



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

STANDING COMMITTEE ON EMPLOYMENT, WORKPLACE
RELATIONS AND EDUCATION

ESTIMATES

(Supplementary Budget Estimates)

THURSDAY, 2 NOVEMBER 2006

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SENATE

**STANDING COMMITTEE ON EMPLOYMENT, WORKPLACE RELATIONS,
AND EDUCATION**

Thursday, 2 November 2006

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

Senators in attendance: Senators Barnett, Fifield, Lightfoot, Marshall, McEwen, Lundy, Siewert, Troeth, Webber and Wong

Committee met at 9.01 am

EMPLOYMENT AND WORKPLACE RELATIONS PORTFOLIO

In Attendance

Senator Abetz, Minister for Fisheries, Forestry and Conservation

Department of Employment and Workplace Relations

Portfolio overview and major corporate issues

Dr Peter Boxall, Secretary

Mr Graham Carters, Deputy Secretary, Workforce Participation

Ms Malisa Golightly, Deputy Secretary, Employment

Mr Finn Pratt, Deputy Secretary, Workplace Relations

Ms Vanessa Graham, Acting General Manager, Corporate Group and Chief Financial Officer

Mr Jeremy O'Sullivan, General Manager, Corporate Group

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

Ms Michelle Baxter, Principal Adviser, Assistant Secretary, Human Resources

Ms Rowena Barrell, Assistant Secretary, Human Resources

Ms Kristina Hopkins, Assistant Secretary, Human Resources

Mr Simon Gotzinger, Senior Executive Lawyer, Corporate Legal Branch

Mr Henry Carr, Senior Executive Lawyer, Corporate Legal Branch

Ms Sue Bird, Acting Senior Executive Lawyer, Corporate Legal Branch

Dr Aloka Sinha, Assistant Secretary, Business Services Branch

Ms Shirley Douglas, Acting Group Manager, Financial Management Group

Mr Bernard O'Donnell, Assistant Secretary, Investigations Branch

Ms Christine Leary, Chief Internal Auditor

Mr John Burston, Chief Information Officer

Outcome 1: Employment

Ms Susan Monkley, Group Manager, Employment Business Services Group

Mr Stephen Moore, Group Manager, Employment Systems Group

Ms Marsha Milliken, Group Manager, Income Support Initiatives Group

Ms Jo Caldwell, Group Manager, Intensive Support Group
Mr Anthony Parsons, Group Manager, Job Search Support Group
Ms Lynne Curran, Group Manager, Specialist Services and Income Support Group
Mr Ray Jeffery, Acting Assistant Secretary, Income Support Programme Branch
Ms Jennifer Chadwick, Assistant Secretary, Vocational Rehabilitation Taskforce
Mr Tony Waslin, Assistant Secretary, Payment Integrity and Assurance Branch
Ms Alison Durbin, Assistant Secretary, Disability Employment Services Branch
Mr Ali Jalayer, Assistant Secretary, Employment Pathways Branch

Outcome 2: Workplace relations

Ms Sandra Parker, Group Manager, Office of the Australian Safety and Compensation Council
Mr Tom Fisher, Federal Safety Commissioner, Office of the Federal Safety Commissioner
Mr Matt Gardiner, Director, Scheme Development Team
Mr Andrew Craig, Director, Outcome 2 Support Unit
Mr Michael Maynard, Group Manager, Workplace Relations Industries Group
Mr Les Andrews, Director, Workplace Relations Research Section
Mr Brien Armstrong, Assistant Secretary, Framework Compliance Branch
Ms Tulip Chaudhury, Assistant Secretary, Public Sector Branch
Ms Colette Shelley, Assistant Secretary, Industries Branch
Ms Jody Anderson, Acting Assistant Secretary, Building Industries Branch
Ms Natalie James, Acting Chief Counsel, Workplace Relations Legal Group
Mr David De Silva, Assistant Secretary, Legal Policy Branch
Mr David Bohn, Assistant Secretary, Legal Policy Branch
Ms Elen Perdikogiannis, Assistant Secretary, Legal Policy Branch
Mr Bob Bennett, Assistant Secretary, Legal Policy Branch
Mr Peter Cully, Assistant Secretary, Legal Policy Branch
Mr John Kovacic, Group Manager, Workplace Relations Policy Group
Mr Ted Cole, Principal Adviser, Workplace Relations Policy Group
Ms Sue Sadauskas, Assistant Secretary, Strategic Policy Branch
Ms Linda Lipp, Assistant Secretary, International Relations Branch
Ms Mairi Steele, Advocate, Strategic Policy Branch
Mr Stuart Watson, Assistant Secretary, Strategic Co-ordination Unit
Mr Malcolm Greening, Assistant Secretary, Wages and Conditions Policy Branch
Ms Jenet Connell, Group Manager, Workplace Relations Services Group
Mr George Brenan, Assistant Secretary, Workplace Advice and Education Branch
Mr Stewart Thomas, Assistant Secretary, Workplace Programmes Branch
Ms Jo Major, Assistant Secretary, Employee Entitlements Branch

Outcome 3: Workforce participation

Mr Barry Sandison, Group Manager, Working Age Policy
Ms Sharon Rose, Assistant Secretary, Disability Policy Branch
Dr Alison Morehead, Assistant Secretary, Parent Policy Branch
Mr Bob Harvey, Group Manager, Indigenous Employment and Business Group
Mr Michael Manthorpe, Group Manager, Labour Market Strategies Group
Mr Ivan Neville, Assistant Secretary, Labour Supply and Skills Branch

Ms Louise McSorley, Assistant Secretary, Industry Strategies Branch
Mr Matthew James, Assistant Secretary, Economic and Labour Market Analysis Branch
Ms Jane Press, Director, Migration Policy and Analysis Section
Mr Bruce Whittingham, Group Manager, Research and Evaluation Group
Mr Scott Matheson, Assistant Secretary, Research and Data Analysis Branch
Mr Chris Foster, Acting Chief Economist, Economic Research Analysis Group

Office of the Employment Advocate

Mr Peter McIlwain, Employment Advocate
Mr David Rushton, Senior Legal Manager
Ms Ann Skarratt, Corporate Director
Mr Geoffrey Casson, Deputy Employment Advocate, CSN

Australian Fair Pay Commission

Ms Jennifer Taylor, Director, Australian Fair Pay Commission Secretariat

Australian Building and Construction Commission

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

Comcare

Ms Barbara Bennett, Chief Executive Officer
Mr Martin Dolan, Deputy Chief Executive Officer
Mr Steve Kibble, General Manager, Research and Policy
Mr Greg Pople; General Manager; Compliance, Enforcement and Self Insurance
Ms Janean Richards, General Manager, Legal Services
Ms Penny Weir, General Manager, Corporate Services
Mr Matt Goldrick, General Manager, Customer Service Support
Mr Stewart Ellis, General Manager, Customer Service

Australian Industrial Registry and Australian Industrial Relations Commission

Mr Doug Williams, Industrial Registrar
Mr Terry Nassios, General Manager, Statutory Services Branch
Mr Dennis Mihelyi, Corporate Services

Indigenous Business Australia

Mr Ron Moroney, General Manager
Mr Ian Myers, Deputy General Manager
Mr Anthony Lovell, Chief Financial Officer
Mr Colin Clements, Assistant General Manager
Ms Kaely Woods, Assistant General Manager
Mr Peter O'Neill, Assistant General Manager
Mr Ivan Parrett, Assistant General Manager
Ms Valerie Price-Beck, Acting Assistant General Manager

Equal Opportunity for Women in the Workplace Agency

Ms Anna McPhee, Director

Office of Workplace Services

Mr Nicholas Wilson, Director
Mr Alfred Bongi, Deputy Director
Ms Anya Moore, General Manager, Corporate
Ms Sherry Pullen, General Manager, Legal and Advice
Ms Lyn Valentine, Chief Financial Officer
Mr Bill Loizidies, General Manager, Field Operations

CHAIR (Senator Troeth)—I declare open this meeting of the Senate Standing Committee on Employment, Workplace Relations and Education. The committee has agreed that we will commence today with the Employment and Workplace Relations portfolio, beginning with the Office of the Employment Advocate. The committee examined the expenditure of this portfolio at its budget hearings on 29 and 30 May 2006 and in these supplementary estimates we will today be considering matters of which senators have given notice.

The committee has resolved that answers to questions on notice are to be lodged with the committee by 15 December 2006. I remind officers that they are protected by parliamentary privilege. I also remind officers that, in its orders of continuing effect, the Senate has resolved that there is no area in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise.

Officers shall not be asked to give opinions on matters of policy and shall be given an opportunity to refer such questions to superior officers or to the minister. Where an officer declines to answer a question, the grounds for this should be stated so that the committee may consider the matter. The giving of false or misleading evidence to the committee may constitute a contempt of the Senate. Oral evidence and documents in estimates proceedings are part of the public record.

I welcome the Minister representing the Minister for Employment and Workplace Relations, Senator the Hon. Eric Abetz, and, from the Office of the Employment Advocate, Mr McIlwain, and other officers. Minister, do you wish to make an opening statement?

Senator Abetz—Yes, if I may. There were a number of issues raised at the last estimates about Work Choices, particularly its effect on four key areas: jobs, wages, industrial disputes and productivity. For the assistance of the committee, I would briefly like to update members on developments since we last met in these areas. In relation to jobs growth since the introduction of Work Choices on 27 March, we have seen record high jobs growth across Australia. 205,000 jobs have been created; 184,000 of those jobs are full time. Unemployment has fallen to a 30-year low of 4.8 per cent. That should be considered in relation to what some of the prognostications were, such as on 23 October last year when Mr Beazley said: ‘Work Choices will not employ more Australians.’ Bill Shorten, on 26 May last year, said: ‘Make no mistake, Work Choices is today’s green light for mass sackings.’ And, when John Laws asked Mr Combet: ‘You don’t agree that these changes would provide any sort of jobs growth?’ Greg Combet answered: ‘Oh, I can’t see it.’ I hope that he can see it now.

In relation to wages growth, there has been strong wages growth since the introduction of Work Choices. The Bureau of Statistics labour price index publication shows that total rates of pay excluding bonuses increased by 1.1 per cent in the June quarter 2006 and by 4.1 per

cent over the year to the June quarter. Real wages have increased by 16.4 per cent since the Howard government came to office. Last week the Australian Fair Pay Commission increased the federal minimum wage by \$27 per week. You will recall how certain members, even of this committee, when they asked questions about the Australian Fair Pay Commission, thought that there was a degree of hilarity in trying to nickname it the 'Australian Low Pay Commission'. Of course, the wage increases that have been experienced in the past years compares with a fall of minus 0.2 per cent under the previous Labor government in real terms for the minimum wage. In a press conference at about this time last year, Mr Beazley said about Work Choices: 'This is about slashing wages. Make absolutely no doubt about that.' Mr Stephen Smith, on 28 March this year, said: 'The minimum wage will not rise in real terms under the Australian Fair Pay Commission.' I think we can put that one to bed as well.

I turn to industrial disputation. In the June 2006 quarter, just 3.1 working days were lost per 1,000 employees. That is the lowest quarterly rate of disputes ever recorded by the Australian Bureau of Statistics. This would suggest an early indication of the success of Work Choices in fostering greater workplace cooperation. This rate is more than 33 times lower than the highest rate recorded under Labor, which was 104.6 working days lost per 1,000 employees for the December 1992 quarter. And there are no guesses as to who was minister for employment at that time—none other than Mr Beazley. Yet, on 6 August 2005, Mr Beazley said this about Work Choices to my own home state's ALP state conference in my home state: 'These extreme changes risk dragging us back into an era of heightened industrial conflict.' Senator George Campbell, on 30 March, said: 'The sort of relationship that is now being established in the workplace is going to encourage that sabotage to take place.' Clearly, neither of those prognostications has occurred.

Finally, let me turn to productivity growth. Figures released yesterday show that labour productivity grew by 2.2 per cent in this financial year. That was against the background of Mr Beazley telling the National Press Club on 1 February 2006 that 'there is no productivity agenda here'. Well, that is clearly wrong. Mr Beazley also had the audacity to tell the ABC *PM* program on 10 October 2005 that somehow Work Choices would hurt the economy and productivity. That prognostication is also incorrect.

I thank the committee for allowing me to make that brief summary of the successes of Work Choices and put into context some of the doom, gloom and questioning that arose on the last occasion. The figures are now out and available, and of course they tell a very different story. I thank the committee, and we are open for questions.

[9.08 am]

Office of the Employment Advocate

Senator MARSHALL—Now that we have got that over and done with, Minister, we can start to ascertain some of the facts and the statistics.

Senator Abetz—There is no need to thank me, but that is kind. I presume I will not be asked about 75,000 jobs after the implementation of Work Choices?

Senator MARSHALL—You are the one that made the claim that there were going to be 75,000.

Senator Abetz—How wrong I was; I should have said 205,000 jobs.

Senator Webber interjecting—

CHAIR—Order!

Senator MARSHALL—We will see what the officers are going to say about that.

CHAIR—Order! I would like the committee to come to order, please. We have had our opening and I have asked Senator Marshall to proceed with questions, which I would like him to do.

Senator MARSHALL—Thank you, Chair. Mr McIlwain, at the last estimates hearings you provided the committee with some statistical information about the make-up of AWAs as at 31 March, when you had figures available. You are aware of that information?

Mr McIlwain—I am aware that I provided a range of statistical information. I am happy to answer your question if you could let me know what you have in mind.

Senator MARSHALL—I was hoping to get an update of the same information that you provided last time. That information went to the make-up of AWAs. You gave us information last time that 100 per cent of the sample had excluded at least one award condition and that 64 per cent had removed leave loadings et cetera. Could you just go through that same information, if you have got it there, otherwise I can ask specifically about every one.

Mr McIlwain—I can answer that question. I have no up-to-date information on the analysis of statistical data relating to agreements lodged since I last appeared here and looking at issues such as protected award conditions.

Senator MARSHALL—You indicated to the committee in the May estimates that you intended to do a sampling of AWAs every four months—in fact, three months; I think you told me ‘quarterly’. Why haven’t you done that?

Mr McIlwain—It is our practice to provide statistical notes on a quarterly basis and we have done that. The OEA provides information on a whole range of characteristics relating to both collective and individual agreements. However, I have no update on statistical data or analysis of statistical data on protected award conditions in AWAs or collective agreements.

Senator MARSHALL—How many AWAs have been lodged with you?

Mr McIlwain—Since the commencement of Work Choices on 27 March this year, 117,487 AWAs had been lodged to 30 September. That brings cumulatively the number of AWAs approved or lodged since the commencement of the system in March 1997 to 1,016,038.

Senator MARSHALL—Do you know how many of those agreements are in force?

Mr McIlwain—The OEA has a methodology that it applies to identify what might be described as live or operational AWAs. On the basis of that methodology, I believe it is approximately 610,000.

Senator MARSHALL—Is that new methodology? I recall in previous estimates that you were not able to answer that question.

Mr McIlwain—I have always been able to answer that question on the basis of the methodology employed by the OEA. It is an estimate, and that methodology has been used since August 2004.

Senator MARSHALL—At this moment of the hearing I am interested in AWAs since the introduction of Work Choices. You have got 117,487. Last time were there 6,263?

Mr McIlwain—When we last spoke I was able to talk only of AWAs that had been lodged in the first five weeks of Work Choices and, off the top of my head, I believe 6,500 or thereabouts was the figure for AWAs that had been lodged in those first five weeks. What I should say is that since then there has been exponential growth in the lodgement of AWAs in particular. For example, 76,000 AWAs were lodged in the September quarter, which is a record for a single quarter over the nine years of AWA making. Twenty-seven thousand alone were lodged in the month of September, which is again a record for a single month over that nine-year period and 46 per cent higher than average monthly lodgements in calendar 2005.

Senator MARSHALL—In the last estimates, based on the number of AWAs that you had, you had used some detailed sampling methodology and you gave us information with respect to what those AWAs had done. What you told us was that, based on your sample and the methodology of your sampling, 100 per cent of AWAs had excluded at least one protected award condition; 64 per cent had removed annual leave loadings; 63 per cent had removed penalty rates; 52 per cent had removed shiftwork loadings; 41 per cent did not contain gazetted public holidays; 31 per cent had modified overtime loadings, and you were not able to ascertain whether that was up or down; 29 per cent had modified rest breaks, and again you were not able to identify whether that was an increase or decrease; 27 per cent had modified public holiday payments; 22 per cent did not provide for a pay increase over the life of the agreement; and 16 per cent of AWAs had excluded all protected award conditions and replaced them with the government's legislated minimum standard. So that I am very clear, are you telling me that you have not sampled again since then?

Mr McIlwain—No statistical analysis for protected award conditions has been undertaken by the OEA on agreements lodged since I last gave evidence here to this committee.

Senator MARSHALL—Why?

Mr McIlwain—There are a number of reasons. I had serious concerns about the methodology that had been employed by the OEA in that first month of Work Choices to analyse that small sample of 250 AWAs. My concerns were threefold. I was concerned about the sample size, I was concerned about the sample composition and, chiefly, I was concerned that focusing on certain characteristics in isolation, without considering what else the parties may have agreed, had the potential to produce misleading and distorted results. On that basis I determined that we would not conduct analysis of that kind until we had reviewed the methodology and determined whether we were able to come up with one that was reliable.

Senator MARSHALL—When did you decide that the sample was unreliable? I recall questioning you about the methodology. I cannot find it in the *Hansard* right now but I recall you were very satisfied with the methodology at the time.

Mr McIlwain—I cannot comment on your impression of my demeanour.

Senator MARSHALL—It was more than your demeanour. It is what you said. If I do find it we will come back to that. I thought we had a discussion about the methodology.

Mr McIlwain—We discussed the methodology. You might recall that what I said also was that we were talking about a very small sample—250 agreements—and that it was the OEA's intention to develop the methodology to provide more sophisticated results over the coming months.

Senator MARSHALL—How are you going with that development?

Mr McIlwain—We are still considering the issues. They are complex. Some of them for the OEA are novel and we have not yet reached a point where I would be satisfied.

Senator MARSHALL—What were your concerns about the way the information was used? Again, I thought we discussed that. The information was fairly stark and clear. The agreements either do or do not remove some of these provisions. One of the concerns I had was that when we talked about modifying clauses we did not have enough information about that. But when we talk about excluding provisions completely, that is simply a matter of fact. I cannot understand how you would be concerned that that information can be distorted. If an agreement removes a protected award condition, it removes it. If it removes all of them, it removes all of them.

Senator Abetz—What Mr McIlwain I think has indicated to you is: with statistics, so often what they show is interesting but often what they hide is vital. And in just pointing to a particular statistic, that does not necessarily take into account all of the countervailing sections in the Australian workplace agreement, which may well counter and in fact provide other benefits; so, to say, 'Yes, the workplace agreement takes this out,' without asking and doing a full analysis—which would have been very difficult—of what are all of the benefits in it. But I think overall, on the positive side, we do know that real wages have increased under Australian workplace agreements and also that people are rushing into them at the rate of 27,000 in the last month, of September. But why are they rushing into them with these record figures of 27,000 in September, and 76,000 in the September quarter? It is clearly not because of a certain condition that you might refer to as having been removed. Whilst that may have been removed, there were clearly lots of other positives in there that made them sign up and say, 'This is a good deal.' So Mr McIlwain's concern is that by just doing an analysis of particular things that may have been taken out that does not paint the full picture and therefore it is potentially very misleading. The OEA has taken a very considered approach to ensure that the full picture is told. Given the statistical approach at the moment, that is very difficult—especially setting up, as they are, and being flooded with a huge number of applications.

Senator MARSHALL—Thanks for that, Minister. I find it extraordinary that on one hand you say that the statistics will not tell the full picture but then you rely on a couple of those statistics to support the case that you wish to make. But that is all right. I guess that is politics, and you need to do that. Mr McIlwain—

Senator Abetz—No, I will respond to that.

Senator MARSHALL—Let me ask the question and you can respond to both at the same time, because that might help us move forward.

CHAIR—I would like to stick to questions and responses, please.

Senator MARSHALL—Mr McIlwain, the minister just talked about AWAs providing wage increases. Where does that information come from?

Mr McIlwain—I will not speak for the minister, but what I can tell you is that the latest available ABS employee earnings and hours survey shows that employees on AWAs on average earn 13 per cent more than employees on collective agreements and 100 per cent more than employees on awards.

Senator MARSHALL—But you are not able to provide that information? That is not information that has come from you?

Mr McIlwain—No.

Senator MARSHALL—You have done no analysis?

Senator Abetz—They are from an independent source.

Senator MARSHALL—Thanks for that, Minister, but—

Senator Abetz—I know you do not want to hear that, but it is vitally important for the public record.

Senator MARSHALL—What I am interested in is actually getting some facts and some statistics from these witnesses. What I am trying to find out is what work they have done on AWAs. You have done no analysis at all on wage outcomes on AWAs?

Mr McIlwain—We have considered conducting such analysis. We have looked long and hard at the challenges that that sort of statistical analysis would pose for an agency of the OEA's size, and I have determined that we will not conduct that analysis, for two reasons, the first being difficulties again with the methodology, and then secondly, because the Australian Bureau of Statistics itself conducts a large employee earnings and hours survey every two years it could be reasonably argued that it was a duplication and not a sensible use of the Commonwealth's resources for the OEA to conduct statistical analysis of that kind itself.

Senator MARSHALL—So you cannot tell me whether any AWAs have provided for a wage increase? Of the 117,487, can you tell me if any of them have provided for a wage increase?

Mr McIlwain—I believe I provided you with some rudimentary information at the last estimates hearing where I appeared that had some indicators of: out of a sample of 250 AWAs lodged in the first five weeks of Work Choices, how many provided for a pay increase during the proposed period of the agreement. Beyond that I have nothing else.

Senator MARSHALL—Are you able to tell me how many AWAs lodged, since you were last before us in the estimates, have removed annual leave loadings?

Mr McIlwain—No. I have no analysis of statistical data on that characteristic.

Senator MARSHALL—Are you able to tell me how many AWAs lodged since you were last before us at the estimates have removed penalty rates?

Mr McIlwain—No.

Senator MARSHALL—Can you tell me how many AWAs have removed shift loadings?

Mr McIlwain—No.

Senator MARSHALL—Can you tell me how many AWAs provide for gazetted public holidays?

Senator Abetz—I think we know the answer to all of these questions. People could also be asking questions on how many of the AWAs have provided family friendly provisions, how many have provided substantial wage increases, et cetera—

Senator MARSHALL—I am coming to that, because that was another line of the questioning.

Senator Abetz—and the answer to all those questions will be that the statistical analysis has not been done. So we can ask as many questions as we like on the negative side of the ledger and on the positive side of the ledger and the answer will always be the same.

CHAIR—Nevertheless, Senator Marshall is entitled to ask these questions, and within reason. Proceed, Senator Marshall.

Senator MARSHALL—Thank you, Chair. Can you tell me how many AWAs have modified rest breaks?

Mr McIlwain—Again, no.

Senator MARSHALL—Can you tell me how many have modified public holiday payments?

Mr McIlwain—Again, no.

Senator MARSHALL—And you can't tell me how many AWAs have provided for any wage increase?

Mr McIlwain—Again, no, in relation to agreements lodged since I last gave evidence.

Senator MARSHALL—Can you tell me how many union collective agreements have been lodged since the last estimates, or since the last period—when I say 'since the last estimates', the last period you used?

Mr McIlwain—I can give you some cumulative figures for both union collective agreements and employee collective agreements. Union collective agreements since the commencement of Work Choices: 872. Employee collective agreements since the commencement of Work Choices: 1,034.

Senator MARSHALL—What about greenfields agreements?

Mr McIlwain—Employer greenfields agreements: 196. And union greenfields agreements: 103. I should say that all of these figures are to 30 September.

Senator MARSHALL—Thank you. Multibusiness agreements?

Mr McIlwain—Multibusiness agreements, zero.

Senator MARSHALL—Let me come back to the sampling for a moment. If you had concerns about your initial sampling methodology not telling the full picture, why have you not just adopted a wider methodology process and used that data?

Mr McIlwain—As I said, I had three concerns: sample size, sample composition and then a reliance on analysis for certain characteristics in isolation without regard to the totality of what the parties had agreed. In regard to sample size, I said when I last appeared here that one ought to be prudent or careful in relying on findings from such a small sample from the first five weeks of lodgements of a quite different system. In regard to sample composition, I believe I explained and, then again in the answer to your question on notice explained in more detail, how the sample was drawn. The reliance solely on workplace size again to my mind is risky. I believe other characteristics, factors or variables should be taken into account. With regard to the risks in focusing solely on protected award conditions, I do not think I can add to the evidence I have given today.

Senator McEWEN—Mr McIlwain, you referred to the ABS data, saying that AWAs on average provide 13 per cent higher wage increases than collective agreements. Is that ABS 2004 data that you are relying on? What data are you relying on?

Mr McIlwain—It is the last ABS employee earnings and hours survey. It was conducted in 2004, and it was published in March or April 2005

Senator McEWEN—So that is pre Work Choices?

Mr McIlwain—That is correct.

Senator McEWEN—So what is the data for post Work Choices?

Mr McIlwain—I do not know.

Senator McEWEN—The 13 per cent is pre Work Choices. So really it is irrelevant to this discussion about the impact of Work Choices. Can you also give us a breakdown of the average 13 per cent increase that you talked about, what portion of people were managerial staff and what portion were non-managerial staff?

Mr McIlwain—I do not have that with me.

Senator McEWEN—Are you able to get that?

Senator Abetz—You would have to ask the ABS, would you not, for that, as part of the Treasury portfolio as to the methodology—

Senator McEWEN—I thought you would have it in the forefront of your mind.

Senator Abetz—as to how the Australian Bureau of Statistics undertake their analysis.

Senator McEWEN—I would have thought it would be reasonable for the officer to look into it, seeing as they are statistics that the officer has used. He should, therefore, have all of the data, otherwise it would be a little inappropriate to be selectively quoting and then not being able to back up the methodology.

Senator Abetz—That is a bit of a long bow to draw. If Kim Beazley is quoted as saying that the AWS are a pack of snivelling little liars, I can quote that; however, I do not have to go back and ask why Mr Beazley said that and what was in his mind. Similarly, I think it is appropriate for this witness to refer to ABS statistics and rely on them—I think most people do—without having to have the full comprehension of their methodologies.

Senator McEWEN—Two-year-old ABS statistics.

Senator Abetz—That is right, even if they were 10 years old.

Senator MARSHALL—Mr McIlwain, at the last estimates you told the committee that you intended to sample AWAs every month. Do you recall saying that?

Mr McIlwain—I recall that.

Senator MARSHALL—When did you stop doing the sampling?

Mr McIlwain—There was no analysis of statistical data on agreements lodged since we last spoke here.

Senator MARSHALL—When did you make the decision to stop doing it?

Mr McIlwain—It would have been sometime in June.

Senator MARSHALL—Had one month gone by since you last collected it? What gives the date in June? You appeared before us on 29 May and you provided information that you had sampled in the previous month. If you were going to do it monthly, where is the May sample?

Mr McIlwain—I will take your question on notice and check whether any analysis was done on agreements prior to my making that decision sometime in June that would necessarily have covered May lodgements.

Senator MARSHALL—Did you come to the decision to cease sampling the data in conjunction with anybody else?

Mr McIlwain—No. It was entirely my own decision.

Senator MARSHALL—You had no discussion with anybody about the sampling?

Senator Abetz—That was not the question. It was the decision. That is another question.

Senator MARSHALL—I said: was the decision made in conjunction with anybody else? Did you have a discussion with anybody else in coming to your decision?

Mr McIlwain—I naturally discussed our approach to statistical analysis with the OEA's statisticians.

Senator MARSHALL—What view did they put to you? Again, I am now looking at page 122 of the *Hansard* record of the last estimates, where we were discussing the methodology. You were satisfied with it at the time. In fact, you actually said that you were going to provide the methodology to the committee. Did you do so?

Mr McIlwain—We answered a question on notice, and the methodology was explained in that question on notice.

Senator MARSHALL—Did the statistician share your view?

Mr McIlwain—Absolutely.

Senator MARSHALL—Anyone else?

Mr McIlwain—I have discussed statistical analysis issues with officers of DEWR.

Senator MARSHALL—Which officers were they?

Mr McIlwain—The OEA provides workplace agreements to the workplace agreements database team within DEWR for its analysis purposes. I have discussed the OEA's approach to statistical analysis with the officers responsible for the management of that function.

Senator MARSHALL—Did any of those officers put to you that you ought not be producing this information?

Mr McIlwain—No.

Senator MARSHALL—Did you discuss it with anyone else?

Mr McIlwain—As part of my statutory function in providing aggregated statistical information to the minister, I have advised the minister's staff of my intention to review the methodology for the analysis of workplace agreements for certain characteristics.

Senator MARSHALL—How did they respond to that?

Mr McIlwain—They noted my advice.

Senator MARSHALL—They had no comment or view?

Mr McIlwain—They noted my advice.

Senator MARSHALL—Did you say that you had a discussion?

Mr McIlwain—I said I advised them—

Senator MARSHALL—You advised them.

Mr McIlwain—in the context of my statutory function to provide aggregated statistical data to the minister.

Senator MARSHALL—Had there been any other communication with the minister's office in relation to statistics on AWAs?

Mr McIlwain—I provide to the minister aggregated statistical data.

Senator MARSHALL—Are you still providing that?

Mr McIlwain—I am.

Senator MARSHALL—What information are you providing to the minister, and where do you source that?

Mr McIlwain—It is information on the number and type of workplace agreements lodged, the industries making particular kinds of workplace agreements, the growth trends in the lodgement of particular types of workplace agreements, the workplace size in which particular types of agreements are being made, and it is information on the geographic origin of particular types of workplace agreements, all of which is available in statistical summary on the OEA's website.

Senator MARSHALL—When does it come on to the website? What is the time lag between you providing that to the minister's office and it being on the website?

Mr McIlwain—We provide quarterly statistical notes, and the statistical summary of those notes appears on our website within a week of the end of the quarter.

Senator MARSHALL—It is a little bit different. You do a summary on the website. I thought you said the information you provided the minister is on the website. It is a summary of that information.

Mr McIlwain—It is a summary of the more detailed statistical information.

Senator MARSHALL—Can you provide to the committee the same advice that you provided to the minister in respect to the breakdown?

Mr McIlwain—I will take that on notice.

Senator MARSHALL—Why?

Senator Abetz—Advice to the minister is not necessarily something that is disclosable at these committees. It really depends I think on the nature of the advice et cetera. Rather than just giving a blanket yes that all the advice that has gone up will be disclosed to the committee, it may be appropriate to look very carefully and ascertain that which is appropriate and that which is not. Therefore, we are reserving our position on that.

Senator MARSHALL—Is there something in the advice you might provide to the minister that may be sensitive if provided to the committee?

Mr McIlwain—I am not saying that, and I do not believe the minister is saying that necessarily, either. However, as this information is contained in advice from the Employment Advocate to the minister, I would like to take the question on notice so I can be certain that the information I provide does not go to policy issues. I would say I think it quite unlikely but, for abundant caution, I would prefer to take that question on notice.

Senator MARSHALL—Of course you can. I do find it a little bit surprising that you provided the advice. You should know whether it is policy advice or not. It is statistical advice we are talking about.

Senator Abetz—I would imagine that there is a flow of information on a relatively regular basis. For somebody not to fully recall exactly what was in a particular piece of advice on a particular occasion, I do not think is strange or unreasonable. I think the approach Mr McIlwain has suggested is a very reasonable one that, as a result of caution, he will take it on notice and see if there are any matters in that block of advice that contain those statistics that would not be appropriate to release. All governments of all persuasions have always taken this sort of approach, and I do not think there is anything of great moment in Mr McIlwain's answer.

Senator MARSHALL—Thank you for that, but my difficulty is this: at the last estimates a methodology was outlined and then subsequently provided to the committee. Mr McIlwain had stated to the committee that he was going to collect statistical information on a monthly basis. We get here to this estimates today to find that a decision had been made not to collect that information, yet there is some information being provided to the minister's office. Given the nature of the information that was provided to the estimates last time, I am concerned that a deliberate decision not to collect the information has been made because of the embarrassing information that is contained in that information. Now, what I am trying to find out is what information is collected, who it is provided to and why can the committee not

have a copy of it? Maybe I should ask Mr McIlwain: have you collected any statistical information in relation to AWAs? What is it, and can you provide it to the committee?

Senator Abetz—I think you have now defined your question considerably. First of all, you want the whole of that which was being provided to the minister.

Senator MARSHALL—No, that is not my question.

Senator Abetz—No. Mr McIlwain has quite reasonably said that he is not sure exactly what was in it. Now, you have expressed a concern that the information that has gone up to the minister might contain some ‘embarrassing’ statistics. I think that is the word Senator Marshall used. Is that right? That may be something that Mr McIlwain can, in fact, recollect as to the extent of the statistical analysis that was sent up to the minister’s office.

Mr McIlwain—I can. For the avoidance of doubt, I can be categorical in saying that the quarterly statistical notes provided to the minister for June and for September do not contain analysis of workplace agreements, collective or individual, for protected award conditions, the particular issue that you have been questioning me on this morning. I will look at those briefings to the minister and confirm in my own mind that they contain only the data that I explained I recollected them containing and I will provide you with that statistical data. It will be about agreement type, numbers, trends in lodgements, workplace size, industry and geographic location. In fact, I have information with me today on that. Information on those variables is already on the OEA’s website. My concern only is to ensure that contained in these briefings there is not material other than statistical material. When I have done that I will be in a position to answer your question on notice.

Senator MARSHALL—I have now asked a more general question, too, which goes to what other information, other than what you have just relayed to me then, you have collected on AWAs? Is there any and, if there is, what is it?

Mr McIlwain—I do not believe there is. I will check.

Senator McEWEN—You can give the information about the types, the number, the industry, the geographical location et cetera, but you do not collect information about award conditions or above-award conditions. It just seems extraordinary.

Senator Abetz—You see, Australian Workplace Agreements, and I am sure Mr—

Senator McEWEN—I am sure the minister would like to have that information provided to him.

Senator Abetz—I am sure Mr McIlwain will correct me if I am wrong, but one of the things about Australian Workplace Agreements is that each one potentially is unique for each individual employee and employer and, therefore, to run a statistical analysis is difficult. If a particular person in their particular agreement has made arrangements for substantially long holidays, for example, as something that he or she really wants in their agreement, but then trades off other conditions—

Senator McEWEN—It is pretty easy to determine whether or not somebody is being paid above the minimum wage—that they are paying commission standard. I would have thought that was a pretty easy thing, if the OEA analyses agreements, which it says it does.

Senator Abetz—You cannot employ below the Fair Pay Commission wage. That would be illegal. But then somebody might trade off wage increases for extended holidays. To try to do an analysis really becomes very difficult because potentially—and I am sure they are not—out of the 600,000 or whatever active workplace agreements, each one potentially is unique. I am sure that a lot of them are, in fact, a standard form. That would be my hunch but, nevertheless, it is very difficult to try to get a snapshot of all of them with some sort of statistical analysis. I think that was the problem that Mr McIlwain was highlighting earlier in the discussion.

Mr McIlwain—What I might add is that this problem exists not only in regard to the analysis of AWAs but all workplace agreements, collective as well. The same concerns that I have expressed here today with regard to methodologies for analysing AWAs would obtain in regard to methodologies for analysing collective agreements.

Senator MARSHALL—Are you now reviewing AWAs and other forms of agreement upon lodgment and, if so, what are you reviewing?

Mr McIlwain—The system is a lodgment-only system. I think I need to set the context first. An agreement lodged with a completed statutory declaration operates, and the OEA's legal responsibility is to provide to the parties a receipt or receipts for that agreement. We have commenced, in regard to my statutory power to remove prohibited content from lodged agreements, a small pilot survey of lodged agreements in order to identify whether they contain prohibited content. Of course, the law says that if I find they contain prohibited content, I must take action to vary the agreement and remove that content.

Senator MARSHALL—How many agreements have you checked for prohibited content?

Mr McIlwain—I am not able to tell you the number we have looked at, but I can say that we are left with 46 that require closer inspection. It is hundreds, not thousands.

Senator MARSHALL—Will you be able to tell us?

Mr McIlwain—I will take that on notice.

Senator MARSHALL—You have 46 which you are now checking. Have any of them been determined as having prohibited content?

Mr McIlwain—No, not at this stage. They are the agreements that have gone through to the second stage of the process. All I could say about them at this point is that there is something there that has prompted us to refer the agreement to a legal officer.

Mr Rushton—If I could just add to what Mr McIlwain has said, we can also get applications from any person for such a review of an agreement that has been lodged, and we have had 14 of those applications. In all of those cases, we have determined that there was no prohibited content in those agreements.

Senator MARSHALL—Who were those applications from?

Mr Rushton—They can be from anybody. Any person can make that application.

Senator Abetz—Even if they are not party to the agreement?

Mr Rushton—That is so.

Senator MARSHALL—Are you required on application to check those agreements?

Mr Rushton—Yes, we are.

Senator MARSHALL—If I requested that you check every agreement for prohibited content, you would be required to do so?

Mr Rushton—I will take that on notice.

Senator Abetz—Chances are, you would have to refer to a specific—

Senator MARSHALL—I am not going to.

Mr Rushton—The application has to be for a specific review, and there is a requirement—

Senator MARSHALL—Are you checking both AWAs and other forms of agreement for prohibited content?

Mr Rushton—We have commenced that pilot, as Mr McIlwain was saying. It was only in relation to AWAs, but we do intend to also look at collective agreements under that process. I cannot give you the break-up of the 14 applications. That might be a mix. I think that is mainly collective agreements.

Senator MARSHALL—Are you able to be more specific with the number of agreements checked through that pilot so far?

Mr Rushton—No.

Senator MARSHALL—How many agreements have you checked for compliance with the Fair Pay and Conditions Standard?

Mr McIlwain—What I can tell you is that since 27 March we have referred to the Office of Workplace Services I believe it is a few short of 1,700 AWAs—that would be less than 1½ per cent of all AWAs lodged under Work Choices—because there is something in the agreement that we believe might not facilitate compliance with the Australian Fair Pay and Conditions Standard. The Office of Workplace Services then goes through a process to determine whether in practice there is a problem that needs to be addressed.

Senator MARSHALL—I can ask them about those 1,700?

Mr McIlwain—I believe so, yes.

Senator MARSHALL—How did you find those 1,700?

Mr McIlwain—We have come across them in several ways. We have, as you know, a contact centre where we take calls from both employers and employees. Some of those may have been referrals as a result of a call of concern that our contact centre had taken about that AWA. We have a process in place in our agreement services unit which manages the lodgment process to sample a small number of AWAs to see whether at first blush there is some potential concern about the terms of that AWA and whether they would facilitate compliance with the standard. What I need to say quickly though is that it is not for OEA to determine whether there is compliance with the Australian Fair Pay and Conditions Standard. That is squarely the responsibility of the Office of Workplace Services, and the OEA does not say that any agreement referred to the Office of Workplace Services in that workplace the employee, in fact, is not enjoying all of the benefits of the Australian Fair Pay and Conditions Standard.

