like to know the answer to it. How many workers were covered by each take-home pay order?

**Mr Lee**—There have been no take-home pay orders issued.

**Senator ABETZ**—So it is only applications at this stage?

**Mr Lee**—That is correct.

**Senator ABETZ**—I was told that Fair Work Australia currently has no research on superannuation being undertaken. That was on 10 February. Is that still the case?

**Mr Lee**—That is correct.

**Senator ABETZ**—Is there any other research being undertaken in other areas, or would it be on your website somewhere if research has been commissioned?

**Mr Lee**—The totality of the list has probably been canvassed here and certainly all of it will be on the website. It was referred to by Ms O'Neill in terms of unfair dismissals and conciliations. There has been research that I commissioned that has fed into the minimum wage.

**Senator ABETZ**—So that is all on the website?

**Mr Lee**—That is correct.

**Senator ABETZ**—Do you put this research out for tender or do you approach particular people or organisations that you believe have expertise in an area?

**Mr Lee**—I would probably deal with that on a case-by-case basis. In terms of the research that fed into the minimum wage process, all of that was subject to tender processes, as indeed was the research that Ms O'Neill talked about earlier.

**Senator JACINTA COLLINS**—That is quite a number of different research projects. Did they all go to separate tenders?

**Mr Lee**—That is correct.

**Senator ABETZ**—No. The University of Sydney scored a couple, did they not?

**Mr Lee**—I can give you the detail of each of them.

**Senator JACINTA COLLINS**—There are the ones that have been published.

**Senator ABETZ**—Do not bother with that. The Workplace Research Centre scored two in relation to enterprise level case studies and industry profiles. That is in question on notice EW0967\_10.

**Senator JACINTA COLLINS**—I think Mr Lee is talking about the ones that have already been published, whereas there are others that have not been yet.

**Senator ABETZ**—All right.

**Senator JACINTA COLLINS**—I think there are only four that have been published, but there are more than four on the list on the website.

**Mr Lee**—No, I am talking about the four that have been published.

**Senator ABETZ**—How is the info line going? Is it going well? How long are people waiting?

**Mr Lee**—I will ask the manager of that area to answer your question.

**Senator ABETZ**—It is EW0965\_10. We were told that there were 6,479 calls between 4 January and 15 January. I was wondering if you could provide us with an up to date—

**Mr Lee**—Before Mr Hower responds, generally speaking, the numbers of calls that are coming in to the line has started to stabilise. In terms of our management of calls coming in, we are pleased with the improvements that have been made with response times. Mr Hower will be able to give you some detailed indicators on that.

**Senator ABETZ**—Mr Hower, having brought you to the table, I do not like doing this to you, but would you mind please taking that question on notice? I have just noticed the clock. We only have 20 minutes left.

**Mr Hower**—Certainly.

**Senator ABETZ**—Thank you for your forbearance. I would like to turn to EW0962\_10. My question was: were any submissions made to you—that is, Fair Work Australia—by the government in relation to these modern awards as to their social and economic impacts on Australian consumers? I am then given a link to at least a dozen Australian government submissions saying:

The Australian Government made a number of submissions throughout the award modernization process. These submissions can be accessed via the following links ...

There are well over a dozen links. With great respect, the question was not how many submissions the Australian government made. It was: which ones dealt with the social and economic impacts on Australian consumers? I do not expect to have to read all of those submissions to find out that there was no mention of social and economic impacts on Australian consumers by Australian government submissions. If there was one, you might be able to identify which one it was. I invite you to go back and reconsider that answer, because it is just throwing a whole lot of bumf at a senator and it does not answer the question.

**Mr Giudice**—I fully understand your frustration that the answer was not as specific as it might have been, but when one is asked to categorise a particular submission made during the course of proceedings it inevitably raises difficulties. It requires us to make a judgment about whether or not the particular submission is relevant to the question. It puts Fair Work Australia, as a tribunal, in a very difficult position to, as it were, sift through and make judgments about whether particular submissions come within the type that you described in the question. That is essentially the difficulty.

**Senator ABETZ**—That is a fair cop. Minister, can you indicate for the benefit of this committee out of all of those submissions which ones, if any, address the social and economic impacts on Australian consumers? You can take that on notice. I would like to move on and hopefully gain some assistance from Fair Work Australia in relation to the issue of personal

leave. As I understand it, under the Workplace Relations Act, it used to be accumulated on an hourly basis so that a worker had 76 hours of sick leave available, whereas nowadays it is 10 days of sick leave. As I understand the previous system, you could leave work at 3.00 pm with a headache and return the next day and only lose two hours of sick leave. Now, if I were to leave at 3.00 pm with a headache and come back the next day, would I have lost a day of sick leave?

**Senator Arbib**—Isn't this a question for the department rather than Fair Work Australia? Fair Work Australia should not be called on to interpret laws at this committee.

**Senator ABETZ**—If employers were seeking guidance on this, should they be going to the Fair Work Ombudsman?

**Senator JACINTA COLLINS**—Yes.

**Senator ABETZ**—That may well be right, and I accept that. If I may, courtesy of it already being on the *Hansard*, I will put that on notice to the department and the Fair Work Ombudsman, and also the scenario of what happens if the person works four 9-hour days per week. Does that person get eight sick days or 10 sick days? If they got 10 sick days they would then in fact be getting 90 hours of sick leave as opposed to 76 hours of sick leave. That is a matter that has caused some confusion, and I will put those on notice. I would like to move on to the conciliations that Fair Work Australia undertakes, especially in unfair dismissals. I am receiving information, rightly or wrongly, that there seems to be a trend amongst conciliators of seeking to force employers to settle cases. Has Fair Work Australia received, through its complaint system, any complaints of that nature?

**Ms O'Neill**—Just to clarify, was your question in relation to respondents—employers?

**Senator ABETZ**—Yes, it would be. The employer would be the respondent.

**Ms O'Neill**—As I understand it, there has been a total of three complaints made that bear on the conciliation process in any way from 1 July of last year. Perhaps I will take the detail on notice, but could I just say that from my quick look there does not appear to have been such an issue raised. What I can say is that that is not something that the conciliators do—force parties or, in fact, advise parties to settle on any particular basis. It is a voluntary process, as I outlined earlier, and it is entirely at the discretion of the parties as to whether they reach agreement and, if they do, on what particular terms they may do so. The conciliators simply have no power to make any determinations of any kind.

**Senator ABETZ**—I know they do not have any official powers, but they have certain persuasive powers. There is a specific matter that has been brought to my attention where one of these conciliators has allegedly contacted the current boss of the person who is the applicant, the person who claims to be unfairly dismissed but moves on to another job, and the conciliator, in doing his or her own homework, takes it upon himself or herself as the conciliator to ring the new boss and find out what the wage level is to assist in this conciliator forcing some sort of agreement on the parties and suggesting what a fair thing might be in circumstances where the applicant themselves had not told their current employer that they were going through an unfair dismissal proceeding. Of course, undoubtedly, with the best intentions in the world, that prejudiced the applicant and, I might add, upset the employer as well, so it got both parties offside.

**Ms O'Neill**—That would obviously be of concern if that was to happen, and if you have a particular matter I would be happy to look at it. What may have occurred in that place—and I may know the matter that you are making reference to—is that a Fair Work Australia tribunal member, not a conciliator, issued an order to a third party to produce documents in relation to subsequent employment, because some of the factors that a Fair Work Australia member has to take into account in determining an application are attempts by an applicant to mitigate their loss and any other income that they have received from other sources. It may be that that is what you are referring to.

**Senator ABETZ**—I will not take that one any further. Are you able to tell us how many applications for variation or whatever for each award there might be? Take that on notice. I have just been told that there are some real issues in relation to the modern cleaning award. It was altered in May, is that right? If I may have the indulgence to quickly say what the problem is. A small business, a cleaning company, now have to pay, they were told, penalty rates for work on Saturdays and Sundays. They are in the business of cleaning low-cost accommodation cabins and that is all fine, but in very rough terms they were charging \$30 an hour and paying \$20 an hour, no matter when the work was being done. Now they have to pay—and this has been backdated on them—\$40 per hour, I think, on Saturdays and \$50 per hour on a Sunday. Of course, they have had their contractual arrangement, they have already done the work, and the business got a maximum \$30 per hour. But now, under this backdating, they will have to pay their workers moneys which they do not have; they cannot recoup it from the person for whom they provided the services. They are some of the difficulties—and I will just leave it at that—in relation to backdating of awards. If you could advise on notice whether or not the modern cleaning award was backdated last month, that would be very helpful.

I understand Senator Fisher said she only wanted one minute, so we will give her her minute now in case it lasts a bit longer than a minute, Chair.

**Senator FISHER**—It will not. Your Honour, to the extent that your opening statement was based on legal advice other than primarily your own, can you provide the committee with a copy of that legal advice.

**Mr Giudice**—I have difficulty answering the question initially, because I had a range of discussions with judges and other people, whose identities I would be very reluctant to disclose, about the issue of a person with the status of a Justice of the High Court being required to attend estimates.

**Senator FISHER**—So the advice was not in writing?

**Mr Giudice**—I have not had any independent legal advice in writing.

**Senator FISHER**—Thank you.

**Senator ABETZ**—Can I then place a few questions on notice. Can you advise us how many costs applications have been made and granted in relation to unfair dismissal claims. Is it accepted by Fair Work Australia that, due to an error in registration, the Supported Employment Services Award 2010 had the transitional schedule deleted? You might need to take that on notice.