Senator MARSHALL—You do not refer agreements to the Office of Workplace Services for no reason, do you?

Mr McIlwain—No, of course not.

Senator MARSHALL—You have to have a view that it is likely not to comply. I understand the point you make that it is not your final decision. So the 1,700 have been referred. You say that some of them are as a result of some calls and others are because of a sampling process. Tell me more about the sampling process. What else do you sample for?

Mr McIlwain—For nothing else.

Senator MARSHALL—You sample for nothing? When you sample, what do you look at? Do you look at prohibited content?

Mr McIlwain—No, not as part of that process.

Senator MARSHALL—Your prohibited content checking is quite separate from your compliance with Fair Pay and Conditions Standard sampling?

Mr McIlwain—Correct.

Senator MARSHALL—How many do you say you have sampled in compliance with the Fair Pay and Conditions Standard? You have told me 1,700 have been referred, but I suspect the sampling must be larger than that.

Mr McIlwain—It would be larger than that.

Senator MARSHALL—How large is it?

Mr McIlwain—I will need to check. I will take that on notice.

Senator WONG—The 1,700 is 1.5 per cent of those lodged?

Mr McIlwain—Yes.

Senator WONG—I think he is asking what percentage of the 1,700 you looked at.

Mr McIlwain—I am saying that I need to check before I answer that question to ensure that I give an accurate answer.

Senator WONG—How long will that take?

Mr McIlwain—I will take it on notice.

Senator Abetz—It is taken on notice. The deadline is set by the committee for answers to be returned.

Senator WONG—We are seeking that information earlier than that. This is a very reasonable question. If the officer has an indication about how many were referred because of concerns as to compliance with the Fair Pay and Conditions Standard, surely the officer can tell us how many were checked.

Senator Abetz—He will in due course.

Senator MARSHALL—We would appreciate if the officers could look while we go on with some questioning and then provide that to us. Do you check for the provision of wages at or above the minimum wage?

Mr McIlwain—No.

Senator MARSHALL—When you do your Fair Pay and Conditions Standard, do you look at everything apart from the minimum wage?

Mr McIlwain—The process is to identify those agreements that may not facilitate compliance with the standard.

Senator MARSHALL—Is the minimum wage a part of that?

Mr McIlwain—I apologise. I heard that wrongly as ‘wage increase’; I beg your pardon. Yes.

Senator MARSHALL—When you look at the minimum, you do not keep any records on what the wages are?

Mr McIlwain—No.

Senator MARSHALL—So you just comply with the minimum. Do you check or sample for the cashing out of annual leave?

Mr McIlwain—What we do with regard to looking at agreements to see whether they facilitate compliance with the standard—a small number—is look at the five conditions that make up the standard. Perhaps it is efficient for me to say at the outset that that is what we do.

Senator MARSHALL—You do not do any sampling about the cashing out of annual leave to ensure that has taken place and has been complied with?

Senator Abetz—That is item 2 of the minimum standards.

Mr McIlwain—That is part of the standards.

Senator MARSHALL—What information can you tell me about the amount of agreements that have cashed out annual leave?

Mr McIlwain—That data is not aggregated for analysis. These referrals are on a case-by-case basis. The agreements are looked at one by one and we do not aggregate data for analysis. The purpose is to identify agreements that on the face of it do not facilitate compliance with the standard and then to refer those agreements to the competent authority to determine whether in fact there is a problem in practice in that workplace.

Senator MARSHALL—You do not keep any information on the reason you have referred an agreement to the Office of Workplace Services?

Mr McIlwain—That information is provided with that agreement to the Office of Workplace Services.

Senator MARSHALL—Can you tell me how many have been referred to the Office of Workplace Services because they may not have met the minimum standard with respect to cashing out of annual leave?

Mr McIlwain—No, I cannot.

Senator LUNDY—Just to clarify that, could you if you looked back through your records, given that you do make a note of the reasons for the referral in the first place? Is that data searchable?

Mr McIlwain—It may be possible. I do not know.

Senator LUNDY—Could you take that question on notice?

Mr McIlwain—I will take that question on notice.

Senator MARSHALL—If you are able to do that, can you break that down against the five criteria with the reasons to which you referred?

Mr McIlwain—I will make that part of the question on notice.

Senator LUNDY—I would like to refer to a specific example of what you have just described, a referral to the Office of Workplace Services. It relates to the AWAs registered by Serco Sodexho Pty Ltd in relation to a number of clauses that were raised by the LHMU with the office. Specifically, the response by you on 9 October identified one of those clauses. You stated:

As a general matter, section 172(2) of the Act deals with the relationship between the Standard and workplace agreements, such as AWAs, which are entered into after 27 March 2006. It provides that the Standard prevails over a workplace agreement or a contract of employment that operates in relation to an employee to the extent to which, in a particular respect, it provides a more favourable outcome for the employee.

Your advice back to the union was that there was a clause in that agreement that potentially did not comply with the standard in relation to sick leave. As you stated, you referred that to the Office of Workplace Services.

Mr McIlwain—That is right.

Senator LUNDY—In looking at the content of the clause, and having a look at the website and advice provided by the Office of the Employment Advocate about the construct of AWAs, it appears that the Office of the Employment Advocate website provides advice to include the clause that you have now determined may not comply with the standard with respect to sick leave. Can you tell me whether or not there has been any checking of the data on the website providing advice to employees about whether or not that advice complies with the Fair Pay and Conditions Standard? I can tell you that it appears not to, and that leaves at risk a whole raft of AWAs that have complied with advice on the website and now may not comply with the Fair Pay and Conditions Standard.

Mr McIlwain—I am not able to answer that question now because our website has literally thousands of documents on it.

Senator LUNDY—It would be pretty embarrassing, wouldn't it?

Mr McIlwain—I will take that on notice and look carefully at that.

Senator LUNDY—You state in your response to the union:

It is arguable that clause 16.2(b)—

the clause in question in the AWA—

if it were relied on by the employer - would provide a less favourable outcome than the Standard. In my opinion, such an argument may be supported by the apparently exhaustive nature of the evidentiary requirements set out in section 254 of the Act. Therefore, I consider that it is arguable that the failure of

an employer to pay an employee, who has satisfied the evidentiary requirements of the Act in respect to sick leave, contravenes the Standard.

I will refer you to clause 16.2 in the AWA. It states:

- (b) require you to be examined by a medical practitioner nominated by the Company who will provide a report to the Company in respect of the illness or injury.

That is the clause that you believe may be in contravention. Yet on your website it states as one of the clauses that employers should consider in terms of limitations:

There is no limit to the maximum consecutive number of days of sick leave ...

And there is a dot point:

- *medical certification and, if required, the opinion of a medical practitioner nominated by the employer.*

You are giving companies advice to insert a clause that you now say is in contravention of the Fair Pay and Conditions Standard. I ask that you take that on notice and provide advice to the committee about whether or not your website is misleading employers and therefore placing at a direct disadvantage employees such as those at Serco Sodexho, which I should say in some circumstances would not have got a job unless they were required to sign these AWAs after previously being on a collective agreement. Further—

Senator Abetz—What was the preliminary to that dot point?

Senator LUNDY—The preliminary to the dot point was:

- *the employee's available personal leave credits; and*
- *medical certification and, if required, the opinion of a medical practitioner nominated ...*

Senator Abetz—‘If required’.

Senator LUNDY—Yes, but it is required in the agreement.

CHAIR—Is that your question?

Senator LUNDY—Yes. It has been placed on notice, but I am giving the contextual information to the department so that they can answer it properly. I have two more questions in relation to this matter. Firstly, you make reference in your response to the union:

Nevertheless, civil remedies are available in respect of conduct that contravenes the Standard.

Can you describe for the committee what civil remedies are available in the context of this correspondence to the union and to whom?

Mr Rushton—I cannot comment in relation to the particular letter, but there are remedies for breaches of the standards, contraventions of the standards, set out in the legislation.

Senator WONG—This is correspondence from the OEA to the union. This is advice that your office has provided. I am a little unclear as to why you say that you cannot comment on the contents of a letter that, as I understand it, Senator Lundy's question—

Mr Rushton—I do not have the letter and I have not seen it.

Senator Abetz—Is this a matter that has been referred to the OWS?

Senator LUNDY—It was written by Mr McIlwain.

Mr Rushton—It is a question of providing legal advice on the run to the committee without looking at the facts.

Senator Abetz—That is right.

Senator WONG—No, it is not providing legal advice. It is asking you to explain advice that you have provided or your boss, Mr McIlwain, has provided.

Mr Rushton—We have taken that on notice and we will provide an explanation that is detailed and helpful to the committee.

Senator WONG—What are the civil remedies, if you want to talk in the abstract?

Mr Rushton—It is the legislation in relation to the breaches of the standard. There are civil remedies for breaches of the standard.

Senator LUNDY—I have a copy of the correspondence here, if you would like to review it.

Mr Rushton—That would be helpful when we take it on notice.

Senator WONG—Mr Rushton, if you have the correspondence in front of you I think that obviates your request to take it on notice, doesn't it?

Senator Abetz—No, it does not.

Senator WONG—I had not finished, Minister. If the reason to take it on notice was that you did not know what was in it; if it is in front of you can you explain to us what you meant, Mr McIlwain, surely?

Senator Abetz—No. Anybody who has practised law, including yourself, Senator Wong, would know the very real danger of trying to give advice on the run. You would want to have the full file in front of you, what first of all initiated the concern, then the letter of concern and what your response is. Part and parcel of the questioning has been the suggestion that there is a difference between a particular clause in the AWA and that which is on the website. There are a number of features about the questioning, and it is only fair and reasonable that Mr Rushton be allowed to go away, consider all of those matters and then provide some sort of response.

Senator WONG—As I understand Senator Lundy's subsequent question, you have taken on notice the apparent contradiction between the advice provided by Mr McIlwain in the letter and the advice provided on the website.

Mr McIlwain—What I have said is that I would check that—

Senator WONG—Let me finish the question. We have moved on from that. As I understand this question, this relates to advice provided in a letter. It is hardly legal advice on the run. Presumably you turned your mind to the factors relevant to the consideration of the advice before you wrote the letter?

Mr McIlwain—The minister asked me the question: how many letters do I sign a week. I sign many a week. I agreed to take that matter on notice, and we will provide you with a careful, thorough and considered response by the deadline set by the committee.

Senator WONG—Presumably it was careful, thorough and considered before you signed it.

Mr McIlwain—It was, and it will be again.

Senator Abetz—Good response.

Senator LUNDY—I will table this letter for the purposes of the committee. We can provide copies to everyone, including the witnesses. The website I am referring to was as the website stood on 19 October 2006, so I would like the response to that question in reference to the webpage as I sighted it on 19 October 2006, in case it has been rectified by now. I will also inform you that the company in question—Serco Sodexho—has since reissued AWAs that do not include this clause. Was that advice given to the company by the Office of the Employment Advocate?

Mr McIlwain—Not to my knowledge. However, I will check to see whether any of my officers have had further communication with Serco Sodexho.

Senator LUNDY—Have you subsequently checked other AWAs for this anomaly that you now believe is not compliant with the Fair Pay and Conditions Standards?

Mr McIlwain—No.

Senator LUNDY—Why not, given the advice on your website?

Mr McIlwain—Firstly, with regard to the website, I will check the website but I will make no comment concerning the accuracy or inaccuracy of the material on the website until that has taken place.

Senator LUNDY—Let me ask you the question this way: in light of the issue raised with you by the LHMU on behalf of Serco Sodexho employees and your response to the LHMU in that regard, has that prompted you to check other AWAs, either of that company or other companies, for the same flaw?

Mr McIlwain—We have not checked other lodged AWAs to see whether they contain a clause in those terms.

Senator LUNDY—Why not? Is that not negligent, given you now have knowledge and evidence that there may be a systemic flaw or consistent flaw throughout all those AWAs?

Mr McIlwain—I have no knowledge of that. I have an issue raised by you, which I have said I will check. Clearly, were that checking to reveal that there was inconsistency between the legal advice contained in the letter to Serco Sodexho and any document on our website, we would remove that inconsistency.

Senator LUNDY—That still does not answer the question that I just asked. The question I just asked was: in light of the knowledge that you now have about this clause and how it appears—regardless of the website—has that prompted you to check either existing or lodged AWAs or indeed new AWAs?

Mr McIlwain—Your premise is false.

Senator LUNDY—You wrote the letter.

Mr McIlwain—Why would I be checking other AWAs to see whether they contained a clause of that kind without there being any evidence that they did so? You are linking this to advice that you say is contained in a document somewhere on the OEA's website. I am unaware of that inconsistency and I was unaware that others considered that an inconsistency existed until you began your questioning 10 minutes ago. I have not checked, and my officers have not checked, other AWAs to see whether they contain a clause of that nature.

Senator LUNDY—I understand your answer. When you receive complaints from anyone—as Senator Marshall has established—does that prompt you to check either lodged agreements either with that existing company or indeed other associated industry AWAs for the same flaw or alleged flaw? Do those individual complaints prompt further activity to assess other AWAs or not?

Mr McIlwain—Where we find evidence that there is a systemic flaw, maybe in a particular industry, what we do is act under my function to provide education and advice to workplaces in that particular industry, for example, to ensure that the parties making workplace agreements, whether they are collective agreements or whether they are AWAs, understand fully their legal obligations. Work Choices sets a high onus on the parties, particularly on the employer, to comply with the law. Our job is to make sure that we do everything we can so that the parties understand what their legal obligations are and can properly comply with them.

Senator BARNETT—Did Serco Sodexho ask you for advice on the content of their AWA? Is that a possibility?

Mr McIlwain—It is possible. We provide advice to many thousands of employers each year. I am not able to answer that.

Senator McEWEN—Mr McIlwain, I would like to revisit the information that you provided to some questions from Senator Marshall about the contact you had with the minister's office regarding the decision that you, I take it, subsequently made not to sample and collect the information that you were previously collecting and sampling from AWAs prior to June 2006. Who initiated the contact with you between the two offices? Did you approach the minister's office, saying, 'We've got an issue with the way that we are collecting these statistics and we want to talk about it,' or did the minister approach your office?

Mr McIlwain—I advised the minister's staff, on my own initiative, that I had concerns about the process and that I would not be conducting analysis on agreements lodged since I last spoke with you until those concerns had been overcome.

Senator McEWEN—When was that contact made?

Mr McIlwain—As I said, it would have been concurrent with my decision, which I believe was some time in June.

Senator McEWEN—Before you made the decision you had no previous discussion with the minister's office?

Mr McIlwain—I discussed my responsibilities under my statutory function to provide statistical data to the minister often with the minister's staff.

Senator McEWEN—How often, in that period between estimates in May and the decision to stop collecting this information in June?

Mr McIlwain—In that period I cannot say. I cannot recall.

Senator McEWEN—Are you saying that it was your decision alone?

Mr McIlwain—Categorically.

Senator WONG—As I understand it, you are saying that the decision to discontinue the collation of data and the analysis of AWAs was made in approximately June.

Mr McIlwain—The decision to discontinue the analysis of data was made in June.

Senator WONG—When was the issue of the analysis of AWAs first discussed between your office and the minister's office subsequent to the last estimate's hearing?

Mr McIlwain—It was not discussed. I provided my advice.

Senator Abetz—We have been through this.

Senator WONG—I understand that.

Mr McIlwain—I cannot recall the exact date.

Senator WONG—You provided your advice?

Mr McIlwain—Yes, I did.

Senator WONG—That was pre June?

Mr McIlwain—No. It would have been in June that I advised the minister's office that I was not continuing to prepare that statistical analysis because of my concern.

Senator WONG—I understand that. As I understand an answer to Senator McEwen, you indicated that there was discussion with the minister's office prior to that decision being made, so I am asking: when did the first discussion with the minister's office in which this prospect was raised occur subsequent to the estimate's hearing?

Mr McIlwain—What I said was that I discuss frequently my statutory responsibilities with staff of the minister's office. I was not specific on that point.

Senator WONG—I am asking that question. When was the first occasion on which the possibility of discontinuing this analysis was discussed between you and the minister's office subsequent to the estimate's hearing?

Mr McIlwain—I am unable to recall. It was some time between the estimate's hearing and the latter part of June.

Senator WONG—When was the first contact post the estimate's hearing with the minister's office? Did you have a discussion on the day of the hearing?

Mr McIlwain—On the day of the hearing, no.

Senator WONG—Did the minister's office raise a concern with you about the publicity associated with the data that you had collected?

Mr McIlwain—No.

Senator WONG—They have never raised that concern?

Mr McIlwain—No.

Senator WONG—Are you unable to tell us how many times you discussed or met with them regarding the prospect of discontinuing analysis prior to your decision being made?

Mr McIlwain—I am unable to give you an exact number.

Senator WONG—Are you able to tell us from your diary when official meetings or formal meetings were undertaken between you and the minister's office in that time frame—that is, between the estimate's hearing and your decision in June?

Mr McIlwain—I will check my diary to see if I met with staff of the minister's office in the month of June.

Senator WONG—Did you speak directly with the minister about this issue at all prior to your decision?

Mr McIlwain—No.

Senator WONG—Senator Marshall may have covered this, but, when you say you made your formal decision, how did you advise the minister's office?

Mr McIlwain—By telephone.

Senator WONG—Were they the first people that you advised or were your staff advised prior to that?

Mr McIlwain—My staff were advised.

Senator WONG—On the same day?

Mr McIlwain—It was likely to be the same day or the day before.

Senator BARNETT—I have a few questions. You mentioned that the September AWA figures of 27,000 were a record for Australia. Can you help to break that down on a state-by-state basis and is that available either now or today?

Mr McIlwain—I can give you a breakdown on employee coverage figures by state, and indeed for Australian Workplace Agreements—that is, by agreements as well; the collective situation is different. Beginning with AWAs, I can read you state by state if you wish?

Senator BARNETT—Is that able to be tabled?

Mr McIlwain—Indeed, yes.

Senator BARNETT—Does that cover from March this year from when Work Choices commenced?

Mr McIlwain—Yes, it is cumulative to 30 September.

Senator BARNETT—Does it also have a total figure since 1997?

Mr McIlwain—I can provide this whole statistical note for tabling if that is helpful.

Senator BARNETT—That would be good. Secondly, with regard to the industry penetration and which industries are more inclined to be using AWAs, do you have those figures available?

Mr McIlwain—I have some up-to-date figures on that exact characteristic. I can provide the top five industries for both AWAs and collective agreements. This is not exhaustive. We would be able to take on notice a full proportional industry split for all types of agreements. To give you a taste of it, for AWAs, in descending order, the top five industries are: retail trade; accommodation, cafes and restaurants; manufacturing; mining; and property and business services. For collective agreements, again in descending order: retail trade; education; government administration and defence; manufacturing; and construction.

Senator BARNETT—Are you able to advise the committee of the percentage of the workforce under AWAs and under collective agreements?

Mr McIlwain—Yes. We are able to give you a split of total federal agreement coverage—union collective, employee collective and AWA. We will provide that.

Senator BARNETT—When would you expect that figure to be available? Is that figure possible today or is that something that you would like to take on notice?

Mr McIlwain—I will take that on notice. It may be possible to provide it earlier.

Senator BARNETT—I wanted to ask about your total number of staff at the OEA. How many are there?

Mr McIlwain—Going on a head count, we have some staff who are part time, so full time effective is slightly less. The head count as at 30 September is 260 staff.

Senator BARNETT—Could that be broken down state by state?

Mr McIlwain—It can be broken down. South Australia, 14; Queensland, 35; the Northern Territory, one; Tasmania, four; Victoria, 28; Western Australia, 15; and New South Wales, where we have both our New South Wales regional office and our national office, 163. That is a total of 260.

Senator BARNETT—I now want to ask you a question about an article in the *Australian Financial Review* on 31 October. The heading is ‘Miners dig in on value of AWA benefits’. You referred to the penetration of the mining industry as being quite high with respect to AWAs. The first paragraph reads:

Labor and the ACTU’s plans to abolish Australian workplace agreements would cost the resources sector between \$6.6 billion and \$9.9 billion in lost productivity, according to the mining industry’s national employer association.

... ..

Mr Platt said he based his comments on the estimate that AWAs boosted productivity by 20 to 30 per cent, they covered 30 per cent of resources workers nationally, and the resources sector would reap \$110 billion in minerals and energy exports in 2006-07.

Are you familiar with those figures and do you have any response to those claims?

Mr McIlwain—I am familiar with those figures. Mr Platt is an officer of the Australian Mines and Metals Association, which is a longstanding OEA industry partner. As Mr Platt has stated, the mining and resources sector is a very enthusiastic user of AWAs, particularly in Western Australia, where many large resources projects are staffed exclusively by employees on AWAs. I understand AMMA, together with the Minerals Council of Australia possibly, has

done some modelling about the potential adverse effect of removal of individual agreements as an option for setting terms and conditions in that sector. The OEA has not done any economic modelling of that kind, but we defer to Mr Platt and the work that he has put into that. He would say that the evidence is stark that removal of the option would have a significant adverse impact on the productivity, in particular, of the mining sector. I understand that is determined on the basis that AWAs are the most effective mechanism of quickly introducing change into a workplace to increase productivity.

Senator BARNETT—You have mentioned Western Australia, which is a critical part of our country in terms of the mining sector/industry. Mr Platt gave the example of BHP Iron Ore and Rio Tinto. They conducted a due diligence of each other's Pilbara mine operations in 1999 with a view to a possible merger that never proceeded. In terms of the analysis that you have referred to, it would have serious implications in Western Australia, in particular in the mining sector, if AWAs were abolished, according to this report.

Mr McIlwain—I understand the position of AMMA to be that that would be the case. Western Australia and Queensland are the loci of the resources boom at the moment. Proportionately, the effect of removing the AWA option in those states would be more adverse.

Senator BARNETT—In terms of productivity boost or benefits under AWAs, because that is the basis of the report, they are talking about productivity improvements of between 20 per cent and 30 per cent, which is in anybody's book a very significant improvement. Are you aware of any other analysis apart from AMMA's analysis? I am thinking of the building and construction sector or some of those other sectors that have high penetration of AWAs. Are you familiar with any other research that has been conducted or any other concerns that have been expressed by different industry groups about the proposal to abolish AWAs?

Mr McIlwain—It is my understanding that the bulk of the work surrounding research into productivity increases through AWAs has been in the mining and resources sector—not only that work commissioned by AMMA or the Minerals Council but also some work done by individual researchers at Edith Cowan University, if I remember correctly, which took a different approach and interviewed employee relations and human resource managers in mining sector employers some years ago and found that the view amongst those managers strongly was that individual agreements, not only AWAs but the previously available Western Australian workplace agreements, had contributed significantly to productivity in that sector. With regard to other industry sectors, I cannot recall right now any relevant research. I will take that on notice and we will have a look through our records and see if we are able to identify any for you.

Senator BARNETT—That would be appreciated. You mentioned the Edith Cowan University report. I must say that I have not seen it. It would be appreciated if you could also advise us of the details of that.

Mr McIlwain—We will source that for you.

Senator McEWEN—I have one more question about the discussions that you had with the minister's office about the collection of statistics. As part of those discussions did either yourself or the minister's office suggest that, because there were problems as identified by

you with having a small sample, perhaps one way to address that was to sample a larger number of agreements so that you had a better statistical response?

Mr McIlwain—Firstly, if I can just be clear, I provided the minister's office with my advice. We did not discuss these issues.

Senator McEWEN—You had a telephone conversation.

Mr McIlwain—I had a telephone conversation to provide my advice and to explain my concerns about the methodology that had been used on that sample of 250 AWAs lodged in April. To move on to your question, the sample size is but one of three concerns that I have about that methodology. They are concerns that would have to be overcome before I was satisfied that we had a methodology which would produce results that were not distorted or misleading and could be relied upon. The other two concerns were the composition of the sample. In the answer to the question on notice concerning the methodology employed, it was explained that the composition of the sample was based on workplace size only. There are many other variables that I believe would need to be taken into account in arriving at a reliable sample composition. The third concern that would have to be addressed is the focus on particular terms and conditions of employment, defined in the legislation, but in the absence of any consideration of what else the parties might have agreed to in that AWA.

Senator McEWEN—I appreciate your three concerns. Did you say in your conversation with the minister or his officers, 'These are my concerns; here are some possible solutions to them', including that you could do a bigger sample or a different kind of analysis, include more information or employ more staff to do a better sampling, or was your advice that you just should not do this?

Mr McIlwain—My advice was that these were my concerns, that they needed to be addressed and that we would be considering how they might be addressed.

Senator McEWEN—There are alternative ways of addressing it than just not collecting the information. I am surprised that you did not have discussions with the minister's office saying, 'We've got these problems'—as evidenced by the media attention to the statistics that were collected—'and here is a way of getting around it.' There must be ways of getting around it. You have already discussed that. You had already thought about it, but the decision was not to do something better to provide better statistics, which would have assisted the minister, I would have thought; your decision was to not collect it at all.

Mr McIlwain—My decision was to review the methodology and to think hard about how those concerns might be overcome to arrive at a methodology that was reliable.

Senator McEWEN—The decision of the OEA was to not collect the statistics at all, and I assume then that the minister's office agreed that should be the outcome of your discussions?

CHAIR—I do not think that you should assume anything about any decision that the minister has come to or not. Mr McIlwain has indicated the extent to which he can advise the committee of the basis of those discussions.

Mr McIlwain—I need to say that I am a statutory office holder and I am acting under a statutory power here to give my advice with regard to aggregated statistical information to the minister, and that is what I have done.

Senator McEWEN—You made the decision not to collect that information in the way that it had been collected before. Minister, did you agree with his decision?

Mr McIlwain—I did not discuss the matter with the minister.

Senator Abetz—The question is to me. Either way the evidence is very clear. The statutory authority or statutory office holder, who did not discuss it with a minister, advised the minister, and the minister's office noted the advice. There was no discussion. Every question of yours has had as part of it 'in your discussion with the minister's office'. The evidence of Mr McIlwain is that there was no such discussion. There was the provision of advice by a statutory officer to the minister's office, and the minister's office did what is usually done—that is, it noted it.

Senator McEWEN—With respect, Mr McIlwain said that he did have discussions with your office. He outlined the three problems that he had.

Senator Abetz—To be clear for you, it was not with my office. I represent the Minister for Employment and Workplace Relations. That was Mr Andrews's office with which any discussions may have been held. But the evidence is that there was no such discussion. There was a provision of advice, which the minister's office then noted.

Senator McEWEN—To assist us in this regard, do you think that you would be able to provide the committee with your diary notes for the period when you were having telephone conversations with the minister's office about the issue of collection of statistics from AWAs?

Mr McIlwain—I will take that on notice.

Senator McEWEN—Yes or no?

Mr McIlwain—I will take that on notice.

CHAIR—Mr McIlwain has indicated that he will consider that and take it on notice.

Senator MARSHALL—There was some diary advice that you agreed to provide to Senator Wong. Could you provide that information, too, today?

Mr McIlwain—What I said was that I would take it on notice to check my diary to see whether I had a meeting with staff of the minister's office.

Senator MARSHALL—It is a slightly different question.

Mr McIlwain—I understand that.

Senator MARSHALL—Would you be able to check that and provide the committee with that information?

Senator Abetz—It depends what the diary note potentially says. There is a big difference in whether he had a meeting with somebody on a particular day as opposed to, if he did have a meeting with somebody on a particular day, what was the detail of the conversation on that particular day. That is where it is quite appropriate for Mr McIlwain to take that on notice.

Senator MARSHALL—I agree that they are two different questions. I am not arguing about that.

Senator Abetz—Good.

Senator MARSHALL—If you can answer one of the questions today that would be appreciated. If you could answer them both today that would be appreciated.

Mr McIlwain—I will take it on notice.

Proceedings suspended from 10.45 am to 11.00 am

Senator MARSHALL—I asked you earlier about information that you collect in relation to agreements and you told me that there was a summary on the website as well as some more specific information that you were going to give to the minister. In answer to a question from Senator Barnett you provided more information. I am just trying to work out whether that is different from the information you were going to take on notice and therefore whether you could provide that information to me?

Mr McIlwain—I have tabled that information.

Senator MARSHALL—Is this the information that was going to be contained in your answer to my question which you have taken on notice?

Mr McIlwain—I think there will be a high degree of commonality, yes. I will continue to take on notice your question and I will answer it in the way that I said I would answer it. I will provide the statistical information that is contained in that briefing to the minister. I think you will find a high degree of commonality between the information I tabled here this morning, the information on the website and any other statistical information that the OEA puts out. As you would expect, the difference—

Senator MARSHALL—It is not just information that you have put out. My question was really trying to find out what information you collect. I appreciate it is a broad question, but my question is: will you provide to the committee all the information that your office collects in relation to agreements?

Mr McIlwain—As far as I can recollect, I believe I will be able to provide you with all of the information that is contained in my quarterly statistical note to the minister because—and this is the point I wish to check—I do not believe that it goes to issues of policy or policy advice. Assuming my recollection is correct, I should be able, in my answer to your question on notice, to provide all of that statistical information.

Senator MARSHALL—I accepted that at the time. You subsequently provided some information in answer to Senator Barnett's question. Is there anything else you are able to provide to the committee now in addition to what you have already provided as a result of Senator Barnett's question?

Mr McIlwain—No, that document I tabled is a cumulative statistical snapshot of agreement making under Work Choices. That is the totality of what I have available to me this morning.

Senator Abetz—Does that statistical analysis tell us that there are not only Australian workplace agreements but also union agreements, collective agreements et cetera?

Mr McIlwain—It does, indeed.

Senator MARSHALL—That is the extent of my question. I am talking about all agreements—

Mr McIlwain—Yes.

Senator Abetz—Which, of course, indicates that people are, in fact, exercising choice and that employers and employees are making these agreements—

Senator MARSHALL—You made that point yourself that we should not just rely on the statistics.

Senator Abetz—Yes. All these agreements are still taking place. They are not all—

Senator MARSHALL—Before other senators moved on to some questions, we were talking about what you do and do not look at. You were telling me that you do check a sample of agreements for the fair pay minimum conditions. I want to move on from there. Do you collect information about the gender application of agreements?

Mr McIlwain—Yes, we do.

Senator MARSHALL—Can you provide that?

Mr McIlwain—Yes, I believe so.

Senator MARSHALL—Can you do that now? How is that collected, as a sample, or do you check all agreements for that?

Mr McIlwain—As part of our lodgement requirements the gender of the employee must be identified by the lodger. Likewise, for all agreement forms we ask for that information, not only for AWAs.

Senator MARSHALL—Will you provide that to the committee?

Mr McIlwain—Yes.

Senator MARSHALL—What other information do you collect across the board on agreements that are lodged? Do you do juniors, people who are under 18?

Mr McIlwain—I will refer to the forms. We have a copy of our lodgement form and that will guarantee the accuracy of my answer.

Senator MARSHALL—Just while you are doing that, do you think your answer to my previous question about providing the committee with all the information you collect was going to encompass those details? Because I did ask that earlier question in the broadest possible sense, so I am hoping that your answer will be yes.

Mr McIlwain—I am not sure whether it appears in the quarterly statistical summary that is currently on our website but, for example, in our annual reports we have reported on the gender distribution of AWAs over nine years, so we can certainly provide that. Let me run through what we ask people to provide when they lodge an agreement.

Senator MARSHALL—This is information that you will then collect and will be available to the committee?

Mr McIlwain—Yes, except I will not be able to provide identifiers of parties to AWAs.

Senator MARSHALL—I accept that.

Mr McIlwain—I am looking at an AWA lodgement form at the moment, which is on our website. We ask people to provide their ABN, the legal name of the employer, the trading

name if it is different, the employer's address, their email address and the industry in which they operate using the ANZSIC codes.

Senator MARSHALL—You will not be providing the first few identifiers, but you will be providing the industry?

Mr McIlwain—We do that now, yes. Industry—

Senator Abetz—That is how you are able to give the five industries—

Mr McIlwain—Exactly, yes. I can provide industry distribution for all agreement types and, in fact, whether it is in our quarterly statistics I would have to check but there is workplace size, whether the workplace is in the private, public, or not-for-profit sector. Of course, for employees, under AWAs we collect information as to their name and address, phone number, whether they are under 18 years of age, whether they work under a supported wage system arrangement, whether they are an apprentice or trainee, what their status is, full-time, part-time, casual, and where their work site is.

Senator Abetz—Do you actually ask them for their gender or not?

Mr McIlwain—We do collect information as to gender as well.

Senator MARSHALL—It is just that the information you have just provided to the committee does not include age, and has not included gender?

Mr McIlwain—No.

Senator MARSHALL—So you will provide that?

Mr McIlwain—I will take that on notice. This will require us to run some reports, possibly. For collective agreements, running through the form again, we collect information about the agreement itself and the name of the agreement—that is the convention, of course, that collective agreements have a name—how many employees are covered by the agreement, in what state or territory or combination of states and territories the agreement will operate, whether the agreement replaces an existing agreement, and what the name and number of the existing agreement replaced is. We collect some information on demographic groups, including gender. We collect information as to the number of staff covered by the agreement who are part time and casual, under 21 years of age or over 45 years of age; and as to what awards does the agreement displace, if it displaces awards. We collect, of course, the employers' identifiers; the industry in which they operate; the size of their business, and again whether or not it is in the private, public or not-for-profit sector.

Senator MARSHALL—Apart from that information that identifies either the employer or the employee, you can provide the committee with all that information?

Mr McIlwain—Yes. It will be aggregated statistical information, yes.

Senator MARSHALL—In your sampling, when you are checking the five conditions, do you keep a note on how many agreements include only those five conditions that you are sampling for?

Mr McIlwain—We do not aggregate that data for analysis.

Senator MARSHALL—When you say you do not aggregate it, do you have any information that you are able to provide?

Mr McIlwain—I do not think so. It is not aggregated for analysis. It is not analysed by our statisticians.

Senator MARSHALL—Do you have the information?

Mr McIlwain—I do not know that the information exists in a form that is aggregated and susceptible to analysis by our statisticians. I would have to take that on notice and check.

Senator MARSHALL—If you could provide the committee with that information, that would be appreciated. We had a discussion last time about family-friendly conditions. From my recollection that was one of the things that you were going to look at. Have you done any further work on analysis of family-friendly conditions in agreements?

Mr McIlwain—No, no statistical analysis.

Senator MARSHALL—Do you intend to? It was your intention last time, as I recall.

Mr McIlwain—We may, although I am conscious that the workplace agreements database team in DEWR does look at that issue extensively, and I am loath to duplicate functions within the portfolio.

Senator MARSHALL—Could you just explain to the committee again how they are able to do any analysis of agreements? Do you provide them with a sample or do you provide them with access to all agreements?

Mr McIlwain—They are provided with a sample of AWAs and, like all Australians, they have access to collective agreements.

Senator MARSHALL—What is a sample size of AWAs you provide to DEWR?

Mr McIlwain—I believe it is in the vicinity of 6,000, but there have been discussions from time to time of a sample size of 10,000, so I will check to see if it is 6,000, 10,000 or a figure in between.

Senator MARSHALL—Are they provided with those agreements in total?

Mr McIlwain—They have access through our system to those agreements.

Senator MARSHALL—Do you know what analysis they do? You say you do not want to duplicate things, so do you know if they are checking for the removal of protected award conditions?

Mr McIlwain—I do not know that, and I am loath to speculate about that.

Senator MARSHALL—That is a question you can ask them. If you do not know, that is fine—I will ask them. Do you do any analysis on the productivity outcomes?

Mr McIlwain—No.

Senator MARSHALL—Do you know if that is something DEWR is looking at?

Mr McIlwain—I do not know.

Senator MARSHALL—We had a discussion as well at the last estimates with Mr Rushton about the wording that may or may not be required to remove protected award conditions

from operation in agreements. Have you done more work on that and are you satisfied in your sampling that, when award conditions are being removed, it is being done appropriately, with the appropriate wording? Do you now provide a sample of wording or a template of wording for employers?

Mr McIlwain—We tell employers and employees that we believe two approaches are effective. One is an omnibus approach where at the beginning of the agreement, conveniently, there is a clear statement that all protected award conditions that would apply to that employee otherwise be excluded, or modified. These ones, in particular, are modified. The other approach is that it can be done on a more specific clause-by-clause basis, even if the employer and employee wish to nominate specific clauses in the award that would otherwise apply as being modified or excluded. In brief, we believe that either approach is effective. However, our advice with a highly specific approach is that great caution must be exercised to ensure that the parties are referring to the correct award, the correct clause in the award and the latest variation of that award. That is the advice—

Senator MARSHALL—Do you provide technical advice on that?

Mr McIlwain—That is the advice we provide, generally, in our materials, particularly in our interactive how-to guide, and that is the advice that people would, for example, get from one of our contact centre staff if they called.

Senator MARSHALL—They would help them with the words specifically?

Mr McIlwain—They would tell them what we believed were the two effective mechanisms if the parties wished either to exclude or modify protected award conditions.

Senator MARSHALL—In terms of removing all award conditions, which was the first approach you talked about, is there a set of words you now provide for that?

Mr McIlwain—I do not think we provide an invariable template of words.

Senator MARSHALL—I am just trying to get a handle on the advice you give. I understand that, if there is some general advice and individuals are providing it tailor-made to every circumstance, that is difficult for you to provide. When people are removing individual clauses I can understand the difficulty, so it may be an impossible question to answer, but in the more general sense—which is removing all award conditions—is there a set of words that are used, Mr Rushton? We had this discussion last time. We were uncertain on how that might in fact take place. Have you resolved that issue and, if you have, can you give me the set of words that you recommend should be used?

Mr Rushton—We do not provide a recommended set of words. We would refer people to the how-to guide, which has the more detailed and clause-by-clause approach embodied in it. That is what we recommend that people proceed with.

Mr McIlwain—Just to be clear, the OEA does not encourage or discourage the parties from excluding or modifying protected award conditions. That is entirely up to the parties. We simply respond to requests for advice on how that might be done if that is the wish of the party.

Senator MARSHALL—That is what I am trying to find out: what advice you then provide if that is the request. And the answer is: no specific advice.

Mr McIlwain—We refer people to our how-to guide and Mr Rushton has reminded me that that has the more specific clause-by-clause approach. However, we also advise people that if they wish they can adopt an omnibus approach to effect their intentions and, if that is their desire, that will also be effective.

Senator MARSHALL—But you do not provide words to put into effect that omnibus approach? That is what I asked.

Mr Rushton—No.

Senator MARSHALL—Does the act require any form of compensation to be included in an agreement if some or all protected award conditions are removed?

Mr McIlwain—No.

Senator MARSHALL—Just harking back to the previous act where there was a global no disadvantage test, is there any view taken about looking at the advantage or disadvantage of AWAs in your sampling?

Mr McIlwain—No.

Senator Abetz—The test now under the legislation is the five minimum standards, which are now legislated, rather than trying to look at whether or not there is a disadvantage.

Senator WONG—Is there a requirement that an agreement actually contain the five minimum standards, or are they simply imported by statutory force?

Mr Rushton—They are imported by statutory force.

Senator WONG—The agreement is not illegal if it does not comply with the standard? You can have an agreement that states ‘no sick leave, no annual leave’ and has more than the minimum hours?

Mr Rushton—The parties must comply with the standard—

Senator WONG—But the text of the agreement can actually be in contravention of the standard?

Mr Rushton—In which case the standard would kick in and override the terms of the agreement.

Senator WONG—And the employee is supposed to know that what is written down is actually not effective at law? Is that the position?

Mr McIlwain—Every employee who is offered an AWA or is asked to vote or otherwise approve a collective agreement must be given an information statement, which is a statutory document which I gazette. That information statement sets out in very clear terms the provisions of the Australian Fair Pay and Conditions Standard for the express purpose that the employee understands the law that applies.

Senator WONG—I understand that. But, as I understand your evidence, an agreement in terms of its text does not, in fact, need to comply with the standard? Do you check that?

Mr McIlwain—No.

Senator WONG—You do not even check whether the agreement in terms of its provisions technically complies with the standard?

Mr McIlwain—Only the small number that are sampled for the arrangements that I have entered into with the Office of Workplace Services.

Senator MARSHALL—Is it a requirement that an employee has to be advised that an agreement removes some or all protected award conditions?

Mr McIlwain—The agreement to remove or modify a protected award condition must include an express provision to do that. If the agreement is silent, the protected award condition continues to apply.

Senator MARSHALL—I am just trying to get a handle on what you said in answer to an earlier question about there being an information pack that has to be provided to employees. Is that just a standard pack that you provide? It does not necessarily have to provide details of the agreement itself? Who is responsible for providing that?

Mr McIlwain—The employer, to comply with the prelodgement processes for all forms of agreements, must provide to every employee a copy of an information statement for employees, and there is one for every agreement type provided for in the legislation and gazetted by the OEA. The statement is available in hard copy or it is available to be downloaded from our website. It is a requirement of the prelodgement process.

Senator MARSHALL—Is it a legal requirement that an employee has to understand the contents of an agreement before it can be put into legal effect?

Mr McIlwain—We do a lot, in particular, to address the needs of people from non-English speaking backgrounds, and we provide the information in a form that is understandable by the employee. We produce our information statements in, off the top of my head, at least 16 community languages. They are also available on our website and may be ordered from our mailing house. We take great care with the drafting of the information so that it is in a form that an employee could understand and act upon when offered an AWA or asked to vote or otherwise approve a collective agreement.

Senator MARSHALL—But that was not quite my question.

Senator Abetz—But the prior law in relation to, say, employees joining a trade union or indeed voting for award conditions or a collective agreement never required that the employee understand what they were signing up to in joining a union or indeed voting for an award or a collective agreement. So in that regard AWAs are no different from people joining trade unions or voting on other employment type contracts. Is that correct?

Mr McIlwain—That is my understanding. What I would also add is that—

Senator MARSHALL—Just let me just clarify that? There is no requirement that an employee understand the agreement prior to—

Senator Abetz—As is the case when they join the union.

Senator MARSHALL—You can make any comparison you like, but I am just trying to ascertain the facts as they stand, Minister, and I would appreciate straight answers to very straight questions, if you can see your way clear to assist me?

Senator Abetz—All we have is questions which are not straight.

Senator MARSHALL—Is there a requirement for an employee to understand an agreement before it has legal effect?

Mr Rushton—The employee must sign the agreement. They must be given a copy of the agreement. The requirements are set out in the act.

Senator Abetz—There is now extra protection for those aged under 18, whereas before there was not.

Mr Rushton—Agreements involving those under 18 have to be countersigned by a responsible person, a guardian. They have to be given, as Mr McIlwain has said, a copy of the information statement. Those are the essential requirements for the making of agreements.

Mr McIlwain—The OEA runs a call centre and takes many thousands of calls a month from employees on AWAs, collective agreements, awards and from the Australian Fair Pay and Conditions Standard. The purpose of running the contact centre is to make sure that both employees and employers have access to advice about the agreement-making system, if they have any questions or doubts.

CHAIR—Senator Barnett has a question on that point.

Senator BARNETT—Just on the OEA point, do you check the award provisions of collective agreements and specifically union collective agreements?

Mr McIlwain—No.

Senator BARNETT—In terms of comparisons, I think that is helpful.

Senator MARSHALL—You told me that 1,700 AWAs had been referred to the Office of Workplace Services. Can you just go through that again? How were they identified and why have they been referred to the Office of Workplace Services?

Mr McIlwain—To repeat my evidence, they came to our attention through calls or inquiries otherwise received from employees about a specific agreement or through the sampling process which I have described—

Senator MARSHALL—How many? I do not think you told me how many inquiries you received?

Mr McIlwain—I have taken that on notice, so I can give you a completely accurate number. The agreements are referred only because there is something in the terms of the agreement that suggests that, were the agreement enforced in those terms, the standard would not be complied with. The OEA does not determine compliance; it has no power to do that. That is the role of the Office of Workplace Services.

Senator MARSHALL—I am interested in knowing how you proceed to investigate these issues. I will put this to you. If an employer has hundreds of AWAs but one has been identified by you as maybe not meeting the standard, would you then look at all that employer's AWAs or do you simply concentrate on that one that has been identified through those means that you have discussed?

Mr McIlwain—I am not able to say whether the sampling process looks at a single AWA. In fact, I am able to say the sampling process may involve more than one AWA for each employer. So to some extent—

Senator MARSHALL—Would that be coincidental or deliberate? That is what I am getting at?

Mr McIlwain—I will take that on notice. I think there is some deliberation in that. But I will take on notice that question so I can be precise.

Senator MARSHALL—It probably goes to the issue of how you identify the sample. Can you provide that information?

Mr McIlwain—I will take that on notice so I can give you an accurate answer.

Senator WONG—This morning you referred to the fact that you are a statutory officeholder and of course your functions and powers are set out under the act. As I understood your evidence this morning, you indicated you are no longer doing detailed analyses of workplace agreements but you are providing aggregated data to the minister. Is that correct?

Mr McIlwain—I am providing both aggregated data and I am analysing workplace agreements.

Senator WONG—It is the case, is it not, that the act actually requires you, under section 151 (1)(l), to analyse workplace agreements?

Mr McIlwain—That is correct.

Senator WONG—That is a statutory function and duty imposed on you by the parliament?

Mr McIlwain—Indeed.

Senator WONG—Can you explain to me how your failure to provide analysis of AWAs to this committee is a fulfilment of your statutory duties?

Mr McIlwain—The act does not prescribe the nature of the analysis that I must undertake. We analyse workplace agreements for a whole range of factors and characteristics including, as I have said already in my evidence this morning, the industry of origin, the geographic location of origin and, as Senator Marshall reminded me, the gender distribution of agreements. A whole range of characteristics forms part of my analysis of workplace agreements under section 151(1)(l).

Senator WONG—Do you not believe that your duties under section 151 would require you to analyse whether or not AWAs removed various protected award conditions?

Mr McIlwain—No, I do not agree that section 151(1)(l) requires me to conduct that analysis.

Senator WONG—You do not believe that your statutory duties require you to analyse whether or not the so-named Fair Pay and Conditions Standard has been complied with in workplace agreements?

Mr McIlwain—My duties definitely do not require me to determine compliance with the—

Senator WONG—No, I used the verb ‘analyse’, not ‘determine’.

Mr McIlwain—Again, I do not see that, looking at section 151(1)(l).

Senator WONG—Have you taken any legal advice about whether the narrow way in which you are constructing or understanding your duties under the act is in fact consistent with the intention of the legislation, particularly read in the light of the objectives of the legislation?

Mr McIlwain—No.

Senator WONG—Do you intend to do so?

Mr McIlwain—No.

Senator Abetz—Can I just indicate at this stage that the functions of the Employment Advocate are enumerated, and the way that the Employment Advocate undertakes the task is of course left up to the Employment Advocate. The very first task that is enumerated is to ‘promote the making of workplace agreements’. It is completely at the advocate’s discretion as to how he undertakes the promoting of the making of workplace agreements. Subsection (1)(b) states:

(b) to provide assistance and advice to employees and employers ... and organisations in relation to workplace agreements ...

Once again, it does not set out exactly how he is to do that. So you can go through all the subparagraphs, including ‘to analyse workplace agreements.’ It does not say how that is to be done and to suggest that, one, there was a failure, cannot be made out and, two, to seek legal advice as to how he ought to do that; the statute provides these areas as functions of the Employment Advocate, but how he undertakes them of course is largely at his discretion

Senator WONG—Mr McIlwain, would you agree that the discretion in the act or your duties in the act would clearly be influenced by the objectives of the legislation?

Mr McIlwain—Yes.

Senator WONG—Do you think that the provisions in the legislation in relation to so-called protected award conditions may have any relevance to your duties?

Mr McIlwain—I have a duty to do all I can to ensure that the parties understand their rights and their obligations in agreement making, including with regard to the treatment of protected award conditions. That I do.

Senator WONG—That is subsection (1)(a) and (1)(b). Subsection (1)(l) says ‘analyse workplace agreements’. I want to pick up on something the minister said, which is his suggestion—and it is only his suggestion—that you have complete discretion in relation to how you exercise your functions. Clearly, it is a statutory function so there are certain legal boundaries about how you exercise it.

Mr McIlwain—Of course.

Senator WONG—But there is a specific section, section 152, is there not, which enables the relevant minister, who is Minister Andrews at this time, to give you specific directions in relation to how you exercise your functions under the act. Is that correct?

Mr McIlwain—That is correct.

Senator WONG—Has any such direction been made?

Mr McIlwain—No.

Senator WONG—The minister would be able to give you a specific direction to analyse workplace agreements, such as including data about how many in fact remove protected award conditions, would he not?

Mr McIlwain—The minister could direct me to do anything with regard to the performance of my statutory powers under section 152.

Senator WONG—If the government were really interested in finding out the impact of their Work Choices legislation on employees in this country, the minister could give you a direction under the act requiring you to collect data about how many agreements remove protected award conditions and how many do not comply with the Fair Pay and Conditions Standard?

Senator Abetz—And how many actually have jobs.

Mr McIlwain—You are asking me to speculate on what might be in the mind of the minister.

Senator WONG—No. I am asking you: under the act, consistent with your previous answers, if the minister wanted to find out the impact of Work Choices, could he direct you to undertake analysis of workplace agreements that determine how many actually remove protected award conditions?

Senator Abetz—The answer of the officer clearly is that the minister has the capacity to direct. To load the question by saying, ‘if the minister really wanted to’ is inviting Mr McIlwain to enter into the realm of the political and I do not think that is fair to Mr McIlwain. What you can do is refer to that and then you can make your statement as to what you think that might mean. But to ask Mr McIlwain ‘if the minister really wanted to’ do something or not, I do not think is appropriate, with respect.

Senator WONG—I will ask you, Minister: is it not the case that the government has chosen not to give a direction, has been happy to hide behind an allegedly independent decision by the Office of the Employment Advocate, because the government wants the political fix? The Howard government does not want information out there about the true impact of its industrial relations changes on employees, it does not want information about how many people are actually not getting the so-called protected award conditions, it does not want information about how many AWAs in fact do not comply with your Fair Pay and Conditions Standard, and this is nothing other than a political fix to ensure that that data is not made public.

Senator Abetz—In response to all of those questions—and there are a lot of them—firstly, I completely repudiate the suggestion that we are hiding behind the allegedly independent statutory authority. I think that is a slur on Mr McIlwain and should be withdrawn. I do not think it is appropriate for those sorts of allegations to be made, but of course it is in the style of the senator’s leader to refer to the OWS as ‘snivelling little liars, so we don’t expect

anything better. I do not think it is appropriate for those sorts of suggestions and allegations to be made. In relation to the true impact—

Senator WONG—We did discuss it with the minister's office. He has been clear about that.

Senator Abetz—If I can answer—

Senator WONG—That is pretty independent, Mr McIlwain, is it not?

Senator Abetz—If I can answer: in relation to the true impact, we have seen a reduction in unemployment in this country to 4.8 per cent, and a growth in employment that nobody anticipated, including me and others who predicted possibly 75,000 more jobs. In fact, we are now sitting on 205,000, of which 180,000-plus are in fact full-time jobs. We are not trying to hide anything about the impact of the Australian workplace agreements.

In relation to your question about the Australian fair pay and conditions standards, can I indicate that the commission has been set up because we as a government believe that there should be certain minimum standards, which we have legislated for. Clearly, in our legislation, if there is a breach of those, that is something which we as a government do not countenance. We have the Office of Workplace Services to pursue those matters because we are concerned to protect the workers of this country. One of the greatest protections you can give workers is in fact a job. We have been able to deliver that to the workers of this country by the bucket load if not the wheelbarrow load—plenty of jobs, hundreds of thousands of jobs—and we believe that that has been against all the false predictions made by the likes of Senator Wong and indeed the Leader of the Australian Labor Party and the ACTU. We do not seek to hide behind anything.

The Labor Party is now trying to overcome their huge embarrassment over their hugely exaggerated claims as to what Work Choices would do. Each of the four points I made in my opening statement this morning has been blown out of the water and they are now making these sorts of allegations, which I find to be unacceptable.

Senator WONG—I have one further issue. If the government asserts it is not trying to hide anything and is so confident about the content of AWAs, contrary to the previous analysis that Mr McIlwain did, which was disclosed at the last estimates, why does the government, through Minister Andrews, not issue a direction under the act to require Mr McIlwain to undertake this analysis? If you are not trying to hide anything, why do you not allow or require that the analysis be undertaken?

Senator Abetz—What we have here is a new Office of Employment Advocate with a whole range of competing interests within a limited budget. We as a government need to consider what the priorities are. One of the real priorities we have seen for the Australian people as being vital is job creation. That has been our focus. There is no doubt that employment growth has gone gangbusters since we engaged Work Choices on 27 March of this year. We are very pleased how things have transpired thus far. Having said that, I am sure there will always be opportunities for improvement and refinement and that is why the minister made some changes to regulations about a month ago.

Mr Rushton—On 21 September.

Senator Abetz—On 21 September, slightly over a month ago. Undoubtedly we will continue to do so. To suggest that the Office of Employment Advocate should spend all its time in analysis of the agreements I do not think is an appropriate use of resources. The Australian people want job creation. That is what we are on about and that is what we are achieving.

Senator MARSHALL—In relation to incorporation of other documents, can you tell me what the act requires in relation to the calling other documents into workplace agreements?

Mr McIlwain—Where another document is called into a workplace agreement it is a requirement that, if it is an award or another agreement, it must be made available as part of the ready access process to the employee. Mr Rushton will find the exact provision.

Mr Rushton—It is section 355, the calling up the content of other documents. Do you want me to go through it?

Senator MARSHALL—Maybe I will ask some specific questions. Does the act allow only certain documents to be incorporated and what are they?

Mr Rushton—If it is an industrial instrument, yes. Workplace agreement may incorporate by reference terms from an industrial instrument mentioned in subsection (2) only if the requirements of subsection (3) are satisfied, and they are a workplace agreement or an award. Then there are rules about that award having had application.

Senator MARSHALL—So only awards or industrial agreements can be incorporated; is that what you are saying to me?

Mr Rushton—No. Other documents such as policies or other documents that are not industrial instruments can be incorporated. But if it is an industrial instrument it has to conform to those particular requirements under section 355(3).

Senator Abetz—Hopefully there are not going to be too many more questions along these lines.

Senator MARSHALL—Are any documents specifically not allowed to be incorporated?

Senator Abetz—Really, this is a tutorial in relation to the legislation: where is the section that deals with this, and what does this section then do?

CHAIR—I am hoping that these questions will be completed fairly quickly.

Senator Abetz—It sounds very much like a tutorial rather than an estimates hearing.

Senator MARSHALL—I did not ask for the section. I was just asking for a matter of fact and how the OEA interprets and applies some of these things. You should recall, Minister, there has been some discussion over a number of estimates about the OEA actually forming an opinion about how these matters are going to be dealt with. I am interested in the practical application.

CHAIR—Perhaps if we could get on with the practical application.

Senator MARSHALL—The OEA is responsible for doing this.

Senator Abetz—Yes, get on with the practical questions.

Senator MARSHALL—I am.

Senator Abetz—You are not.

CHAIR—Please proceed.

Senator MARSHALL—Are certain documents not allowed to be incorporated?

Mr Rushton—The section refers to the rules. If a workplace agreement or award does not meet those requirements, it cannot be incorporated.

Senator MARSHALL—Do you check workplace agreements for the incorporation of other documents?

Mr Rushton—Not on lodgement. In relation to reviews where people have made application for prohibited content and other documents are incorporated, we would need to look at those other documents in order to give a view as to what prohibited content was contained in those other documents.

Senator MARSHALL—Do you give more than a view? Who makes the decision?

Mr Rushton—We give advice under section 357, as we have discussed before.

Senator MARSHALL—Who makes the decision finally? Is it you or, if it is a problem, do you refer it to the Office of Workplace Services, or is this in your realm of decision making?

Mr McIlwain—Under that provision the advice is given by the Employment Advocate—without referral.

Mr Rushton—What I was referring to was applications made prior to the lodgement of agreements. So it is an advice provided to the parties? It is not an issue for what you are talking about, agreements having been lodged?

Senator MARSHALL—Do you require specific wording to incorporate documents?

Mr Rushton—We do not have any requirements for the content of agreements. Obviously the particular wording of an agreement will effect its incorporation or not. That would be a matter for looking at the particular words of any agreement.

Senator MARSHALL—Is an individual letter of offer of employment a document that could be incorporated?

Mr Rushton—I do not see why not. I do not see that the act precludes it.

Senator MARSHALL—If there was a letter of offer of employment that set out some terms and conditions and the AWA indicated that the agreement should be read in conjunction with the letter of offer of employment, would that letter of offer of employment be incorporated and legally binding on the AWA?

Mr Rushton—It would depend on the wording again. The use of the phrase ‘in conjunction with’ is problematic, in my view, to incorporate.

Senator MARSHALL—Looking practically, if the agreement said it is to be read ‘in conjunction with’, what is the problem with that and what is your advice?

Senator Abetz—This is seeking a legal opinion.

Mr Rushton—In the broad sense.

Senator MARSHALL—The Office of the Employment Advocate is responsible for making this decision as just outlined. I am trying to work out how a decision is made. You must be providing advice to people surely?

Mr Rushton—We provide advice on the particular words. You would have to look at the words in the particular case.

Senator MARSHALL—You said the words ‘in conjunction’ are problematic, right?

Mr Rushton—Yes.

Senator MARSHALL—So what do you advise people to use?

Mr Rushton—Well—

Senator MARSHALL—Or do you not advise?

Senator Abetz—The words ‘in conjunction’ would be contained in a sentence. You would need the whole letter, the whole agreement and to read it all together. This is very much in the arena of the hypothetical.

Mr Rushton—Without looking at any particular provisions, the words ‘this document is incorporated into and forms part of the terms of this agreement’ would be effective incorporation. I am not saying that there are not other words that might work as well.

Senator MARSHALL—Thank you, Mr Rushton. That was not too difficult, was it? We got there. The office has taken a number of questions on notice and they have indicated that they may be able to get back with some information today, so we would expect that to happen even though we are about to finish with you.

Mr McIlwain—I have not indicated that—

Senator MARSHALL—No, if you can—

Mr McIlwain—Sorry, you misunderstood.

Senator MARSHALL—You have indicated that you may be able to get back with some—

Mr McIlwain—No, I have indicated that I will take the questions on notice.

Senator MARSHALL—All right. But you did indicate that, if you are able to provide it, you would.

Senator Abetz—Yes, but not today.

Mr McIlwain—I have indicated—

Senator MARSHALL—We asked specifically if you could do so.

CHAIR—I think we mentioned the date of 16 December for the return of answers and Mr McIlwain indicated that it may be possible to anticipate that date by some means, but the word ‘today’ was certainly not in the answer.

Senator MARSHALL—I thought we had a discussion about the diary entry and there were two questions being asked, and I thought it was indicated that—

Mr McIlwain—No, I have been clear that I will take that on notice.

Senator WONG—You were to come back today and tell us you met with the minister's office some time between the estimates and the decision to discontinue comprehensive analysis of the AWAs?

Mr McIlwain—I have taken that question on notice.

CHAIR—Thank you. That is all for questions?

Senator MARSHALL—We have a substantial number of questions, which we will put on notice.

CHAIR—Very good. Thank you very much, gentlemen, for your very extended appearance before the committee.

Senator WONG—That was extended? That was less than usual.

[11.54 am]

Australian Building and Construction Commission

Senator FIFIELD—Mr Lloyd, I do not know whether you, like me, start the day with the morning paper, but could I ask you whether you have seen this article on the front page of the *Age* today headed 'Minister "caved in to unions"'? Have you—

Mr Lloyd—I have.

Senator FIFIELD—For the benefit of the committee and those at the table who might not have read the article, it starts off:

A SENIOR Bracks Government minister, John Lenders, interfered with the awarding of an \$8 million state contract to help maximise jobs for union members and to shut out a company loathed by unions, secret documents claim.

I should make it clear that the *Age* report is not coverage of any partisan attack, that it is the result of the *Age*'s own work and based on the words of a Victorian public servant. It is based on notes and emails from a Mr John Howell from the Victorian government property group, which show that Mr Lenders, the finance minister, overruled advice from his own department in relation to the public tender for the demolition of the old Morwell gasworks in the Latrobe Valley. Mr Lloyd, what is your knowledge of these particular events and could you give us an overview of them?

Mr Lloyd—These matters transpired during the term of the Building Industry Taskforce, the predecessor to the ABCC. My colleague, Mr Hadgkiss, has more knowledge of that, so it would be best and more informative for the committee if I pass to him to answer.

Mr Hadgkiss—Sorry, the question again?

Senator FIFIELD—The extent to which—

CHAIR—Just a minute

Senator MARSHALL—Can I just clarify whether there is an ongoing investigation about this matter at the moment?

Mr Hadgkiss—No.

Senator MARSHALL—There is not.

Senator WONG—How is it in their remit to answer questions about it, then?

CHAIR—Because the ABCC has been mentioned in the newspaper article from which Senator Fifield quoted, and I think it is only right and proper that the committee hear a version of the events or a version of the incident from the ABCC.

Senator FIFIELD—Correct. Mr Hadgkiss, given I am merely going on a newspaper report and given this is a matter within the building industry over which the commission has jurisdiction, I would be interested in your knowledge of these events and your overview of the circumstances to the extent that you do have knowledge.

Mr Hadgkiss—My reading of the article is that what the investigative journalist has written is factually correct.

Senator WONG—On what basis do you say that if there is no investigation? Is that an opinion?

Mr Hadgkiss—There was an investigation for some three years.

Senator WONG—By this organisation or by your task force?

Mr Hadgkiss—In my capacity as head of the Building Industry Taskforce.

Senator WONG—Fair enough.

Senator FIFIELD—How did this particular matter come to your attention in the first place?

Mr Hadgkiss—I originally had knowledge of this matter through the contractor concerned giving evidence to the then Cole Royal Commission into the Building and Construction Industry. The contractor concerned tendered for the project mentioned in this article. He was unsuccessful. He was concerned that it was a payback from the CFMEU and he came to the then Building Industry Taskforce to complain. We mounted an investigation.

Senator FIFIELD—The *Age* newspaper article and the documents it refers to from Mr Howell, the Victorian public servant, apparently shows that in what we could call the Howell diaries the bureaucrat discussed paying off a company—Able Demolitions, that is the company to which you are referring—so that it would go quietly when removed from a short list under union pressure. The *Age* obtained these documents, we are told, under Victoria's Freedom of Information Act—documents which the Victorian government fought for two years in the Federal Court to withhold. Did the commission have any difficulty obtaining documents from the Victorian government in the course of its own inquiries.

Mr Hadgkiss—Yes, there was a protracted legal battle culminating in the Full Court of the Federal Court ruling that they were obliged to surrender the documents to us.

Senator FIFIELD—How long did that court case take?

Mr Hadgkiss—Possibly it culminated in September last year, 2005, and it had been going since 2002.

Senator FIFIELD—What did the court find?

Mr Hadgkiss—The court ordered, as I say, the Victorian government to surrender the documents pursuant to a number of notices that we had already served on the department concerned.

Senator FIFIELD—Just to take you back to the Howell diaries, they also record that the minister intervened after unions demanded ‘more access to work at Morwell by direct intervention’. That is by direct ministerial intervention. The email also says that there was ‘substantial pressure to advise the minister’ on the jobs on offer for the unions.

The *Age* also refers to a handwritten note from January 2003 that refers to Mr Lenders’ desire to ‘do something about Latrobe Valley union labour’. The note further notes that this meant employing ‘heaps of CFMEU/AWU labour on job’. The Howell diary also refers to a commitment by Mr Lenders to give AWU coverage at the Morwell site. I just wanted to check these facts with you on the basis of your own investigation. In 2002 the Victorian government commissioned CMR consultants to report on which companies should be short-listed for the demolition work. Apparently they were short-listed from eight that expressed interest down to five, which included Able Demolitions, and Able was listed second in preference. Was that the basis upon which Able approached you, that they had indeed been short-listed to the final five and listed second in preference?

Mr Hadgkiss—You have to bear in mind something: those documents were not available to us until after our prosecution of the Victorian government. We were not aware. But it was certainly the allegation of the victim and the suspicion of the investigators.

Senator FIFIELD—It would seem that the government ignored the consultant that it paid for and also ignored the advice of Mr Howell. The article today also notes that in the Howell diary discussion of a meeting with CMR that Abel could be given a payoff not to cause trouble politically and that that included the provision of possible extras, such as settling an unrelated legal dispute to Able’s advantage, which sounds a pretty extraordinary approach. It also refers to possibly buying a stockpile of material for the company. Did those matters come to your attention after you had access to the documents by direction?

Mr Hadgkiss—Only after the court ordered the surrender of those documents. But it is true to say that, when the demolition company came to us, a proposition was put to them that they should retender and indeed they were then successful in that tender process.

Senator FIFIELD—Can I ask your professional view? In a circumstance where an inducement or payoff is offered not to cause trouble—political trouble—in a circumstance where someone is being removed from a tender list, and also included in that offer are possibilities such as settling an unrelated legal dispute to their advantage and buying a stockpile of materials for the company, if that is being offered at the behest of a minister, in this case Mr Lenders, would that constitute a conspiracy to offer a bribe?

Mr Hadgkiss—It certainly raises extremely serious concerns. Improper interference by government in the tender process is not usual, in my experience.

Senator FIFIELD—But would you consider it a bribe to be offering something entirely unrelated to buy the peace and quiet of a company whose only crime was that they did not employ union labour or had not signed a union agreement?

Senator WONG—I appreciate Senator Fifield obviously wants to pursue this, but that question is clearly a request for a legal opinion from the officer. You previously ruled that that is not an appropriate form of questioning of the officer. I would ask that that be considered before the question is answered.

CHAIR—Certainly.

Senator WONG—Perhaps in particular by the officer concerned, about the appropriateness of offering that sort of opinion in these hearings.

CHAIR—Some 20 minutes ago, the previous gentleman appearing for the OEA—

Senator Abetz—Mr Rushton.

CHAIR—Mr Rushton—thank you, Minister—was asked for an opinion by Senator Marshall and we agreed that that was a broad opinion and should be given. And I am willing to extend—

Senator WONG—He did not.

Senator Abetz—You did.

CHAIR—As he is a lawyer I would consider that in the same category.

Senator WONG—But this officer is not a lawyer; we know that.

Mr Hadgkiss—I am a lawyer.

Senator WONG—Is that right?

CHAIR—I am prepared to allow Senator Fifield's question to Mr Hadgkiss.

Senator FIFIELD—Perhaps if I might restate it, Mr Hadgkiss. Would you consider the circumstance where the settling of an unrelated legal dispute to someone's advantage is offered and the circumstance where buying a stockpile of material for a company is offered, where that is being offered in order for someone to remain quiet about the fact that they are corruptly removed from a short list for a tender, would that constitute a bribe, in your view?

Mr Hadgkiss—Had it proceeded, most definitely, yes. In the circumstances, consideration was given to the proposition. It was not proceeded with other than, as I say, that the demolition company was awarded the contract, I assume, with a view to going away and withdrawing its complaint from the task force. Based on what the victim has told us, yes.

Senator WONG—You assume?

Senator FIFIELD—So the victim actually did confirm that he, Mr Rossi, and the company were offered an inducement to accept the withdrawal of their company from the tender process quietly?

Mr Hadgkiss—From recollection, once it was known that he had been to the task force and we were conducting an investigation, communication was made with the victim. As I say, the tender that was on foot where he was unsuccessful was withdrawn. A new tender process commenced and Able Demolitions won that same tender, as it were. But he continued to assist with our investigation and we continued to pursue the Victorian government to surrender the documents. It is probably not on the record, but the Victorian government then pleaded guilty after some two years to unlawful conduct. It was then pointed out that there would be no

requirement to surrender the documents. But we continued—hence, it went to the Full Court of the Federal Court and we obtained the documentation.

Senator FIFIELD—So the Victorian government fought the release of the documents when they were directed to hand the documents across?

Mr Hadgkiss—They were directed to hand the documents across and within 48 hours they returned to the Federal Court and lodged a declaration that they had broken the law on two occasions. Then as a result they deemed it was not necessary to surrender the documents. We argued it was, and they are now in our hands.

Senator FIFIELD—So the Victorian government said, ‘We’ve done nothing wrong.’ They then aborted the tender process because they had been pinged. They gave the contract to the company that had previously been excluded. The investigation continued. The Victorian government still maintained that they had done nothing wrong. They withheld the documents. But, once they were required to hand the documents across, they all of a sudden said, ‘Actually you are right; we were guilty’?

Mr Hadgkiss—That is a fair summation.

Senator FIFIELD—Then, having admitted to their guilt, they then tried to argue that there was no necessity to hand across the documents now that they had admitted the guilt?

Mr Hadgkiss—That is correct.

Senator Abetz—That is hardly the behaviour of a model litigant, is it?

Senator FIFIELD—It is a very curious way to approach it. But in your view the only reason that they aborted the tender process in the first place was that they got pinged trying to shaft a company?

Mr Hadgkiss—Crudely put, yes.

Senator FIFIELD—Having been pinged, they tried to continue the cover-up?

Mr Hadgkiss—Yes.

Senator FIFIELD—Easier to admit guilt than release the documents and actually find themselves caught red-handed. Mr Howell also wrote in his diary that what the government wants is:

... Able off Morwell, Able out of (Latrobe) Valley for a period of time, Able off all government work.

Did Mr Rossi or Able indicate to you why they thought that they were being excluded in the first place?

Mr Hadgkiss—Because of the evidence they gave to the Cole royal commission. They had hitherto been a successful tenderer for Victorian government projects and they, on this occasion, were somewhat disturbed that they were unable to proceed.

Senator FIFIELD—So it was clearly a case of payback—of a Labor government paying back a company on behalf of the unions because they had the temerity to give evidence at the royal commission?

Mr Hadgkiss—That was the rationale for Able’s coming to the task force.

Senator FIFIELD—It would seem to be borne out by subsequent events, by the exclusion from the tender process. We do not just have to rely on Able's word for that. We now in fact have the word of Mr Howell. Had Mr Howell and any of his documents, emails or diaries come to your attention during your investigations?

Mr Hadgkiss—No. We were unable to obtain any documentation. Indeed, all of the notices were strenuously fought.

Senator FIFIELD—This is now official?

Mr Hadgkiss—That came out after the plea of guilty, yes.

Senator FIFIELD—Would the information which we have seen in the *Age*, which is contained in these diaries and in these emails, be a cause for the commission to make further inquiries into this matter?

Mr Hadgkiss—As I say, had the bribe, as you put it, proceeded, obviously it would give ground to an offence of, I believe, conspiracy to defraud the Victorian government of the best tenderer available on the day.

Senator FIFIELD—So it is not something which is really open to the commission to look at, given the bribe did not proceed. Would it be fair to say that if Victoria had the equivalent of an Independent Commission Against Corruption or a Criminal Justice Commission then that would be more something for them, rather than a body such as yours, to examine?

Mr Hadgkiss—Yes. We are not an appropriate body. As you realise, we lack the power to interview people about these events.

Senator Abetz—I would have thought the Victorian Director of Public Prosecutions might be interested in looking at whether there was an attempted bribe. You do not only have to commit crimes; attempts often are criminal as well. But that will be interesting.

Senator FIFIELD—That is right—an inducement is a crime itself. Mr Hadgkiss, Mr Howell warned that:

... buckling to union pressure would lead to project delays, cost blow-outs and 'decreased safety and environmental performance, the risk of which will be taken by the state'.

Are you concerned more broadly about the tendering process for public works used by the Victorian government?

Mr Hadgkiss—In fairness, I am probably not in a position to comment. This is the only matter that we have fully investigated in this fashion. Again, we are not the appropriate body to examine tendering processes by the states.

Senator FIFIELD—That is fair enough. Could you tell us what the cost of your investigation and of the court case itself was?

Mr Hadgkiss—I recall the legal challenges mounted by the Victorian government originally cost us \$110,000-plus. The first matter was called Laing v Carroll. Laing being the investigator and Carroll being the public official who refused to hand over the documentation. That cost \$110,000-plus in legal fees. Then there was a matter called Hadgkiss v the State of Victoria, which is the matter where the Victorian government pleaded guilty and finally submitted the documentation. I recall that cost some \$50,000 to \$60,000. Then of course there

are internal legal fees on top of that and investigation fees of pretty much the full-time commitment of an investigator going about his duties.

Senator Abetz—Was there an order for costs?

Mr Hadgkiss—No.

Senator Abetz—So all of those costs were borne by the Australian taxpayer?

Mr Hadgkiss—And the Victorian taxpayer for the other side. I am only talking about the Commonwealth expense.

Senator FIFIELD—You are confirming that this was a clear attempt to rot a tender process?

Mr Hadgkiss—On the documentation available, yes.

Senator FIFIELD—It was an offer of a bribe?

Mr Hadgkiss—As I say, had it gone through it would have been conspiracy to defraud the Victorian government.

Senator FIFIELD—But it was an offer which occurred?

Mr Hadgkiss—At the very lowest it would be improper interference by the government in a tender process.

Senator FIFIELD—Tell me if you agree with this summation. The government preferred political payback, cost overruns, possible project delays, decreased safety, increased risk to the state and a corrupt offer to pursuing a good outcome for the people of Victoria?

CHAIR—I do not know that Mr Hadgkiss should feel obliged to agree with that. I think you have made your point very well.

Senator FIFIELD—Only insofar as he feels he can.

CHAIR—I am—

Mr Hadgkiss—Perhaps all I should say is—

Senator Abetz—I think they are all valid points, but I am not sure that Mr Hadgkiss would necessarily repeat them.

CHAIR—That is exactly what I have said.

Senator FIFIELD—I can only—

Senator WONG—We have spent a significant amount of time on this issue. I appreciate that Senator Fifield had questions and a political point to make, but I wonder, given the tightness of the program, if it would be possible for us to actually get to some of the other agencies soon?

CHAIR—Senator Wong, given that we have spent over two and a half hours with your exploration of the Office of the Employment Advocate—

Senator WONG—On a variety of topics. We have spent 40 minutes on this.

CHAIR—And we are about to advance on other topics with this agency.

Senator WONG—Are we? That is fine.

CHAIR—To devote what has been 20 minutes so far—

Senator WONG—I think it has been significantly more than that.

CHAIR—on what is a perfectly valid point to be made, I am prepared to allow this to go on. Senator Fifield, do you have some more questions?

Senator Abetz—But of course we understand the sensitivity of Senator Wong, who used to work for the CFMEU.

CHAIR—Nevertheless, Minister, we are proceeding with questions.

Senator Abetz—Good.

Senator WONG—It took you 40 minutes to get that out, didn't it?

Senator Abetz—No, it did not.

Senator WONG—It is a tired old thing—

Senator Abetz—You were sitting very quietly until then. You showed your sensitivity.

Senator WONG—He is entitled to ask his questions. I am just asking for a bit of courtesy to try to get this agency done before lunch as we indicated.

CHAIR—And I am using that to invite Senator Fifield to continue with his questions.

Senator FIFIELD—Thank you, Chair. I am almost done and I am sure all senators are as concerned as I am about corruption and attempts to bribe, and any light that the commission is able to shed on these matters and any light that this committee is able to shed on these matters I think is very much in the public interest. But I accept, Mr Hadgkiss, that some of those matters are not really within your domain to respond to. I just make the point that they are outcomes of corrupt government tendering processes. Has the union that was involved in this matter come to your attention since the creation of the commission in relation to other—

Mr Hadgkiss—Not in relation to this Morwell project.

Senator FIFIELD—But in relation to other projects, are you aware of any similar attempts to corrupt?

Mr Hadgkiss—Certainly the CFMEU has come to the attention of the Building Industry Taskforce after this matter, and indeed the ABCC, and continues to be brought to our attention not just in Victoria but throughout the other states and territories.

Senator FIFIELD—Does Victoria have, compared with your other offices, a disproportionate number of claims made against the CFMEU?

Mr Hadgkiss—You must bear in mind that the head office of the ABCC is housed in Melbourne, which is somewhat unusual for a Commonwealth department. That was following the recommendation of His Honour Justice Cole when he wrote his final report because of the seriousness of unlawful activity in that state.

Senator FIFIELD—Just in answer to my question, appreciating that the Melbourne office as the head office would handle cases from around Australia, I assume there are a larger number of claims against the CFMEU?

Mr Hadgkiss—Certainly Victoria and Western Australia loom large in matters being reported to the ABCC.

Senator FIFIELD—I think I am done. My great concern is that, reading today's paper, it reads more like Queensland in the 1980s rather than Victoria in 2006.

Senator Abetz—Or Tasmania in 2006.

Senator FIFIELD—Indeed. I congratulate the commission on its work in exposing what was a union rort, a Bracks government scam, an attempt to shaft a Victorian company, and congratulate the commission on its work in exposing and pinging a government attempting to offer a bribe and corrupt a tender process.

Senator BARNETT—I have some questions in regard to the appointment by the state government in Tasmania of four union officials to conduct occupational health and safety inspections, which was announced by the Attorney-General Steve Kons some months ago, starting on 1 September. Concerns have been expressed by various industry associations, although the Attorney-General initially said that he had the support of the industry associations. They have refuted that view and have now made it very clear publicly that they oppose these appointments. Could the ABCC advise if you have any concerns with respect to the activities of these four inspectors, their appointment by the state government and what the ABCC is doing about it?

Mr Lloyd—I have written to the Tasmanian government now on three occasions. I was alerted to the fact that this initiative may take place, that it was under consideration, and I wrote to the government to say that it was a matter of concern—that it was an inappropriate role for union officials to be authorised with the powers of inspectors. Once the trial got under way we received information in regard to the building industry inspection role that some union officials had abused their power. I again wrote to the Tasmanian government and informed them that we had that information, and I urged them to investigate it and to cease the experiment as soon as possible. There was a follow-up to that letter and I responded again yesterday, where again I reinforced our view. They asked for more information about it. We have given the Tasmanian government an amount of information. We will seek to get a release from the witnesses in terms of statements they have given us to pass those to the Tasmanian government. We do not have that release from the witnesses yet.