**Mr Giudice**—Yes.

**Senator ABETZ**—If that was by way of administrative error, how might that potentially be rectified? Just going back to the registration of agreements or approval of agreements, why is it taking longer than seven days to get these agreements processed?

**Mr Giudice**—The agreements are dealt with in the way that I indicated earlier. They are allocated as soon as they can be.

**Senator ABETZ**—I accept that; that was a repetitive question. What is the shortest time in which an agreement has been processed, from being lodged to being approved in Fair Work Australia?

**Mr Giudice**—I would really have to take that on notice.

**Senator ABETZ**—Of course. And when we get the answer, Minister, you might and Ms Gillard especially might like to study it, because in Forward with Fairness the Australian people were promised that under Labor's system collective agreements would be approved by Fair Work Australia within seven days. I do not think that that benchmark is being achieved and I have not heard the minister complain in any way, shape or form about that, so I am wondering whether it is a problem with Fair Work Australia or, in fact, with the scheme. If I may on a final note, because I am sure we have all got a sweet tooth, raise the issue of Haigh's Chocolates, they had a substantial delay before their agreement was ultimately approved by Fair Work Australia. I think it went for—I hope I do not do them, or indeed Fair Work Australia, a disservice—some 17 weeks. It was lodged on 22 October 2009.

**Senator JACINTA COLLINS**—Did that one involve undertakings?

**Senator ABETZ**—It was allocated to a second member on the unavailability of the first, then there was a substantial delay before the agreement was ultimately approved.

**Senator JACINTA COLLINS**—It does not say anything about undertakings?

**Senator ABETZ**—No, it does not. If you could possibly give us an indication in relation to the Haigh's Chocolates agreement—I understand that it has all been approved and all is well that ends well—what the rationale or reason was for the delays, that would be very helpful.

In relation to the award modernisation, did the issue of student workers come up? Indeed, as I understand it, the Pharmacy Guild sought variation and the SDA, during the hearing, suggested that it could be dealt with by IFAs, I am told; is that correct? If nobody has a recollection of that, you could take that on notice.

**Senator JACINTA COLLINS**—Which award is it?

**Senator ABETZ**—Whatever one applies to the pharmacists.

**Senator JACINTA COLLINS**—So it is not the retail one.

**Senator ABETZ**—I think that is a separate one to the Retailers Award. I understand the retailers raised it with a casual clause in the award modernisation process and that the Australian Industrial Relations Commission specifically rejected it. If you could please confirm that on notice for me, I would be much obliged.

**CHAIR**—That is it for questions on notice. Thank you, Justice Giudice, Mr Lee and other officers of Fair Work Australia, for your appearance before the Senate estimates. We will now suspend just for five minutes while we get the ABCC in.

[9.06 pm]

### **Australian Building and Construction Commission**

**CHAIR**—We will now commence questioning with the Australian Building and Construction Commission. Welcome, Mr Lloyd and your officers. Do you have an opening statement that you would like to make to the committee before we go to questions?

**Mr Lloyd**—Yes, I have a brief opening statement.

**CHAIR**—Thank you.

**Mr Lloyd**—This opening statement has an element of a closing statement for me. Two recent decisions of the Federal Court are instructive about the ABCC's journey in achieving its outcomes set out in the portfolio budget statements. The outcome is workplace relations laws are enforced in building and construction workplaces. In the first case the Federal Court on 18 May 2010 dismissed an appeal by the CFMEU and an officer of the union, Mr Mates. The case relates to events in February 2006 at Heidelberg, Victoria. This occurred not long after the ABCC was established. Mr Mates threatened and coerced a contractor to employ three people; two of them had been shop stewards and the other an occupational health and safety officer. The court found the conduct was done in wilful disregard for the BCII Act. The CFMEU was fined \$75,500 and Mr Mates, \$10,000. The union and Mr Mates appealed the decision and the appeal was rejected.

The ABCC has had an impact on the workplace relations conduct of the industry. As a result of its education activities, investigations, onsite presence and court proceedings the conduct of the industry has improved. Industrial disputation has fallen and unlawful conduct, such as found in this case, is less prevalent. Many in the industry remark about the removal of industrial tension and coercion from most of the nation's building and construction sites.

It is also important that productivity and efficiency of the industry has steadily improved. More projects are now completed on time and within budget. The presence of the ABCC is a contributing factor to this improvement. However, some in the industry have not embraced the changes that I have identified. In the second case, on 20 and 24 May 2010, the ABCC obtained orders in the Federal Court. The orders were against the CFMEU. The CFMEU had been involved in organising a picket at a Melbourne wholesale fruit, vegetable and flower market at Epping. The building of the new market is an important project for the state of Victoria. It appears that, despite the Federal Court order, the picket continued for a number of days.

The need for injunctions is not a common requirement as the incidence of unlawful conduct has been reduced. However, some in the industry remain prepared to resort to unlawful tactics. This means that extreme care should be taken in changing the regulatory regime. Australian workplace relations is grounded in respect for the rule of law; respect for the right to choose not to join or to join a union; the right to choose the type of industrial arrangement; and the right to work without fear of threats, intimidation or coercion. If the rule of law is defied then the workplace relations system can suffer and Australia's reputation will be harmed.

The ABCC staff will continue to work hard to eradicate unlawful conduct from the industry and achieve the agency's key outcome. Thank you.

**CHAIR**—Thank you. We will now move to questions. Senator Abetz.

**Senator ABETZ**—I thank you for that opening statement. Can I have a copy of that?

**Mr Lloyd**—Yes.

**Senator ABETZ**—The secretariat could make a photocopy of that if there are no individual notes written on it.

**Mr Lloyd**—No.

**Senator ABETZ**—Thank you for that. On behalf of the coalition I would like to say thank you for your service in the ABCC. You have indicated that you will not be reapplying, so your term will undoubtedly come to an end sometime later this year. I wish you well and thank you for your services. In the course of your work as commissioner, have you had occasion to meet with the department from time to time?

**Mr Lloyd**—Yes, from time to time.

**Senator ABETZ**—How often would you attend those meetings?

**Mr Lloyd**—They vary. It is possibly up to half a dozen times a year at the most.

**Senator ABETZ**—What about the minister's office?

**Mr Lloyd**—I have met the minister on a few occasions. It is about once or twice a year, normally.

**Senator ABETZ**—When was the last time you met with the minister?

**Mr Lloyd**—It certainly was not recently.

**Senator ABETZ**—What about the department?

**Mr Lloyd**—I met with the secretary of the department about two months ago and I met with other senior officials probably two or three times in the last year or so.

**Senator ABETZ**—What are the details of those meetings? If you cannot tell us because they are operational matters or whatever, then so be it.

**Mr Lloyd**—In general they are about the direction of the ABCC and issues like that. The last meeting with the secretary concerned discussion about my future and what I was going to do.

**Senator ABETZ**—Were you advised at that meeting as to the process for the position of commissioner when your contract expired?

**Mr Lloyd**—It is part of the government appointment process in regard to portfolio agency heads and statutory appointments, as I understand it, that about six months before the appointment term concludes, the secretary is required to advise the minister about what type of appointment or how the appointment process should proceed. It seemed to be an appropriate thing for me to initiate a meeting with the secretary to discuss those issues.

**Senator ABETZ**—If I need to mind my own business tell me so, but did you say anything about your future as to whether you would reapply or would not reapply?

**Mr Lloyd**—I said that I would not apply for the position, but if the government wished to reappoint me for a term to take the organisation past an election, for example, then I would be prepared to consider a short appointment like that.

**Senator ABETZ**—Can I push this any further? Did you make it perfectly clear to Ms Paul that you would not be reapplying?

**Mr Lloyd**—Yes.

**Senator ABETZ**—The department provided us with the letter that was sent to you inviting the possibility of reapplying. Can you recall when that discussion was held with Ms Paul?

**Mr Lloyd**—She is required to write about six months before the term concluded, so I think it would have happened about mid-March.

**Senator ABETZ**—I do not recall the date on the letter, but it would have roughly coincided with when you received the letter?

**Mr Lloyd**—Yes. My term finishes on 28 September, so I presume Ms Paul was required to write by about 28 March.

**Senator ABETZ**—So you would have met shortly before that?

**Mr Lloyd**—Yes. That is right.

**Senator ABETZ**—And made it clear that you would not be reapplying?

**Mr Lloyd**—Yes. That was not a secret. I had stated that publicly a few times.

**Senator ABETZ**—Since then, yes.

**Mr Lloyd**—No, before then.

**Senator ABETZ**—Thank you for that. If I recall the letter correctly, there was no comment in the letter about your discussion with Ms Paul about not seeking to reapply.

**Mr Lloyd**—No.

**Senator ABETZ**—Nor was there any request for you to reconsider your position in that letter?

**Mr Lloyd**—No.

**Senator ABETZ**—Unfortunately, I do not have the letter with me, but that was my recollection of it. Can you take us to the Epping markets dispute. Was the injunction obtained courtesy of an ABCC action?

**Mr Lloyd**—Yes.

**Senator ABETZ**—Was that successful?

**Mr Lloyd**—Yes.

**Senator ABETZ**—How long did it take for the picket to be removed?

**Mr Lloyd**—It took about a week.

**Senator ABETZ**—What other enforcement action could the ABCC take? I assume the court order was served on the relevant union or the picketers?