Senator BARNETT—You have raised a whole range of issues. What date do these three letters go back to? Can you advise us when you first advised the state government of your concerns and the inappropriateness of this course of action being taken by them?

Mr Lloyd—It was early in the year. It was before the trial commenced. I do not have an exact date in my head.

Senator BARNETT—And since then you have written two further letters expressing concern?

Mr Lloyd—Yes.

Senator BARNETT—Can you provide more detail in terms of what advice you gave to the state government?

Mr Lloyd—The advice was, ‘Look, everybody is concerned about the industry, and it has a poor occupational health and safety record.’ It is very important that there be—

Senator BARNETT—Are you thinking of the building industry?

Mr Lloyd—Yes, the building industry. Yes, it does. It is often first or second on the table of the poorest performing industries. Therefore one of the issues is that often OH&S in the past has been used as a smokescreen for other industrial action and pressure. What we are concerned about—as, I think, are most agencies involved with the industry—is getting a better respect for proper occupational health and safety practices. There was a concern that this approach would undermine that and that it involved the risk of the authorised union officials getting their, if you like, union role and OH&S roles intertwined. I do not think that is good for getting respect for proper OH&S regulation.

Senator BARNETT—You said you wrote to the state government again yesterday—a third letter?

Mr Lloyd—Yes.

Senator BARNETT—What was the purpose of that letter and the thrust of your advice?

Mr Lloyd—They responded to my second letter seeking further information. What I said to them was that we would provide them with information about complaints that had been made to us and that they could investigate that of their own volition, and that I would attempt to get a release from the witnesses who provided us with information so I could pass on their witness statements to the Tasmanian government. At this stage I do not have that.

Senator BARNETT—I will come to the witnesses in a minute. So they were wanting more information. Had they been conducting their own inquiries or just awaiting our inquiry and your efforts?

Mr Lloyd—I could not say definitely. I gained the impression that they had not undertaken any investigation, but I could not say that definitely. That was my impression.

Senator BARNETT—In terms of the incidents and the witness advice and statements that you have received, how many have you received and how many incidents have been investigated?

Mr Lloyd—There is a small number of incidents that have been reported to us.

Senator BARNETT—Can you advise how many?

Mr Lloyd—Three.

Senator BARNETT—Can you advise further and more detailed particulars in regard to each of those incidents?

Mr Lloyd—We have to be careful. We have disclosure requirements on the ABCC, and we are not at liberty to disclose, if you like, the detail.

Senator BARNETT—How long have they been proceeding?

CHAIR—We will have to break for lunch in a moment. Make this your last question, and we will continue after lunch.

Senator BARNETT—That is okay. How long have the inquiries into these incidents been proceeding?

Mr Lloyd—Probably since about September is my recollection. That is when the incidents came to our attention.

Senator WONG—Can I have an indication from Senator Barnett how much longer he will be with the ABCC?

Senator BARNETT—I expect to be another 10 minutes.

CHAIR—Thank you. We will resume after lunch at 1.30.

Proceedings suspended from 12.30 pm to 1.30 pm

ACTING CHAIR (Senator Marshall)—Order! The estimates hearing will reconvene.

Senator BARNETT—We were talking about the Tasmanian government's appointment of the four CFMEU and AWU officials as occupational health and safety inspectors in Tasmania, and I wanted to go back one step and ask if you can advise the committee the basis upon which the unionists have been appointed. Secondly, what were the terms and conditions of those appointments and does this invoke the Workplace Relations Act or not?

Mr Lloyd—My understanding is that the unionists in Tasmania are given authority and powers that are normally exercised by OH&S inspectors. In some other states, there is capacity, of course, for union officials to enter for OH&S purposes and they are authorised to do that. On this occasion, it is an additional role that they have—that is, to be authorised as inspectors—and that is why we had a concern about that. I would have a concern if it was employer association people who were authorised to be inspectors. They do not invoke any powers or roles under the Workplace Relations Act. They have a power to enter and inspect OH&S issues and incidents, but they do not have, as I understand it, the power to issue infringement notices.

Senator BARNETT—There is a reason I ask. I am just wondering if you are aware of and had a chance to peruse the terms and conditions, as it were, of their appointment. If so, can you advise the committee?

Mr Lloyd—No, I am not aware of the terms and conditions. In fact, we were alerted to the initiative through industry participants telling us; the Tasmanian government did not in any way inform us about the trial.

Mr Hadgkiss—Perhaps I could throw some light on that. As I recall, the authorisation which is issued by that department has an annexure and on that annexure are listed a number of conditions of appointment.

Senator BARNETT—Have you had a chance to peruse that annexure?

Mr Hadgkiss—Yes.

Senator BARNETT—Can you advise the committee of the content of those terms and conditions and of the annexure?

Mr Hadgkiss—My recollection is that certainly one of the conditions is that upon entering a site there is a requirement to notify the occupant of the site of the nature of the suspected OH&S matter, and this is what is in question in these circumstances.

Senator BARNETT—Could take on notice whether you could table that document in this committee?

Mr Lloyd—We could take that on notice.

Senator BARNETT—Thank you. What feedback have you had from the industry associations as to the appropriateness or otherwise of this trial program by the state government?

Mr Lloyd—The industry associations have expressed concern to us and, as I understand it, publicly as well in Tasmania that it is an inappropriate role for the union officials.

Senator BARNETT—Can you name them?

Mr Lloyd—The associations? The Master Builders Association alerted me to the initiative and advised me of it, and they were very concerned about it. I understand that Australian Mines and Metals Association has expressed concern. I think that the HIA has as well—I am not sure on the HIA—and the Civil Contractors Federation.

Senator BARNETT—I understand the TCCI is equally strongly opposed. The chief executive officer was quoted as saying it was ‘outrageous’ on the front page of the *Business Reporter*. They have advised you of their concerns. Are you aware if they have advised their concerns to the state government?

Mr Lloyd—I understand they have advised their concerns to the state government.

Senator BARNETT—Can you advise the committee of any further and better particulars regarding the three incidents that you referred to earlier in the building and construction industry in Tasmania?

Mr Lloyd—I do not have the details of incidents here, but I know that in one of the incidents one of the union officials on entering the site was asked why he was there and he said he was exercising these powers. It was put to him that there were no OH&S issues at the site and I think his response was that all sites have OH&S issues, which I think is contrary to how OH&S inspectors should conduct their affairs.

Senator BARNETT—If they were conducting their affairs in accordance with the law, would that response from a union official be in breach of their right of entry in rules of engagement?

Mr Lloyd—I am not aware of the details of the OH&S act in Tasmania, but I think those officials should be mindful of the terms and conditions of their appointment and conduct themselves in accordance with those.

Senator BARNETT—Mr Hadgkiss, did you want to comment on that?

Mr Hadgkiss—We are alleging that the actions of these officials are in breach, as the commissioner says, the conditions of their terms of appointment.

Senator BARNETT—Have you advised the state government accordingly?

Mr Lloyd—We have expressed our concern to the state government, yes.

Senator BARNETT—In what areas has the breach occurred? Have you given the state government the further and better particulars regarding this alleged breach by the four unionists?

Mr Lloyd—We have given a summary of the incidents. They have requested further particulars and, as I said before the lunch break, I have not been able to forward any further information because the witnesses have not given me permission to do that.

Senator BARNETT—Can you advise if this particular trial has been conducted anywhere else in Australia or is it, would you say, unique in Australia in terms of its scope and terms of engagement for these four unionists?

Mr Lloyd—It is my understanding that it is unique to actually authorise union officials or anybody other than inspectors to exercise some of the powers of inspectors. I know of no other jurisdiction where that happens.

Senator BARNETT—Are you aware that this matter has been raised in the state parliament of Tasmania today and the Attorney-General has refused to withdraw or close down the trial?

Mr Lloyd—No, I was not aware of that.

Senator BARNETT—Moving onto another matter relating to industrial disputation in the building and construction sector, can you advise the committee on the latest figures on industrial disputation across the country and on a state-by-state basis with some comparisons with previous years?

Mr Lloyd—In the last two quarters there has been a marked decline in the rate of industrial disputation. The comparative figure for this is working days lost per 1,000 employees and the figures for the construction industry suggested that in the order of 50, 60 or 70 working days lost per 1,000 employees was a typical result for the building industry. It was often the worst performing sector for industrial disputation and was many times in excess of the oil industry average—sometimes 10 times greater than the oil industry's figure. However in the first quarter, when the ABCC was fully operational, those figures in the region of 40, 50, 60 and 70 fell to 5.3 working days lost. It diminished by multiples of about 10. In the June quarter it came in at 7.6 working days lost—certainly a marked reduction.

Senator BARNETT—Was that 7.6 in the June quarter?

Mr Lloyd—Yes, and 5.7 in the March quarter.

Senator Abetz—So it had come down to the average, which I think I had read out earlier, as about three point something. So it is getting very close. Ever since you came into the Senate, Senator Marshall, the figure has been coming down. I am not sure if it is related.

Senator BARNETT—Have you got a figure for years ago that you can advise us of—say 1996 or 2000—since your organisation got established?

Mr Lloyd—The figures were as high in the June 1996 quarter as 535 days lost. In March 2005, it was 43.5. Then in March 2006 it was 5.7. So the graph has fallen very steeply down.

Senator BARNETT—Yes, it has. Could I just take you back—I neglected to ask you one other question regarding the state government trial in Tasmania. Were you aware of the Australian Chamber of Commerce and Industry public statement on 26 October saying that the state government trial was actually in breach of the International Labour Organisation convention 81? There was a prima-facie case of that. They were considering taking action against the state government and acting in accordance with the ILO convention. Were you aware of their views?

Mr Lloyd—I certainly have read the reports that they consider that is a possibility, and as I understand it, they are going to conduct an investigation into the matter. Beyond that I am unaware of their views.

Senator BARNETT—That is a public document released on 26 October. I draw that to your attention and consideration in light of your investigations that are currently underway. Finally, I want to draw your attention to an article in the *Western Australian* yesterday headed ‘Union offers \$150,000 for building breaches’. The first paragraph reads:

The CFMEU has offered to pay contracting giant Layton \$150,000 in penalties after admitting to 21 breaches of the new federal building industry laws which delayed construction of the Perth to Manjura rail line.

And it goes on. Can you advise the committee whether that is correct and the status of that particular matter?

Mr Lloyd—The report appears to be correct. We intervened in that case and in fact the case is continuing today in Perth as we speak. The report, on my understanding, is an accurate reflection of what transpired in the court the other day.

Senator BARNETT—It says that there were 21 breaches of the law. Can you advise further and better particulars regarding those breaches?

Senator WONG—As I understand it, this matter is sub judice. Is that correct?

Mr Lloyd—It is before the court today, yes.

Senator WONG—I just raise that as an issue.

CHAIR—In that case it would probably be unwise to pursue the matter further.

Senator BARNETT—I was referring to the accuracy of the newspaper article.

Senator WONG—He has already responded to that.

Senator BARNETT—I certainly would not want to pursue matters that would impinge on any court case. I am aware of Senator Wong’s special interest in this matter as a former CFMEU executive officer.

Senator WONG—Oh, come on!

CHAIR—Do you have any more questions?

Senator BARNETT—I think I will leave it there.

Senator WONG—And your special interest in this matter is as a Liberal senator who does not like unions—we could do this all day.

Senator BARNETT—You have asked these questions before, Senator Wong.

CHAIR—Senator Wong. You have some questions. Please proceed.

Senator WONG—Thank you. Very briefly, Mr Hadgkiss, when were you aware the article that Senator Fifield was asking you about was to appear in the *Age*?

Mr Hadgkiss—Some time ago. In previous weeks we were aware that a journalist had lodged an FOI application with the ABCC. We notified the state of Victoria of that journalist's lodgement and they had the right to object to the surrendering of that documentation. There was correspondence between the ABCC and the Victorian government about the lodgement by this journalist.

Senator WONG—Actually, I was not going to track through all of that detail.

Mr Hadgkiss—It was an assumption on my part that he would be producing an article.

Senator WONG—Was there an indication to you yesterday? Did you become aware yesterday, for example, that the article would appear this morning?

Mr Hadgkiss—I knew that an article was imminent; I was not aware of which day it was to go out.

Senator WONG—Have you or anyone else at the ABCC had any discussions in relation to that article prior to your giving evidence today with the minister or any member or senator of the parliament?

Mr Hadgkiss—The minister's office has been briefed continually on this prosecution as it unfolded.

Senator WONG—After the article appeared today, was there any further contact with the minister, his office or any member or senator?

Mr Hadgkiss—I have spoken with the minister's office, yes.

Senator WONG—Have you spoken to any other member of parliament?

Mr Hadgkiss—No, only to you this morning, Senator.

Senator WONG—I mane have you spoken in relation to this article?

Mr Hadgkiss—No.

Senator WONG—Were you asked to provide a briefing document?

Mr Hadgkiss—We have not provided a briefing document.

Senator WONG—So you just gave a verbal briefing.

Mr Hadgkiss—Sorry, we have provided previous briefings to the minister's office.

Senator WONG—Other than those written briefings, subsequent to the article, there has been no discussion between any officer of the ABCC and any member or senator?

Mr Hadgkiss—And any other Liberal senator? No.

Senator WONG—Any member or senator.

Mr Hadgkiss—No.

Senator WONG—Regarding the request for the ABCC to appear earlier in the program than had been put on the agenda, was that a matter discussed with the minister's office?

Mr Hadgkiss—All I have knowledge of is that we were told to come early. Mr Dalglish and I had to change our arrangements late last night.

Senator WONG—So it was not at your request that this agenda change was made?

Mr Hadgkiss—Absolutely not; I had to change my travel arrangements as a result.

Senator WONG—Were you aware that someone else had made a request for your appearance to be changed?

Mr Hadgkiss—Absolutely not.

Senator WONG—So the minister's office did not advise you that they had requested it?

Mr Hadgkiss—No.

Senator WONG—Thank you. We have no further questions of the ABCC.

CHAIR—Do you have any questions, Senator Marshall?

Senator MARSHALL—I have lots to put on notice.

CHAIR—Senator McEwen?

Senator McEWEN—No, thank you.

CHAIR—Thank you very much gentlemen, for appearing before us today. We will now call the Office of Workplace Services.

[1.48 pm]

Office of Workplace Services

Senator FIFIELD—I am sure you would be extremely disappointed if you escaped this estimates hearing without a question about your action against the Holy Grail, or the business which owns the Holy Grail. I noted your press release from yesterday stating that the OWS is taking action in the Federal Magistrates Court seeking penalties against Squaw Valley Pty Ltd, trading as the Holy Grail Restaurant and Bar, Kingston. Could you take us through what the alleged breach is and how you came to be aware of it?

Mr Wilson—In relation to that matter, we decided to commence litigation in the Federal Magistrates Court for the recovery of underpaid wages and also to seek penalties against the company. We are seeking a total of over \$70,000 for 96 employees, two of whom were subclass 457 visa employees. The background to this matter is fairly extensive. The office has been investigating the restaurant for some time. As is usual in these sorts of things, the office goes through a process of endeavouring to get voluntary compliance. On this occasion it has been unsuccessful in that. A decision was taken by the office recently that it needed to proceed to litigation. Since the matter has been now filed as litigation in the Federal Magistrates Court, I suppose it is difficult for me to go into too much detail, but we will endeavour to assist.

Senator FIFIELD—Thank you. What steps do you go through to seek voluntary compliance?

Mr Wilson—Ordinarily in these sorts of instances, but not always, there would be a complaint that is made to the office by the employee concerned, the union, a legal practitioner

or a friend. That might be how we come to be involved with the matter. Alternatively, it may be that we are undertaking wider compliance action and we attend the workplace without a complaint. Usually, we go through a process of ascertaining whether or not the wages which are being paid to people are accurate. Sometimes that is a matter of process and time to actually establish. It is also the case that sometimes there is contention about the industrial instrument, which we say should apply, and so you go through a process of trying to get an agreement with the employer about the facts of the circumstance and whether or not there might be an underpayment. It might be more appropriate for me to refer you to Mr Bongi, who is the deputy director. He can perhaps give you more details about that matter.

Senator FIFIELD—Mr Bongi, are you able to say whether this was a case where it was an audit or a site visit initiated by the AWS that identified this problem, or was it a complaint from someone?

Mr Bongi—We received a claim to begin with on 4 January. On the basis of that and other similar claims, we initiated a campaign of ACT restaurants within the industry. We have been going through the ACT restaurants locally.

Senator FIFIELD—So it was not as a result of OWS officers undercover on a Wednesday night at the Holy Grail, or anything of that nature? Are you able to indicate the range of breaches at the Holy Grail?

Mr Wilson—I am not sure I actually have that detail with me. The litigation was commenced fairly recently. I might need to give you the detail on notice. The problem I have is that there are a number of breaches relating to, as I said, 96 employees. We would need to look at the file on that matter.

Senator FIFIELD—I appreciate that and I commend you. Obviously, the OWS shows no fear or favour if it is taking on the Holy Grail. I will hand back to the chair.

CHAIR—Senator Barnett, you have a few questions, is that right?

Senator BARNETT—I do—not on the Holy Grail but on other matters. Let me just start, Mr Wilson, and ask you pretty directly, are you a ‘snivelling little liar’?

CHAIR—I assume that is asked in italics, Senator.

Senator BARNETT—It is.

Mr Wilson—That question places me in a slightly difficult position. I do not think I should answer that. If I were to do that, I would be entering a political discourse.

Senator BARNETT—I am actually quoting from a statement on the public record by the Leader of the Opposition, Kim Beazley, on 8 August 2006, where he referred to you and your officers—your entire team—as ‘snivelling little liars’, and I am asking you whether you consider yourselves ‘snivelling little liars’.

CHAIR—Senator, with due respect, I think you should have qualified the question in that way before you asked it in that manner, if you do not mind me saying so. Could you rephrase it?

Senator BARNETT—All right. Kim Beazley, the Leader of the Opposition, has referred to you on the public record in *Hansard* on 8 August this year as ‘snivelling little liars’. Can we assume that you disagree with the Leader of the Opposition?

Mr Wilson—I do not think you can assume anything. My recollection of that particular statement is that it was withdrawn in the House of Representatives. I am not entirely aware, therefore, of the status of the comment. In any event, I need to, I suppose, bring myself to the Australian Public Service values and code of conduct. Because of that code I think it would be quite inappropriate for me to, in effect, be drawn on the question that you are proposing.

Senator BARNETT—Let me clarify. I am not aware of any retraction or, indeed, any apology by Mr Beazley to you or your officers at all. If that is the case, I would be enlightened to hear it by anybody around this table. Secondly, what sort of code of conduct do you apply to yourselves at the Office of Workplace Services that would ensure values consistent with not being ‘snivelling little liars’ or having any connotations of the like?

Mr Wilson—Both as employees and as the head of the agency, we are bound to the Australian Public Service values and the code of conduct. There is an obligation on me as the head of the agency and, in fact, on the other senior executive service members to ensure that those values are understood throughout the agency and that in our work we ensure that our staff work to them. Can I preface what I am about to say by indicating that I seriously do not wish to enter into the political discourse. The staff of the office act competently. They act according to the values and, obviously, if there are circumstances where that is considered to be not the case, then that is something which as a manager we are obligated to deal with.

Senator BARNETT—Could I ask the minister if he has any further comment to add with regard to those questions?

Senator Abetz—I am not aware of any withdrawal on the public record by Mr Beazley in relation to the government. It would be fair to say that public servants seek to deal with the issues that come up from time to time to the best of their ability. I think Australia has been blessed over the years with a very professional public service. For anybody to describe a public servant in the terms that you have mentioned is—if I can be the master of the understatement—regrettable and unfortunate. I think they deserve more respect than that. One would have to assume that those sorts of comments by the alternative Prime Minister would have a devastating impact on staff morale. I only make that comment as a general comment. I do not have any specific evidence as to that, but I would imagine if any of us as senators were to walk up to our staff and call them a bunch of snivelling little liars or that sort of description, I dare say it would have a very negative impact on their morale. It stands to reason that that sort of description by somebody as high as Mr Beazley would have had a negative impact.

CHAIR—I feel sure that no member of the committee would wish to impugn the very professional conduct of these officers by carrying the subject any further, so I would consider that line of questioning closed. Are there any other questions you wish to go on with?

Senator BARNETT—My word I do; I have quite a few. I appreciate the minister’s response. Since the Office of Workplace Services was established in 1997, firstly, in terms of recouping employees’ pay from underpayments, can you provide the committee with details

of those figures? Secondly, how many people are involved in recovering those funds? Thirdly, if possible—either now or take it on notice—can you give a breakdown on a state by state basis?

Mr Wilson—In relation to the last point about a state by state breakdown, I am not equipped to be able to do that today; I would need to take that on notice for you. The information which I have available is that, since the inception of the office in one form in 1997, there has been a total of more than \$43 million which has been recovered on behalf of employees between 1 July 1997 and 27 October 2006. For most of that time, the office was within the Department of Employment and Workplace Relations and its predecessors. Since 27 March 2006, however, the office has been an executive agency and outside of the department. I am informed that we have recovered more than \$5 million in that period on behalf of underpaid workers—more than 3,000 employees—in that period.

Senator BARNETT—So the \$5 million is since 27 March this year?

Mr Wilson—That is correct.

Senator BARNETT—Can you take the state by state breakdown on notice?

Mr Wilson—We can. As I said, I do not have that information with me at the moment, but I am presuming it is available within our database. I would need to check, to be honest.

Mr Bonggi—If I may add, pre 27 March, OWS did not have a presence in every state of Australia. In a number of states it contracted its work to state governments. That figure of \$43 million is what OWS itself has collected. If we add the recoveries for underpayments paid by state governments as well, that figure is just over \$50 million.

Senator BARNETT—Does that include state governments?

Mr Bonggi—Including what we contracted the state governments to do on our behalf.

Senator BARNETT—So now it is over—

Mr Bonggi—Fifty million dollars. But in terms of the efforts of the OWS itself directly, it was \$43 million.

Senator BARNETT—How many employees do you have on board? What are the locations in Australia where they exist?

Senator WONG—I think they are everywhere. You are going to waste time.

Senator BARNETT—It is changing, Senator Wong, so things move. I would like to know the status as at today, if you can advise us. I am not sure that that is a very difficult question, but it is timely to know.

Mr Bonggi—At this point in time, the office has 252 staff. It has 193 inspectors and we have 26 locations. Do you want me to run through them?

Senator BARNETT—No, that is fine. Can you table the locations? Is that what you have with you?

Mr Bonggi—Yes, I can table this. Just so it does not cause confusion, this also has a column next to each location that details whether the office is temporary or permanent.

Senator BARNETT—That is fine, thank you. I would like to ask you about your education and your compliance campaign. Senator Fifield has asked about a particular matter already, but can describe your procedures, the different industries that you are focussing on or targeting at the moment and provide further and better particulars on your compliance and education campaign?

Mr Wilson—The office is endeavouring to conduct quite a significant amount of work, which we put in the category of targeted education and compliance work. We expect our staff throughout the country not just to be dealing with the complaints which they receive, but also to be conducting auditing and so on throughout the course of the year. We are still in the process of absolutely finalising the industries which we plan to be working with, but we expect over the course of the next 12 months to be working probably on the basis of one industry per month over that period. During September we conducted one particular audit which was in respect of time and wages records nationally in retail centres and we undertook quite a number of audits in that period. We expect to be doing that on a rolling basis, taking different industries at different times.

Mr Bonggi—We actually have two types of campaigns. There are campaigns that we run in geographic locations solely for that location and they also inform future campaigns that we might run. They give us the intelligence to make sure that when we run a national campaign it is better targeted and achieves results. Since 27 March we have had a number of those; if you are interested in knowing the details of those I am happy to run through the locations and the types of campaigns that we have been running. We also run national campaigns. As Mr Wilson has just indicated, we have run a campaign nationally on retail establishments in shopping centres where we targeted 792 employers. We are currently doing a campaign in the accommodation industry—looking particularly at motels—and we have written to 9,400 employers in respect of that. This month we will commence a national campaign, also on the hospitality industry, which will build on the work that we have done within ACT restaurants and also the restaurants campaigns that we have run in north-eastern Victoria and in Tasmania.

We are just about to commence a national campaign also on the hospitality industry, which will build on the work that we have done within the ACT restaurants, but also restaurants campaigns that we have run in north eastern Victoria and in Tasmania.

Senator BARNETT—Are you referring to your investigations into the retail sector in Tasmania?

Mr Bonggi—In Tasmania we ran a campaign in the café and restaurant industry.

Senator BARNETT—What is the methodology behind your focusing on restaurant and hospitality compared with building and construction?

Mr Bonggi—We do not get into the building and construction industry. The ABCC has a particular role there. We examine the range of calls that come in through the department's information line. We look at where claims have been received from particular industries, and we examine other statistical data. We run pilots where we can in order to establish some basic facts. On the basis of high risk areas, if you like, we target large national campaigns. I signed off just this week, for example, a campaign to be initiated on a pilot basis looking at

employers of young workers as a particular group worth looking at. That will be a multi industry campaign, sales, retail, and other industries. We will learn from that exercise and then expand what intelligence we gather there.

The way we conduct these exercises is to talk to the relevant industry groups and the employee associations. We ask for their input and we then write to the employers, setting out what their obligations within the act are, and advise them that we will select a number for audit. We request records from those industries. We get the records in and we examine those, or we go out and physically look at the records, as we did with the retail establishments in shopping centre audits. On the basis of that, we provide one-to-one education with these businesses. Where there are breaches we issue breach notices. Where there are severe matters, we will consider for litigation.

Senator BARNETT—You said you base it in part on the calls that you have. Is that to your 1800 number? On what basis does that occur?

Mr Bongi—It is calls to the DEWR workplace information line call centre. We also have our own information line where people can call up and ask the OWS directly. We keep track of the types of calls, the range of matters or general industries. On the basis of that we then decide what appear to be the hot industries.

Senator BARNETT—You said that you deal directly with the industry associations. What response have you had from those associations to your calls and representations?

Mr Bongi—Generally it has been excellent.

Senator BARNETT—Finally, I wanted to ask you about a story in the *Age* yesterday, 1 November, headed: ‘Pay victory for visa workers’:

Workplace investigators have recovered a record \$650,972 from a Chinese-owned subcontractor who underpaid 38 foreign workers on temporary work visas.

It quotes Mr Wilson:

“The office has been in existence now for about six months,” he said. “Quite clearly we’re starting to hit our straps and this is a sign our investigations are coming to a point where we can take matters to court.

Mr Wilson, can you expand on that statement?

Mr Wilson—If I recollect, that was a question about the work of the office and why it was that these matters were coming forward at this time. The response which I gave to the journalist was simply to indicate that we now have quite a number of litigations before the courts. What I was endeavouring to say to them was that these investigations are not easy, that there is a lot of work that has to be done in gathering the source data and then obviously applying the legal circumstance to that data and making a decision about what you do.

Senator BARNETT—My last question is: this article says that you are doing the bidding of your political masters; would you refute that statement?

Mr Wilson—Again, I would be very cautious about how I answer that. I was asked that question by the journalist. The answer that I was endeavouring to give is that we make our decisions independently. The situation is that we now have, I think, 20 litigations before the courts in all of the states. I need to clarify, in respect of the particular matter that was being

talked about on that occasion—which was the recovery of a very large amount of money, \$650,000—that litigation has not yet been commenced and the investigation is continuing.

Senator BARNETT—But, Mr Wilson, it is a very serious allegation against you and your organisation that you are doing the bidding of your political masters. I am merely asking the question: are you fulfilling your responsibilities as you see them, or are you doing the bidding of your political masters? It is not a trick question.

CHAIR—I should think Mr Wilson would want to answer the first part of the question, certainly, as to whether he is fulfilling the objectives of his organisation.

Mr Wilson—The answer is an unequivocal ‘yes’.

CHAIR—Yes. Have you finished your answer?

Mr Wilson—I have; however, there is one point of clarification I need to make about an earlier question perhaps before you move on. It is in respect of the document we tabled about the number of locations we have. When you physically add up the list, you will see that it adds up to 27 different officers. The answer given by Mr Bongi indicated 26 locations. It is 26 locations, except here in Canberra we have a national office and also a field office. I should make that clarification.

CHAIR—So there are two offices in Canberra.

Mr Wilson—Two offices. Do you want me to table this document?

CHAIR—Does the committee agree that the document be tabled? Yes, it is tabled. Senator Lundy?

Senator LUNDY—We heard evidence earlier from the Office of the Employment Advocate that they had referred a matter to you relating to the Serco Sodexo AWA and the provision of that agreement that they felt may not comply with the fair pay and conditions standards. Can you confirm that you are now processing that issue? Have you formally advised Serco Sodexo—or the originator of the complaint, the LHMU—about the technical status of the clause in question?

Mr Bongi—I am not aware whether we have actually got that referral from the OEA. I would need to check that.

Senator LUNDY—Yes, if you could take that on notice. In the response sent to the organisation that made the complaint, that correspondence was clearly cc’d to the Office of Workplace Services. We heard this morning that their process for handing on these concerns or complaints was to refer them to the Office of Workplace Services. I am just trying to ascertain whether that is in fact how you understand it and whether or not you received that cc’d copy of the correspondence, and are acting on that.

Senator Abetz—Senator Lundy, can you assist us: I think you tabled that letter.

Senator LUNDY—That is correct.

Senator Abetz—Does that have a date on it? It might assist the officers. I think it was relatively recent.

Senator LUNDY—It was 9 October.

Senator Abetz—Yes, 9 October.

Mr Wilson—If I can assist: I can recollect that correspondence coming to my office, and it would have been about the period that you mention—9 October.

Senator LUNDY—Would you take on notice providing the committee with all correspondence you have subsequently issued in relation to that, including to both the company and the union?

Mr Wilson—All right. As I said, I have certainly seen the correspondence. I did not come prepared for that matter this afternoon, so I will need to check on what we have done. We will endeavour to get an answer for you.

Senator LUNDY—If you could do that as soon as possible. Obviously it is a current issue, so waiting for the normal responses to questions on notice is not good enough in this case, so if you could undertake to get it back to us as soon as possible, thank you.

Mr Wilson—Certainly.

Senator LUNDY—The primary issue I wanted to ask a few questions about was to do with the restaurants in Canberra. I note that your recent press release states very clearly in the third-last paragraph that you ‘exist to ensure the rights and responsibilities of workers and employers under the act are understood and enforced fairly’. How can you say that when you have so far not issued the names of any restaurants that you state have subsequently been found to be in breach of the act, and in fact you have recovered quite a substantial amount of money on behalf of employees? Why have you not named those restaurants, and will you name them now?

Mr Wilson—Senator, the genesis of the project is an auditing campaign which we are endeavouring to run with the restaurants here in the ACT. We are endeavouring to ensure that the entire industry understands what their obligations might be. In these sorts of approaches we start off with the point of view that it is best to try to educate and make sure that there is voluntary compliance. That is the path that we are going down. We have written to more than 300 establishments indicating what their obligations might be and what their record-keeping obligations might be as well. We are going through a process of then receiving documentation from those restaurants and ascertaining whether or not they do comply.

It is not, in this general type campaign, appropriate for the office to go through a process of naming the people who we find to be in breach. Obviously there will be some instances where we choose to take litigation because the breaches are either so severe or so determined, or they are simply not able to be recovered voluntarily from the employers concerned.

We have found quite a lot of cooperation from the industry, in the main; but obviously there are some instances where it is not possible to get cooperation. Mr Bongi might be able to talk about more of the detail of what we have done in those matters.

Senator LUNDY—If you could take that on notice, I would appreciate that. Could you tell me why you have reached a decision not to litigate with respect to the 50 restaurants that have been found to be in breach, noting that yesterday you made a public statement that you would be litigating with respect to the Holy Grail?

Mr Bongi—I am not familiar with the statement that we would not breach 50.

Senator LUNDY—It says here at the bottom of that statement, ‘As at 23 October 2006, the ACT hospitality audit has recovered \$346,672 for 493 employees from 50 employers.’ That is where I got the 50: are there more than that?

Mr Bonggi—No. This goes to the question that Mr Wilson was answering just a moment ago. Where people readily, voluntarily comply with the requirement, where they are forthcoming in making changes, those sorts of things—

Senator LUNDY—Could you take on notice providing an explanation of your decision-making process as to whether or not you choose to litigate if a breach has been identified?

Mr Bonggi—Yes.

Senator LUNDY—I go back to my question about naming the employers that have committed a breach. Have you considered naming the restaurants that have not committed a breach, so consumers at least can make informed decisions about the establishments that they choose to patronise?

Mr Bonggi—We are certainly considering that as an option. The campaign is still ongoing. That sort of decision will certainly be worked through at the conclusion of the campaign when we see what the volume is within the market.

Senator LUNDY—I formally place on notice that you provide me with both sets of names—those that have been found to have breached conditions and those that have not—so we have a full public record. If you are going to refuse to provide those answers, I suggest you make sure you refer to the appropriate parliamentary conditions regarding any claimed reasons for not providing that information to the parliament.

Senator Abetz—That is gratuitous, but I am sure they would. Just in general terms, I would have thought anybody would expect a public authority that has a policing role to take different approaches depending on the gravity of the breach. I know that in my driving career I have received a warning on occasion when the speeding was minimal—

Senator LUNDY—We are talking about people’s wages. We are talking about underpayment—people getting ripped off and not being able to pay mortgages, Minister. So don’t you be gratuitous.

Senator Abetz—Employers similarly can inadvertently underpay, and if that is drawn to their attention they may well be highly embarrassed and be more than willing to make amends et cetera. Yet there may be recidivists who do so deliberately and with malice of forethought against their employees, and I think before we get into the shame game we should be very careful to ensure that we do not tar everybody with the same brush. I am just sounding that note of caution. For example, if somebody accidentally paid somebody \$5 below, would you want them named and shamed in exactly the same way as potentially those at the Holy Grail? I just think we need to take a deep breath on it.

Senator LUNDY—I take your point, but I think there is one perfect remedy to that—and that is when the list is provided the nature of the breach is also provided. So I place that on notice, and I thank you for that idea. I will place further questions on notice.

Senator WONG—I take you to page 280 of the PBS, which I think deals with your budget appropriation. This is no criticism, because I think this is consistent with the way in which the

accounting standards have been applied, but these figures are at a very high level in terms of the aggregation of functions. Would it be possible for us to go through and perhaps unpack a little bit more what is included in each of the line items here. Obviously not the revenues—I figure that is just the government paying you, unless you have some sort of secret source, which I doubt. In terms of employees, is that line staff salaries, on-costs et cetera?

Mr Bongi—Certainly that is salaries.

Senator WONG—Salaries and on-costs alone?

Ms Valentine—That employees line is for all employee expenses, including superannuation and accrued leave.

Senator WONG—Thank you. I will come back to that in a moment. Can you tell me what the suppliers line item is?

Ms Valentine—Suppliers covers a range of items, such as travel, property, contractors, consultants and consumables.

Senator WONG—So I can get a feel for it, are you able to give me an indication of exactly what the \$15.8 million and the \$15.2 million in 2006-07 and 2007-08 are made up of? I presume in terms of your estimates you must allocate a certain proportion to travel and a certain proportion to property and consultants.

Ms Valentine—That is correct.

Senator WONG—Are you able to take me through that, perhaps for the 2006-07 year?

Ms Valentine—We are still working through the break-up of this year's budget. I can take you through the first quarter of the year-to-date expenses. Salaries and staff on-costs are approximately 53 per cent of—

Senator WONG—We are on different line items.

Ms Valentine—Twenty-two per cent of that suppliers figure is for property; 18 per cent is the administrative costs, including legal costs.

Mr Bongi—That percentage is actually of the total expense items. It is 53 per cent for salaries and costs, and then the balance is broken up by 22 per cent in property.

Senator WONG—Let us start with the year-to-date expenditure.

Ms Valentine—For the year-to-date expenditure, out of the 32.314, 53 per cent has gone to salaries—

Senator WONG—No, give me the figure first, before we go to percentages.

Ms Valentine—\$4.1 million dollars.

Senator WONG—What is the date on that?

Ms Valentine—As at 30 September.

Senator WONG—And of that figure, 53 per cent is salaries and on-costs?

Ms Valentine—No, that \$4.1 million represents 53 per cent of the total year-to-date expenditure.

Senator WONG—Let us try to go through this logically, because we are jumping around with different parameters, and it is probably going to be quicker if we can at least do this in a structured way for both of us.

Ms Valentine—The year-to-date figure for total expenditure against both line items—or do you want to do it by different line item?

Mr Wilson—Senator, are you endeavouring to—

Senator WONG—I am endeavouring to unpack what ‘suppliers’ includes and what the year-to-date expenditure in relation to each of those components is. I am doing that because, as I understand Ms Valentine’s evidence—and we may have a discussion about that shortly—you have not exactly established the allocation for each subcomponent of that line item for the 2006-07 year. Is that right?

Mr Wilson—That is correct.

Senator WONG—If we start with the year-to-date expenditure, we can see what you have spent and what proportion of each category is comprised in suppliers. That might give us a bit of a sense of where your expenditures go.

Mr Wilson—Before we answer that, can I check that we are equipped to in fact answer that question. I would not wish to mislead you. It might be better for us to take that on notice.

Senator WONG—Can we see how far we get? If you need to go away and check things, that is okay. Ms Valentine, what do you have here? It is a genuine question actually.

Ms Valentine—I understand that. I have here total expenditure to 30 September of \$7.8 million, of which \$4.1 million is for salaries and staff costs. I have it broken down into the major components. Shall I read through those?

Senator WONG—Yes.

Ms Valentine—I will round these figures: travel, including pool vehicles, \$280,000; property, \$1.7 million; depreciation, \$111,000; temporary contractors, \$67,000; consultants, \$97,000; and other administrative costs, including legal, \$1.4 million.

Senator WONG—Do I take it that all of those specific items which you have read out—travel, property et al—would fall within the suppliers line item?

Ms Valentine—That is correct.

Senator WONG—Are there any other categories of expenditure within suppliers?

Ms Valentine—Telephones; recruitment advertising; courses, seminars and workshops; and stationery.

Senator WONG—Do you have any figures for those?

Ms Valentine—No, I do not. I have the telephones, advertising, courses, seminars and workshop figures if you would like those.

Senator WONG—Okay.

Ms Valentine—I will again round the figures. For the year to date: courses, seminars and workshops, \$21,000; advertising for recruitment, \$6,000; and telephones, \$5,000. That is it.

Senator WONG—So you are looking at \$3.7 million to date that is non-salary. You are getting close in terms of what is left over, the difference.

Ms Valentine—Yes.

Senator WONG—In terms of the legal costs and other administration, are you able to tell me what the actual legal costs are to date?

Ms Valentine—Yes, I can. External legal costs year to date is \$124,670.

Senator WONG—If other administration, including legal to date, was \$1.4 million and only \$124,000 of that \$1.4 million was external legal, what is the remainder?

Ms Valentine—I do not have that information directly at hand. I could get it for you.

Senator WONG—If you are able to. Would you track internally an allocation for legal costs for in-house legal staff out of that line item?

Ms Valentine—No, that is purely external legal costs, not internal legal costs.

Senator WONG—And you cannot explain to me that \$1.25 million for that line item that is not legal costs?

Ms Valentine—No, I do not have that breakdown with me, but I can get it for you.

Senator WONG—I would appreciate that. I may not need to take it any further; I do not know if someone is able to just let us know. In terms of staff functions, you have given some evidence to Senator Barnett about the numbers of staff. Your annual report talks about this to some extent. Can you tell me as at the same date, the year to date 30 September, how many inspectors were on board?

Mr Wilson—To 30 September?

Senator WONG—I am just trying to align it with the year to date budget figures, if you have that.

Mr Wilson—I am not sure that we can give you that information—

Senator WONG—Current figures then.

Mr Wilson—but we have some other information that we are equipped to give. We can tell you that there were 189 employees in total in the Office of Workplace Services on 31 July of this year. On 27 March there were 157 in total. What those numbers reveal, 157 and 189 and now 252, obviously is the growth of the agency.

Senator WONG—So the 252 is the current figure.

Mr Wilson—Yes.

Senator WONG—How many of those are inspectors?

Mr Bongi—193.

Senator WONG—I do not know if I have to ask this of DEWR direct or whether you can explain it to me, but the 2005-06 additional estimates budget statement—this may reflect the creation of your office—at 16, there is a compliance line item under workplace relations reform. It commences 13.2 and then 46.4, 41.9, 39.8 over the outer years. Have you got that?

Ms Valentine—Yes.

Senator WONG—Is that prior to your establishment as a separate office?

Mr Wilson—What is the date of that?

Senator WONG—It is in the additional estimates, so that would be February.

Ms Valentine—Yes, it was.

Senator WONG—Is it the case that some of your funding would relate to the funding in that line item, or are you not aware of that?

Ms Valentine—Yes, it is. Because, subsequently, the Department of Employment and Workplace Relations transferred funding to the Office of Workplace Services.

Senator WONG—So, of the 46 in compliance funding for 2006, they would have transferred \$32.314 million to you?

Ms Valentine—That is correct.

Mr Wilson—I think we should put a caution into that.

Senator WONG—I will put this to DEWR, too.

Mr Wilson—But if I can also indicate that my understanding is that, at least within the Department of Employment and Workplace Relations, there was a thing called the Office of Workplace Services, and it undertook many functions. Some of those functions became this Office of Workplace Services, but not all of those functions. I think if you wish to drill down about what was transferred to this Office of Workplace Services, you might need to discuss that with DEWR.

Senator WONG—To what extent they drew on that line item or another line item in order to fund you, is that what you are saying, Mr Wilson?

Mr Bongii—In order to drill into that line in order to fund the office.

Senator WONG—Where the money came from?

Mr Bongii—Yes, because there are other components within that line that remained in DEWR.

Senator WONG—Clearly on the monetary amounts that is the case, in any event.

Ms Valentine—Senator Wong, I can provide additional information on that \$1.4 million on the other administrative expenses—the costs for the memorandum of understanding that we have with DEWR. In the first quarter we paid \$866,000 to DEWR, associated with those MOU costs, so that \$866,000 would be part of the \$1.4 million line there for other administration.

Senator WONG—Is there anything more?

Ms Valentine—Communication costs of \$142,671.

Senator WONG—Please go on; is there anything else?

Ms Valentine—That is all I have got.

Senator WONG—I have been asking a lot of questions over the last couple of days so I might have forgotten these from last time. What is the MOU?

Mr Wilson—We take a number of services from DEWR. They fall into, I suppose, two broad categories, and there are memorandums of understanding which relate to those two broad categories of services. The first of the broad categories is in relation to information technology and similar services. The second of the categories is in relation to a number of what we call ‘enabling services’, which cover things from property management through to human resource management, through to registry services and so on.

Senator WONG—Registry services?

Mr Wilson—Mail services.

Mr Bongi—Mail room and filing services.

Senator WONG—When was this MOU put in place?

Mr Bongi—We put that in place last financial year, and we paid DEWR some money for the first quarter of our existence, and now we have paid for the first quarter of the current financial year.

Senator WONG—So is the \$866,000 a first quarter payment?

Mr Bongi—That is a first quarter payment.

Senator WONG—So if I times that by four I get the approximate annual cost to the Office of Workplace Services?

Mr Bongi—We would have to take that on notice, but I think it would be roughly right.

Mr Wilson—It could be dangerous, just on the basis that the staff numbers grow and therefore the per capita grows as well.

Senator WONG—What is your internal budget allocation for the MOU costs, Mr Wilson?

Mr Wilson—I would need to defer to Ms Valentine.

Ms Valentine—For our IT it is \$2.8 million per annum and for the enabling MOU it is \$1 million per annum.

Senator WONG—Do you have copies of the MOU that you can provide to the committee?

Ms Valentine—Yes.

Mr Bongi—We do not have them here. We would have to provide them.

Senator WONG—Is it a public document? Is it on the website?

Mr Wilson—No.

Mr Bongi—No, I do not think we have made that public.

Senator WONG—I will check this with DEWR, but is it your understanding that the situation in relation to the two line items in the additional estimates PBS and the PBS for the 2006-07 year that I was putting to you, the situation you describe whereby your funding that is in the 2006-07 PBS comes out of the compliance function in the additional estimates PBS,

subsists for the forward estimates period? That was a very poorly asked question, Ms Valentine. If you look at page 16 of the additional estimates PBS, you have 46, 41 and 39 over the forward estimates period. Do you understand that the estimates in page 280 of the 2006-07 PBS—that is 32, 30, 30 and 30—would come out of that line item, subject to the caveat that Mr Wilson indicated earlier?

Ms Valentine—That is my understanding. When I confirm, if it is any different I will certainly advise the committee.

Senator WONG—Run back in and tell me, by which time I am sure Dr Boxall would have put me right if I am wrong. Do you have any knowledge of what occurs with the differential? In other words, the costs associated with OWS are obviously less than the compliance function, are you able to cast any light on what happens to the expenditure—that is, what makes up the difference?

Mr Wilson—I for one would not be qualified to answer that. I think you would need to direct that to Dr Boxall.

Senator WONG—I certainly will. I wondered whether, in the context of MOU and anything else, you had had those discussions with them.

Mr Wilson—Unfortunately not.

Senator WONG—I want to turn to the compliance activities that you undertake. What proportion of the employees is actually engaged in compliance as opposed to administration or some other function?

Mr Wilson—Certainly 193 are engaged as inspectors. All of those would be engaged in compliance functions. In addition, there would be other people who are similarly engaged in compliance functions—for example, our legal staff.

Senator WONG—How many legal staff do you have, Mr Wilson?

Mr Wilson—I am not sure if we have that exactly with us.

Senator WONG—Is there a unit within OWS?

Mr Wilson—There is, we are just checking on the numbers. It is relatively small, perhaps in the order of five or six. We will take that on notice for you.

Senator WONG—But you are saying that it is perhaps fewer than 10.

Mr Bongi—In our legal branch we have eight people.

Senator WONG—Do you have corporate relations, government relations, public relations or communications staff?

Mr Wilson—We have a communications function. There are a number of people who are engaged in that function. That is associated with, for example, developing the website and keeping that maintained. I do not think we have the exact numbers of people engaged in that but, again, we could take that on notice for you.

Senator WONG—Thank you. You have been described as an independent agency. You are not actually a statutory agency are you, Mr Wilson?

Mr Wilson—We are an executive agency, so we are statutory to that sort of extent.

Senator WONG—Are you responsible to the Minister for Employment and Workplace Relations?

Mr Wilson—Yes.

Senator WONG—Does the \$3.8 million you pay per annum to DEWR comes out of your supplier's line item?

Ms Valentine—Yes, it does.

Senator WONG—Do you regard yourself as an independent agency, Mr Wilson?

Mr Wilson—I think we do. The kind of decision making we do on a daily basis is done quite independently and within the office. The decisions about what we take on as investigatory work and the decisions about how those matters are conducted or disposed with, and ultimately if matters are taken to litigation, certainly are made within the office.

Senator WONG—Could you tell me whether there is any charter of independence or any statement or document anywhere which outlines a statement of independence?

Mr Wilson—Not a document as such, no. Senator Abetz reminds me that the Public Service guidelines certainly require us to operate in a proper, competent and professional manner. The other thing which I should point out to you is that there are published ministerial directions on the agency. Unfortunately, I forget the genesis of those as to which act they come from, but they were certainly made by Minister Andrews at the very earliest stages of the formation of the office. They replaced ministerial directions which had been in place for a number of years, initially determined by Minister Reith. The directions which have been put in place by Minister Andrews reinforce the independence of the agency in that they require us to undertake a range of functions consistent with the Governor-General's orders. They require us to make decisions about litigations in a certain manner, depending on the issue. The extent of the other direction is that they require us not to litigate breaches which are considered to be minor or trivial. If you compare those with the former ministerial directions, I think that they certainly do provide that independence.

Senator WONG—Can I move now very briefly, because it was raised in the economics estimates committee, to the investigation into the Cowra abattoir. How many staff were involved in that investigation? You can take that on notice.

Mr Wilson—I believe that there were four involved in the investigation, but of course there were other people who were engaged throughout the processes—advisers and so on.

Senator WONG—Is it the case that OWS engaged a specialist consultant to analyse financial records?

Mr Wilson—That is correct. It is a firm by the name of Protiviti.

Senator WONG—As in 'creativity', but 'pro' at the front?

Senator Abetz—Which public relations firm thought out that name?

Senator WONG—Can you confirm that the consultant examined the financial records of the employer from 2003 to 2006?

Mr Wilson—I am just searching for one of my briefs on this matter. My understanding is that the firm examined the company's trading position from June 2003 to the end of April 2006.

Senator WONG—April 2006?

Mr Wilson—Correct.

Senator WONG—Did they provide a written report?

Mr Wilson—Yes, they did.

Senator WONG—Could you provide that to the committee?

Mr Wilson—I would have to take that on notice. There may be some concerns about doing that on the basis that it was in the process of an investigation. We would obviously need to consider the extent to which it went into confidential material about the companies.

Senator WONG—Mr Wilson, I am happy for you to take it on notice and consider the position. There has been, frankly—and I do not necessarily include you in this because I do not think we have had an argument about this as yet—a bit of a tendency for confidentiality to be waived around in a very generalised way in response to requests for the presentation of documents. There are a number of resolutions of the Senate in relation to the grounds on which public interest immunity or other grounds can be claimed in terms of a nonprovision of a document. I would invite you to consider those when making your decision.

Mr Wilson—I am aware of those. I do not wish to be difficult, but it is something that we would need to consider.

Senator WONG—That is fine. No, I appreciate that. Do you have a cost of engaging the specialist consultant?

Mr Wilson—We would need to take that on notice as well. I do not think we have that.

Senator WONG—Did the specialist consultant's report make any reference to, or consider, any particular transactions to related companies?

Mr Wilson—Before I answer that question, if I can go back to my earlier one. I am advised that the cost of the consultant's report—the cost to OWS—was in the order of about \$4,000, but we will clarify that and get back to you. In respect of the related entities—

Mr Bongzi—There was no review of documentation or transactions to related entities, as I understand it, because that was not the issue being examined at the time. The issue was if the company was financial.

Senator WONG—If a company is financial, surely you would check the financial accounts, wouldn't you? Do you want to take advice, Mr Bongzi?

Mr Wilson—The advice that we have had is from Ms Pullen, who is our General Manager, Legal Advice, which indicates that the work conducted by Protiviti looked at the work of the company, the employer, but also within the context of the group. I am not sure that we are equipped to explain at this stage the extent to which it went through the group records.

Senator WONG—It is actually not even group records, though. If the position is you are looking at the financial position of the company, presumably one would actually check the

accounts, and even if you do not know to whom the money is paid, you might notice that \$1 million, or so, has been moved out of the company's accounts.

Mr Wilson—In terms of whether or not there had been inappropriate transfers in the group, when this matter became the matter of some public controversy, I recall speaking with the consultant who undertook the work. The indication which he put to me was that he had looked at the company reports, and he looked at a number of other bits of material, including productivity records of the company, the kill rate et cetera. He took the view that the advice which he gave to the Office of Workplace Services, even in the light of the kind of comments which were being made at that point, were still accurate. The point that he then made to me was that to draw the conclusion which had been put into the public record by the administrator would require a much more detailed analysis, and would require going through individual transactions. The point the consultant put to me was that that was not the brief which he had been given by the office and, of course, if he had been given that brief, it would have taken much longer to complete.

Senator WONG—Yes, but there is a distinction and it is this, Mr Wilson: I am not putting to you that that should have been a finding, because that is an issue for ASIC's investigation, and ultimately for a court, as to whether there has been an improper transaction under part 5A of the Corporations Law. What I am putting to you is that, as I understand the public statements made by the government, the OWS is asserted to have given this company a clean bill of health. I questioned ASIC representatives this morning. Their indication is that no report of any sort was ever received from the OWS in relation to any concerns about the financial transactions engaged in by the company.

Mr Wilson—The examination which the Office of Workplace Services did undertake was to consider whether or not there might have been breaches of the Workplace Relations Act. In testing whether or not there had been breaches, the work of the office examined the contention of the employer that there were financial and other reasons which meant that they needed to make redundancies. My recollection of the financial review and the inspector's report is that it was a lockstep process. The financial report indicated that certainly the company was in some financial difficulty but at the same time other evidence, which had been obtained by the inspectors in the course of their interviews with people and from the review of documentation provided from notices produced, indicated that the company had suffered a very significant downturn in the volume of its work which in itself was consistent with the cause of the trading difficulties that was being established.

Senator WONG—I could talk a lot more about this. One of the issues is the basis of the redundancy and therefore whether or not the operational reasons which you relied on to determine there was no breach in relation to 79.2(1A) was in fact circumstances contributed to by an improper transaction. There is a lot more I could say about this, but we are very short of time so I will pose the rest of the questions on notice in relation to Cowra. I wish to confirm that you never even sent the financial consultant's report to ASIC. Is that right?

Mr Wilson—Sorry, I missed that.

Senator WONG—ASIC were never provided with a copy of the financial consultant's report?

Mr Bonghi—I cannot confirm that one way or the other.

Senator WONG—You might want to take that on notice as to whether or not the specialist consultant's report or any OWS report has ever been provided by the OWS to ASIC. ASIC have indicated not. I can give you the opportunity to speak to your staff about it. It just seems extraordinary, given what has been in the public arena, that there was not an attempt by the OWS to furnish ASIC with information in light of what the administrator has indicated.

Senator Abetz—For the record, and possibly the officials may correct me on this, as to the transaction to which you referred earlier, Senator, I think it was in the OWS investigation, and if that is the case—

Senator WONG—That is not correct.

Senator Abetz—That was my view, and it has just been suggested by the officials. Allow us to take that on notice. There seems to be some doubt on that. But I think that may be a material point.

Senator WONG—As I understand it, there was a loan as at June 2004 of \$618,000, which was subsequently increased, so certainly there was at least one loan on the books in relation to the time period for which the consultant's report was undertaken. I am happy to move on from this.

Mr Wilson—If I can add one further thing. My understanding, which I believe I checked with the consultant, was that the administrator, in their report, indicated that there had been a cash transaction of the order of \$930,000 in June to July, 2006. The consultant pointed out to me at the time that he had, of course, reviewed business affairs only until the end of April 2006.

Senator WONG—Thank you.

Senator Abetz—And that would then seem to suggest that the transaction had been stated.

Senator MARSHALL—In respect of how you actually deal with issues raised and how they are raised, has your office ever become aware of a potential breach of the Workplace Relations Act on the basis of matters raised by the ALP during question time in either of the houses?

Mr Wilson—Yes.

Senator MARSHALL—Have you ever commenced an investigation on the basis of matters raised by the ALP during question time in either the Senate or the House of Representatives?

Mr Wilson—I think it would be 'yes' again.

Senator MARSHALL—I would expect you to be paying more attention to the Senate than the House of Representatives, but you would probably take notice of both!

Senator Abetz—Can I suggest that you do not, because for the last 24 weeks in the Senate there has not been a question on Work Choices because the Labor Party is too scared to ask.

Senator MARSHALL—I do not think that is right. I actually asked—

Senator Abetz—So if I were you, I would be watching the House of Representatives.

Senator MARSHALL—I actually asked about the Chinese workers.

CHAIR—Order! Senator Marshall has asked a question, and Mr Wilson is considering his response.

Mr Wilson—Maybe if I can elaborate a little bit on what I have said. There are certainly matters which we have seen articulated in either house, and the expectation of the office is that wherever there is an allegation that there might have been a breach of the act we will take a look at whether or not that is the case. One of the points which I would make, and I would make it quite honestly, is that it is sometimes very difficult to determine a chicken and egg point at which the office first became aware of things. In some instances it is because there has been a media comment that morning, which leads into a question during one of the question times or some other debate. It might have been that it arises in the media but not elsewhere, or it might be that it comes direct to us.

Senator MARSHALL—Are you able to find out specifically which came first, the chicken or the egg, in each case?

Mr Wilson—I would point out to you that we have, since March, finalised more than 3,000 cases. That would be quite an extensive body of work.

Senator Abetz—Is there a particular case?

Senator MARSHALL—I am asking about the work issues that have been raised in question time. Mr Wilson, you have said that sometimes it is difficult to determine whether you became aware of that earlier than question time.

Senator Abetz—Senator, can we try to condense the questions? Is there a specific example—

Senator MARSHALL—Just be patient, Minister. I will proceed to ask the questions in the way that I want to. So I have asked you a question, Mr Wilson: can you identify those issues?

Senator Abetz—Well, you can but it is the minister's right to respond in the way that he wants. If the scope of your question is deemed to be a waste of resources, then the minister may well not deem it appropriate to answer. I am giving you the opportunity to confine your question so you, in fact, do get a responsive answer.

Senator MARSHALL—My experience here so far is that, if you do not want to answer the question, you find a reason not to answer it anyway. So I hardly think your assistance is worth much in that respect. Are you able to provide me—

Senator Abetz—In that case, we may as well pack up now, Chair, if he wants to pass those gratuitous comments.

CHAIR—Order, please! We will confine ourselves, Minister, to questions and answers. Senator Marshall, you have asked your question?

Senator MARSHALL—Yes.

CHAIR—Do you want to go on with any more?

Senator MARSHALL—I am waiting to see if I am going to get an answer or not. You are quite right; I have asked the question.

Mr Wilson—I do not think it would be feasible for us to do that in respect of all of the matters which have been commenced and finalised by the office. That would be an impossible task.

Senator Abetz—Leave it there. That is what he has asked; that is what he gets.

Senator MARSHALL—How many times have you commenced an investigation on the basis of matters raised by the ALP during question time? That is really what I have asked. I have not asked for every investigation.

Mr Wilson—In respect of that question, I think I would need to take that on notice.

Senator MARSHALL—Do you have staff monitoring question time?

Mr Wilson—Periodically we do.

Senator MARSHALL—If you have pursued any issues that have been raised in question time, how are they brought to your attention?

Senator Abetz—Just so we get the scope of this question clear, when did the Office of Workplace Services come into being?

Mr Wilson—On 27 March this year, with Work Choices.

Senator Abetz—And we are only been talking about that period.

Senator MARSHALL—I hardly think they could be monitoring before they were in existence.

Senator Abetz—Yes, but they were in a different manifestation.

Senator BARNETT—They were in the department.

Senator Abetz—So I just want to confine the question so we know exactly what we are dealing with.

Senator MARSHALL—We are talking about breaches of the work choices act. It has been in place since 27 March, so I am not asking about breaches prior to then.

Senator Abetz—Good.

Mr Wilson—You asked me a moment ago whether we have staff monitoring question time. I took that quite literally: do we have staff monitoring it as it proceeds? Sometimes we do. It depends on the work rate. But, in respect of whether we then monitor the *Hansard*, yes we do. We go through that with some degree of particularity within a 24-hour period, and if there is anything which requires the attention of the office then we ensure that the relevant state or staff are asked to commence some work.

Senator MARSHALL—Can you explain to me what the process is for matters raised in federal parliament being referred from the government to your office?

Mr Wilson—In some instances there are direct referrals. I saw on Sunday night a media article about Feltex and Godfrey Hirst in Victoria. I must admit that I forget which minister had been speaking about the matter—whether it was the Prime Minister or the Minister for Workplace Relations—but in any event there was a comment made by them that they would refer the matter for investigation to the Office of Workplace Services. So there are some

issues, such as those, where there is quite a discrete reference. In other instances, as part of our monitoring process we pick it up and become involved.

Senator MARSHALL—Is there any formal process for matters to be raised with you by the government over issues that have been raised in parliament?

Mr Wilson—Is it the normal process, did you say?

Senator MARSHALL—No. Is there a process?

Mr Wilson—As you would be aware, there is the usual ministerial process whereby if constituents or senators or members write to ministers then they are allocated in time to the office, and obviously we deal with those matters as well. Anyone can raise a matter with the office, and they do. I have said this on many occasions: we take work from wherever it comes, whether it is from the people directly, whether it is from their representatives, unions, or whether it is raised in a public forum such as in the media or in parliament.

Senator MARSHALL—I am trying to ascertain whether there is a formal process. Can you tell me if there is a contact in the minister's office for reporting to you about issues that need to be raised or investigated by you about matters raised in parliament?

Mr Wilson—As I answered to Senator Wong, there is a reporting relationship between the office and the minister's office. Very clearly, we speak with the minister from time to time and with his staff. As has been said in the House of Representatives, certainly there are occasions where they have asked the office to become involved in the matter.

Senator MARSHALL—The minister asks you directly?

Mr Wilson—Or his staff.

Senator MARSHALL—His staff. Is there a primary contact in the minister's office that you deal with in relation to these matters?

Mr Wilson—I suppose the primary contact is the chief of staff, but it could be any of the advisers who work for him.

Senator Abetz—But, at the end of the day, anybody can raise an issue with you, from the Prime Minister, the Leader of the Opposition or the ACTU president to a pensioner who is concerned about their grandchild's working conditions. So it is open to anybody.

Senator MARSHALL—Thank you, but I am trying to establish whether there is an internal government process between the minister's office and you about issues specifically raised in parliament.

Mr Wilson—I think process would be too high a word to put on it. But—

Senator MARSHALL—Can I put it this way: if you do not see it or hear it on question time and if you do not read it or hear about it in the media, how else would it be communicated to you?

Mr Wilson—It is getting a bit into the hypothetical. There may well be cases which we miss—I really do not know—but there certainly is not only an obligation but a desire on the part of the office to understand where there might be potential breaches and to ensure that our staff are allocated immediately.

Senator MARSHALL—I was hoping not to have ask this, but I think I probably do have to. There are a number of case studies that have been raised by the ALP during question time, and I am probably going to have to go through each one of them because what I am interested in knowing is how many of those case studies were raised with your office before you became aware of them being raised in federal parliament. So I will go through the list. Actually, I could probably just provide you the list. That might be easier.

Senator Abetz—I am sure that would be helpful to the committee.

Senator MARSHALL—I am trying to be helpful.

Senator Abetz—That is good.

Senator MARSHALL—I was hoping to get what I needed without going through this painful process.

Mr Wilson—I do not wish to be unhelpful, but I think it might be best if you do provide the list.

Senator MARSHALL—You have got it now.

Mr Wilson—Thank you.

Senator MARSHALL—Can you tell me, out of those case studies, how many were raised with the Office of Workplace Services before being raised in federal parliament?

Senator Abetz—That is quite an extensive list, I would assume they would need to take that on notice. In fact, that is what I was trying, possibly clumsily, to get you to do earlier by limiting the scope of your question. You have now given a list of 26.

Senator MARSHALL—They have all been raised by the ALP in federal parliament, so I am interested in the process of dealing with them. It is a substantial list, so I am interested to know how the Office of Workplace Services deals with these issues.

Mr Wilson—We will get that answer for you, but I can maybe give you an example just to indicate the sort of conundrum that we face. That is in respect of item G, the Hilton IGA. The note that I have in respect of that is that on 22 September 2006 allegations were raised in the media about the offering of AWAs to employees of IGA supermarkets. The shadow minister, Mr Stephen Smith MP, issued a media release on 23 September. We will go back and obviously double-check whether a question had preceded that, but often that is the kind of sequencing which we are dealing with.

Senator MARSHALL—I am going to come to that issue specifically soon. While you are finding out about that, can you tell me also—and, if you need to take this on notice, you need to—of that list I have given you which ones have been raised with your office by the government specifically to be followed up?

Mr Wilson—I would need to take that on notice.

Senator MARSHALL—Again, I am just trying to understand the general process. Is it up to your office to pick up when the minister says in public that a particular issue will be investigated or is it formally communicated to you?

Mr Wilson—It could be either, I think. What I would ask you to bear in mind is that very often there is an article in the media which we see at eight o'clock or nine o'clock in the morning, and then there is some further comment during the course of the day, and then there is question time, and in the course of that period there might be a comment about OWS becoming involved. In some instances as soon as we see them in the media we might be involved, or we might be involved already, but nonetheless we can check.

Senator MARSHALL—Has the government ever directed your office to obtain further information in relation to a matter raised during question time from the ALP or from the member actually asking the question?

Mr Wilson—I would need to take that on notice.

Senator MARSHALL—Has the OWS ever sought to obtain a copy of a document, either an agreement or a letter of offer et cetera, tabled by a member of parliament when raising a case study during question time?

Mr Wilson—The answer to that is yes.

Senator MARSHALL—Which documents and which case?

Mr Wilson—That part I am afraid I would need to take on notice, but I can certainly recall that there have been instances where we have contacted the member who has raised the question.

Senator MARSHALL—Can you tell me on how many occasions that has happened, whether you have investigated and which of those you have then gone on to investigate?

Mr Wilson—Sure, we will find that for you.

Senator MARSHALL—Earlier in the questioning, you talked about an internal process of determining whether or not you will proceed to prosecution—and I think you are going to provide us with some information about the process, your internal thinking about what constitutes something that should be prosecuted and what should not, and I think the minister made some relevant points in that respect too. But how do you actually decide whether a matter should be investigated? Is there a process or threshold that has to be reached before an investigation takes place?

Mr Wilson—In the first instance, we need to consider whether or not there might be disclosed in whatever it is that has been brought to our attention a potential offence that might be within our jurisdiction, and then we commence an investigation. We then have a process of management during the course of that investigation, which we call a case conferencing process, and each of our state managers is obliged to meet weekly with their general manager, who takes them through the significant matters which are under investigation in that state, and in the fullness of time a decision then needs to be made as to whether or not litigation can or should be commenced. Quite clearly, aside from the evidence, which is absolutely vital, we need to exercise some discretion, but we have, as a matter of policy, that the office would litigate in all cases where it believes that the breaches of the act or the regulations are deliberate and/or routine.

Senator MARSHALL—I understand, and you are going to give us some detail on the litigation, but what about the investigation? Is there a threshold that has to be reached before you commence a formal investigation?

Mr Wilson—Obviously, that would go to whether, as I said at the start, it meets this test: is there jurisdiction for the office?

Mr Bongi—We receive information from a variety of sources. People will send in claims to us, they telephone us and we capture information from the public area, whether it is newspapers and through *Hansard* the day after. Our role is to ensure that the rights and obligations of workers and employers are understood and enforced fairly, so we do not turn any of these matters away. If there is some concern in some quarters, we will be there looking at it. It is when we go through that process that we determine whether it is a case, we go through the case conferencing process and, depending on the nature of the case, it ends up in litigation. That is essentially the process, but we are open to receiving any matter that is referred to us or that is brought to our attention regardless.

Senator MARSHALL—Does that mean you will investigate every matter that is brought to your attention?

Mr Bongi—Most certainly; we will not turn away from any matter. The extent to which we go through that might differ because some things we determine fairly early on that they do not fall within our jurisdiction. Some things need to be referred elsewhere. With some matters, when we start looking at them, there just is not the evidence there, but we look at all matters. I do not want to give the impression out in the marketplace that we will simply choose which cases we look at and which we do not. We treat all cases on their merits.

Senator MARSHALL—Regarding the Hilton IGA case, when and how did you become aware of that issue?

Mr Wilson—My understanding is that first came about because of a press article.

Senator MARSHALL—Can you tell me which one? Do you have the file there with you?

Mr Wilson—Not to that level of detail, I am afraid.

Senator MARSHALL—Has your office held discussions or provided information to DEWR in respect of this matter?

Mr Wilson—I am just reflecting on the case. There were certainly discussions with the department about the exercise of the delegation leading to litigation and, because of the circumstances of the particular case, there was a requirement to have some fairly high-level discussions with the department on that.

Senator MARSHALL—With the minister or minister's office?

Mr Wilson—The minister I think was briefed that we were proceeding to litigation.

Senator MARSHALL—It was purely a briefing?

Mr Wilson—Correct.

Senator MARSHALL—The Prime Minister's office?

Mr Wilson—I am not aware. I do not recall that we briefed them.

Senator MARSHALL—So it was purely in the manner of a briefing. Can you tell me what were the alleged breaches of the Workplace Relations Act that you investigated or that you continued to investigate in relation to this issue?

Mr Wilson—The investigation, as you know, has resulted in litigation action being commenced in the Federal Magistrates Court, so I just need to be a little careful about what I say. As a result of the investigations, which we conducted, the office formed the view that a company by the name of Ten Talents and adviser to it applied duress to two named employees at a supermarket by the name of the IGA Hilton and that they applied duress by requiring those persons to make an AWA as a condition of employment. The action that has been taken by the office alleges that there has been a breach of section 400(5) of the Workplace Relations Act, and that section in particular requires:

A person must not apply duress to an employer or employee in connection with an AWA.

We also seek penalties under section 407 of the Workplace Relations Act and we seek compensation under section 413 for any loss that may have been suffered by the employees by virtue of the alleged breach of section 400(5).

Senator MARSHALL—Are the transmission of business issue and the duress issue being treated as two separate investigations?

Mr Wilson—In some ways they are inextricably linked. The reason for that is our contention that duress was applied in a manner in which all consideration was unlawful. I would have to go back and check the statement that was made to the court but obviously the circumstances which were alleged were that in the course of the transmission duress was applied to the two workers concerned. If I can go further in an endeavour to help you on that, there is still a continuing investigation in respect of one of the companies, and that is in respect of other employees of that company.

Senator MARSHALL—So there is an investigation into more than the two.

Mr Wilson—Correct.

Senator McEWEN—In the matter of duress or in the matter of breach in the transmission?

Mr Wilson—In relation to both. If you bear with me, I will check that point. I might need to take that particular part on notice.

Senator McEWEN—There are two separate bits of the act, aren't there? You are prosecuting for both—the duress provisions and the transmission of business. Which employer was it?

Mr Wilson—It is a complex matter, and that is why I think I need to check with our staff about precisely the direction it is going in. What I can say is that there is a wider investigation which is still continuing.

Senator MARSHALL—Were the discussions you had with the minister's office in relation to this matter in order to determine whether or not to proceed with the prosecution?

Mr Wilson—No.

Senator MARSHALL—Where was that decision made?

Mr Bongsi—I would make that decision.

Senator MARSHALL—Was that independent of any discussions with DEWR or the minister's office?

Mr Bongi—Absolutely. It was my decision.

Senator Abetz—Just in case there is any doubt, any decision to prosecute is made independently by the OWS and not on the say-so of the minister or the minister saying, 'Don't prosecute somebody.' That is solely within the province of OWS.

Senator MARSHALL—I am wondering whether your office has made any recommendations or provided any advice to Ten Talents in relation to its legal obligations.

Mr Wilson—I would have to take that on notice. I cannot recall if there was. The reason I hesitate is that in the course of investigations it is obviously quite routine for our inspectors to draw what they consider to be a breach to the notice of the party they are talking to and sometimes in those sorts of instances there is a dialogue: 'What does that really mean?' and 'What if I fix that up immediately?' In respect of this matter I am afraid I do not have that information for you.

Senator MARSHALL—While you are looking at that could you also specifically tell me whether you provided any advice in relation to the status of their previous collective agreement and the offering of new AWAs?

Mr Wilson—We will take that on notice.

Senator MARSHALL—Has your office examined the terms of the AWA offered to employees by Ten Talents?

Mr Wilson—This might seem inadequate: we believe we have, but we will need to check that. Again, part of the routine undertaken by our inspectors in these sorts of matters is that they would routinely take a look at what is, if you like, the whole circumstance of the workplace and, clearly, it would be relevant to—I think, at least—consider the content of an agreement, but we will need to check that for you.

Senator MARSHALL—Would that process include comparing the AWA against their previous collective agreement?

Mr Wilson—It is relevant to assessing whether or not there has been duress, I suppose, but in this particular matter—and I am very concerned that it is something which is before the courts—we will need to check that for you.

Senator MARSHALL—Thank you. I am just wondering whether you will be publishing a report in relation to this matter to assist employers and employees to understand their legal entitlements and obligations in circumstances where there is a transmission of business.

Mr Wilson—I think in the fullness of time there would certainly be some further statement by us, once we have the matter successfully through the court, but it would be difficult at this point to make a wider statement.

Senator WONG—I appreciate there is a matter before the court but as an issue of law, the act says it is not duress to require an AWA to be signed for the purposes of getting a job. Then you have the transmission of business provisions which say your conditions are transmitted, except if the AWA excludes them. Senator Marshall might have touched on this but I am

wondering what your view is about the interaction between those two provisions and the act. Which overrides which?

Mr Wilson—I am afraid that would be beyond my capacity to answer this afternoon.

Senator WONG—But surely in terms of your consideration of this and any other—I understand this is not the only situation where this has occurred—you would have to form a view in terms of your compliance functions as to whether a transmittee employer is entitled to say, ‘You are only going to get this job if you sign this AWA,’ thereby avoiding the protection of the transmission provisions.

Mr Wilson—In this particular instance we have formed the view that there has been duress because the workers, we allege, have not been allowed to continue on their pre-existing instrument. I guess, though, that we need to be just a bit careful in making very sweeping statements about that. I would be quite hesitant to do that and suggest that it may be a question better directed to the people from DEWR.

Senator WONG—But you are the compliance organisation; you have to form a view about what might constitute a breach.

Mr Wilson—We have, and we formed the view that this amounts to a breach.

Senator WONG—Only in relation to the two.

Mr Wilson—They are the two people that we have seen so far.

Senator WONG—But the 63 who signed—is it 63, Senator Marshall? I think that is right.

Senator MARSHALL—It think so.

Senator WONG—There might be an argument that the 63 who signed were, in fact, required to; therefore, the transmission of entitlement conditions and provisions have been avoided by the requirement that they sign an AWA, and no prosecution has been commenced in respect of those.

Mr Wilson—Senator you may have been out of the room when I mentioned—

Senator WONG—Yes, I apologise for that.

Mr Wilson—that there is an ongoing investigation. Certainly we are going through the process of making a determination about those employees and where their circumstances might fit, and I guess we have to be careful. There could be some where in fact there was no duress; there could be others where we consider that there was.

Senator WONG—The issue I raise then, which you say I should take up with the policy people in DEWR, is about the tension between those two provisions. Have you sought advice from DEWR about that issue?

Mr Wilson—I would need to check whether we have sought advice from DEWR, but what I can say is that certainly the matters which are about to proceed to court are the subject for advice.

Senator WONG—Have you sought independent legal advice about the interaction between those two provisions in the act?

Mr Wilson—In the course of determining that we were going to court, we sought independent legal advice on the matter.

Senator WONG—On the particular factual circumstances?

Mr Wilson—On the particular factual circumstances.

Senator WONG—Thank you.

Senator MARSHALL—There are a number of issues we will put on notice but I want to go to another issue, which is Heinemann Electric. You are aware of that dispute?

Mr Wilson—Yes.

Senator MARSHALL—Can you tell me when and how you became aware of that dispute?

Mr Wilson—I am advised that the matter was originally brought to our attention through media reports.

Senator MARSHALL—Okay. So you do not have any record of any individual asking for an investigation to commence?

Mr Wilson—No, I do not.

Senator MARSHALL—So I take it from that that you initiated the investigation yourselves?

Mr Wilson—Unless you hear back from me, yes.

Senator MARSHALL—I am just interested in how that happens.

Mr Wilson—I understand that it came about through media reports. If that is the case, we would have gone immediately to it.

Senator MARSHALL—Can you just explain to me the internal process for that. Does it rely on you reading the paper, or is it one of your officers? How does that become a decision made by your office to investigate?

Mr Wilson—I would have to check back on exactly how that came about. From recollection, there was some sort of media comment which was not just a small clipping on page 27 of *The Age*. It was a very prominent thing. I believe it ran in several newspapers that there was a problem, and that CEPU members were saying that they had not been paid for 38 ordinary hours and that, based on a number of contentions, that was not lawful. Very clearly that would indicate to the office that that is a breach of some significance. I would feel fairly confident that we acted of our own volition.

Senator MARSHALL—I want to go specifically to this issue but, in the broader sense, I am just trying to get a feel for how cases come to your attention.

Mr Wilson—Sure

Senator MARSHALL—We know—this has outlined it, and so have you—that anybody can ring up. We know that it can be referred by the minister's office; we know that you monitor question time and that you get some media reports. But there must be a much more

formally structured process of identifying things, and then decisions being made to act upon them within your office. So I am interested to understand how that works.

Mr Wilson—In the first instance, I point out that we have dealt with the best part of 3,000 matters since the commencement of the agency. The vast majority of those matters are a result of complaints from the workers, their families or their representatives that some problem is occurring. In addition to that, there are matters which come up in the media, in parliament or elsewhere and develop into some sort of public controversy. Our policy on those sorts of matters is to make sure that, if it does reveal a jurisdiction that we need to be involved in, we attend and consider whether an investigation is to be conducted.

Proceedings suspended from 3.45 pm to 4.01 pm

CHAIR—I welcome back the Office of Workplace Services. I understand, Mr Wilson, that you wish to correct the record.

Mr Wilson—That is correct. We have checked with our office in Perth about the Ten Talents matter, which you were asking us about, Senator Marshall. I believe one of the questions was whether or not the inspectors did a comparative analysis of the certified agreement and the Australian workplace agreement. I am told that we did do that, and that that is one of the parameters which we have taken into account in formulating the view that the two employees were subject to duress. So that is ongoing. In addition, I am told that we had contact with the 63 others who were referred to, I think, by Senator Wong, as to whether they were under duress and that aspect of the investigation is continuing.

CHAIR—Would you be able to provide that analysis of the AWA and the certified agreement to the committee?

Mr Wilson—I would have to consider that, just from the point of view that the matter is still proceeding to court and I am not quite sure where it is in terms of the court's process. But I will take that on notice.

Senator MARSHALL—I want to finish the issue of Heinemann Electric. Have you formed a view about section 496? Specifically, do you think section 496 precludes payment for workers who impose overtime bans when they continue to work their regular 40 hours per week?

Mr Wilson—I do not wish to be difficult. However, that investigation is continuing and we are at an advanced stage with it. We have gathered the evidence and we have formed some views but I do not think it is appropriate that I go into those matters here.

Senator MARSHALL—I will not ask you any more questions about that issue if it is still ongoing. In general, when you do investigations, do you prepare a final report? And what do you do with them? Do you publish them?