**Mr Lloyd**—Yes.

**Senator ABETZ**—If somebody wilfully ignores a court order, what is the next course of action that you follow?

**Mr Lloyd**—We have to be careful here. The matter is still before the court and there is a hearing scheduled for the next few days.

**Senator ABETZ**—At this stage it is an allegation that the court order was ignored by the maintenance of the picket, but that might be aired in further court proceedings; is that correct?

**Mr Lloyd**—Yes.

**Senator ABETZ**—In that case I dare say we should not go any further. If the amending bill were to have already been passed, would that have changed the suite of powers that you may have had on this particular occasion with the Epping markets?

**Mr Dalglish**—The powers under the BCII Act include the power to obtain an injunction under section 49(3), which would not be available under the bill.

**Senator ABETZ**—If the amending legislation had been passed then you would not have had the power to grant that injunction—I am sorry, apply for that injunction? You do not grant injunctions. The courts do that.

**Mr Dalglish**—No, that is an oversimplification. The application for the injunction can be under section 39 of the BCII Act—and there is an equivalent for that in the Fair Work Act—or there is an additional source of power under section 49 of the BCII Act. There is no equivalent of that in the Fair Work Act.

**Senator ABETZ**—It was the latter that you used for the purposes of the Epping markets?

**Mr Dalglish**—I think, both.

**Senator ABETZ**—What, in your mind, was the situation in relation to the Epping markets? What was the matter that you were seeking to protect? What were the issues involved?

**Mr Lloyd**—It was basically to ensure that work could occur at the site, because the imposition of the picket prevented work from happening.

**Senator ABETZ**—As I travel around the country there are suggestions from time to time that criminal elements are involved in the building industry. I think that has been alluded to in a certain way with the—what do we call it—petrol bombing, firebombing of the CFMEU headquarters in New South Wales. I understand that there is speculation around those activities; that has been brought to my attention. I do not know if they are related in any way but it has been brought to my attention that there may be criminal elements, in the form of bikie gangs, also involved in the building sector. Do you have any knowledge of that? Has anything like that been brought to your attention?

**Mr Lloyd**—There are often comments made about bikie gangs' involvement. It came to our attention that at the West Gate dispute there were bikie gang elements involved in some of the protest action around that dispute. Beyond that we have the odd report made to us, but we have not found widespread evidence of it. I think it was mentioned in the papers that on the Perth to Bunbury highway construction recently a contractor company there had some bikie connections. They are the two most prominent matters that come to mind. If we do get any

concerns or information suggesting criminal activity, we are of course obliged to refer it to the appropriate law enforcement bodies, which we have done.

**Senator ABETZ**—At one stage there was a rally in support of Ark Tribe, who was prosecuted by the ABCC. I think it was reported in the media that that rally in support of him included a lot of bikies, to use that pejorative term. I know there are a lot of good people who ride motorbikes et cetera, but I use the term as it is often understood—as in bikie gangs and the lawlessness that is associated with them. Was anything of that nature drawn to your attention about that rally in support of Ark Tribe?

**Mr Lloyd**—There was a suggestion that there were bikie gang people involved in that protest.

**Senator ABETZ**—Of course that was mentioned in the media, so you would not have had to do much supersleuthing to find that out.

**Mr Lloyd**—Yes.

**Senator ABETZ**—If I may briefly interpose here, Chair, and acknowledge that Mr Dalgleish is up for reappointment—not that I want to know what he is doing. But, whatever may be decided, I wish him well in relation to his future.

Can you give us an update in relation to any of the major construction sites in Western Australia in the resource sector?

**Mr Lloyd**—Yes, there has been industrial disputation in the Pilbara. In December there was a strike by several hundred employees at the Pluto project. There is a proceeding underway in the Federal Court on that matter and we are a party to that. In January there was an eight-day strike in the Pilbara and we are again intervening in that matter. That is before the Federal Court. Also, back in 2008, I think it was, there was a strike at another Woodside project. It involved employees of CBI, which is a construction contractor. Again, we are involved in proceedings in the Federal Court on that matter against some unions and about 118 employees, I think it is. They are the three major matters. Since January and the last Pluto strike, nothing has come to my attention about any further action.

**Senator ABETZ**—In relation to those resource projects, are you able to give us a rough idea as to the size of the projects involved in either dollar terms or the number of people engaged in the totality of the site, or the potential—no, I will not go to their potential income. That is all subject to taxes and other things. We will not go there tonight.

**Mr Lloyd**—The Pluto project is a massive project. The number that comes to my mind is \$20 billion. I think the CBI matter concerned some extensions to the Woodside project, but these are massive projects. They start at a billion and go up, normally.

**Senator ABETZ**—You start losing me when you talk \$20,000, so \$20 billion is \$20,000 million, which is undoubtedly—

**Senator CAMERON**—You should get one of your own to explain it to us!

**Senator ABETZ**—Can I tell you that your own minister, Senator Sherry, made a similar mistake at estimates and in question time, so I would not be going there.

**Senator CAMERON**—I would.

**Senator ABETZ**—Of course you would, and we would not expect anything else from you. Can I take you to a question on notice, to which you kindly provided answers, EW0972-10, where the question was:

How many working days have been lost in the construction sector for the last eight quarters?

The last one was September 2009. Are you able to give us updates on those figures for the December 2009 quarter and, if you have got them, the March 2010 quarter?

**Mr Lloyd**—I can for the December quarter. The construction figure has now risen in December to 10.4 per cent.

**Senator ABETZ**—What is it for all industries?

**Mr Lloyd**—It is 4.7 per cent.

**Senator ABETZ**—There has been a slight rise there as well? It is about the same, is it not? There is about a 30 per cent increase in both areas. If I can go to EW0971-10, the question was:

Of the 3 matters referred to the ABCC legal section in January 2010, how many were against building contractors?

And then:

Of the 59 active investigations, how many were against building contractors?

Are you able to provide us with updates as to how many matters have been referred to the ABCC legal section, let us say, for this calendar year so far?

**Mr Lloyd**—No, I do not have those figures.

**Senator ABETZ**—Could you take that on notice for me, please. Do we have the number of active investigations?

**Mr Draffin**—As at 1 May 2010 the ABCC had 59 active investigations.

**CHAIR**—We will now suspend for 15 minutes.

#### **Proceedings suspended from 9.30 pm to 9.44 pm**

**CHAIR**—We will resume these estimates hearings and continue with questions for the ABCC. Senator Abetz.

**Senator ABETZ**—I think before the evening recess I asked how many active investigations were underway and Mr Draffin indicated there were 59. Is that the same 59 that I was told about in EW0971\_10, or have some moved on and a few more come on to the page?

**Mr Draffin**—Yes. Some would be the same; others would have been moved off and there would be some new investigations in there as well.

**Senator ABETZ**—Could you tell us on notice how many, under the current lot of 59, were against building contractors? Last time around there were 29 against building contractors, 10 against head contractors and 19 against subcontractors.

**Mr Draffin**—I would have to take that on notice, but it would be a similar number, I would think.

**Senator ABETZ**—How many were against building contractors; no, the description was ‘builders, contractors and union officials’? If you could provide that in relation to the matters referred, I would be much obliged.

On EW0973\_10 I think I asked the wrong question and as a result got an answer. I think I asked, ‘Did the AIG, Masterbuilders or AMA, the Australian Construction Association, refer a letter to the Deputy Prime Minister to you for comment?’ The letter was dated 3 November and dealt with the National Code of Practice for the Construction Industry. You answered, ‘No.’ What I think I was meaning to ask was: was that letter, co-signed by all these people, sent to the Deputy Prime Minister, referred by the Deputy Prime Minister to the ABCC for comment or advice to the Deputy Prime Minister?

**Mr Lloyd**—No.

**Senator ABETZ**—It was not; all right. So, even when I ask the question correctly the answer is still no; that is fine. Where are we at in this case where two senior union building officials are facing court in relation to allegations that they head-butted ABCC officials on a work site?

**Mr Draffin**—That matter will be heard before the Melbourne Magistrates Court. As I understand it, there is a mention hearing later this month, but the matter will continue from there, so it is yet to be decided.

**Senator ABETZ**—So, it is still before the courts, and you say it is the Melbourne Magistrates Court, so it undoubtedly occurred—or it is alleged to have occurred—in Melbourne. Whereabouts; on what work site?

**Mr Draffin**—It was a work site in North Melbourne.

**Senator ABETZ**—So, it was not West Gate or the hospital or one of those—

**Mr Draffin**—It was a Buildcorp site.

**Senator ABETZ**—Whereabouts are the IR hotspots? Do they continue to be in Western Australia and Victoria in relation to the ABCC?

**Mr Draffin**—Yes.

**Senator ABETZ**—The ABCC e-alert dated Wednesday, 14 April 2010 gives us a breakdown in relation to the current ABCC legal proceedings as at 30 March 2010. You include the ACT in New South Wales for your statistics. What about the Northern Territory; where does that fit? Would you deal with that separately?

**Mr Lloyd**—No; we do not have an office in the Northern Territory, but we service that from Adelaide.

**Senator ABETZ**—So, if there were anything in the Northern Territory, would that then be SA (including NT)?

**Mr Lloyd**—We would stipulate it as Northern Territory.

**Senator ABETZ**—Stipulate it separately as Northern Territory. This might be, you know, the biggest insult I have ever had to face, but if there were any activity in Tasmania, would that be Victoria (Tasmania)?

**Mr Lloyd**—No, it would be Tasmania.

**Senator ABETZ**—Very good. Tasmania is not a hotspot for illegal activity, which is nice, nor is the Northern Territory. Senator Scullion and I are the representatives of two states that do not find a position on your list, which is welcome. Can you tell us whether there is an update to that list? Can you provide us with an update, say, until the end of May?

**Mr Lloyd**—Yes.

**Senator ABETZ**—I am referring to the ABCC e-alert of Wednesday, 14 April, which gives us current ABCC legal proceedings as at 30 March 2010. If we can just have that updated to 31 May, that would be helpful. I have got a media clipping here but, unfortunately, I cannot assist you other than it is from the *Financial Review*. It is headed 'Building office alleges union acted unlawfully'. That is a story suggesting that the ABCC has filed fresh legal proceedings alleging certain activities at the Melbourne Royal Children's Hospital. Is that currently before the courts?

**Mr Lloyd**—Yes.

**Senator ABETZ**—How many different sets of proceedings have now been filed by the ABCC in relation to the Royal Children's Hospital site?

**Mr Dalglish**—Three.

**Senator ABETZ**—What about the West Gate Bridge?

**Mr Dalglish**—Just one.

**Senator ABETZ**—How many applications has the ABCC brought to cancel any entry permits of union officials?

**Mr Dalglish**—I would have to take it on notice for the precise number, but it would be in the vicinity of half a dozen.

**Senator ABETZ**—How many of those applications have been successful? I know of one that has not been successful, but how many of those would have been successful?

**Mr Dalglish**—In three cases that I can think of there were suspensions of permit rather than revocation of permit, and in each case that permit holder would have got it back after the period of suspension. In another case there were conditions imposed.

**Senator ABETZ**—Possibly, if you could take on notice, the number of cases, what was sought from the court—whether a suspension or revocation—and then what the court or Fair Work Australia actually ordered. In relation to Mr Brett Harrison, you sought an order to cancel his permit; is that correct?

**Mr Dalglish**—I think the technical term is a revocation, and that was rejected by the commissioner.

**Senator ABETZ**—That was despite the fact that he had pleaded guilty to fraud in the sum of \$3,595 in living- away-from-home expenses.

**Mr Dalglish**—That is correct.

**Senator ABETZ**—As I understand it, the Abigroup contractors had dismissed this Mr Harrison as a result of that fraud; is that within your knowledge?

**Mr Dagleish**—Yes.

**Senator ABETZ**—Do you know whether he brought any applications? This may be not within your knowledge and you would not necessarily know, but did he bring an application for unfair dismissal or unlawful termination in relation to his dismissal from that job?

**Mr Dagleish**—I do not know. I could take that on notice.

**Senator ABETZ**—If you could, because it is of interest that in the story, which I have in front of me dated 1 March 2010, we are told that, ‘The organiser said a lack of attention to detail on the expenses he was accruing led him to inadvertently make the excessive claims.’ I do not know how you can be convicted of fraud by inadvertence, but I suppose I just offer that up as a comment, especially when he pleaded guilty to the charge. You brought the application on the basis that he was not a fit and proper person; is that correct?

**Mr Dagleish**—Yes, that is correct, because he had convictions for dishonesty offences.

**Senator ABETZ**—I will not take that one any further. Having this new job as shadow minister for employment and workplace relations, part of my bedside reading is to read CFMEU publications. One of them asserts that the ABCC intimidated working families at Easter.

**Senator CAMERON**—Point of order; it may not be a point of order. CFMEU has got a number of publications and I am not sure which one you are talking to. There are a range of publications.

**Senator ABETZ**—It just goes to show that I am not as good a connoisseur of CFMEU publications as Senator Cameron.

**Senator CAMERON**—I am just trying to follow you.

**CHAIR**—It is probably good practice if you are going to quote from a document that you properly identify the document; that is all.

**Senator ABETZ**—All I have got is off the website; cfmeu.asn.au/yourunion/message from Dave Noonan/ABCC intimidates working—it is dated 10 May 2010. In the top right-hand corner it has, ‘Contact CFMEU national office on’, with a telephone number.

**CHAIR**—It is an electronic newsletter, is it?

**Senator ABETZ**—I would assume so, and it has been colour printed. It asserts that:

Workers at two Bovis Lend Lease jobs were visited at their homes by process servers and served letters threatening them with prosecution and fines ... if they did not contact the ABCC and agree to act as informants against their workmates and union officials.

The timing was no accident. According to the letter, if they did not agree to become informants by Easter Tuesday, the ABCC would prosecute them. This gave workers no reasonable opportunity to obtain legal advice by the deadline.

What can you tell us about that allegation?

**Mr Lloyd**—At one point the letters required a response by not the Tuesday, which would have been 5 April, but they were given until Friday, 9 April. Also, following some media comment on this matter in the *Australian*, I observed, as any agency would, that if there were

extenuating circumstances not to meet the specified date then all someone had to do was to contact us and they would be given an extension.

**Senator ABETZ**—How many of these letters were served? Or how many workers had been approached to give advice on these two Bovis Lend Lease sites?

**Mr Lloyd**—Fifty-five people.

**Senator ABETZ**—I suppose they would all have been done as a job lot, as in their letter issued with the same date?

**Mr Lloyd**—That is my understanding, yes.

**Senator ABETZ**—So the return date was, to your recollection, not Easter Tuesday but the Friday following.

**Mr Lloyd**—Yes.

**Senator ABETZ**—Do the letters normally allow 14 days?

**Mr Lloyd**—I think it varies. With any investigation it is best to get the information as close to the events as possible, but there is some flexibility. There is no dictated or specified date. There is no requirement in legislation about the time or anything like that for this type of letter.

**Senator ABETZ**—That completes my questions at this stage, thank you.

**Senator CAMERON**—Mr Lloyd, what was your date of appointment?

**Mr Lloyd**—I think it was 29 September 2005.

**Senator CAMERON**—When do you resign?

**Mr Lloyd**—I have not decided yet.

**Senator CAMERON**—When does your resignation take effect?

**Mr Lloyd**—It is up to me to decide, but the term finishes on 28 September 2010.

**Senator CAMERON**—So about five years, nearly to the day.

**Mr Lloyd**—Yes, it was a five-year term.

**Senator CAMERON**—What steps have you put in place for an orderly transition out of the ABCC?

**Mr Lloyd**—In any organisation I have ever run you always have people who work with you who are capable of stepping up and doing the job. Whoever is selected to be commissioner is a matter for the government, the minister, to recommend to cabinet. I think an organisation is not properly managed if someone departs and it does not operate as effectively, so I have always felt there are a range of competent people to keep running the organisation if I am not around.

**Senator CAMERON**—Did you give a lot of thought to this closing statement?

**Mr Lloyd**—The one I gave today, yes.

**Senator CAMERON**—So you did not give much thought to your obligations under the objects of the act in this document, did you?

**Mr Lloyd**—I do not understand the question.

**Senator CAMERON**—Do you have a copy of the act?

**Mr Lloyd**—I do not have a copy of the statement. The act, the objects, yes.

**Senator CAMERON**—Go to page 3.

**Mr Lloyd**—Section 3?

**Senator CAMERON**—Section 3, clause 3, the main objects of the act.

**Mr Lloyd**—Yes.

**Senator CAMERON**—I was looking for some idea in your opening and closing statement of your achievements in some of these objects that are outlined in the legislation. I put it to you that this closing statement demonstrates the same bias that you have had in this job ever since you came into it—that is, it is about the CFMEU, and you have had nothing but a set on the CFMEU and you have ignored other aspects of your obligations as the commissioner.

**Mr Lloyd**—I obviously reject that.

**Senator CAMERON**—Tell me why you would have this statement that simply focuses on the CFMEU and does not focus on any other aspect of your obligations under the act.

**Mr Lloyd**—The statement does focus on other aspects of the act. Paragraph 6 mentions particularly the range of activities we undertake. Paragraph 7 mentions the productivity. I think it does. I highlighted two cases and they happened to involve the CFMEU.

**Senator CAMERON**—You have highlighted two cases and you have been there for five years.

**Mr Lloyd**—What I highlighted was the two most recent cases.

**Senator CAMERON**—You have been there for five years and this is your record, your closing statement to the Parliament of Australia on your achievements. If you look at the object of the act, you have a responsibility to carry it out fairly. There is no mention of fairness in your five years—not one mention. Thirteen paragraphs are all you can bring to the Senate on your achievements.

**Mr Lloyd**—I misunderstood. I did not see this opening statement as a valedictory of what I have done as chair.

**Senator CASH**—Otherwise you would still be talking now, wouldn't you?

**Mr Lloyd**—Exactly, yes. I wanted to give a summary particular highlighting two recent decisions. One related back to near the start of the ABCC and the other one related to current events. I wanted to draw from those some lessons of what I have learned.

**Senator CAMERON**—You were the one that said it was a closing statement. When they have a closing statement, many people try and have a look at providing a report on their activities and that is it. Again, it is the CFMEU. You are one-eyed in your approach to the CFMEU. You have not carried out your functions fairly or objectively and this document demonstrates that.

**Mr Lloyd**—Are you asking me a question?

**Senator CAMERON**—Yes.

**Senator CASH**—No, he was not. He was making another statement.

**Mr Lloyd**—What was the question?

**Senator CAMERON**—Why is there nothing else in there about fairness in the industry? Fairness is the first object of the act.