Mr Bongi—We don't publish our reports. I think Cowra was an exception that we took because of the interest around that investigation. What we do have is a summary on file. It depends on the nature of the case as well. A very complex, very involved case will have quite a lot of documentation summarising what was done. Other summaries are half a page.

Senator MARSHALL—Of the people directly involved, such as the employer and the employees, what information do you provide to them at the end of an investigation?

Mr Bongi—We normally write a letter to them to say what has been determined in that matter.

Senator MARSHALL—What if they are unsatisfied with that? Is there an internal appeal process? Can they ask for further investigation?

Mr Bongi—We have had a number of people come back and we have examined those matters within the resources. As our resources have now grown to 252 it was flagged a couple of months back, I think, within the office the desire to set up a separate appeals area, but that is not quite there yet. At the moment, with any cases where people come back and ask for a review because they are not satisfied, these matters are handled by other inspectors within the same office, but I want to establish a slightly different process over the coming months.

Mr Wilson—If I can add to that, there is a further avenue that people sometimes take, which is to the Commonwealth Ombudsman if they are dissatisfied with what we do.

Senator MARSHALL—Has that happened yet?

Mr Wilson—I think there have been a handful of instances where that has happened.

Senator MARSHALL—Could you find out how many and let the committee know?

Mr Wilson—We will let you know.

Senator MARSHALL—If you can provide on notice the detail of what cases they were too, within reason, that would be appreciated.

Senator Abetz—Whilst he can do that, chances are you might get a more accurate figure from the Ombudsman's office because, if the Ombudsman has received a complaint that they do not bother following up because they do not think there is any merit to it, I dare say the OWS would never be informed about that complaint.

Senator MARSHALL—That is interesting. Maybe that is something I can do separately, but perhaps the office can also let me know about the ones that they have.

Senator Abetz—The ones they are aware of they will tell you about.

Senator MARSHALL—That would be good. How many AWAs has the Office of the Employment Advocate referred to your department for not meeting the Australian fair pay and conditions standard since Work Choices has come into effect? Do not rely on the minister's advice. He is coaching again—it is very dangerous!

Senator Abetz—I was saying hopefully it is the same that the OEA said they had referred.

Senator MARSHALL—Did you make that note, Minister?

Senator Abetz—It was seventeen hundred and something, from recollection, but let us see what their figure is.

Mr Wilson—At the risk of quibbling, we say the number is 1,681. There were 1,701 referrals, but then there are some deductions as a result of errors and ones which we were not clear as to what was being said, but we say that we have received 1,681.

Senator MARSHALL—That is not too bad, I think they said 1,700 exactly.

Senator Abetz—As of what date, are we working on the same dates?

Mr Wilson—That is to date.

Senator MARSHALL—That is fine. Are you able to give me a breakdown of which of the fair pay conditions were not met or how many were a combination of those conditions?

Mr Wilson—First of all, I would say that the referrals that were made by the Office of the Employment Advocate were for agreements over which there was a question as to whether or not the agreement facilitated compliance with the standard. On that sort of basis, when we receive them we do not assume that they are breaches but that they are things that need to be looked at.

Senator MARSHALL—I guess the question should be: how many have you found to be in breach, and what were the breaches or combination of the breaches?

Mr Wilson—If I can work my way down to that it might assist. There were agreements which were referred across the spectrum of the standard. We have not done any analysis as to the numbers which fit within those different groupings. Part of the reason for that is it became very clear that some of them had a foot in many camps, some or many, so on that basis we felt it better to get on with the process and then see what came out of that. In addition to whether or not the agreement facilitated compliance with the standard, there were a number that we understood were referred to us because they were things such as incomplete lodgements or they might refer to company policy within the document, and it was not possible on the face of the agreement to make a determination about whether it met the standard without referring to the policy documents.

Alternatively there might have been AWAs which did not identify the applicable award or classification of the employee, and on that basis it became very difficult for the OEA. I am just setting that up as a bit of context. So that is by way of context. Of the 1,700 that have been referred, we have gone through a process of writing to both the employer and employee, as I understand it, in about 1,375. They are the ones which have been referred during April and July, for which some sort of analysis is currently available. Of those 1,375 agreements, 960 are still ongoing—that is, we do not regard the review that we are conducting as being complete—and 415 we regard as having been finalised.

It is important to understand the process that we have gone through before I get to the outcome. In each case the process has been to write to the employer and employee to indicate that there has been a question raised about their particular AWA, to invite them to reflect on what it was and to give some advice to us about whether in fact the agreement is compliant and whether we are overlooking something or, alternatively, to indicate that there might be a problem or to provide some other information to us. So that is the process which we are running. That process invites people to respond within 28 days of the letter from our relevant state office.

With respect to the 960 which I indicated as being ongoing, there is still a process—the letters might have gone out fairly recently or they might not have responded at all. So that process is still going on. Within the 415 that have been finalised, I am told that there are 313 which we say were compliant, and in those particular instances the inspector has been satisfied that there is not a problem that needs to be addressed. There were, I am told, 52

which were finalised by relodging the AWA and there are 50 of the 415 which, in our opinion, need not have been referred in the first place.

Senator MARSHALL—How many have you deemed to be non-compliant?

Mr Wilson—That comes back to the 960.

Senator MARSHALL—Put them out; of the finalised ones?

Mr Wilson—We have not yet determined any to be completely non-compliant and not capable of being compliant, or capable of requiring of prosecution or what have you. But of the 415 that are finalised, I would point out that 52 were finalised because they were relodged. In those particular instances, we have been satisfied that relodging is sufficient for that particular case.

Senator MARSHALL—In some cases I expect they have to be relodged with the extra documentation?

Mr Wilson—Correct. I have an example of one that required relodging. I cannot say it required relodging, but it is an indication of where the matter was closed. In the initial document it said that parental leave was available to the worker in accordance with the relevant provisions of a human resource manual. In that particular instance, the employer wrote back to the inspector to provide an extract from the parental leave policy and, as a result of that, the inspector was quite satisfied that the policy was well in excess of the standard and therefore the matter was closed.

Senator MARSHALL—Do you intend to put in place—or do you already have in place—quality control in terms of how long an agreement referred to you will take to be finalised? I know it is early stages, but do you intend to do that, have you done it or what do you intend it to be?

Mr Wilson—The basic position is that 80 per cent of the matters which we take on, including underpayments and other investigations—

Senator MARSHALL—I am just talking about the agreements referred to you by the OEA.

Mr Wilson—I do not think we have addressed that in detail—if I can answer why, that might assist. We are at the early stages of this process. We are trying to find out exactly what the timeline is. Obviously, once we have a better understanding of the kind of information that will be coming back to us, I think we can put some time constraints around it. But, certainly in my view, it would not be acceptable for it to go for longer than a month or two.

Senator MARSHALL—In terms of all those agreements referred by the OEA, do you collect any other information from them?

Mr Wilson—No.

Senator MARSHALL—I asked a question about the annual leave buyout issue. Do you ensure as part of your process that the maximum or minimum amount that can be cashed in has been cashed in for the right monetary value?

Mr Wilson—I cannot answer that question directly in the way that you have posed it. We take these things on a case-by-case basis. Whether it comes to us from the OEA, from the worker or directly from the union, if this issue arose we would test it quite properly.

Senator MARSHALL—How many of those agreements referred to contain only the minimum standard?

Mr Wilson—I do not think we can answer that. We have not done that sort of analysis of these agreements. The issue we are looking at is purely whether they comply with the standard.

Senator MARSHALL—The table you gave us earlier in response to Senator Barnett's questions had the location of the offices. You only have four permanent offices. Are you able to expand on that for us and indicate which of those temporary offices you intend to become permanent and how many staff you intend to base in each of those offices?

Mr Bonggi—Absolutely. In fact, I had started to answer that question earlier but, unfortunately, I could not finish. A temporary office indicates that we have moved into temporary accommodation locally while more permanent accommodation is fitted out.

Senator MARSHALL—So each of these locations will be a permanent office?

Mr Bonggi—Absolutely. What it means is that, in these locations, we may be utilising serviced offices or temporary accommodation somewhere else within the same town or city and once our fit-out is completed we will move into the permanent premises.

Senator MARSHALL—Could you provide to us a break-up of staff—that is, how many inspectors will be there, whether you are going to have a legal officer there and how many support staff will be in each of those offices?

Mr Bonggi—I can answer that. We will not have legal officers located in regional centres. It is more likely they will be in capital cities.

CHAIR—Gentlemen, thank you very much for appearing before the committee today.

[4.22 pm]

CHAIR—I welcome Dr Boxall and officers of the department. There is some comment amongst the committee that they would prefer to do cross-portfolio first. I gather from you, Dr Boxall, that some of your senior management are not here to do that. Would it take very long to get them here?

Dr Boxall—We have all the management people here apart from the deputy secretary for outcome 2, because that was later in the agenda.

CHAIR—That is correct.

Dr Boxall—We could take some cross-portfolio questions now, as long as they do not require the deputy secretary for outcome 2. We could request the deputy secretary, through this broadcast, to come up here now.

Senator WONG—Where is the deputy secretary?

Dr Boxall—He is in his office.

CHAIR—Yes, as he should be.

Senator WONG—How far away is the office?

Dr Boxall—He will be able to be up here in about 10 or 15 minutes.

Senator WONG—Very good.

Dr Boxall—I was wondering whether the committee could indicate whether we would get to outcome 2 before or after dinner, because, if it is after dinner, that means that the staff from outcome 2 can go home and then come back after dinner.

CHAIR—If we could just settle the matter of the cross-portfolio first—whether you or I issue the signal over the airwaves for the deputy secretary to come along.

Dr Boxall—I am sure he is on his way.

CHAIR—That is good. So, Senator Wong, if we deal with other matters in cross-portfolio for 10 to 15 minutes, are you agreeable to that?

Senator WONG—I would appreciate that. Dr Boxall, I am happy to indicate from my perspective that we would not be requiring outcome 2 other than in a cross-portfolio context until after dinner.

Dr Boxall—Thank you.

Senator WONG—I also indicate for any agencies that are here that I am just trying to get advice, given the lateness of the hour, as to whether we will require Indigenous Business Australia and EOWA. I hope to have that advice fairly soon.

Dr Boxall—Thank you.

CHAIR—There is just one matter I want to raise with you, Dr Boxall. You may recall that in the hearings last November for the additional estimates Senator Wong asked you some questions relating to the retirement of the Department of Employment and Workplace Relations as lead agency for the COAG Indigenous Trial in Shepparton. The question was whether the community were aware of the DEWR handover. Some time later—that is, this year—as chair of the committee I received a letter from Tony Cutcliffe, the director of the Eureka Project, one of the agencies involved in the trial, in which he claimed that, contrary to your answer, the community was unaware of the handover and that DEWR ought reasonably to have been aware of this. I wondered if you could clarify any answers given last year in the light of Mr Cutcliffe's concerns.

Dr Boxall—My recollection is that last November we answered those questions. Indeed, Tony Cutcliffe wrote to the department not long after that Senate estimates session, and my recollection is that that was answered by a senior member of the department. As committee members will recall, when the government decided to set up OIPC, the Office of Indigenous Policy Coordination, and the ICC network, some departments decided to move away from the COAG trials and to have the area serviced by the new network. We did that with both the Cape and Shepparton. Nevertheless, we have been heavily involved in both of those areas since. My advice is that the community in Shepparton as well as that in the Cape were aware that that was our course of action. I am hoping that a senior person will be arriving any minute who will be able to update that in the event that there is anything else to add.

CHAIR—Thank you very much. Assuming that we are now starting on cross-portfolio, I call Senator Wong.

Senator WONG—I have just received advice—and I can only speak for opposition senators, obviously—that we will not be requiring EOWA.

CHAIR—Thank you.

Senator WONG—First, on questions on notice: I do not want to spend a long time on this, Dr Boxall, but I am advised by the committee that, as at the deadline for receipt of answers to questions on notice, DEWR had answered 19 out of 239.

Dr Boxall—I am advised that we prepare the answers to questions on notice as soon as practical and send them to our minister's office, and it is the minister who determines the timing of the tabling of the answers. That is the same answer that the department gave to this question in previous Senate estimates.

Senator WONG—Yes, I am aware of that. I want to again place on record the disrespect that I suggest that shows the Senate process, to have 19 out of 239 filed with the committee by the time the Senate requests that through this committee. I appreciate that there will be occasions where a number of questions may not be able to be finalised in time, particularly complex ones, but I would suggest to you that it does seem that such a small proportion of the questions being answered within the period required by the parliament is really inappropriate.

Dr Boxall—I will pass on those views to the minister.

Senator WONG—My first cross-portfolio issue deals with outcome 2 expenditure. While we are waiting on the deputy secretary, I just have a brief question about an FOI request. There was, as I understand it, a freedom of information request in relation to the winning of a Work Choices contract which was denied on the basis that no documents exist. This was in relation to Ted Horton winning a Work Choices contract.

Dr Boxall—We will have to get our FOI expert.

Mr Gotzinger—Sorry, Senator, could you just repeat the question?

Senator WONG—There was an FOI request, I think reported in the *Australian* newspaper, in relation to Ted Horton winning a WorkChoices contract. Were you the person who made the decision in relation to that request?

Mr Gotzinger—I do not have the details of that particular request here, so I will have to take that on notice.

Senator WONG—Okay, perhaps you can advise us to what occurred and whether it is the case that no documents exist in relation to that request—perhaps just those two issues?

Mr Gotzinger—I will take that on notice.

Senator WONG—Thank you. Dr Boxall, did that particular contract go to tender?

Dr Boxall—Is this the contract for communications for—

Senator WONG—Yes, I think the contract was for Ted Horton.

Dr Boxall—That is an outcome 2 question.

Senator WONG—Can we deal with it here?

Dr Boxall—We will have to wait for Mr Pratt to arrive.

Senator WONG—He is not here. I think at the last estimates you provided some information about funding for consultancies—I just want to track through and make sure I understand what the amount of consultancies was—are you able to tell us the total cost and the number of consultants for the 2005-06 year?

Dr Boxall—On page 335 of the annual report, appendix 8, we have a list of all the consultancies let in 2005-06 of \$10,000 or more.

Senator WONG—So the figure on that page is \$23 million: is that right, 7,678?

Ms Graham—In 2005-06 the total expenditure was \$23 million.

Senator WONG—Can I just confirm with you, Ms Graham, the 2004-05 figure for the same expenditure item was \$4,579,464?

Ms Graham—I will just get hold of the annual report for that year. Yes, that is correct \$4,579,464.

Senator WONG—Dr Boxall, can you explain to me why DEWR funding for consultants increased by I think it is around \$19 million as between 2004-05 and 2005-06?

Dr Boxall—All the consultancies for 2005-06 and for 2004-05 are listed. We were doing much more business in 2005-06, as it turns out. There is no question we were doing more business and this required more consultancies. We had Welfare to Work, we had Work Choices and we had CDEP reform, amongst other things. If you had a more detailed question, we would be able to answer it.

Senator WONG—It is a very large proportion of increase—\$4 million to \$23 million.

Dr Boxall—But that reflects the extra work of the department. The department has gone up from 2,000 staff to 3,500 staff. The department has been at the centre of major government policy development and policy initiatives and it is not surprising that expenditure on consultancies would go up.

Senator WONG—You might need to take this question on notice but, of the consultancies listed in the annual report, I would like to know what proportion of that expenditure of \$23 million relates to the development and implementation of the Work Choices legislation. I do not think that it is all outcome 2.

Dr Boxall—We will have to take that on notice.

Senator WONG—Thank you. Can you just confirm: is any component of the \$55 million spent on advertising for Work Choices included in the consultancies expenditure that we have just been discussing?

Dr Boxall—We will have to wait for outcome 2 to answer that question.

Senator WONG—I will come back to that.

Dr Boxall—Ms Golightly has just pointed out that on page 332 there is a separate appendix for advertising and marketing research, and that includes for Work Choices amongst other things—if that is of any assistance to you.

Senator WONG—Those amounts are not included in the subsequent table at page 335—is that what you are saying?

Dr Boxall—They are separate tables.

Senator WONG—So the \$23 million we discussed does not include the \$69 million in the advertising and market research.

Mr Boxall—No. By definition it could not.

Senator WONG—I have been advised we do not require Indigenous Business Australia either.

Mr Boxall—You do not require IBA? Thank you.

Senator WONG—That is the opposition; I do not know if government senators wish to question them.

Senator Abetz—Did you say other senators do not require officers from EOWA?

Senator WONG—No, I indicated that I could only speak for opposition senators.

CHAIR—That is quite true. We do not require those officers.

Senator Abetz—Then they can go rather than just sit around?

CHAIR—Yes.

Senator WONG—I will move now to the advertising expenditure at page 332. There is a significant amount of activity in relation to market research expenditure, which is \$6.293 million. I presume all of these market research consultancies resulted in the provision of a written report, Dr Boxall.

Dr Boxall—Not necessarily.

Senator WONG—Of those that did, I ask that you provide copies of those reports to the committee.

Dr Boxall—Obviously, we would have to take that on notice.

Senator WONG—In the annual report, AC Nielsen is listed as providing a study of the relevance of awards.

Dr Boxall—This is pretty difficult. These questions are getting into details which are covered by outcome 2, which is covered by people such as Mr Kovacic, Mr Pratt and others, and they are scheduled to come up after dinner.

Senator WONG—Do we know where Mr Pratt is? In the absence of Mr Pratt, perhaps Ms Graham can help me. I did raise this question with OWS. In the additional estimates portfolio budget statement there is a compliance line item on page 16, which is 13, 298, 46, 475, et cetera. Then obviously in the PBS there is an appropriation in respect of OWS which appears on page 280 of the 2006-07 PBS. Am I correct in assuming that that appropriation for OWS has been taken from that compliance line item in the additional estimates PBS?

Ms Graham—That is right. A component of the compliance measure that you are reading from in the portfolio additional estimates was transferred to the Office of Workplace Services

on their establishment. In addition, there was a component of funding transferred to OWS for existing activities already in the department that related to OWS activities now.

Senator WONG—How much was transferred to the department?

Ms Graham—To OWS?

Senator WONG—No, what was not transferred to OWS? There is clearly a difference in the figures if you compare the two line items. Is the totality of the remainder, if you deduct it, remaining within the departmental appropriation, ex-OWS?

Ms Graham—I am not sure of the calculation that way, but I can tell you that around \$22 million of that compliance measure was transferred to OWS, decreasing a little in the out years. It was \$22.8 million in 2006-07. The remaining component stayed with the department.

Senator WONG—Can you take me through the out years, please?

Ms Graham—For 2007-08 it was \$21 million, and in 2008-09 it was \$20.7 million.

Senator WONG—Where is the remainder of the appropriation in respect of OWS sourced from?

Ms Graham—Sourced from?

Senator WONG—You have \$22.8 million in 2006-07. Their total income at page 280 is \$32.314 million. What about the remaining \$10 million or so?

Ms Graham—The remaining funding was an \$8 million a year transfer in relation to the existing activities that were previously undertaken by the department.

Senator WONG—That was the previous OWS before it became an executive agency?

Ms Graham—That is right.

Senator WONG—Is that the totality of the internal allocation for OWS prior to it becoming an executive agency?

Ms Graham—That was transferred from the department to OWS?

Senator WONG—No. I understand that it was the totality that was transferred. In terms of your internal budgeting, was that the totality of your allocation for OWS?

Ms Graham—Yes, we have to transfer all the funding associated with the activities that are transferred.

Senator WONG—Mr Pratt is here. So you heard the summoning over the airwaves, Mr Pratt?

CHAIR—Your arrival has been keenly anticipated, Mr Pratt.

Senator WONG—I appreciate your assistance, Mr Pratt, in coming over; thank you. Ms Graham, what I would like to do is to go through that table on page 16 and have you advise me as to expenditure to date in respect of all of those.

Ms Graham—In each of the Work Choices measures?

Senator WONG—Yes. Are you able to do that, or will Mr Pratt have to do that?

Ms Graham—I certainly do not have that information with me. I am not sure if Mr Pratt is able to do that.

Mr Pratt—Finn Pratt, Deputy Secretary, Workplace Relations, and race driver. I am just catching my breath—could you repeat the question, Senator?

Senator WONG—I am looking at page 16 of the additional estimates budget statement. Ms Graham has very kindly explained to me how OWS is funded, and I was just trying to track back against the PBS versus the PAES. Can you give me expenditure to date—figures in relation to the other line items in that outcome there? I do have the compliance figure in respect of the OWS function; they provided that today.

Mr Pratt—You are looking for expenditure to date against 2006-07—those figures there? Is that correct?

Senator WONG—Yes, that is right—as in, that are in the 2005-06 additional estimates budget statement. We can come back to it if you need to get some advice.

Mr Pratt—Yes, that would be helpful.

Senator WONG—The other issue I would like to clarify is whether there has been any alteration to the estimates over the forward estimate period, as set out in that table.

Mr Pratt—No, Senator, none that I am aware of.

Senator WONG—Okay, but you might want to check that when you are checking the expenditure. Correct?

Mr Pratt—I will check that, but I do not think so.

Senator WONG—How long would you like on that? Do you want me to do that at outcome 2?

Mr Pratt—That would be best, if you could.

Senator WONG—Can I come back, Dr Boxall and Mr Pratt, to this: I understand from the evidence of the Office of Workplace Services today that there is an MOU between the department and OWS?

Dr Boxall—Yes.

Senator WONG—Could you explain to me what that relates to?

Dr Boxall—We have MOUs with a number of agencies who contract with us for the supply, primarily, of corporate services and IT. Many agencies in the portfolio contract with us, as do one or two—at least one—outside the portfolio. And we supply them with IT services and with services to do with corporate, such as HR, property and things like that.

Senator WONG—I understand that the cost is around \$2.8 million per annum for IT and \$1 million per annum for other functions. Is that right?

Ms Graham—In relation to OWS?

Senator WONG—Yes.

Ms Graham—Yes, that is my understanding.

Senator WONG—Could you give me the exact figures? Do you have figures over the forward estimate for the costs under that MOU?

Ms Graham—No, we do not have them over the forward estimates. And indeed—even though I agree that they were the figures, they are the estimate of the figures—they do fluctuate on the basis of the services actually provided and are driven largely by the number of employees in each of the organisations.

Senator WONG—I understand that, but you obviously estimate what it will cost under the MOU, for both the agency and DEWR.

Ms Graham—That is right, but we do not do it on a forward year basis; we actually do it at the beginning of each year.

Senator WONG—So you do it at the beginning of each financial year?

Ms Graham—That is right.

Senator WONG—Can you confirm the exact figure for the OWS?

Ms Graham—I do not have that with me. Because IT is the largest component and it fluctuates, all I have is the first quarter figure that Ms Valentine already provided.

Senator WONG—She also provided the figure of \$1 million and \$2.8 million for the—

Dr Boxall—I was watching that broadcast. She provided an estimate whereby she essentially multiplied the quarter by four. But OWS made clear, as Ms Graham has just made clear, that the actual outcome depends on the amount of services they purchase from us, which is largely driven by the number of staff they have. So there is no exact figure to give you.

Senator WONG—I am not asking for an exact figure. I am asking for your internal estimate.

Dr Boxall—No, you asked for an exact figure. I will check with Ms Graham if we have an internal estimate.

Ms Graham—The internal estimate really is the one that OWS gave you.

Senator WONG—Thank you.

Ms Graham—It is their best estimate that they have at the time.

Senator WONG—That correlates with what you understand to be the estimate?

Ms Graham—That is right.

Senator WONG—Thank you. What are the other MOUs, Dr Boxall?

Dr Boxall—With the Office of the Employment Advocate, the Fair Pay Commission and the Australian Building and Construction Commission. We also have one with the Office of Indigenous Policy Coordination for IT, which will be ceasing very soon, and also with EOWA and IBA.

Senator WONG—Do you want to finish talking before I finish the list? Is that it?

Ms Graham—I have not got the list in front of me. I am trying to remember off the top of my head, but I think that is it. I am pretty sure that is it.

Senator Abetz—If there are any additions, they will provide them on notice, I am sure.

Ms Graham—I will double-check, Senator, and let you know if there are any more.

Senator WONG—What is the estimate of the annual cost under the OEA MOU? I take the caveat, Dr Boxall, that this is an estimate only.

Ms Graham—I do not have the estimates.

Senator WONG—I would like figures for estimates in relation to all of those MOUs, so I wonder whether you could provide that, perhaps later this evening.

Ms Graham—I will certainly try. It is a little late to get hold of people back at the office, but we will certainly try.

Senator WONG—It is estimates; they will be there, won't they? Everyone else has to be here.

Ms Graham—I will note that it does involve services from a range of areas in the department. Indeed, on the corporate service side, we are still discussing with some of the agencies the level of services that we will be providing, particularly as those agencies are quite new.

Senator WONG—I understand that, but we are now a number of months into the financial year, so I assume there must at least be an estimate of the cost of the fees to be paid under the MOUs.

Dr Boxall—We will give you an estimate by 11 o'clock tonight if we have one; otherwise we will take it on notice.

Senator WONG—Thank you, I appreciate that. Can I clarify something else: where do you account in the PBS for that income, as it were?

Ms Graham—It is recorded as sales and goods and services revenue.

Senator WONG—Can you take me to where in the PBS that is identified?

Ms Graham—It is in several places in the PBS, but on page 24 you will see the total for receipts in table 2.1 is \$23,333,000. That was the estimate of the goods and services revenue at that time.

Senator WONG—Sorry, page 24?

Ms Graham—Page 24, in the table headed 'Appropriations and other resources', if you look at the receipts column, which has that little (a).

Senator WONG—\$23,333,000 as the total?

Ms Graham—That is right.

Senator WONG—In terms of those line items there, what are the components of them?

Ms Graham—They are predominantly revenue from the MOUs that we have been discussing. In addition to that, there is revenue that is earned under the Trades Recognition Australia operations.

Senator WONG—Trades Recognition Australia.

Ms Graham—There is a small component to do with seminars and those sorts of things that we would be running and publications that we sell.

Senator WONG—Of the \$23 million, what component is non-MOU receipts?

Ms Graham—I do not have that detail with me.

Dr Boxall—The \$23.333 million is primarily revenues from MOUs, as we have just been discussing. The only other item of any size is revenue from TRA, the Trades Recognition Authority, and the rest is miscellaneous. We can get you a breakdown of that figure.

Senator WONG—Thank you. Is there an AC Nielsen consultancy, Dr Boxall?

Dr Boxall—Yes. What page is that in the annual report?

Senator WONG—I do not actually have a reference. I presume somebody knows whether there is an AC Nielsen consultancy.

Senator Abetz—It does not seem to be ringing any bells.

Senator WONG—It is not ringing any bells? Well, I am going to do the same as you and give the—

Mr Pratt—No, we have discussed the AC Nielsen consultancy.

Senator Abetz—Yes, we are ringing bells.

Mr Pratt—It was to do with the award review task force.

Senator WONG—That is it, yes.

Mr Pratt—The award relevancy study.

Senator WONG—Is it in the list of the consultancies or not? I cannot find it.

Mr Pratt—It may not be under the consultancies list; it may be under the marketing list.

Senator WONG—Yes, I looked at that. I could not find it under advertising and market research, either.

Mr Pratt—While we are attempting to find that information for you, I can probably give you a bit of an update on your questions. I am not aware of any changes to the Work Choices estimates, as set out on page 16 of the additional estimates statement. However, one caveat to that is that the government has given the department permission to spend an additional \$12½ million in this six months on phase 2 of the Employer Advisory Program, and that will be covered by additional estimates early next year.

Senator WONG—And you do not have expenditure today, at this stage?

Mr Pratt—No, I am waiting for someone to get here. I expect that we will have to take that on notice simply because we report our expenditure against the output prices in the annual report, not against these sorts of categorisations. We would be able to do it, but I suspect we would have to take that on notice. If that changes, I will let you know.

Senator WONG—You report against outputs?

Mr Pratt—Output prices, as identified in our annual report.

Senator WONG—I do not mind it against those.

Mr Pratt—It will not give you the same sort of split, though, that you are seeing in the additional estimates statements.

Senator WONG—Take me to it in the annual report.

Mr Pratt—It will be spread amongst outcome 2 output prices, starting on page 56.

Senator WONG—If you cannot provide that today, I am happy for you to take it on notice in relation to the page 16 outcome aggregate levels. But it would be most helpful if you were able to give me today the tracking of expenditure against individual outputs, which I understand is how you track the data.

Mr Pratt—Certainly.

Senator WONG—Since you have raised it, can you explain the \$12 million phase 2 issue?

Mr Pratt—Perhaps you will recall that, shortly after Work Choices commenced, we contracted 17 organisations around the country to provide information to employers and employees about the new Work Choices arrangements. That program was extended from about August or September of this year for about another five or six months and we recontracted those 17 organisations and contracted a further 17 organisations through a tender process. The government has given us permission to spend up to \$12.5 million on the extension of the Employer Advisory Program.

Senator WONG—That will be an additional appropriation?

Mr Pratt—It will be, through additional estimates.

Senator WONG—In relation to your outcome, are you seeking any additional appropriation at this point?

Mr Pratt—No. Page 56 of the portfolio budget statement gives our estimated actuals against the output prices for outcome 2 but, as I mentioned before, that will not give you the split.

Senator WONG—But that is only as at—

Mr Pratt—That is our output price level, so I will have to take it on notice.

Senator WONG—We can use this. It is probably easier. Do have the expenditure to date?

Mr Pratt—Not at the moment.

Senator WONG—I just want to clarify what I am seeking.

Mr Pratt—If we can give it to you tonight, we will.

Senator WONG—We are back on AC Nielsen.

Mr Pratt—Yes, and we do have some information about that.

Mr Kovacic—The AC Nielsen consultancy was to conduct the award relevance study, which was part of the work that was commissioned by the award review task force. The value of the contract with AC Nielsen was \$232,173. It is not listed in the annual report. The only reason I can think of for that is that the invoice would have been paid this financial year, as opposed to last financial year. I will try and confirm that shortly.

Senator WONG—What was the purpose of the market research?

Mr Kovacic—The study was intended to examine how extensively federal and state awards were being used to determine wages and conditions of workers in Australia.

Senator WONG—Why were AC Nielsen used?

Mr Kovacic—It was, in essence, market research. The study involved a range of telephone interviews with just over 2,400 businesses. The department did not have the capacity to undertake the project in its own right, so we conducted a restricted tender, which was in accordance with the procurement guidelines, to select an external provider to undertake the study for us.

Senator WONG—So polling was undertaken?

Mr Kovacic—No, it was a series of telephone interviews that AC Nielsen conducted.

Senator WONG—Qualitative research?

Mr Kovacic—It would be based around a series of questions on the extent to which particular businesses applied or utilised federal awards and state awards to determine rates of pay in a particular enterprise.

Senator WONG—Was this report or information arising out of this provided to the minister's office?

Mr Kovacic—It forms part of the award review task force's final report on the rationalisation of wage and classification structures, and that report was released by the minister, I think from memory, in early September.

Senator WONG—I am a bit confused. AC Nielsen has no specific understanding, as far as I am aware—and please explain this to me—of the application of particular industrial instruments to workplaces.

Mr Kovacic—It was in essence trying to clarify the extent to which enterprises relied on awards to determine rates of pay. For instance, as you are probably aware, in the order of about 80 per cent of employees are now covered by agreements and the residual 20 per cent covered by awards. As part of the work of the award review task force, the task force identified a need to identify among those award reliant employees, and indeed those employees covered by agreements, the extent to which awards might form the basis of wages and conditions for those employees.

Senator WONG—Can you provide a copy of the report to the committee?

Mr Kovacic—As mentioned before, it is an appendix to—

Senator WONG—It is already in the task force appendix?

Mr Kovacic—Exactly. And that report is public.

[5.07 pm]

Senator WONG—We can move to outcome 1. Can I first ask for an update on the figures which you provided at previous estimates hearings about the estimated number of people who will first be moving into work as a result of or under the Welfare to Work package? You have previously indicated, Mr Carters—you probably remember this—that there were 109,000. Has there been any revision to that figure? That was by 2008-09.

Mr Carters—I am not aware exactly of the circumstances of that figure, but there certainly has been no update to any such figure.

Senator WONG—Dr Boxall, we have often done outcomes 3 and 1 together.

Dr Boxall—We have all the people from outcomes 1 and 3 here.

Senator WONG—I do want to confirm this, Mr Carters, and if there is a change I would like you to come back to me. In the answer that was given in the May estimates hearings last year—and I think I may have followed it up again subsequently in supplementary estimates; this is WO15_06—you indicate that the assumptions underpinning that budget were 109,000 moving towards 2008-09. I would like you to confirm that that is still the case and tell me if there is any additional number as a result of moving forward one year—so 2009-10.

Mr Carters—There has been no change to that figure.

Senator WONG—What about the 2009-10 figure?

Mr Carters—We do not have a 2009-10 figure.

Senator WONG—You must have. There must be an assumption underpinning your 2006-07 budget that puts it one further year out, because it is a forward estimate period.

Mr Carters—No, there is not.

Senator WONG—What do you mean ‘no’, Mr Carter? It does not make sense to me. You gave me figures after the 2005 budget that said, ‘The assumptions underpinning the budget 2008-09 are 109,000 people moving into work as a result of this initiative.’ Okay? That was in the 2005-06 budget. As I understand it, you have confirmed that figure as to 2008-09 under the 2006-07 budget. What are the additional numbers, given that we are one year on, so the outer year moves out one year?

Mr Carters—We do not recalculate the figure for a future year. The funding is only for the set four years, and then that just gets rolled into the base estimate. So there has been no reason to recalculate the figure.

Dr Boxall—This was based on the specific estimate which was in the budget, which had this figure, which you asked us about, and which is answered there. But this year, which is one year on, as Mr Carter has explained, it is not a new budget measure.

Senator WONG—So you have not recalculated it.

Dr Boxall—Yes.

Senator WONG—Okay, that is fine. So can I confirm the figures also in relation to W016_06 and W017_06? Do you have those answers there?

Mr Carters—Yes.

Senator WONG—Has there been any revision to those figures? Do you want me to go through them?

Mr Carters—No, there has been no revision to those figures, either.

Senator WONG—So the assumptions are that the number of people who would have been on the disability support pension but will instead be on Newstart are 34,400 in 2006-07, 57,900 in 2007-08 and 75,700 in 2008-09.

Mr Sandison—Basically the numbers are the same. Last time we had a discussion around the difference between the transition group versus the annual figure.

Senator WONG—As I recall, this was a cumulative figure.

Mr Sandison—That is correct.

Senator WONG—Which included the transition group plus new applicants?

Mr Sandison—That is correct.

Senator WONG—Did you ever give me disaggregated figures on that?

Mr Sandison—I do not think we did, Senator.

Senator WONG—Do you have them?

Mr Sandison—I can take that on notice and get them for you.

Senator WONG—So, of the 34,000, 57,000 and 75,000, roughly, what proportion or what numbers relate to transition groups and what numbers relate to new applicants?

Mr Sandison—I think in one of the answers I provided at one of the hearings I said 18,000 to 20,000 was the annual figure for DSP.

Senator WONG—That is right.

Mr Sandison—They are the people who would not go onto DSP, who would go to other payments.

Senator WONG—How does that relate to the figure that is in W016_06?

Mr Sandison—The 34,000?

Senator WONG—Yes.

Mr Sandison—Because we had the transition group which, for a period, contains the people that are being reviewed—

Senator WONG—So there would be 14,000?

Mr Sandison—Yes.

Senator WONG—To date, have you tracked what is actually happening against your estimate for 2006-07?

Mr Carters—Our figures for the first quarter of Welfare to Work for the Newstart partial work capacity group suggest that there are probably about 2½ thousand people who have commenced on that payment. It is early days yet and it is difficult to extrapolate that, but clearly it is a bit lower than the estimate.

Senator WONG—Can I just unpack that a little bit—with that 2½ thousand, we are not talking about the parenting payment; are we talking about DSP or DSP applicants?

Mr Carters—We are talking about people who are eligible for the partial work capacity—15 to 29 hours—Newstart payment.

Senator WONG—But these are not sole parents?

Mr Carters—No, they are not.

Senator WONG—What is the end date for that number of 2½ thousand?

Mr Carters—The first quarter—the end of September 2006.

Senator WONG—So 30 September?

Mr Carters—Yes.

Senator WONG—That is significantly lower than expected.

Mr Carters—It is lower but again, as I said, it is early days. There are lag effects in these figures because claims for these payments do take time to be assessed and so on.

Senator WONG—Have there been any changes to any policy parameters as a result of that figure being lower than anticipated?

Mr Carters—No.

Senator WONG—Have there been any instructions to Human Services in relation to the JCA?

Mr Carters—No.

Senator WONG—Have there been any changes to the guidelines?

Mr Carters—No.

Senator WONG—Can you to update then W017_06 in the same way? Can you give me figures to 30 September in relation to the 21,800? I am asking for updated figures to 30 September for the same category as was asked in relation to W017_06.

Mr Carters—Again, to 30 September 2006—the first three months of Welfare to Work—the number of principal carer parents who are on Newstart allowance is just under 5,000: 4,982.

Senator WONG—So that is tracking slightly under expectation.

Mr Carters—These were estimates; that one was pretty close.

Senator WONG—I am not making a political point there; I am just confirming that that is correct.

Mr Carters—That is correct.

Senator WONG—I am just trying to remember the timing. These figures were prior to the policy announcement which extended the higher level payment—that is, being able to stay on the sole parent payment—in terms of the age of the child, were they not? Or did you adjust it post that announcement?

Mr Carters—We did not adjust the forecasts for that.

Senator WONG—On what basis?

Mr Sandison—Those forecasts have been made; separately, we would track the group that stay on parenting payment single and have activity requirements.

Mr Carters—In other words, the group that is on parenting payment single with the youngest child aged six or seven will have an activity requirement—a participation requirement—so we track them as a separate group because they are still on the parenting payment.

Senator WONG—So they are not included in these figures?

Mr Carters—No. They are an additional 1,318 people for the quarter to 30 September.

Senator WONG—What do you call this group? How do you describe them?

Mr Carters—Parenting payment single recipients whose youngest child is aged six or seven—new entrants.

Senator WONG—So they are new entrants?

Mr Carters—Yes.

Senator WONG—I see that the minister is laughing, but it is your policy that creates all these categories.

CHAIR—I think we were laughing at the possibility of constructing an acronym from that—it is alphabetically impossible. That was the sole reason for laughter.

Senator Abetz—Yes, that was when you were asking for the name.

Senator WONG—I wanted to know what they call it but I am not going to try to construct an acronym; I can tell you that. And of the 1,318, what is the total that is projected for that group to move into work?

Mr Carters—They actually would have been part of the previous projection because we did not adjust for that.

Senator WONG—So there are 2,500 onto Newstart of the partial capacity and 4,982 of the principal carer parents child aged over seven?

Mr Carters—Yes. The 2,500 is still an estimate because there is a lag effect with partial work capacity recipients—in other words, it changes; you have to keep going back to find out the exact figure.

Senator WONG—I would like to go back to your ‘we don’t adjust the estimates’ answer. Presumably there is an estimate of the number of Newstart recipients that is built into the forward estimates.