**Senator ABETZ**—Read paragraph 6 of the statement.

**Senator CAMERON**—I am not here to do anything you tell me.

**Senator ABETZ**—I did not think you would.

**Mr Lloyd**—I reject what you are saying. I do not know where to take it. I do not think you are here to publish a big valedictory speech. I will have opportunities to give that sort of speech later on.

**Senator CAMERON**—Okay. What is your current rate of pay?

**Mr Lloyd**—I do not have that with me. What I normally do when I am asked about my rate of pay at estimates is to indicate what band I am employed under.

**Senator CAMERON**—That is fine.

**Mr Lloyd**—I think that band is C, but I would have to check on that.

**Senator CAMERON**—Can you provide the committee with your total rate of pay and the total value of all remuneration since you were appointed in September 2005.

**Mr Lloyd**—All remuneration since I was appointed?

**Senator CAMERON**—All remuneration, yes.

**CHAIR**—You may need to be a bit more specific than that. Are you talking about salary?

**Senator CAMERON**—Salary and any other payments you have received.

**Mr Lloyd**—What officials normally do is indicate to the Senate the band which they are employed under and the arrangements which apply to that. That is what is normally done and I can tell you what the band increases were as they were issued by the remuneration tribunal.

**Senator CAMERON**—Okay, please do that. Did you discuss your decision not to reapply for the position with any employer, employer group, media representative or member of the opposition prior to issuing the media release of 26 May announcing that decision?

**Senator CASH**—And all your cousins and all your dogs?

**Senator ABETZ**—That was a good laugh, you must admit, Dougie.

**Senator BILYK**—Are the opposition asking specifics?

**Mr Lloyd**—I got the letter on a particular day. As it was my resignation I was dealing with, I then decided I would talk to a number of people. I spoke to people in the industry. I spoke to my family and friends, of course, initially.

**Senator CAMERON**—Who in the industry?

**Mr Lloyd**—A number of contacts in industry associations.

**Senator CAMERON**—Anyone from CFMEU?

**Mr Lloyd**—No. So I spoke to people like that.

**Senator CAMERON**—The media?

**Mr Lloyd**—The media got alerted that there was a media statement. I do not think I mentioned it to anybody in the media.

**Senator CAMERON**—What about the opposition?

**Mr Lloyd**—No, I did not speak to any member of the opposition.

**Senator CAMERON**—You did not speak to any member of the opposition.

**Mr Lloyd**—No.

**Senator CAMERON**—Did you advise the minister of your decision not to reapply before issuing the media release?

**Mr Lloyd**—No, I did not think I had to. It is my future, my career, my resignation. I did not feel any compunction at all to talk to the minister about it. You make those decisions with you and your family. Who you advise and when you advise is up to me. I had told Ms Paul, as Senator Abetz mentioned previously, that I would not be reapplying, so I presume the minister knew that, and I had stated it publicly in a few occasions as well.

**Senator CAMERON**—Didn't you again demonstrate your bias in how you have applied yourself to your appointment when you used your resignation to air your personal views about regulation in the construction industry, when that is properly a matter for the government and you were still an appointed senior officer?

**Mr Lloyd**—I have been in the job for five years. I cannot call back the actual statements in that press release but I think that there is nothing untoward in making statements about how I saw the industry when I announced my resignation.

**Senator CAMERON**—So you did not think that there was any need to advise your minister? That is the professional approach you adopted: no need to tell the minister? There is a lack of professionalism, I would think.

**Mr Lloyd**—I reject that. It is my resignation, it is my career and it is my decision for my family and me. The minister was aware that I was not going to apply for the job. Therefore I felt no reason to advise her before the thing came out. When you deal with your own career you and your family are first and foremost. That is how you deal with it.

**Senator CAMERON**—Some people have got a wider view of their obligations than that but that's okay—if that is your narrow approach to your obligations, that's fine.

**Mr Lloyd**—I reject that it is a narrow approach.

**Senator CAMERON**—Very narrow, but anyway, that's okay.

**Senator BACK**—It was probably a reflection of the tone of the letter. I am not Mr Lloyd; I am just making the observation.

**Senator CAMERON**—I am not asking you. Don't make any observations. I did not interrupt.

**CHAIR**—I would like to go as far as we can with minimal interjections, if we can.

**Senator CAMERON**—Is it your view that you had an entitlement to be reappointed under section 15 of the act, because you are quoted in the *Australian Financial Review* as saying:

... he did not believe it was appropriate for him to go through a selection process, given the senior public sector positions he had held in his career.

So you think you are better than other public servants and that you do not need to go through the same process as other public servants? Why would you make that comment publicly?

**Mr Lloyd**—I made a decision to not apply for the position because, as I say, of a number of personal family considerations, which I will not share here. Also, as I felt that I had had a long and senior career, I just felt that I was not going to go through a selection process. I am not saying I am better or worse than anybody else but I decided I was not going to go through a selection process. I am not reflecting on whoever else might be in the field who may be thinking about applying.

**Senator CAMERON**—So all this great benefit that you assert you have made to the building and construction industry all disappears because you were not allowed to determine whether you could stay on?

**Mr Lloyd**—I am not saying that at all. That is insulting. It is insulting to say I have had those thoughts.

**Senator CAMERON**—What do you mean, then?

**Mr Lloyd**—I find it insulting to suggest I have had that sort of thought.

**Senator CAMERON**—That is what it sounds like to me.

**Mr Lloyd**—Well, you have got it wrong.

**Senator CAMERON**—Anyway, you are on the public record as saying you should be treated differently; you were not treated differently and so you resigned. That is okay. That is your position. Why do you use emotive and politically charged language such as ‘virile stallion’ and ‘tame gelding’ and ‘increased militancy’ in the *Australian* article on 27 May? How do you justify a statutory office holder engaging in that sort of rhetoric?

**Mr Lloyd**—I commented on the industry and how I saw it.

**Senator CASH**—The Prime Minister has used way worse language than that, he has owned up to it and he is the Prime Minister of this country.

**Senator CAMERON**—But Mr Lloyd is not the Prime Minister.

**Senator ABETZ**—He needs a higher standard than your Prime Minister!

**Senator CASH**—Clearly you have very different standards for your own people, don’t you?

**Senator CAMERON**—You said in the article that you had previously warned that Labor’s changes to the commissioner’s powers—your powers—could turn a ‘virile stallion’ into a ‘tame gelding’. That is the comment you were making, entering into the political debate. I am happy to table that if anybody wants to have a look at it.

I turn now to the issue that Senator Abetz raised, and that is the firebombing attack on the offices of the CFMEU's New South Wales branch. That was on 13 May. Are you aware of that?

**Mr Lloyd**—Yes.

**Senator CAMERON**—When did it first come to your notice?

**Mr Lloyd**—It was in the media. It was reported that day or the day after.

**Senator CAMERON**—Have you made any public statements about that attack?

**Mr Lloyd**—No.

**Senator CAMERON**—You make public statements about virile stallions and you make public statements attacking the union movement but you do not think it is appropriate to make a public statement about the firebombing attack on the offices of the CFMEU in New South Wales?

**Mr Lloyd**—No.

**Senator CAMERON**—Have you or any of your officers contacted the CFMEU in relation to this attack?

**Mr Lloyd**—Yes.

**Senator CAMERON**—Who have you contacted and when did you do it?

**Mr Lloyd**—A letter was sent to the state secretary of the CFMEU, Andrew Ferguson, yesterday.

**Senator CAMERON**—It took place on 13 May and you took over two weeks to write to the CFMEU?

**Mr Lloyd**—Yes.

**Senator CAMERON**—Why the delay?

**Mr Lloyd**—The car bombing was predominantly a criminal matter, which we have no role in investigating. The CFMEU made assertions that they thought it could have been related to a contractor with a grudge. I thought the CFMEU, if they had evidence like that, would contact us as other people in the industry do. They chose not to for some reason.

**Senator CAMERON**—For some reason? Don't you think they have some reason for not approaching you, because of the bias that you have used in your office for five years?

**Senator ABETZ**—If they were to approach the ABCC, it would destroy the whole campaign against the ABCC. It is so basic.

**Senator CAMERON**—I am not talking to you. I am talking to Mr Lloyd. This is Mr Lloyd's last estimates; let him answer.

**Mr Lloyd**—What was the question?

**Senator CAMERON**—Why did it take you two weeks?

**Mr Lloyd**—As I said, the bombing is a criminal matter, which we do not have jurisdiction over. There were assertions made around the time of the bombing in some of the articles that they thought it could have been a disgruntled contractor. I thought that if the CFMEU had

information they would contact us. When they did not do so, we then followed it up with them.

**Senator CAMERON**—Have you made any contact with New South Wales law enforcement agencies in relation to the attack?

**Mr Lloyd**—No. I have no information that I could pass on to the New South Wales Police.

**Senator CAMERON**—How many investigative officers do you have?

**Mr Lloyd**—I think it is in the region of 80.

**Senator CAMERON**—Have you allocated to any of those officers the task of talking to the CFMEU in relation to the allegation that this could be related to the union's lawful activities in the building and construction industry?

**Mr Lloyd**—We have written to the CFMEU and we are awaiting a response from them.

**Senator CAMERON**—What did you say in that letter?

**Mr Lloyd**—I did not write it. My director in New South Wales wrote it.

**Senator CAMERON**—Have you read the letter?

**Mr Lloyd**—I saw a draft of it.

**Senator CAMERON**—You did not see the final letter?

**Mr Lloyd**—No. It was sent when I was travelling to Canberra, I think.

**Senator CAMERON**—This is how you deal with these issues, I suppose. In that letter did you offer to provide any assistance to the CFMEU in relation to any of the industrial issues that may be associated with the incident?

**Mr Driffin**—There have been conversations between the ABCC regional director in New South Wales and the CFMEU in New South Wales as recently as today. I understand that there will be an exchange of information which hopefully will allow the ABCC to investigate matters of an IR nature but certainly not in regard to the actual bombing itself.

**Senator CAMERON**—Mr Lloyd, given your biased conduct for the last five years—you have consistently and regularly made public comment about alleged criminal conduct within the construction industry, particularly suggesting that unions or union members have been involved in such conduct—why have you not said here tonight what you put in those statements, which is that these are criminal matters? You have gone on the public record about criminal matters. You have referred allegations of criminal conduct to various law enforcement agencies and commented publicly on those referrals. You have devoted extensive resources to the investigation of industrial issues where there have been associated allegations of criminal behaviour against workers and their unions. Why have you treated this matter differently from other matters where unions or workers are alleged to be involved in criminal behaviour?

**Senator CASH**—I would like to make a point of order in relation to a number of statements that Senator Cameron has made to Mr Lloyd. Senator Cameron has premised his questions with 'given the bias that Mr Lloyd has shown'. I am prepared to accept that that is Senator Cameron's view. However, he needs to make that very clear in the question because

Mr Lloyd has refuted that on several occasions. I would just like to make sure it is clear on the *Hansard* record. I am happy that that is Senator Cameron's view, but it is certainly not a view shared by Mr Lloyd and he has already made that clear.

**CHAIR**—I have noted that Mr Lloyd has refuted those allegations. I have made the point several times that the *Hansard* record will stand as the record of proceedings, not how other people may want to categorise other people's evidence. Senator Cameron, please proceed.

**Senator CAMERON**—Mr Lloyd, I questioned you and put questions on notice about the arrangement that you have with the Fair Work Ombudsman in relation to sham contracting. You did a sham subcontracting audit of the industry in 2009. Why did the ABCC provide almost three weeks notice to various contractors that it intended to conduct an audit of possible sham subcontracting arrangements in the industry in 2009? Was this period of notice necessary to ensure the evidence of sham contracting could be effectively concealed before the audit could be conducted? Why did you do that?

**Mr Lloyd**—Mr Draffin might want to add to this, but normally when you do a compliance audit you inform the parties who are likely to be subject to it that it is going to happen so that they have records available to you. They are not surprised. It is not an inspection of stuff. It is an audit to gather information about the conduct and the practices of the industry. I have found in numerous compliance audits I have been involved in over years that it is a pretty regular approach to take. It is not to let them avoid because the records will be there in any case and you will be able to access them. It is very hard for them to disguise such records.

**Senator CAMERON**—How can the ABCC conclude that there is no abuse of subcontracting arrangements in the construction industry on the basis of an audit that involves 20-minute interviews with 39 people, all of whom had 20 days notice of the investigation?

**Mr Lloyd**—I do not think that we have ever said that there is no—I forget your term there. We have never said that there is no abuse of sham contracting.

**Senator CAMERON**—What is your view?

**Mr Lloyd**—There is some sham contracting abuse. We have a number of investigations underway into sham contracting. It is a question as to how widespread it is but we certainly are investigating complaints about sham contracting.

**Senator CAMERON**—Didn't you tell me last time that sham contracting was being referred to the Fair Work Ombudsman?

**Mr Lloyd**—Some sham contracting—

**Senator CAMERON**—No, that is not what you said last time. You said it was referred to the Fair Work Ombudsman and that you did not carry these out.

**Mr Lloyd**—We certainly mentioned what had been referred. We did not say that we refer everything to them.

**Mr Draffin**—No, absolutely not. There have been seven sham contracting matters that have been referred to the Fair Work Ombudsman.

**Senator CAMERON**—Seven? There were four the last time you gave evidence, so there have there been another three?

**Mr Draffin**—That is correct. Currently, we have 17 active investigations that relate to sham contracting arrangements across Australia.

**Senator CAMERON**—Let me go to EWO867\_10, which was a response to a question I put on notice. I am happy to table it. Sorry, I have misled you: EWO867\_10 is actually a question on notice I put to the Fair Work Ombudsman. I have to say I am pretty confused about where this sham contracting is being dealt with. I asked:

Is the Fair Work Ombudsman aware of any sham contracting arrangements in the construction industry?

And they said:

The Fair Work Ombudsman is aware of allegations of the existence of sham contracting arrangements in the building and construction industry. The Australian Building and Construction Commission generally has responsibility for the investigation of allegations of sham contracting within the building and construction industry.

What is this demarcation between you and the Fair Work Ombudsman? They say it is your job and you say you refer it to them? What is the arrangement?

**Mr Lloyd**—As I think Mr Wilson indicated earlier in the day, there is an understanding between the two organisations. There is an overlap, of course, because sham contracting pops up in all elements of the industry. It can be in the domestic housing sector, which we do not have jurisdiction for and they do, or it can be in the more commercial sector, where we have the coverage. So there is an overlap. It is done on a case-by-case basis where we think about who has the more appropriate expertise to investigate the matter and what context it comes up in. We make a decision on whether we will deal with it or they will.

**Senator CAMERON**—It is one of your responsibilities under your act, isn't it?

**Mr Lloyd**—It is, yes.

**Senator CAMERON**—Why would you hand it over to someone else? Is it because you are too busy chasing union delegates that swear at a boss? Is that the more important issue for you?

**Mr Lloyd**—No.

**Senator CAMERON**—It seems to me they are the sorts of issues that get aired publicly but the issue of sham contracting, where workers are being undermined in terms of their wages and conditions and where they are under illegal contracts, is not something you really want to dirty your hands with. You just want to be biased and come after the CFMEU.

**Mr Lloyd**—I reject that again.

**Mr Draffin**—We currently have 17 active investigations in respect of sham contracting.

**Senator CAMERON**—Why all the excitement and interest in sham contracting now? The last time you were here, at the last estimates, you had no cases on board and you had referred four to the Fair Work Ombudsman. You did not want to go near them. Is that a policy change?

**Mr Draffin**—Definitely not. The ABCC has always operated on the fact that we will investigate matters that are referred to us for investigation. The 17 matters that we have underway have been referred to us, but the last time we were in Senate estimates we would have had active investigations into sham contracting as well.

**Mr Lloyd**—Also, we have publicised the sham contracting parts of the legislation with fact sheets, articles and information on the website, as has Fair Work Australia. So it is quite possible there is a growing awareness of sham contracting.

**Senator CAMERON**—Do you mean Fair Work Australia or the Fair Work Ombudsman?

**Mr Lloyd**—As to Fair Work Australia I am not too sure, but the Fair Work Ombudsman certainly has, so there may be a growing awareness in the industry of sham contracting issues.

**Mr Draffin**—If I could add one further point, between 1 July 2009 and 21 May 2010, the ABCC has in fact investigated 30 sham contracting cases. Unfortunately they did not eventuate to anything, but nonetheless they were investigated.

**Senator CAMERON**—It seems to be there has been a renaissance in interest after you were questioned at the last estimates about sham contracting. It has suddenly gone from no investigations to 17 investigations and from a complete ignoring of your obligations under the act to suddenly doing something under the act.

**Mr Lloyd**—We respond to complaints. We investigate any complaint from any person about any contravention—

**Senator CAMERON**—Yeah, I am sure you do!

**Mr Lloyd**—and that is what we do with the sham contracting.

**Senator CAMERON**—Obviously, you were listening to the evidence of the Fair Work Ombudsman this afternoon.

**Mr Lloyd**—I heard some of that. I did not hear all of it.

**Senator CAMERON**—Did you hear questions I put to the Fair Work Ombudsman in relation to *Construction Matters* magazine?

**Mr Lloyd**—I heard some of that interchange but not all of it.

**Senator CAMERON**—Are you aware of the publication *Construction Matters*?

**Mr Lloyd**—I do not think so, no.

**Senator CAMERON**—A number of building industry organisations and employer organisations publish it. You do not know about it?

**Mr Lloyd**—No.

**Senator CAMERON**—They describe themselves as a leading source of news and information for building industry professionals throughout Australia, and you do not know about them?

**Mr Lloyd**—No, I do not know the magazine.

**Senator CAMERON**—There you go. They say in their magazine that the Fair Work Ombudsman investigates sham contracting arrangements. You do not get a mention. This is a leading source of news and information for building industry professionals—

**Senator ABETZ**—Self-described.

**Senator CAMERON**—They may be self-described, but nobody has challenged that. I do not hear it being challenged anywhere.

**Senator ABETZ**—If you want us to!

**Senator CAMERON**—I do not want to engage with Senator Abetz; he has had his time and he can continue doing what he has to do after I am finished. In terms of the Fair Work Ombudsman investigating, do you think it is appropriate that, given you have a clear obligation under the act, a publication such as this does not even mention your role in terms of sham contracting?

**Mr Lloyd**—It would be better if they did, but that is just a fact of life.

**Senator CAMERON**—Well what about this education role you are supposed to play? Does that not go to ensuring that business professionals in the industry understand that you have obligations under the act to deal with sham contracting?