Dr Boxall—Yes, there is.

Senator WONG—So surely that requires some assumption about how many people from this group are going to go onto Newstart?

Dr Boxall—There are estimates of the numbers of people in the parameters which underpin those estimates and forward estimates. It is also related to Treasury’s parameter on unemployment and other relevant issues.

Senator WONG—So what are those assumptions in terms of the number of people on Newstart?

Dr Boxall—Those assumptions have not been made public.

Senator WONG—Yes, and I am asking for them in this estimates committee.

Dr Boxall—We are not in a position to make them public now because the government does not make those parameters public.

Senator WONG—The assumption of the number of social security recipients?

Mr Carters—You are asking for projections.

Senator WONG—Yes.

Mr Carters—That is what is not made public.

Senator WONG—But you gave me these projections.

Dr Boxall—Those parameters relate to a specific budget measure.

Senator WONG—There is a specific budget measure here—that is, that you continue to pay Newstart.

Dr Boxall—No, that is a specific budget measure as part of Welfare to Work—namely, people with a disability who can work between 15 and 29 hours and people who otherwise would have been on parenting payment single or parenting payment partnered whose youngest child is older than six. That is a new budget measure and we generously gave the members—

Senator WONG—Actually, you did not, Dr Boxall. As I recall, I got it from Treasury.

Dr Boxall—No, we—

Senator WONG—Only after we got it from Treasury. You refused to provide it, as I recall.

Dr Boxall—No, my minister answered the question on notice and gave those numbers.

Senator WONG—Only after another department did.

Senator Abetz—There was no refusal.

Senator WONG—We can go back and have a look at the *Hansard*.

Senator ABETZ—It has been given; there has been no refusal if it has been given.

Senator WONG—I have a question on the education entry payment. Is that a question for you, Mr Sandison?

Mr Sandison—Depending on the question, it might be.

Senator WONG—Let us clarify what this is: a one-off taxable payment paid annually.

Mr Sandison—Once a year is the eligibility, yes.

Senator WONG—And the current level is 208?

Mr Sandison—Correct.

Senator WONG—As I understand it from the annual report about 80-odd thousand people accessed it. Is that right?

Mr Sandison—It would be that number in the report, yes.

Senator WONG—That would be the number in the report, did you say?

Mr Sandison—Which page is it on?

Senator WONG—It is on page 34.

Mr Sandison—Yes.

Senator WONG—Can you tell me against which outcome, output or budget line item in the PBS this payment is appropriated?

Mr Sandison—I will have to check that and get back to you. I will take that on notice.

Senator WONG—I am going to ask some questions about it, so can we wait until someone comes forward and tells us where it is paid out of?

Mr Sandison—My outcome 1 colleagues are discussing it.

Senator WONG—He has pointed down the end of the table; I think that means it is you.

Ms Golightly—We are just checking exactly that line for you.

Senator WONG—I want to know about that and also about the employment entry payment. That might facilitate questioning.

Ms Golightly—Yes, Senator. In relation to the education entry, we believe it is in the pensioner education supplement, which—

Senator WONG—No, that is a different payment.

Ms Golightly—Yes, but some of them are amalgamated if they are smaller payments. That is what I am double checking for you, Senator. If you wish to move on while we look for that—

Senator WONG—I do not have anything that will be really quick, so I would prefer not to start another section then have to come back half way through.

Ms Golightly—We will be as quick as we can.

Senator WONG—That is fine. I have found some questions on Green Corps; that should not take too long. Mr Parsons, on page 44 of the PBS the estimated actual for Green Corp—

Dr Boxall—25,325.

Senator WONG—And 24,912 is the budget estimate. Can you tell me how this funding works? Is it done on a cost per participant basis?

Mr Parsons—Green Corps actually has two budget components—a component which is paid to the contractor that delivers the service, and there is a component in that budget which is set aside for money that goes to the participants in the program.

Senator WONG—So is the 25,325 figure a combination of both or only one aspect of it?

Mr Parsons—No, it is a combination of both.

Senator WONG—Are you able to tell me how much is for one and how much is for the other?

Mr Parsons—I could.

Senator WONG—I will have to wait again—that is the problem with going on to another issue, Ms Golightly. I will have to remember where I was in two places at once, and I am beyond that at the moment.

Mr Parsons—Some figures I have for this financial year would indicate that it is not quite half-and-half—slightly less than half goes to the participant; slightly more than half goes to the contractor.

Senator WONG—How much goes to participants?

Mr Parsons—Against the 2006-07 figure, \$11½ million goes in participant allowance.

Senator WONG—And the rest goes to the?

Mr Parsons—The contractor.

Senator WONG—Is there any training component?

Mr Parsons—There is. Part of the requirement for the Green Corps contractor is to deliver relevant training to the participants during their engagement.

Senator WONG—Is there any component of that funding which can be spent on training fees, or is it simply delivered by the contractor and paid for though the contract fee?

Mr Parsons—I think the contractor is free to choose whether or not they deliver it as an RTO or purchase it in.

Senator WONG—Do they get additional funding for any purchase of an external training provision?

Mr Parsons—No, they do not.

Senator WONG—They pay that out of the contract fee?

Mr Parsons—Correct.

Senator WONG—What is the amount per participant that is paid?

Mr Parsons—Which contract are you asking about? The reason I ask is that it is different in 2005-06 and 2006-07.

Senator WONG—Okay. Give me both.

Mr Parsons—The 2005-06 contract was such that the participant wage depended on the age of the participant. It was loosely, as I understand it, based on the training wage. With the current, 2006-07, contract we picked a median figure and we have a flat wage for participants.

Senator WONG—Which is?

Mr Parsons—Sorry, I will have to come back to you on that.

Senator WONG—What is the target number for participants underpinning the 2006-07 estimate?

Mr Parsons—Again, for the 2006-07 estimate, because we ran a fresh contract for that round, we asked the contractors to tell us how many participants they would service for the fee. So it is different to what we had set in previous years. The contract number for the current financial year is 1,740 placements.

Senator WONG—I think the actual number of participants in the 2005-06 year was 1,680. Do you have figures for the previous two financial years?

Mr Parsons—I can tell you there were 1,700 placements in 2004-05, but I do not have the figure for the year before that with me. We can get it.

Senator WONG—Can you tell me what requirements there are in relation to relevant training? You said there is a requirement for some relevant training. Is there any more detail than that?

Mr Parsons—Not with me, no.

Senator WONG—Is it specified in the contract or is there some outcome against which training is measured? How does it work?

Mr Parsons—My understanding is that they are certainly obliged to give the participants relevant occupational health and safety training when they start the activity and then any training that is relevant to the particular activity that they undertake.

Senator WONG—Leaving aside the occupational health and safety, what is the relevant training requirement? Is there a number of hours?

Mr Parsons—It does really depend on the nature of the Green Corps activity. If, for instance, the activity involved working on some sort of conservation, maybe a historic building, then participants may—

Senator WONG—Sorry; I will stop you there. I do not really want a hypothetical discussion. What I am interested in is what requirements are associated with the contractor fee in relation to the provision of training. Is there a number of hours that must be applied or is it discretionary?

Mr Parsons—I will have to check. I believe it is discretionary.

Senator WONG—Does it lead to any qualification? Is there any requirement for accredited training?

Mr Parsons—I do not believe there is a requirement for accredited training, but there is no preclusion from the training leading to, say, a certificate IV.

Senator WONG—You will come back to me?

Mr Parsons—I will.

Senator WONG—Ms Golightly, are we able to go back to education and employment entry?

Ms Golightly—We are. The answer is that it really depends on which income support payment the recipient is currently on. For example, if they are on Newstart and they receive an employment entry payment then that expenditure is included in the Newstart appropriation line. If they are one of the other payments, it is so on and so forth for both education entry payment and employment entry payment.

Senator WONG—Are you therefore able to get for me, given that it has been aggregated in that way, the amounts for each of those payments which are included in the aggregate Newstart figure?

Ms Golightly—Not here. But I would imagine we can tell how many people have received those payments.

Senator WONG—I am also interested in the estimates. What you are saying to me is that there is no forward estimate for these particular payments.

Ms Golightly—There would have been a forward estimate at the time the measure was introduced.

Dr Boxall—They are incorporated in the admin items.

Ms Golightly—Yes, they are now incorporated in the admin items. But there would have been a forward estimate at the time the measure was announced.

Senator WONG—Just explain to me: if you are on Newstart and you get it, it is attributed against which line item in the PBS?

Ms Golightly—If you go to the 2006-07 PBS, it would be in the table that is on page 44. One of the lines is called 'Newstart allowance'. It would be in that figure.

Senator WONG—Okay. Are you able to perhaps come back to me at some point later this evening about what of the \$5.3 million—\$5.3 million is right, isn't it?—

Ms Golightly—Yes.

Senator WONG—is attributable to the forecast or the estimate for the employment entry payment and the education entry payment?

Ms Golightly—Yes, as long as that was disaggregated when the measure was announced, I will be able to do that.

Senator WONG—These measures go back. But, with respect, that is not the issue. You have come up with a figure, which has gone through the parliament, of about \$5.3 million to be spent on Newstart. There are various assumptions underpinning that. As I understand it, it is not just Newstart allowance; it is Newstart allowance plus bits.

Ms Golightly—The supplements, yes.

Senator WONG—I want to know about a couple of the bits.

Ms Golightly—We will come back to you on that.

Senator WONG—Perhaps I will go through and flag them now. There are the employment entry payment and the education entry payment. Is the utilities allowance separately identified?

Ms Golightly—Yes, it is in that table I just referred you to in our current PBS on page 44.

Senator WONG—Is there something else you wanted to mention?

Ms Golightly—We are just saying amongst ourselves that we will definitely look for that disaggregation figure but it may not be possible. We are double-checking. But the utilities allowance that you are asking for is towards the bottom of that table.

Senator WONG—Yes, I have found it. It is \$7.493 million. Can you tell me how many people received the utilities allowance in the last financial year—that is, the 2005-06 year?

Ms Golightly—We will look it up for you.

Senator WONG—For the 2006-07 year, what is the payment amount?

Ms Golightly—Senator, we are coming back to you on that one. I have to get the right person in the room. While I am waiting for the relevant person, I have found some information on page 34 of the annual report in relation to utilities allowance. At the bottom of that page it gives the—

Senator WONG—I am asking what it will be for the 2006-07 year.

Ms Golightly—Yes, okay. I am just checking whether that has been made public or if there is a figure.

Senator WONG—I knew that for the 2005-06 year. The question was a relation to the 2006-07 budget.

CHAIR—Dr Boxall, I have been informed by all senators that we do not need the Australian Industrial Relations Commission and the Australian Industrial Registry. So those officers can leave.

Dr Boxall—Thank you very much, Madam Chair.

Ms Golightly—Senator Wong, we will have to come back to you on that. We are checking for you, but we want to be 100 per cent sure of our figures before we give them to you.

Senator WONG—My list of things I have to come back on is growing.

Ms Golightly—We are finding out as fast as possible.

Senator WONG—I am just saying that I will have to try and remember to get back to them. Shall I ask some entitlement questions around the employment and education entry payments? Will that give everyone time?

Mr Parsons—I have some answers to the Green Corps questions, if this is a good time.

Senator WONG—Okay.

Mr Parsons—The contract actually requires a minimum of 134 hours of accredited training per placement. The training must be at least certificate I level. Of course, some activities give the applicants the chance to do modules of higher levels. The training always relates to the project and, as I was saying when I was answering before, mostly the training relates to environmental type activities—conservation, land management, horticulture; those sorts of activities. In addition to that, as I said before, participants are required to receive OH&S training and some first aid training whilst they are in the activity.

Senator WONG—OH&S and first aid?

Mr Parsons—Correct. I also owed you an answer to the question on the amount of the participant allowance.

Senator WONG—Yes.

Mr Parsons—For 2006-07, that median figure that I spoke of that we have flattened in the contract, is \$283 per week; the 2007-08 figure is \$291 per week; and 2008-09 goes to \$300 per week.

Senator WONG—What are the anticipated number of participants over that same period? I think you said 1,740 for 2006-07.

Mr Parsons—Correct. That figure will in fact stay through the life of the contract because that figure was taken by dividing the contracted price by the appropriation. So I am expecting—

Senator WONG—Is the contract for three years?

Mr Parsons—Correct.

Senator WONG—Do you have figures for the out year?

Mr Parsons—No.

Senator WONG—There must be forward estimate figures for it.

Mr Parsons—The budget for the program?

Ms Golightly—We will check that.

Senator WONG—I am presuming you are not putting zero next to this in the forward estimates, though.

Ms Golightly—We have money for the forward period of the contract, and then it is up to the government as to whether we go forward beyond that. I am just checking if that is the year that the contract is finalised.

Senator WONG—But, surely, in terms of the aggregated forward estimates for the department's appropriation, there must be some account for Green Corps.

Ms Golightly—We do not have money for a contract we do not have.

Senator WONG—I was not saying you do not have money; I am saying: surely there is an assumption of your budget estimate over the forward period?

Mr Parsons—As Ms Golightly said, I do not believe that we have got anything beyond 30 June 2009 at this stage.

Ms Golightly—But we will check that for you.

Senator WONG—That is fine. Thank you very much, Mr Parsons. I think that, apart from that one issue, that is it on Green Corps. Can I go back to the education entry payment? I understand you are coming back to me in relation to appropriations et cetera. Can you tell me how the payment is advertised?

Mr Sandison—Basically, it is through the Centrelink offices, and availability or eligibility is through the Centrelink network. There is no specific advertising done by the department.

Senator WONG—Can you tell me what the process of claiming and granting is?

Mr Sandison—It is a once-a-year payment and, basically, they claim or are told about the entitlement if they should be going off payment for getting a job. I do not have the details of how Centrelink do that interaction.

Senator WONG—You are responsible for the policy parameters around the eligibility for this payment, yes?

Mr Sandison—I could provide you, if you wanted, the eligibility data—the information that Centrelink provides around how the eligibility works for the payments, but the actual process interaction I do not have.

Senator WONG—I appreciate that. We actually had some difficulty finding it on the Centrelink website, to be honest with you, so if you could provide that I would appreciate it.

Mr Sandison—Certainly.

Senator WONG—Are you able to give it to me now?

Mr Sandison—I will check on what parts I have got from the fax. It is only mentioned—as in a description of it—in a one-line entry in the Centrelink book. Is that the one you are referring to—how it is advertised?

Senator WONG—I am looking for eligibility requirements, criteria et cetera.

Mr Sandison—I will check on the elements of this and get a copy to you.

Senator WONG—Thank you. It is a bit difficult without it. I think the secretariat is waiting to see if we can get a copy of that.

Mr Sandison—When a person gets a job, for some people the eligibility is related to part-time work—that was one of the changes that were made under Welfare to Work—and for others it is going into full-time employment. Centrelink officers would advise the individual of eligibility.

Senator WONG—So the part-time work eligibility arose because some people will not exit the payment on part-time work?

Mr Sandison—That is correct.

Senator WONG—What is threshold: the number of hours or actual income earned?

Mr Sandison—I would have to check on the details. We would have linked it, under Welfare to Work, to the 15-hour rule. I would have to check whether or not we allow for hours below the 15 hours, because that is the part-time goal both for principal carers and for the disabled.

Mr Carters—We have a one-page description of the eligibility for it. We are happy to table that.

Senator WONG—That is your brief?

Mr Carters—No.

Senator WONG—I am trying to work out what the status of that document is. Where is it from?

Mr Carters—It is from DEWR.

Senator WONG—It is a briefing note?

Mr Carters—Yes.

Senator WONG—I am happy to do that, but I am more interested in what the actual legal criteria are and where they are set out.

Mr Sandison—We would have to take it on notice, for the full legal criteria.

Senator WONG—Thank you. I would appreciate it if I could get a copy of that from you, in order to ask questions. Are you tabling this document, Mr Sandison? There are two documents at the moment.

CHAIR—There is one on the table there and the briefing note.

Mr Carters—We will table this one on the employment entry payment.

Senator WONG—We have not seen it, but that is fine.

CHAIR—As that is the wish of the committee, it is so tabled.

Dr Boxall—If now is an appropriate time, we might be able to clear up this issue of Green Corps. Mr Parsons pointed out that we have a three-year contract for Green Corps, and Senator Wong asked about the provision in the budget for the fourth year. There is something in the forward estimates for the fourth year, but that will depend on whether the government of the day wants to have another three-year contract. Nevertheless, there is provision in the aggregate forward estimates for 2009-2010. But it is not part of the three-year contract because it is the year after.

Senator WONG—I appreciate that. What is the provision in 2009-2010?

Dr Boxall—We will not be able to give that figure because the government does not make those figures public.

Senator WONG—Are you able to come back to me on the utilities allowances?

Ms Curran—Yes. In relation to utilities allowances, the current annual rate is \$105.20 for singles and \$52.60 for each eligible member of a couple. The 2006-07 budget extended utility allowances to people under age pension age who are receiving mature age allowance, partner allowance and widow allowance. That was a measure announced in the 2006-07 budget. I am unable at this point to give you numbers, so I would like to take that question on notice, if I may.

Senator WONG—Sure. Would you give me the figure again?

Ms Curran—Yes. The rate is \$105.20 for singles and \$52.60 for each eligible member of a couple.

Senator WONG—Would you explain this to me on this issue as I am a little confused. I think the estimate has actually gone down to 7,493 from 7,997. Is that right?

Ms Curran—Yes, there was a one-off payment last year.

Senator WONG—Yes, but the criteria for eligibility were extended in relation to the 2006-07 budget. Would you explain to me how it works if you have got extended eligibility but the appropriation actually reduces?

Ms Curran—Yes. It is because of the populations for mature age allowance, partner allowance and widow allowance. They are closed payments, so the populations are declining over time. Our annual report actually has the numbers for the recipients of those populations as at June.

Senator WONG—Never ask a question you do not know the answer to! Thank you, Ms Curran. I am trying to work out from the documents provided whether I actually need to ask some of these questions. I know that Senator Siewert has some questions, Chair, and I wonder if the secretary can give me the second document that was tabled so I may check that, which might obviate some more questioning on these payments.

CHAIR—It is on the way, I believe.

Senator WONG—What I am suggesting, Chair, is you might want to flick to Senator Siewert whilst that is coming.

CHAIR—That would be very good.

Senator SIEWERT—I have some specific questions about carers. I want to chase up a couple of specific things. There was an article in the *West Australian*—and I did not see this in other media—on the issue of grandparents being covered by the foster care provisions, and I understand a letter has been written to coalition members. I am wondering if it is possible for us to get a copy of that letter. It might clear up some issues.

Mr Carters—That is the minister's letter.

Senator SIEWERT—Is it possible that you could provide the same explanation to the committee?

Senator Abetz—What I could do is make an inquiry of the minister's office and get back to you on that. I imagine it would be creating a substantial precedent but we will see.

Senator SIEWERT—I would appreciate that. I understand it is talking about how a program will specifically be implemented. It is my understanding that grandparents that have custody of their grandchildren through the Family Court are covered by the general exemption for foster carers.

Mr Sandison—It is the intention of the minister—it is his advice—that the department would look into the mechanism to do that for grandparents who are identified as being principal carers and have custody of their grandchildren as notified through the Family Court. Already, where we had grandparents who had custody of their grandchildren through a state system and were identified as such we interpreted 'foster carer' to include those grandparents. Provided they had the notification from a state government, they would be classified as foster carers for that exemption. The commitment has been to look at including grandparents where the custody has been identified through the Family Court rather than through the state system in the same way. That is what we are looking at now.

Senator SIEWERT—So that is the additional change?

Mr Sandison—Correct.

Senator SIEWERT—Therefore it still does not cover grandparents who are informal family carers, who are then covered under that category that I have been raising for some time.

Mr Sandison—That is correct. It is a government decision to extend it to look at the Family Court.

Senator SIEWERT—So how many children do you think are covered by this extension of that provision?

Mr Sandison—I actually wrote it down on a piece of paper before coming in. Based on some research that was undertaken in 2003, 500 was our estimate.

Senator SIEWERT—500.

Mr Sandison—Through the Family Court—but you are interested also then in how many would be left outside that?

Senator SIEWERT—Yes.

Mr Sandison—From the figures we had, it was a number from the Australian Bureau of Statistics in 2003 that talked about there being a bit over 20,000 grandparent carer families involved. Then, within that group, you have to subset to identify how many of those might be on income support—and we do not know that; the ABS data just showed the number of grandparent carer families—to be involved in the process, and then how many would have the youngest child in the age group where there would be a participation requirement anyway.

Senator SIEWERT—Yes.

Mr Sandison—So it is a subset of a subset that would be in that group you are talking about.

Senator SIEWERT—But you do not know.

Mr Sandison—We only have that broad data from the ABS.

Dr Boxall—The bottom line is that we do not have an estimate of the figure you want.

Senator SIEWERT—Of the families that are outside—

Dr Boxall—Of the subset.

Senator SIEWERT—Of the subset that are outside—

Dr Boxall—We do not have an estimate of the subset of a subset.

Senator SIEWERT—That is my concern. I am worried about the grandparents, but I am also worried about other family carers, as I have been articulating.

Dr Boxall—I know, and the minister is well aware of your concerns on these matters.

Senator SIEWERT—Okay. I am aware that we have had discussions in the past about each of the state registers. I understand the complexities. I have tried to get my head around how each state registers its family carers. My understanding is still that most states are not registering their family carers as foster carers. Is that your understanding?

Mr Sandison—Our only advice from the states was where it was the formalised process. We talked about who is registered in the active and registered foster care situation, not who is left outside of the state rules.

Senator SIEWERT—Are you talking to the states about how this set of people, this cohort of people—grandparents, aunts, uncles and whoever else are family carers—can be picked up to register informal family carers?

Mr Sandison—At this stage, the government decision only involves the ones that we have described and the Family Court group that we are acting on, so, no, we are not talking to states about an extension or how their processes might increase the number. We do have, within the Welfare to Work system, the other exemptions that I think we have notified before with the answer to the last one.

Senator SIEWERT—I am aware. But you have to reapply every 16 weeks. These people are doing the same work that foster carers do. In fact, in some instances they are probably doing more, because it is on a longer term basis.

Dr Boxall—As you know, we have noted your comments, and the minister is aware of the position and the points you are making. But the government decision is as Mr Sandison pointed out.

Senator SIEWERT—Okay. I will continue to pursue it. I just want to check something that was in the media—that is, about the exemption that applies to foster parents. Can we just clarify whether that is there under the guidelines. Are they permanently on, but subject to the time lines of the guideline, or are they required to do participation when they do not have children?

Mr Carters—The basic eligibility is that people who want to claim a payment have to have a base eligibility for parenting payment. So, if they do not have a child in their care at a particular point in time, whether it is their own child or a foster child, they are not eligible for that base rate of parenting payment. They never were. In that context, they would not be eligible for an exemption during that period on the basis of having a foster-child.

Senator SIEWERT—So if they have kids already and they are subject to—

Mr Carters—If they have their own children, for example, and they are moving in and out of taking foster-children, they would continue that exemption through that period, as long as the state had registered them through that period.

Senator SIEWERT—So let me be clear: if they have their own children but their oldest one is in school, but they are registered foster carers, would they then remain on?

Mr Carters—As long as their own child entitled them to parenting payment, they would.

Senator SIEWERT—If their own child does not—

Mr Carters—They have to have an eligible child.

Senator SIEWERT—So, while they have an eligible child—say the scenario is that they have a child for three months and then they do not have the child anymore. Do they then automatically go off PPS, even though they are a registered foster carer, and transfer over to Newstart?

Mr Carters—They would have to claim Newstart, just as they had to do prior to Welfare to Work.

Dr Boxall—It is the child in their care that entitles them to the exemption, not the fact that they are registered per se.

Senator SIEWERT—You can appreciate the argument that the foster carers are articulating: they can be called on with 24 hours notice—less than 24 hours; with an hour's notice—to take a child, and then what does that do to their—

Dr Boxall—The issue is that with any government program that is not universal, which is most, there has to be some criterion for eligibility for the program. The criterion here is that you have a child within your care who is up to six years old. So, even if you have your own child and you are separated and your partner takes that child for full care, then you are no longer eligible. That is the criterion, and that is the policy as it is set out.

Senator SIEWERT—Let me come at it from another perspective. As soon as a foster carer has a child in their care, are they then eligible again for PPS?

Mr Sandison—The primary issue is whether or not the child is identified as a dependent child and there is no other person claiming to be the person who looks after them. The child has to become the dependant of that person for our purposes. Sometimes you have people taking a foster-child, but there is still another principal carer on a payment looking after them.

Senator SIEWERT—This gets worse.

Mr Sandison—So it has to be formalised.

Senator SIEWERT—Sorry, it gets worse.

Dr Boxall—The short answer is yes, if the child in foster care is dependant on the individual making the claim.

Senator SIEWERT—So, as soon as a child goes into foster care, does that mean that the foster carer does not have to meet the participation requirements, activity testing et cetera for Newstart, and they do not get breached because they are not going to meet their activity test because they are looking after a child in crisis?

Mr Sandison—The foster carer group—this whole process was around the principal carers, for Welfare to Work. It was aimed at the people who are principal carers, and then also a foster carer. Somebody who is just a foster carer is a person who may or may not go onto parenting payment, just like other people who take care of a child who is not their own, and they have to meet the requirements of dependency. So they may move on again, off again.

Senator SIEWERT—Okay.

Mr Sandison—And then there are those separate exemptions for a Newstart person if there are special circumstances. That might give them an exemption, but it is not an ongoing exemption for a person who is on Newstart who happens to be a foster carer in that situation. It is about the dependency. And that is the same for eligibility for the parenting payments and being a principal carer.

Senator SIEWERT—I might have to come back for a second bite at this one. I might think about that one a bit more. I want to go on to disabilities, if I can. Is that okay? My understanding is that people on disability support pension prior to May 2005—because there is the group who were on disability, then there was the transition group, and then there is the group after 1 July 2006—are subject to the procedures at the time, which were that it would be reviewed every two years.

Mr Sandison—Correct—the grandfathered group.

Senator SIEWERT—Under what criteria are they being reviewed? Are they being reviewed against criteria that now apply to—

Mr Sandison—The grandfathered group. Their review is only part of a normal process; it is not special.

Senator SIEWERT—It is their two-yearly review?

Mr Sandison—It is under the rules that existed before Welfare to Work. They stay under the 30-hour rule and other things for any reviews.

Senator SIEWERT—That is what I wanted to clarify. I have a question about the minimum wage issue and how it relates to Newstart, but it may not be relevant here.

Dr Boxall—If it is to do with the how the minimum interacts with suitability for work and Newstart, now is a good time to ask it.

Senator SIEWERT—Okay; I will ask it now. I asked a question in the chamber about this issue, so I know that you have said that you do not breach anybody if they do not make the minimum wage remuneration.

Dr Boxall—That is correct. One of the factors defining suitable work is that the wage must be above the minimum.

Senator SIEWERT—Two questions arise out of that. What happens to the people who do not meet the remuneration part of suitable work if they are not being breached? What happens to those people—they have met their activity test but they are not meeting the remuneration test?

Mr Carters—If they do not meet both tests, they have to continue to look for work to be eligible for the payment.

Senator SIEWERT—If they do not meet that, do they get breached?

Mr Carters—They are not eligible for the payment if they do not continue to look for work.

Senator SIEWERT—That is, in effect, the same thing—they are still meeting their activity test?

Mr Carters—Yes, so if they do not attend an interview or do not attend a job interview with a provider without a reasonable excuse, they may have a failure.

Dr Boxall—If they attend a job interview and they are offered a job at below the minimum wage and they refuse it, they would not be breached.

Senator SIEWERT—I take that on board. Does Centrelink tell you when that happens? If people are being paid below minimum wage, do they tell you?

Dr Boxall—It is an issue for the Office of Workplace Services, because it is against the law for somebody to be hired at less than the minimum wage. They would raise a complaint, and the Office of Workplace Services would investigate it.

Senator SIEWERT—Centrelink will raise a complaint?

Dr Boxall—Centrelink is unlikely to know about it.

Senator SIEWERT—Centrelink will know about it, because they are not meeting their remuneration test.

Dr Boxall—Are you talking about self-employed people?

Senator SIEWERT—No. On the Centrelink website there are examples of people being paid below the remuneration level. There are examples; trust me.

Dr Boxall—Then it is self-employed—it is about family business type arrangements.

Senator SIEWERT—There may be other occasions. Do you class that as self-employed?

Dr Boxall—I think we should clarify it so that we are not talking at cross-purposes. If somebody goes for a regular job interview and they are not self-employed—it is not a family business—they are not required to take that job if the wage is below the minimum. In the event that they were paid below the minimum in those circumstances, that is a case for OWS to investigate. There is another group of people who are self-employed or who work in family businesses, and there is an activity and remuneration request. I will get Mr Carters to explain that.

Mr Carters—I have been through that. Basically, it means that if, in that self-employment or family business, they are earning less than what would otherwise have been the minimum wage—for example, if they have to do 15 hours a week—then unless they are earning the equivalent of that 15 hours a week they would have to continue to look for work and accept reasonable offers of employment.

Senator SIEWERT—I appreciate that. You are classing them as self-employed so you are saying, ‘Okay, we don’t have to tell OWS.’

Dr Boxall—In effect, it is like an implied minimum wage. If you are self-employed and your income is so low—such that when you divide it by the number of hours you work you come out with an hourly rate below the minimum—that is different from being paid below the minimum.

Senator SIEWERT—I understand the distinction that you are drawing.

Dr Boxall—That is the point that Mr Carters is making.

Senator SIEWERT—Yes. So what happens if someone takes a job below the minimum wage and Centrelink finds out about it?

Dr Boxall—It is illegal to hire somebody below the minimum wage and they, or anybody else, could complain to OWS.

Senator SIEWERT—Is it automatically linked? Is there an automatic link through to OWS—the same way as there is an automatic link through to the ATO?

Dr Boxall—You would have to ask Centrelink, Senator Siewert, but the chance of somebody being on benefits and then taking a job below the minimum wage is very low.

Senator SIEWERT—So the recent episodes in Canberra are not a really good example?

Dr Boxall—Those are issues that have been investigated by OWS—

Senator SIEWERT—I know they have been.

Dr Boxall—and they are nothing to do with Centrelink.

Senator SIEWERT—I want a little bit of thinking time to make sure I have covered all the carers stuff.

Senator Abetz—Whilst you are thinking I can tell you that that letter from the minister can be released.

Senator SIEWERT—Thank you for letting me know.

Senator WONG—I have questions about EEP and EdEP. I think I can truncate this a bit. Do you have projected claimant numbers for the 2006-07 year for each of those payments?

Ms Golightly—What I have been able to find out is that the forward estimates are done at the aggregate level. They are not disaggregated so I will not be able to get that for you.

Senator WONG—Claimant numbers?

Ms Golightly—That would be part of the parameters underpinning the estimates.

Senator WONG—When you say you are not able to get them to me is it that you will not provide them because you do not want to or because they are not done?

Ms Golightly—It is not calculated on the basis that you are asking; it is calculated at the aggregate level.

Senator WONG—Can you tell me what the estimated claimant numbers are?

Ms Golightly—I do not think so, because it would be a parameter underpinning those estimates and we are not allowed to disclose the parameters.

Senator WONG—You are not allowed to disclose them? No, hang on, that is—

Ms Golightly—It is not something that the government discloses.

Senator WONG—Hang on. I appreciate about the outer years; we have had that discussion. This is the 2006-07 budget. I am asking what claimant numbers are assumed in relation to these payments. I would have thought that is a question that really ought to be answered in the context of an estimates committee. We know how many people received it in 2005-06. I just want to know if there has been any change in terms of what is estimated for 2006-07.

Ms Golightly—I will check again for you, but the government releases the total amount of money appropriated.

Senator WONG—I am not asking about the money.

Ms Golightly—I know, Senator. I am just explaining what I am aware of. As far as I am aware, the government announces the appropriation. I am not aware that it releases the parameters underpinning that appropriation, but I will double check that for you.

Senator WONG—There were two answers you gave: one is that you do not have it; the other is that you have it but you do not release it. What is the answer?

Dr Boxall—No, that is not quite correct. First, you asked if we had the estimates for EEP and EdEP, and Ms Golightly explained that we do not because the estimate is based on an

aggregate, so we do not have that. The second question you asked was: do you have the numbers of people underpinning the government's estimates for 2006-07? Ms Golightly said that, as far as she is aware, the government does not make available those parameters but that she will double-check.

Senator WONG—Tell me where it says the government does not make those figures available?

Dr Boxall—The department's position is that we are not aware whether the government makes those parameters available, but we will double-check.

Senator WONG—This is an estimates committee hearing. Previously, your department has been subject to, if I can be frank, some criticism in written advice from the clerk about the basis on which questions have been refused to be answered. It is a very simple question. We know, for example, that just under 84,000 people received it in 2005-06. I just want to know whether it is an estimate that that will go up and, if so, by how much, or whether it will go down. The fact that you are saying that there is some sort of policy decision that the government does not release is not really a basis for refusing to answer a question in an estimates committee if you have regard to the resolutions of the Senate on these issues. If you do not have the information now, I understand if you need to take the question on notice. But saying that the government does not release it is not a basis on which an answer can be refused. I refer you to what Senator Troeth read out at the beginning of the estimates hearing about what departments can be asked and expected to answer.

CHAIR—I did say as well, if you remember, that where an officer declines to answer a question the grounds for this should be stated.

Senator WONG—I am saying that if the grounds are that the government does not release it, I suggest to you in your capacity as chairperson that those are not grounds which the Senate recognises. There are a range of grounds which the Senate has recognised as a basis for refusing to provide an answer or not being able to provide an answer—that government does not release the information is not one of those. What are we doing in relation to my question?

CHAIR—The grounds for not releasing the information have been stated, in my view.

Senator WONG—Are you refusing to release information?

Dr Boxall—No, I am not.

Senator WONG—What are you doing?

Dr Boxall—I am telling you what the department's position is. The department's position is that, as far as we are aware, the government does not release parameters underlying the budget estimates but we are going to double-check.

Senator WONG—Are you suggesting that that is a basis on which the information is not going to be provided to the committee?

Dr Boxall—No. I am suggesting that our answer to your question is that, as Ms Golightly pointed out, as far as we are aware, the government does not release the parameters underpinning the estimates but we will double-check. We cannot do any better than that.

Senator WONG—I again say—and one day the numbers in the Senate will change—that those are not grounds on which officers can refuse to provide information to a Senate estimates committee.

Dr Boxall—That is the answer to your question. We are double-checking, which—to say it explicitly—is taking the question on notice.

Senator WONG—Is it possible to receive the education entry payment more than once?

Ms Curran—It is paid once annually.

Senator WONG—If you meet the original criteria and are undertaking the same training for two years, do you get it for two years? How does that work?

Ms Curran—I am sorry. I am not across the detail. My colleagues might be able to help—

Senator WONG—You are the policy department with responsibility for these payments now. It is no longer part of FaCS. Who is the person who understands the policy parameters associated with these payments?

Dr Boxall—If you would like to repeat the question, we will see whether we have somebody here who can answer it.

Senator WONG—I will repeat the question. I am asking in what circumstances the education entry payment can be claimed over more than one year.

Mr Carters—My understanding is that you can claim the education entry payment each year.

Senator WONG—Each year. What are the criteria associated with that?

The CHAIR interjecting—

Senator WONG—No, it is not, with respect, Madam Chair. When can you claim it every year? Is it the same course? Is it two different courses?

Mr Carters—The eligibility rules are on the Centrelink website. They are quite long and detailed. Again, we would have to take it on notice or refer you to that website.

Senator WONG—Is your department not responsible for the eligibility rules now, Mr Carters?

Mr Carters—The operationalisation and the administration of the education entry payments is with Centrelink. We have no reason to change the rules that they have in place.

Senator WONG—Is there a cap on how long you can continue to study and receive it?

Mr Carters—Not under the education entry payment. That does not place its own cap on courses. The education entry payment has nothing to do with caps on courses.

Senator WONG—No, no. Can I claim it for 18 years by continuing to study? There must be some limit to how often it can be claimed.

Mr Carters—My understanding is the only limit is once a year, as long as you are eligible each separate year.

Senator WONG—So you are saying I can get the eligibility criteria off the Centrelink website and no-one else in the department can give me any more detailed information on it

other than what is on the website? You keep saying 'your understanding', Mr Carters, and I appreciate in your position you would not necessarily be across the detail of every payment, but no-one else has moved to the table. So is the department's answer to these detailed questions about eligibility criteria that I have to go back to the website and interpret that?

Dr Boxall—Alternatively, you can place it on notice.

Senator WONG—This is an estimates committee and I would prefer to get the answer.

Dr Boxall—The point is that, if you had given us advanced notice that you were going to ask this question, we probably could have brought up some middle-ranking officer to answer it.

Senator WONG—'Middle-ranking officer'—I am sure they would be very happy to hear that.

Senator Abetz—Senator Wong, can you take it on the basis that what Mr Carters has said is the best the department can give at the moment. In the event they have to supplement that answer or correct it, they will do so.

Senator WONG—So your understanding, Mr Carters, is that there is no limit. You can continue to receive it over a number of years?

Mr Carters—Yes, that is my understanding.

Senator WONG—You might want to take this on notice: how many people received the payment more than once?

Mr Carters—We will take that on notice.

Senator WONG—The figures you provided me with, for example, for 2005-06, were that 82,898 received an education entry payment. Do you track how many of those have previously received it on a course of study where they continued to receive it over a period of years?

Mr Carters—I will take that on notice.

Senator WONG—In terms of there being no limit—as in you can receive it for more than one year—is it contingent upon commencing a new course, or can it be accessed for a course that continues over a year? Do you understand the difference?

Mr Carters—I do understand the difference. We are actually getting those guidelines printed out over the dinner break from the Centrelink website.

Senator WONG—Okay. Would you like to come back to those?

Mr Carters—It would be preferable if we could answer the questions then.

Senator WONG—That is fine. For both education and employment entry payments?

Mr Carters—Yes, both.

Proceedings suspended from 6.29 pm to 7.33 pm

Senator WONG—Briefly, on the employment entry payment, Mr Carters: I think that was the one where you said you changed the criteria to enable provision of that entitlement for part-time work?

Mr Carters—Yes, that is correct, Senator.

Senator WONG—Where can I get the detail about the eligibility for that? Is that on the Centrelink website, too?

Mr Carters—Yes. As we said earlier, we have printed off from the Centrelink website the eligibility criteria for employment entry payment and education entry payment, and we are happy to table those.

Senator WONG—Thank you very much. Ms Golightly, looking back over my list to make sure that we have covered everything, there were the MOU costings.

Ms Golightly—Yes. I think Ms Graham took that on notice to come back to you. Unfortunately they cannot get those figures tonight.

Senator WONG—There was—I think to you, Mr Carters—expenditure to date against various outputs?

Dr Boxall—That is for outcome 2, I think.

Senator WONG—And we have done the Green Corps; we have done the utilities amount. So we are up to date. There is one question about the amount of the employment entry payment. It says you get up to \$104 or up to \$312—this is at page 34 of the annual report.