**Mr Lloyd**—As I mentioned before, perhaps one of the reasons that we do have more sham contract investigations at the moment is that our publicity, our education, has been effective. We might not have reached this body you are talking about, but I am confident the message is getting through to a fair bit of the industry. The Fair Work Ombudsman has quite a lot of material as well.

**Senator CAMERON**—When did you put your publications out on sham subcontracting?

**Mr Lloyd**—I would have to take that on notice. We have a number of mediums, predominantly on the website—

**Senator CAMERON**—Have you put any recent publications out?

**Mr Lloyd**—On sham contracting?

**Senator CAMERON**—Yes.

**Mr Lloyd**—There are fact sheets on it. I do not know whether there is anything else. I would have to take that on notice.

**Senator CAMERON**—So can you take on notice whether you have done anything new since 10 February 2010, and what you have done since then that has resulted in a difference of four investigations that were referred to the Fair Work Ombudsman? You now have 17 active investigations being conducted by the ABCC. Could you also advise me why there is now a policy change in relation to you investigating these sham contracting arrangements?

**Mr Lloyd**—There is no policy change.

**Senator CAMERON**—No policy change?

**Mr Lloyd**—No.

**Senator CAMERON**—It is just a miracle that these things have happened, is it? Just coincidence?

**Mr Lloyd**—As I said, we respond to complaints. We do not go on fishing expeditions. We respond to complaints; we investigate complaints made by anybody. There have been increasing complaints about sham contracting.

**Senator CAMERON**—How many discussions have you had with the Fair Work Ombudsman since 10 February in relation to sham contracting?

**Mr Lloyd**—I have had none, that I recollect—

**Senator CAMERON**—But your officers?

**Mr Lloyd**—I do not know. There is regular contact in all states between the organisations, so I would expect there would be conversations about sham contracting. We have referred some, so obviously there are going to be conversations about it.

**Senator CAMERON**—So how does the referral work?

**Mr Lloyd**—It depends on the case, but, as I think Mr Wilson outlined, there has been a letter of exchange between us about how we cooperate, a case comes up, if it has particular characteristics it might justify referral, there is a discussion within the ABCC office and then a discussion with the Fair Work Ombudsman, probably at the state level. Mr Draffin might be kept informed about it, depending on how major the case is. That is the way it works. It is the normal way government bodies interact when they have this overlapping jurisdiction.

**Senator CAMERON**—The evidence we had this afternoon was not from Mr Wilson; it was from one of his officers—that there were these discussions and analysis and determinations made between them and ABCC in relation to what would happen with taking a case forward and who would handle it. At the last estimates you were handling no cases and you had four you had forwarded to the Fair Work Ombudsman. Now you have 17.

**Mr Lloyd**—What is the question?

**Senator CAMERON**—I am just asking what has changed, and what discussions did you have with the Fair Work Ombudsman on these 17 cases?

**Mr Lloyd**—We have referred a number—I think seven have been referred to the Fair Work Ombudsman—

**Senator CAMERON**—Is that seven of the 17?

**Mr Draffin**—No, seven have been referred to the Workplace Ombudsman since 1 October 2005. There have been seven matters referred formally to the Workplace Ombudsman.

**Senator ABETZ**—Way back from 2005?

**Senator CAMERON**—You can take those questions that I have put to you on notice. In this audit of sham subcontracting, was there any documentation accompanying the audit: pro forma questionnaires, et cetera?

**Mr Lloyd**—I recollect that there was.

**Senator CAMERON**—You reckon there was?

**Mr Lloyd**—I am 99 per cent certain there was. It was some time ago now.

**Senator CAMERON**—What was that percentage you were sure—90 per cent?

**Mr Lloyd**—99 per cent. I am almost certain.

**Senator CAMERON**—Almost 100 per cent but not quite?

**Mr Lloyd**—You have got to be careful when you are on the record but I am very confident. It was a quite an organised and thorough audit conducted carefully. It involved senior people in the organisation doing it.

**Senator CAMERON**—Can you explain to me the process used in the audit? What records were checked and who was in it with you?

**Mr Lloyd**—I think that is in an audit report which we have made public but I would need to send that to you. It might be the best way.

**Senator CAMERON**—The last time you were here I asked you about a report on *The 7.30 Report* in September 2009 concerning sham contracting. You advised that an investigation into the allegations aired on the program commenced in August. Can you tell the committee what the outcome of that investigation was?

**Mr Draffin**—There are various elements to that matter. I think there is one matter that has been referred, I think, to internal legal. Elements of it have been referred off to the Australian Taxation Office.

**Senator CAMERON**—You do a lot of referring, don't you?

**Mr Draffin**—It is appropriate that we refer matters off that we do not have the jurisdiction to investigate. Tax happens to be one of those.

**Senator CAMERON**—So if employers are in the wrong it is a referral; if it is the CFMEU that is in the wrong it is a prosecution?

**Mr Lloyd**—I reject that.

**Senator CAMERON**—You reject that, do you?

**Mr Lloyd**—Yes.

**Senator CAMERON**—Well, can you take on notice the number of prosecutions against the CFMEU compared to employer organisations or employers?

**Mr Lloyd**—Yes.

**Senator CAMERON**—How is it that while ABCC does not seem to find any substantive evidence of sham contracting in the industry, on 18 March in one of these adjoining committee rooms I met personally with half a dozen building industry subcontractor representatives who told me and others, including Senator Marshall, that sham contracting is rife and is driving legitimate operators out of the industry, and that the head contracting companies work to ensure that legitimate businesses who complain about it suddenly stop winning tenders? In fact—

**Senator ABETZ**—Why didn't you report this to the ABCC?

**Senator CAMERON**—In fact, the allegation was made that you turned a blind eye to the practice on behalf of the big players in the industry, including Leyton and Lend Lease. This is what has been put to me. You have now got an opportunity to deal with that assertion.

**Mr Lloyd**—I reject that.

**Senator CAMERON**—You reject it?

**Mr Lloyd**—Yes.

**Senator CAMERON**—So what have you done about sham contracting other than this recent rush of activity? How many sham contracting arrangements did you look at in the last four years?

**Mr Lloyd**—I would have to take that on notice. I am not sure it has been in for four years. As I have said, I go to the old ground. We respond to complaints. We publicise our role. The Fair Work Ombudsman publicises the issues about sham contracting. Sometimes they are misunderstood. It is about disguising and misrepresenting the relationship. That is an important element of the sham contracting under our legislation. We will continue to deal with complaints as they arise, and we will continue to publicise what the law is and what is entailed by the law.

**Senator CAMERON**—I suppose that would be a refreshing change from your lack of activity in the past few years on this issue, so that is fine. Does the ABCC monitor agreements that are lodged for approval with Fair Work Australia?

**Mr Lloyd**—No.

**Senator CAMERON**—So you don't. A number of non-union agreements have been disallowed by Fair Work Australia for failing to meet the better-off overall test, the BOOT. Have you made any submissions to Fair Work Australia about compliance with the BOOT provisions during the approval process?

**Mr Lloyd**—No.

**Senator CAMERON**—Wouldn't such submissions be consistent with the ABCC's role of monitoring and ensuring statutory compliance?

**Mr Lloyd**—The agreement making is negotiations between the parties and then it is taken to Fair Work Australia for approval. We do not get information about the progress of negotiations. We do not have access to that process. So matters go out to vote, stat decs are signed and the matters are lodged with Fair Work Australia. There is really not any exposure to us. If the agreement is used in such a manner or if the agreement, once it is approved, is found to be not compliant with, obviously we get involved in those sorts of issues.

**Senator CAMERON**—But you have also got, under section 10 as to the functions of the ABC Commissioner, these following functions:

(a) monitoring and promoting appropriate standards of conduct by building industry participants, ...

It seems to me that you have got a biased approach to that. You want to monitor the conduct of the CFMEU and the union movement but you are not interested in monitoring the conduct of employers who do not meet the minimum requirements in the industry. Why is that?

**Mr Lloyd**—We publicise and put out information about what are the requirements in the Fair Work Act and what is required to comply with that and various elements of the Fair Work Act. As regards the agreement making, it seems in these cases that Fair Work Australia has done its job. As I understand it, as to your first statement, they have not approved those agreements. But if we are not aware of it we cannot be transported in and somehow fix it up.

**Senator CAMERON**—Why wouldn't the unions think that? If an organiser swears at a boss then in comes one of your audit compliance officers. If a boss rips off a worker you do not care.

**Mr Lloyd**—No. I reject that.

**Senator CAMERON**—But you have got an obligation under the act. You do nothing about it. You reject that, do you?

**Mr Lloyd**—You are just making assertions of your view. I reject that.

**Senator CAMERON**—But you have got an obligation to monitor and promote compliance with your act and the Workplace Relations Act, and these failed agreements in the building and construction industry are a breach of minimum standards and legal obligations in the industry. What have you done about it?

**Mr Lloyd**—We are not aware of it. As I understood it—

**Senator CAMERON**—You're not aware of it?

**Mr Lloyd**—I do not know the cases—

**Senator CAMERON**—Oh dear.

**Mr Lloyd**—you are referring to. Can you just let me finish. As I understand from your statement at the start, Fair Work Australia has detected that the agreements were not proper. So the system seems to be working.

**Senator CAMERON**—Oh, the system seems to be working! But as long as you do not have to do anything in terms of an employer's bad behaviour in the industry then from your point of view it is working.

**Mr Lloyd**—If a union or an employee complained that, in the context of their negotiations, they were heading to an agreement which was unlawful, then obviously we would investigate it and intervene as appropriate. But unless we are told that—

**Senator CAMERON**—The position is clear that your obligations and your functions are not simply about sitting back and waiting till someone comes to you with a complaint—and you have said that several times—so all that is not your obligation under the act, is it? It is not about you sitting back and waiting till some boss comes and complains about a union official swearing at the boss and then you mobilise your task force. It is not about that, is it?

**Mr Lloyd**—No, and I have not said that.

**Senator CAMERON**—But you—

**Mr Lloyd**—I have not said that.

**Senator CAMERON**—keep saying that nobody has told you about these things. These are issues on the public record and you have got a responsibility to monitor these issues. Are you telling me you have never monitored them, that you have never made any attempt to monitor and that you solely rely on people making a complaint? Is that correct?

**Mr Lloyd**—I do not know which case you are referring to—

**Senator CAMERON**—Because you have not monitored; that is why.

**Mr Lloyd**—but I will say again that we publicise what is required to comply with the Fair Work Act. If complaints are made to us about inappropriate, unlawful practices, we investigate them. We are advised of matters going to Fair Work Australia that involve the building industry. We intervene where we are aware of a matter which requires our intervention to put a view as the law requires.

**Senator CAMERON**—But the act provides for more than you—

**Mr Lloyd**—There are thousands of agreements made in the industry—

**Senator CAMERON**—Sure.

**Mr Lloyd**—and it is beyond—

**Senator CAMERON**—But you can mobilise your task force if an agreement breaches the building industry code. You soon understand if there is an agreement that breaches the building industry code—you have intervened.

**Mr Lloyd**—We have intervened in 192 cases.

**Senator CAMERON**—You have intervened in many industrial agreements, haven't you?

**Mr Lloyd**—In some. It is not very often. When we intervene, the interventions are normally about industrial action, I must admit.

**Senator CAMERON**—But it is not just industrial.

**Mr Lloyd**—It is predominantly industrial action.

**Senator CAMERON**—You have a responsibility as the Commissioner to monitor and promote appropriate standards of conduct, and I am saying to you that you again have shown your bias and your lack of professionalism by not monitoring what is going on. When it comes to workers being ripped off, you are not interested. Isn't that the case?

**Mr Lloyd**—That is certainly not the case.

**Senator CAMERON**—Well, it looks like the case to me. You do not seem to be interested in carrying out your functions when it comes to protecting workers. Are you?

**Mr Lloyd**—I reject that, Senator.

**Senator CAMERON**—Well, tell me where you have protected—

**CHAIR**—Senator Cameron, please wind up very shortly.

**Senator CAMERON**—Where do you protect these workers? It is on the public record that you have a responsibility to monitor and promote appropriate standards. What are you going to do about it? In the remaining time that you have left, why don't you show some balance and some fairness? Why don't you instigate investigations where workers are being ripped off in the building and construction industry? Why don't you do that?

**Mr Lloyd**—I will answer this once again by saying that there is no bias. We respond to complaints and issues drawn to our attention. We provide a widespread, detailed and fairly elaborate education service—

**Senator CAMERON**—You have said this, but I am drawing your attention to your obligations.

**Mr Lloyd**—Senator, can I finish? Where appropriate, if we have a matter referred to us or become aware of it, we will intervene. But I do not know the case you are talking about. Fair Work Australia alerts us to applications coming before it but there are thousands of agreements being approved in the building industry. Very few have been knocked back. If they are not being knocked back, it seems that the Fair Work Australia system is working.

**CHAIR**—This will have to be your last question, Senator Cameron.

**Senator CAMERON**—You say, again, that when it comes to workers, Fair Work Australia have to look after workers' rights and you will not carry out or have not carried out your function under clause 10 which says that you must monitor and promote appropriate standards of conduct.

**Mr Lloyd**—I reject that.

**Senator CAMERON**—That is fine. I think it is that way. My last question on this is: have you spoken to the opposition about an appointment if they win office?

**Mr Lloyd**—No, certainly not.

**Senator CAMERON**—Good.

**Senator BACK**—Mr Lloyd, I have some figures and I wonder if you could confirm them. The first is injuries per thousand workers in the building and construction industry. I have them as going from 27.7 per thousand workers in 2003-04 down to 22 per thousand in 2006-07 and 21 per thousand in 2007-08. Are those figures consistent, or could you take that on notice and confirm them?

**Mr Lloyd**—I will take that on notice.

**Senator BACK**—Thank you. Could you also take this on notice. I have a figure, and perhaps you could update it, that in the building and construction industry from 2004 to 2007 there was a 25.5 per cent increase in wages against an all-industries average increase of 15 per cent. Are those figures consistent with those that you understand?

**Mr Lloyd**—They are broadly consistent, yes.

**Senator BACK**—I would be very pleased if you could extend that to 2009 so that I could have an understanding of that.

**Mr Lloyd**—Okay.

**Senator BACK**—Also, compared with residential construction I understand that over the last six or seven years we have had a 7.3 per cent productivity gain in commercial building against residential building. Is that a consistent figure?

**Mr Lloyd**—Yes.

**Senator BACK**—With regard to statistics for days lost per 1,000 employees in the construction industry, the figure I have for the year 2000 is 109 days lost; 2003, 86 days; 2008, down to 2.9 days; and 2009, climbing again to 6.1 days. And did you say in answer to an earlier question that in the fourth quarter of 2009 there were 10.4 days lost?

**Mr Lloyd**—That is right.

**Senator CAMERON**—If you get Work Choices back, you will be really happy, won't you?

**Senator BACK**—Mr Lloyd, I do not want to upstage you at all with your reference to 'virile stallions and tame geldings', but I do have to tell you that in my speech in the Senate on 4 February this year—

**Senator ABETZ**—Recommended reading.

**Senator BACK**—in speaking about the government dismantling or neutralising the ABCC, I did refer to the process of emasculation, which does have the same effect! I want to place on record, Chair, my appreciation—as probably the last person in the Senate to have come out of the field of employment, as an employer and an employee and as a Western Australian—of how you have carried out your role as ABCC Commissioner. Thank you.

**Mr Lloyd**—Thanks, Senator.

**CHAIR**—Senator Abetz.

**Senator ABETZ**—Briefly, in relation to answers provided to me previously, with regard to the 59 active investigations, can you confirm that 29 of them—one less than 50 per cent—related to either head contractors or subcontractors. Mr Draffin, take that on notice, but it will be found in question on notice EW0791-10—which would indicate that there is no bias in the active investigations that you are currently undertaking.

Mr Lloyd, in relation to the media story that Senator Cameron referred to, can I first ask: has Senator Cameron referred any allegations of any rip-offs or any inappropriate behaviour in the building or construction industry, whilst he has been a senator, to the ABCC?

**Mr Lloyd**—No.

**Senator ABETZ**—Thank you. This media story, which he tells us shows your bias against the union, is in fact headed ‘Outgoing watchdog says employers too soft’. You were criticising employers, weren’t you?

**Mr Lloyd**—Yes, I was.

**Senator ABETZ**—The opening paragraph of the story says:

OUTGOING construction industry watchdog John Lloyd has criticised building contractors—not unions but building contractors. In relation to criminal investigations, are you at liberty to investigate any criminal activity that you come across?

**Mr Lloyd**—No.

**Senator ABETZ**—No. You are limited. And I would imagine, in relation to your investigative officers, you undoubtedly do not have arson experts or firebombing experts or others that may have been able to assist in the CFMEU premises firebombing?

**Mr Lloyd**—No.

**Senator ABETZ**—When some of your officers were in fact assaulted, or allegedly assaulted, on a building site, did the ABCC take the prosecution of that alleged criminality or did it refer it to the Victorian police to pursue?

**Mr Lloyd**—We referred it to the Victorian police.

**Senator ABETZ**—So you even do that for your own officials. Thank you very much for that. And in your ‘closing statement’, as Senator Cameron so inappropriately referred to it, does the first statement actually say that the ‘opening statement has an element of a closing statement’, not that it is a full closing statement—that it is only ‘an element’?

**Mr Lloyd**—Yes.

**Senator ABETZ**—Yes, and it was in that context that you delivered it. Can I ask in relation to paragraphs 6, 7, 8 and 12 of your short but very concise statement whether they show improvements within the building sector as a result of ABCC activities?

**Mr Lloyd**—Yes.

**Senator ABETZ**—Has the ILO ever contacted the ABCC in relation to its activities?

**Mr Lloyd**—No.

**Senator ABETZ**—Right. Because it has made findings including such things. It undoubtedly gets its evidence from Senator Cameron about bias in relation to employers and employees and the prosecution of them. Can you indicate to us, on notice, how many workers there are in the building and construction sector and how many employers there are; and then tell us how many investigations there are in relation to workers as opposed to employers and how many legal actions there have been against workers as opposed to employers, so that we can get some sort of balance on that. Finally, again, can I thank Mr Lloyd—and whatever the decision may be, Mr Dalglish, all the best.

**CHAIR**—Minister?

**Senator Arbib**—Thank you, Chair. On behalf of the government I would like to publicly thank Mr Lloyd for his years of dedicated public service in the federal and several state public sectors for a range of governments, and as a member of the former Australian Industrial Relations Commission I wish him all the best in the future.

**Mr Lloyd**—Thank you, Minister.

**CHAIR**—Thank you, Mr Lloyd and your officers, for appearing before the estimates proceedings today. The committee is now adjourned.

**Committee adjourned at 11.00 pm**