Mr Carters—Yes. It depends on what form of income support you are on. For example, you get \$104 if you are on Newstart allowance and you get \$312 if you are on disability support pension.

Senator WONG—Yes, but that is not the issue. It says:

This is a lump-sum payment of up to \$104 (or up to \$312 for Disability Support Pension recipients).

So even within the different range it seems to be suggesting you might get a part-payment of that up to \$104 or up to \$312. Why would that be?

Mr Carters—We are pretty confident that it is what I said, and that wording is just a little bit loose.

Senator WONG—Thank you. I am not sure if perusing the eligibility criteria will make this clear to me, but can you get the payment more than once—say you start one job in one year and then after the 12-month period you start another job?

Mr Carters—Yes, you can get it each time you start a new job, as long as you satisfy other criteria, and it is only once every 12 months.

Senator WONG—Just to confirm that, there is no partial payment?

Mr Carters—No, there is not.

Senator WONG—As per the education payment, that is included in the appropriation in relation to the particular income support benefit that someone is on?

Ms Golightly—Yes, Senator.

Senator WONG—Moving to the Job Network, what is the assumption of the number of people which will satisfy the Job Network in terms of the 2006-07 budget estimate?

Ms Golightly—In my notes that I have with me at the moment, I have got dollar figures and percentage increases. I have not got numbers of people, so I will see if I can get that for you.

Senator WONG—While that is being sought, Ms Golightly, is the increase between the 2005-06 actuals and the 2006-07 estimate a reflection of increased numbers of people or is there also a component of increased fees?

Ms Golightly—There is a component of increased fees. It is also, as you said earlier, an increase in people, resulting from some measures in Welfare to Work and in this year's budget. It is a combination of both.

Senator WONG—Can we unpack that a little bit. What is the increase in fees that is included in the \$1.4 million?

Ms Golightly—There was normal indexation allowed on the service fees component. I do not have a figure with me, but that was the methodology that was used.

Senator WONG—Sorry, indexation on the service fees component?

Ms Golightly—On the service fees component.

Senator WONG—Is there any more?

Ms Golightly—That would have been the increase in fees. Then the rest was because of additional measures that were announced by the government.

Senator WONG—Let us go through those. What is the indexation rate?

Ms Golightly—From memory, it was CPI, but I will double-check that.

Senator WONG—You might want to check it or take it on notice.

Ms Golightly—I am advised that that was also a parameter driven increase. I will have to check on whether I can release that information for you.

Senator WONG—Under the contract, what are the increases in fees?

Ms Golightly—I will see if I can get someone to get the contract for you.

Ms Caldwell—Senator, the service fees are published in the contract, as they were in the request for tender for Job Network services. The service fees and outcome payments and other values in the contract are set for a period of three years from 1 July.

Senator WONG—Yes, I understand that. I asked what the rates were.

Ms Golightly—Yes. We might just have to get a copy of the previous contract as well, Senator. We will give you the fees that are noted in the current contract, but I will have to get people to look up the previous contract to give you what they previously were.

Senator WONG—The current contract runs for what period?

Ms Golightly—From 1 July.

Senator WONG—This year?

Ms Golightly—This year, for three years.

Ms Caldwell—Senator, I have both the previous and the current contract service fees. There are a number of service fees that are payable. There is a Job Search support registration initial fee, which under the new contract is \$63, GST inclusive, for a standard job seeker, compared to \$60 under the former contract. We have a re-referral interview for clients previously serviced, which has increased from \$25 to \$26. We have intensive support Job Search training fees, which are for a fully Job Network eligible job seeker: \$688 under the current contract compared to \$660 under the former. We have the short refresher Job Search training fee, which has increased—the refresher hours—from \$220 to \$229. We have the intensive support customised assistance fee, which has increased, for a standard job seeker, to \$834 in new value, up from the previous contract of \$800. We also have the intensive support customised assistance second period, which has increased to a value of \$465 for a standard job seeker compared to—from \$475 to \$495. Different fees apply for highly disadvantaged job seekers, and we also have a range of fees that are included in a quarterly service fee payment.

Senator WONG—Could you table the current contract? I am not sure if I have the current one.

Ms Golightly—Yes. I think that is public, yes.

Senator WONG—Yes, it is a public document, I think.

Ms Golightly—Yes.

Senator WONG—And just for ease of reference, are you able to table for me the previous one so that I can compare the two, or do you not have that there?

Ms Golightly—It is a scribbled-on, rough copy.

Senator WONG—That is fine. No problem. If you could just table the current one, I would appreciate it.

Ms Golightly—Yes.

Senator WONG—In 2005-06 how many people were serviced by the Job Network?

Ms Caldwell—What I can tell you is the number of commencements into Job Network during that year, so essentially that is clients flowing in through Job Network. I have today's point-in-time measure—all new commencements. In 2005-06—if you would just bear with me for one moment. I am just looking for a total figure.

Ms Golightly—We can come back in a few minutes, Senator.

Senator WONG—Okay. Shall I tell you what I want?

Ms Golightly—Yes.

Senator WONG—I would like the total number of commencements. From memory, you track the different tiers of job seekers. Is that correct?

Ms Golightly—Yes.

Senator WONG—Could you give me those, a break-up for the 2005-06 year, and I am going to ask some questions about job seeker account expenditure details for 2005-06. Do you want me to come back on that?

Ms Golightly—I will just make sure people are doing that while—

Senator WONG—All right. I will ask you another question, which is about the age pensioner employment program which was announced in March this year, which provided for an enhanced job seeker account et cetera. What is the cost of that program? Against which line item would it appear in the PBS?

Ms Caldwell—The budget measure is in the PBS. It is included within the Job Network appropriation in the overall account, but the budget measure is listed on page 29.

Senator WONG—So 3.5.

Ms Golightly—Yes.

Senator WONG—How many people do you anticipate being serviced under that program? It is a new measure.

Mr Carters—It is 2,500 people a year and it is \$10.9 million over four years.

Senator WONG—How many to date have utilised this? It commenced 1 July. Is that right?

Ms Golightly—I do not think it actually starts until next year, but I will check that for you.

Mr Carters—I do not think it starts until 1 January.

Ms Golightly—Yes.

Senator WONG—Sorry. It will be a calendar year?

Mr Carters—We will check that. Sorry, 1 July 2007.

Senator WONG—Thank you.

Ms Caldwell—I have the answer to the total number of Job Network commencements last year and also the breakdown by highly disadvantaged. The number of commencements, 2005-06, in Job Network services was 1,984,288 commencements overall, and, of those, 372,411 persons commenced as highly disadvantaged.

Senator WONG—And how many outcomes?

Ms Caldwell—For the same group?

Senator WONG—Yes.

Ms Caldwell—For that, I have the 12 months to the end of September 2006 rather than the financial year.

Senator WONG—I am happy to take that figure. It would be useful because it enables us to analyse the 2005-06 figures you have given us.

Ms Golightly—Yes. Senator, perhaps I have misunderstood, but you will not necessarily have a correlation anyway.

Senator WONG—I realise that.

Ms Golightly—That is fine.

Senator WONG—But it still gives us some sort of snapshot over the same period.

Ms Golightly—Yes. We might have to calculate that for you.

Senator WONG—Could you take that on notice and just give me the September figure.

Ms Caldwell—Over 640,000 job placements recorded by Job Network, including job placement, and, in the period to the end of September 2006, 179,100 long-term jobs. The long-term jobs are only for people who are only counted with respect to job seekers unemployed for more than three months or who are highly disadvantaged.

Senator WONG—The 640,000 figure relates to which time frame?

Ms Caldwell—That is the 12 months to the end of September 2006.

Senator WONG—And the 179,100 is the 12 months to that date, to September 2006. Is that right?

Ms Caldwell—Yes.

Senator WONG—And that is highly disadvantaged?

Ms Caldwell—Yes.

Senator WONG—Plus job seekers unemployed for over three months.

Ms Caldwell—The job seekers unemployed for over three months who are in intensive support services.

Senator WONG—So it is a narrower criterion.

Ms Caldwell—The two usually correlate. There are certain classes of job seekers who may get earlier access to intensive support, but they broadly correlate.

Senator WONG—They are not counted in the 179,100?

Ms Caldwell—Those who are less than three months unemployed or have not actually turned up and had their activity agreement updated and are being commenced administratively on our records would not qualify for an outcome.

Senator WONG—I am trying to clarify it. The 179,100 are job seekers in intensive support who have been unemployed for in excess of three months. Correct?

Ms Caldwell—Yes.

Senator WONG—When you say ‘job placements’, is that the 13 weeks?

Ms Caldwell—That is the total job placement figures, so that is people who have commenced in employment. The long-term jobs are the 13 weeks. When I say ‘outcome’, I am referring to the 13-week and 26-week long-term jobs.

Senator WONG—Can you give me the 13- and 26-week figure?

Ms Caldwell—I have also been provided with some information on the financial year basis rather than end of September year basis, if that is helpful to you. That includes a breakdown of both the 13- and 26-week as well as the—

Senator WONG—Let us stick with what we are on at the moment, rather than jumping around. In the 12 months to September 2006, can you give me the 13- and 26-week figure?

You have got 640,000 job placements, which is initial entry into work. What is the 13-week figure for that same snapshot?

Ms Caldwell—It would be 179,100 with 13-week outcomes for that group.

Senator WONG—This is where I am a little bit confused, because I thought the 179,100 were a specific class of job seeker.

Ms Caldwell—Yes, they are job seekers who are eligible for outcomes. We only record and pay for outcomes, 13-week jobs, in respect of those job seekers who are not within their first three months of unemployment.

Senator WONG—Of the 640,000, this is a component of that: 179,100 is the 13-week outcome?

Ms Caldwell—Would be a component.

Senator WONG—And then 26 weeks?

Ms Caldwell—I will get somebody to calculate that. We do not have the 26-week split for that same time period.

Senator WONG—Shall we do the financial year now?

Ms Caldwell—If you like, Senator. With respect to the 2005-06 financial year, the number of long-term 13-week jobs—

Senator WONG—Sorry, could we start the other way? Let us start with job placements.

Ms Caldwell—Total job placements during the 2005-06 financial year were 638,202.

Senator WONG—This is in relation to 1,984,288 commencements. Correct?

Ms Caldwell—Correct. The long-term job figure for those who were eligible in that same financial year was 183,502, and the number of long-term jobs recorded on a 26-week basis was 79,859 during that period.

Senator WONG—Could you do that analysis for me on notice—that is, number, service, job placements, 13-week, 26-week for 2003-04, 2004-05?

Ms Caldwell—We could do that. As Ms Golightly indicated earlier, these are not the same people tracking through all of these dates. You cannot exactly correlate commencements, placements and 13 and 26. This is not the same cohort of individual people.

Senator WONG—I think I can get my head around 13 and 26 weeks meaning that there will be people who will start that would be counted the next year. It is a longitudinal analysis.

Ms Caldwell—Yes.

Senator WONG—Going to job seeker account, in 2005-06 what was the proportion of the \$1.25 million? I presume that the job seeker account is included in that line item, Ms Caldwell. I think we have discussed this before.

Ms Golightly—It is in the Job Network line item.

Senator WONG—In 2005-06, what proportion was job seeker account allocation? What was the amount?

Ms Caldwell—I am looking for the financial year data. In 2005-06, \$196.5 million were reimbursed from the job seeker account.

Senator WONG—That gives me the answer to the second question. The first question was what was the amount that was allocated to the job seeker account in the \$1.25 million for 2005-06?

Ms Caldwell—The job seeker account credits are notional credits.

Senator WONG—Yes, I understand that. I am not asking for forward estimate parameters; I am asking you backwards. Even Senator Abetz would probably permit me to do this. What was the notional allocation for the 2005-06 budget?

Ms Caldwell—We do not separately notionally allocate within the line appropriation. It is part of the overall funding model that we use for Job Network. We report on the actuals.

Senator WONG—I do not agree with the position that the department is taking on forward estimates but, even with that rationalisation, I am asking about a budget which has passed. I am trying to get an understanding of how much was allocated and how much was spent. It is a perfectly reasonable question. You spent \$196.5 million. How much did you think you were going to spend?

Ms Caldwell—The actual amount credited to the job seeker account in 2005-06 was \$249.5 million. Apologies, Senator, I misunderstood your question.

Senator WONG—Can you just give me that answer again?

Ms Caldwell—The amount that was credited to the job seeker account, the amount of credits attracted, was \$249.5 million in credits available, and \$196.5 million were the actuals that were reimbursed.

Senator WONG—So I should ask about the amount credited? I will remember that, so we will try not to have an argument when I ask you next time. Are you going to tell me what the amount credited is for the 2006-07 year?

Ms Caldwell—Only the amount credited to date for 2006-07, Senator. That is \$91.7 million to 30 September.

Senator WONG—You only credit—

Ms Golightly—As people enter the system they attract a credit.

Senator WONG—What is the estimate of the credit for the whole of the 2006-07 year?

Ms Golightly—I do not believe we do that, except at the aggregate level just for Job Network. I do not think we break that down.

Senator WONG—I am sure you do, Ms Golightly. You just do not want to tell me. You would have to do it, otherwise how can you budget? You have to work out approximately what you think you will spend.

Ms Golightly—The appropriations are done at an aggregate level, as I have explained before.

Ms Caldwell—The credits, as I was saying, are notional. As Ms Golightly mentioned, they occur as job seekers pass the relevant gateway in the service continuum. The actuals are what

are included in the forward estimate model, so our Job Network single line appropriation estimates will have an allowance for our financial modelling. Our forward estimate model, which has many parameters in it, will include our estimate of actual reimbursements, which is the smaller of those figures. We do not forecast the number of notional credits.

Senator WONG—What is your forecast estimated actual for 2006-07?

Ms Caldwell—I will see from my colleagues whether we disaggregate that. It is one of the parameters within the forward estimate model of the single line appropriation. Senator, we will need to confirm whether we can reliably disaggregate that. Could we take that on notice?

Senator WONG—Okay. What proportion of the job seeker account in the 2005-06 year was spent on training—so of the \$196.5 million—and do you have data relating to the sort of training, in terms of what is accredited, what is Job Search training? Do you have that sort of data?

Ms Caldwell—We do not, Senator. We do not record the details of accredited or not. The job seeker account training must meet the job seeker account principles, so it is predominantly work preparation, training, and it covers a range of—

Senator WONG—Yes, I understand that. What do you track in terms of the data on training? Do you track accredited training versus—

Ms Caldwell—We do not categorise the job seeker account in our own administrative systems as accredited and non-accredited. That is not the dichotomy that we use when recording the training.

Senator WONG—What is the dichotomy you use?

Ms Caldwell—We do not use a dichotomy. We characterise reimbursements by one of eight expenditure categories, of which training is one. Within that expenditure category, reimbursements are called down against individual invoices. When we periodically do evaluation or better practice studies of use of the job seeker account, we then go to the unit record data of the training to do point-in-time analysis of the type of training.

Senator WONG—When did you last do that?

Ms Caldwell—Our research and analysis colleagues might be able to assist. We do a range of short action research as well as evaluation. The most recent one would have been quite recently. My colleagues in Research and Evaluation may be able to tell you.

Mr Carters—We last did that in 2005 and we released information in the best practice study in April 2006, but we do not have the information here.

Senator WONG—I actually was only going to put it on notice, but I thought it would be useful to find out what to put on notice.

Mr Carters—Yes.

Senator WONG—In the course of doing that evaluation did you analyse the type of training that was being undertaken?

Mr Whittingham—The evaluations have looked at—

Senator WONG—Mr Whittingham, I am sorry. We are just very short of time. I actually just want to know what was tracked so that I know whether or not I should put various questions on notice, or whether the department simply does not track that data through this evaluation.

Mr Carters—Senator, in that study we looked at training course type and broke it into at least 10 categories, such as IT, hospitality, OH&S, first aid, security, basic education, those sorts of things.

Senator WONG—Are you able to provide a copy of that study?

Mr Whittingham—The study has been released.

Senator WONG—I am sorry. It was attached to the paper earlier this year?

Mr Whittingham—Yes. The table Mr Carters is referring to is part of the study which has been released.

Senator WONG—That was earlier this year?

Mr Whittingham—April this year.

Senator WONG—Thank you very much. I appreciate that. Ms Caldwell, you were giving me the percentage of the 2005-06 job seeker account which was spent on training.

Ms Caldwell—We have with us the contract 2003-06 figures or the year to date since the start of the 2006-09 contract extension.

Senator WONG—Why don't you give me both.

Ms Caldwell—Under the training item, the contract period 2003-06, 24 per cent of total reimbursements under the job seeker account was spent on training. For the period from 1 July this year till 30 September, 25 per cent of reimbursements from the job seeker account has been spent on training.

Senator WONG—Can you just whip me through the seven other categories.

Ms Caldwell—Some of our categories have subsets.

Senator WONG—I am using your figure.

Ms Caldwell—That is right. Clothing and equipment.

Senator WONG—What percentage was that?

Ms Caldwell—Twelve per cent in the contract period. Thirteen per cent in the first quarter from July this year. Employer incentives, which includes wage subsidies: 29 per cent over the contract period ending 30 June and 32 per cent of expenditures in the first quarter of this year. Fares and petrol assistance: four per cent on both the whole contract and—

Senator WONG—I am understanding that you are going contract, then first quarter.

Ms Caldwell—Okay. Interpreter services: one per cent and one per cent. Job Network additional contacts: five per cent and five per cent. Transport costs: one per cent and one per cent. Job seeker incentives: four per cent in the old contract, zero per cent this year. Our other category is four per cent for the whole contract and two per cent for the last quarter. Professional services: 13 per cent for both the whole contract and the first quarter. Relocation

assistance: less than one per cent for both the whole contract and the first quarter. Self-employment: one per cent for the whole contract, less than one per cent for the first quarter of this year. Training: 24 per cent for the whole contract and 25 per cent. Transport assistance: five per cent for the whole contract, three per cent for the first quarter of this year. Work related licensing: one per cent for both whole contract and the first quarter of the extension.

Senator WONG—That is more than eight.

Ms Caldwell—I had them broken by—

Senator WONG—That is fine. Thanks. Job Network additional contacts: what does that comprise?

Ms Caldwell—Senator, the Job Network contract purchases a certain repertoire of scheduled contacts as job seekers move along the service continuum. A Job Network member who determines that a job seeker requires additional contacts over and above can charge them to the job seeker account.

Senator WONG—The job seeker incentives are four per cent and nought per cent. Is there a change in the contract arrangements there?

Ms Caldwell—At the start of the job seeker account it was more open to Job Network members to provide incentives. We clarified quite early, after July 2003, that it was not appropriate to include in job seeker incentives any cash paid as reimbursements; vouchers were okay. That tended to reduce what was already a small component to a smaller one.

Senator WONG—Professional services: is that pre-voc?

Ms Caldwell—It can include pre-voc, obviously, additional to the Australian government's vocational rehabilitation services. Professional services may be any of a range of additional quasi-professional counselling: could be vocational, coaching, counselling, mentoring, psych, social work; interventions that a Job Network member may purchase for a group of job seekers or for an individual job seeker to assist them in their work preparation.

Senator WONG—The figure that you gave me where you compared the actual reimbursement to the credit for job seeker account for 2005-06, have you got that for 2004-05 and 2003-04—for the term of the contract?

Ms Golightly—Probably not here with us, but we can check.

Ms Caldwell—Yes. The job seeker account was introduced with the employment services contract 3 and commenced in June 2003. For the first year of its operation, 2003-04, \$324.5 million in credits were attracted by job seekers during that financial year; \$116.9 million in actual expenditure was reimbursed. In 2004-05, job seekers attracted \$315.2 million in notional credits, of which \$278.5 million actual expenses were reimbursed.

Senator WONG—When you say credited, that is when they go through the gateway I think. What is the gateway?

Ms Caldwell—A small amount of money is credited when a job seeker first joins Job Network. The principal crediting gateways occur when the job seeker reaches intensive support customised assistance.

Senator WONG—How much at the commencement and how much at the ISCA stage?

Ms Caldwell—The amount of job seeker account credits did not change between the contract and the contract extension period: \$11 for each fully Job Network eligible job seeker who commences intensive support or \$22 for a fully Job Network eligible job seeker commencing intensive support who is locationally disadvantaged; \$900 for each fully Job Network eligible job seeker who commences customised assistance for the first time; an additional \$450 to that intensive support customised assistance credit for highly disadvantaged job seekers; an additional \$225 for that first period of customised assistance for job seekers who were locationally disadvantaged.

Ms Golightly—We can continue to read out the information, Senator, but it would be easier for us to give you a page number.

Senator WONG—That is in the contract?

Ms Golightly—Yes, it is in the contract.

Ms Caldwell—It is page 12 of the contract.

Senator WONG—I would like to turn to the Disability Employment Network. The funding for DEN, I presume, would be credited in which line—

Ms Golightly—The table is on page 44 of the PBS. It is the line called ‘Employment assistance and other services’.

Senator WONG—I am trying to find it in the annual report.

Ms Golightly—In the annual report—

Senator WONG—Dr Boxall, I have got your smiling face here in the secretary’s review. I’ve never seen you look like that!

Dr Boxall—You should be nicer to me at Senate estimates!

Ms Golightly—Senator, it is in a number of places.

Dr Boxall—What, the smiling photograph?

Senator WONG—No, they couldn’t get them to take more than one.

Ms Golightly—Page 23 is one reference and page 49 has the output price. If you are looking for the appropriation, page 23 is probably the easiest.

Senator WONG—Disability support pension?

Ms Golightly—‘Employment assistance and other services’ is the name in there.

Senator WONG—What does employment assistance and other services comprise? Disability Employment Network. What else?

Ms Curran—It also has the employer incentive scheme, so workplace modifications, the wage subsidy scheme and the supported wage scheme.

Senator WONG—That is it? Nothing more? There is always something more.

Ms Curran—I am sorry. We do have the national disability recruitment coordinator. I just have to check to see whether I have omitted one other.

Senator WONG—If you could give that to me on notice. I am interested in how much—for 2005-06—in that line item ‘Employment assistance’ relates to DEN funding.

Ms Golightly—Senator, we will get that for you. I will try and get it tonight, if I can.

Senator WONG—You can’t do that now? You should be able to. It is just how much was spent on DEN last year.

Ms Curran—The total for the appropriation last year was \$226 million.

Senator WONG—Actuals.

Ms Curran—Yes.

Senator WONG—As opposed to the budget appropriation?

Ms Curran—Yes. I did omit one other thing that is in the employer incentive scheme and that is the PM Employer of the Year Awards.

Senator WONG—Of the \$226,089,000, how much was for DEN in 2005-06?

Ms Curran—Last year the actual amount for DEN capped was \$201 million.

Senator WONG—There was no uncapped last year?

Ms Curran—No.

Senator WONG—That commenced in 2006. Of the \$254 million in the 2006-07 budget, what is DEN capped and what is DEN uncapped? This is a new measure.

Ms Curran—Yes. That level of disaggregation—

Senator WONG—Hang on. The justification that Dr Boxall gave me for the fact that you gave me the assumptions underpinning how many people go onto payments was—

Dr Boxall—Ms Curran has not answered yet. She only got two words out, I think.

Ms Curran—In the budget papers, we have the numbers that were allocated for the DEN uncapped over the forward estimates period. I just cannot lay my hands on it quickly.

Senator WONG—In Budget Paper No. 1?

Ms Curran—Yes.

Senator WONG—Wasn’t that adjusted later?

Ms Curran—There were adjustments to the DEN appropriation, but the new places only started from 1 July this year.

Senator WONG—No, I meant the appropriation. I thought that was subsequently adjusted again. I am trying to work out what in the 2006-07 is attributable to DEN capped.

Ms Curran—Senator, could I take that on notice, please?

Senator WONG—I have to go to Treasury in a minute to ask some questions, but I would really appreciate, Minister—perhaps the chair can assist here. This is a fairly straightforward question about how much in the budget appropriation for 2006-07 is proposed to be spent on disability employment services. I would have thought that that is a fairly unremarkable thing to ask for, a fairly unremarkable thing to answer, and I have asked that that be answered at some point later this evening.

CHAIR—We will endeavour to find out by the time—

Senator WONG—I think they have it. I do not think that that is the problem, judging from the kerfuffle behind the table. Can I indicate, Dr Boxall, through the chair, that I raised with the chair prior to the dinner break that, if I was unable to finish outcomes 1 and 3, with the indulgence of the committee—I do have to be in Treasury because of some timetabling issues which happened early in the day—if we could flick to outcome 2 for Senator McEwen to ask some questions, unless Senator Siewert has more outcome 1 and 3 questions. I should be about 15 or 20 minutes and then I will return.

CHAIR—To go back to outcome 1?

Senator WONG—And outcome 3.

Dr Boxall—Thank you.

CHAIR—Senator Siewert, you are asking questions on outcomes 1 and 3. Please proceed.

Senator SIEWERT—I can roll this out and stretch it out for 15 or 20 minutes until Senator Wong gets back, if you really want me to.

CHAIR—No. Senator McEwen has questions, too.

Senator SIEWERT—I want to go back to the family carers issue and clarify a few numbers, if we can. You thought that there were 500 children—was it children that would be affected by this, or grandparents?

Mr Sandison—Senator, I said that it might be in the order of 500 grandparents.

Senator SIEWERT—Sorry. I was not trying to make you sign up to exactly 500. You used the ABS figures of 20,000?

Mr Sandison—It was just above 20,000 from the 2003 ABS survey, yes.

Senator SIEWERT—How did you get the 500 breakdown from that?

Mr Sandison—The number of the 500 in the courts was trying to get an idea from the court systems, so there were two separate issues. You asked about how many might end up going through the Family Court system.

Senator SIEWERT—Yes.

Mr Sandison—And that is where they have engaged with the court system around the country, are not all already counted as going through the system, which is the state registration of an active and registered foster carer, and that might be in the order of 500. It is just trying to get an idea, as a maximum, of what is happening in the state system and the Family Court. Separately, it was just the issue of grandparents looking after grandchildren and the ABS survey that talked of the 23,000, and then I did not have any other data below that. I just say that you would need to take into account that, of that 23,000, you would have, I would consider, a large number that would not be on income support. And then, of any that would be on income support, what is the extent to which they would actually have kids in the right age groups? If they had them below six, anyway, and they are a principal carer on the system, then they do not fall into the need for an exemption, and there will be other grandparent carers on

income support but they might not have identified themselves as principal carers, so you have to cut and cut and cut, and we do not have that data available.

Senator SIEWERT—This 500 is on top of those that you know have gone through the state system?

Mr Sandison—It was only working on trying to get an idea of how many might be picked up, if you extend it to the Family Court. That is not already picked up in the existing rule; it has the state system of active and registered foster carers.

Senator SIEWERT—So the 23,000 relates specifically to grandparents, doesn't it?

Mr Sandison—That was the ABS information, yes.

Senator SIEWERT—Do you have a breakdown of how many of those would be Aboriginal and Torres Strait Islander people?

Mr Sandison—No, I do not; certainly not to hand. We could go back to the ABS survey information and see if it was broken down.

Senator SIEWERT—Is it possible to do that?

Senator Abetz—Let us take it on notice.

Mr Sandison—We could take it on notice.

Senator SIEWERT—Yes, that would be appreciated. Looking at the figures that I have been talking about recently: with the new data that came out—I think at the beginning of the year—do you have any further figures that show how many children are being cared for under the family care scenario?

Mr Sandison—Because of the government decision on the policy settings we have not pursued the data. You are talking about the informal sorts of kinship care arrangements?

Senator SIEWERT—Yes.

Mr Sandison—I do not have that here. I would have to take on notice whether we have looked at it.

Senator SIEWERT—Thanks. The other issue is about principal carers. We were talking earlier about foster carers and when they are eligible to go back on PPS once they have a child in their care and they have been designated as principal carers. Who does the designating of principal carer? Does the foster care agency designate them as principal carers?

Mr Sandison—That is a Centrelink decision, based on appropriate evidence, which is to say, 'Are you a principal carer under the legislation?' That is the issue about being able to get onto the payment. That means that basically you have to prove that the child is dependent on you, not on its parents.

Senator SIEWERT—What satisfies that claim?

Mr Sandison—I would have to get the detail for you.

Senator SIEWERT—What I would like to know is, if they have a piece of paper from the foster care agency, does that satisfy the claim?

Mr Sandison—I will still get the full explanation for you, but it links to receipt of the family tax benefit and determination of what is a dependent child. It comes through a range of different payments that are made to families.

Senator SIEWERT—All right. If you have just been given the care of a child, you are not going to be getting family tax benefit.

Mr Sandison—No. But to identify that you are moving into the position of trying to be a principal carer, there are a range of things: you have to prove that you are the one that is responsible for that child. I do not know the rules on family tax benefit.

Senator SIEWERT—I can guarantee that you will not be getting family tax benefit for a child that has just entered your care as a foster carer. So where I am coming from is, when somebody is going to Centrelink and they have just taken over the care of a child and they obviously want to then come under the exemption, you can guarantee that they are not going to have the family tax benefit for them at that time.

Mr Sandison—Then further details are required about the evidence primarily on a case by case basis, because the issue is looking at shared care arrangements and what the laws are around the level of care being undertaken by the grandparents to prove that they are the principal carers.

Senator SIEWERT—I think I may have crossed over and not indicated that I was speaking in a broader sense. But this does apply to grandparents and other foster carers as well. When we were talking earlier you said that foster carers have to show that they are principal carers.

Mr Sandison—Yes.

Senator SIEWERT—Any foster carers, I presume, have to do that?

Mr Sandison—If they are looking at the principal carer arrangements under Welfare to Work.

Senator SIEWERT—Surely they do not have to wait until they have been given the family tax benefit credit for family tax benefit.

Mr Sandison—No, that would be one of the criteria that would help them. If that is not available, there are other criteria. That is what I said.

Senator SIEWERT—That is what I was getting to. What else do they need? I can appreciate that if people are going on to longer term family care you would say, 'Okay, you can have the family tax benefit,' but if foster carers are doing crisis care—hopefully this is an 'and/or' and not an 'and you need this and you need that' situation—what do foster carers have to do to show that they are the principal carer?

Mr Sandison—That is what I will take on notice and see whether it is an 'and' or an 'or'.

Senator SIEWERT—Thank you.

CHAIR—Senator McEwen?

Senator McEWEN—Thank you for accommodating the change in arrangements. When debate on the two pieces of legislation relating to independent contractors passed the House of

Representatives on 13 September, Minister Andrews made comment about the department discussing with the Textile Clothing and Footwear Union and FairWear some draft amendments to make preservation of existing state outworkers laws as clear and effective as possible. I am sure you are aware of those comments. Can you tell me when those discussions referred to by the minister in the House on 13 September between DEWR, the TCFUA and FairWear took place.

Ms James—I do not have that information to hand. There was a meeting at Parliament House that the minister attended, as did the department, to discuss amendments, including draft text. There was also liaison via telephone and email and a number of telephone conferences over a period of time and there was a meeting with the Senate committee where the detail of the amendments was discussed at some length. I would describe the consultations as lengthy, extensive and with a very positive outcome.

Mr Pratt—They largely happened around the time of the Senate inquiry.

Senator McEWEN—In September?

Ms James—I think that is correct, but I cannot be exact.

Senator McEWEN—Did those discussions involve the TCFUA and FairWear?

Ms James—Yes.

Senator McEWEN—Did they attend the meeting at Parliament House with the minister?

Ms James—They brought with them quite a sizeable delegation.

Senator McEWEN—Can you give me a bit more information about exactly what those discussions related to.

Ms James—They related to the various provisions of the bill that affected outworkers and draft amendments. That is about as much information as I would like to give at this stage, Senator. They were very fruitful discussions. There was an exchange of information about the various laws that applied, and the result was agreement on draft amendments.

Senator McEWEN—So the amendments are agreed between who?

Ms James—Between the department and the TCFUA and FairWear. The amendments have not been formally and finally approved by the government, but the minister has indicated very positively his views on those amendments. You would be aware that the bill has not been brought on for debate in the Senate at this stage.

Senator McEWEN—What is the hold-up in bringing the bill to the Senate?

Senator Abetz—It is up to the government to determine the legislative timetable, and I think this coming week we will be dealing with embryonic stem cells.

Senator BARNETT—Cloning.

Senator Abetz—Cloning. Thank you, Senator Barnett—Senator Kay Patterson's bill.

Senator McEWEN—But the independent contractors legislation is not on the program for the Senate for the rest of the year, as far as we can see. If there is agreement and there has been a positive outcome, why would this legislation that was apparently so important to the government still be languishing somewhere?

Senator Abetz—It is important. Unfortunately, there is lots of legislation I would like to see on the paper that has not reached it as yet. It is one of those things of competing priorities that sometimes dictate that legislation does not get as far as one would hope.

Senator McEWEN—Could we expect to see the legislation this year?

Senator Abetz—My personal hunch is no.

Senator McEWEN—Does DEWR have the view that the amendments that were recommended by the Senate committee and have now apparently been agreed to by the minister and the TCFUA were necessary to give effect to the stated intent of the bill to protect outworkers?

Dr Boxall—Sorry, Senator McEwen, we cannot express a view on the proposed amendments. Ms James has indicated that the meeting with various parties was considered to be very fruitful and productive and that the minister is going to put the amendments to the government. The government is yet to even agree on them.

Senator McEWEN—I thought we heard that the minister had agreed—

Dr Boxall—No.

Senator McEWEN—with the TCFUA at a meeting.

Dr Boxall—Ms James said that the department agreed with the other parties, but the government is yet to agree to them and to put them to the Senate.

Mr Pratt—That is right. We cannot assume that they are agreed until they are actually introduced into the Senate.

Senator McEWEN—Do you believe that the amendments that you have agreed to with the TCFUA meet the concerns of the Senate committee as outlined in their report?

Mr Pratt—My assessment is that the TCFUA, FairWear and the committee were pretty happy with the outcome of the discussions, but I cannot give you an opinion on whether or not the amendments meet their needs. They would have to give that opinion.

Senator McEWEN—Is there anything arising out of that that I need to know about?

Senator Abetz—No. I was checking, and there is nothing here as to whether the discussions resolved statements of principle or whether they put more pencil to paper and drafted amendments. I understand they did get down to that detailed level.

Senator McEWEN—So the amendments are ready to roll, but it is up to the government to decide when they are going to be put into the parliament. Ms James, you said that you had had discussions with the Senate committee about the text of the bill. When did those discussions occur?

Ms James—I do not remember the exact date. I do not have it to hand, but the Senate committee secretariat may be able to help us out there.

Mr Pratt—It was during the inquiry, Senator, and we came back to meet with the committee.

Senator Abetz—We could start asking Mr Carter some questions!

Senator McEWEN—Funnily enough, my next question was: has DEWR had discussions with members of the government who were not on the Senate committee in relation to the terms and effect of the bill?

Mr Pratt—Our dealings are with Minister Andrews.

Senator McEWEN—The department didn't have any discussions with other members of parliament?

Mr Pratt—Other than through the Senate committee, all of our discussions on the bill would have been with Minister Andrews in his office.

Senator McEWEN—Were there any other members of parliament at the meeting with the minister—members of parliament who are not members of the Senate committee?

Ms James—No.

Senator McEWEN—You haven't met with any other members of parliament who are not members of the Senate committee about this matter?

Ms James—No.

Senator McEWEN—At all?

Ms James—No.

Senator McEWEN—Or had telephone conversations with them?

Ms James—I have not.

Senator McEWEN—Have any officers of the department?

Mr Pratt—The department, basically, does not deal with members of parliament other than through the minister's office—or through Senate inquiries, of course.

Senator McEWEN—Has DEWR received any drafting instructions in relation to the findings of the Senate committee, in relation to any other matter relevant to the proposed or current terms of the bill?

Ms James—What do you mean by 'drafting instructions', Senator?

Senator McEWEN—Has the minister required you to write amendments other than those specifically recommended in the Senate committee report?

Ms James—That is not something that we would discuss prior to any amendments being circulated.

Senator McEWEN—Do you know what drafting instructions are?

Ms James—I certainly do, Senator.

CHAIR—We may well ask if you do, Senator!

Senator McEWEN—No. I am so far off being on the delivering end. There has been no other request that you are willing to share with the committee tonight for amendments to those bills or to the substantial legislation that go to matters other than the ones that were recommended by the Senate committee?

Dr Boxall—We cannot comment on that, Senator McEwen.

Senator McEWEN—You can, but you will not.

Dr Boxall—No, we cannot. It would be against the rules of the committee.

Senator WONG—That is inviting a long discussion about being consistent.

CHAIR—No. It is what I read out this morning about officers discussing policy. That is what it is.

Ms James—Returning to your previous question about the date of that meeting with the Senate committee, it was 17 August.

Senator McEWEN—And that was just with the members of the committee, or the TCFUA?

Ms James—And FairWear.

Senator McEWEN—Thank you. That is all I have about that matter.

Senator WONG—I am sorry, Mr Pratt. We wonder, through the chair, if we could go back to outcomes 1 and 3 so that we can finish them and they can go home, and then we can talk to you.

CHAIR—I am sorry, could we just hang on a moment. Senator Barnett has some questions on this issue.

Senator BARNETT—On the ILO and—

CHAIR—We will come back to that. Thank you. As you were.

Senator WONG—Dr Boxall and officers, thank you for facilitating the shift in outcomes in that brief period. I hope it was not too inconvenient and gave Ms Curran time to consider her position.

Ms Curran—We would like to take the question on notice.

Senator WONG—If you are taking that on notice, could we have both capped and uncapped?

Ms Curran—We will take that on notice, Senator.

Senator WONG—And the number of places in capped remains the same as the previous announcement, or what is the number of places in capped?

Ms Curran—It is currently around 38,000.

Senator WONG—To date, how many have been taken up?

Ms Curran—We have about 96 per cent utilisation across the program.

Senator WONG—To date, how many?

Ms Curran—It is not at any particular point in time because people move through, so we look at a utilisation rate across the program, and the utilisation across the program is about 96 per cent currently.

Senator WONG—Of capped?

Ms Curran—Of capped.

Senator WONG—And how any uncapped entries into the program have there been?

Ms Curran—That is a new program, and people starting in the uncapped program have to go through a JCA assessment.

Senator WONG—Yes, I am aware of that. I am trying to work out, to 30 September, the first quarter, what sorts of numbers we are looking at.

Ms Curran—In terms of actual commencements, I just have to look at a number.

Senator WONG—This is the uncapped stream.

Ms Curran—It is around 2,000 up until the end of September.

Senator WONG—Thank you. Have you or officers in your area, Ms Curran, or officers of the department, had any discussions with DEN providers about the possibility of handing back their uncapped contracts?

Ms Curran—Early in the start of the contract period, the flow to uncapped DEN was slower than some providers had expected.

Senator WONG—That is a good way of putting it.

Ms Curran—Yes. And so at that time we had a number of conversations with different providers about flows and what that might mean for them, but I think your question was specifically relating to real-life examples.

Senator WONG—So you had some discussions about providers' concerns that the flows were too low for their financial viability?

Ms Curran—Not that they were too low for their financial viability—that they were lower than they had anticipated. And it was much slower. They had not anticipated that the JCA process would mean that referrals to their services would be slower.

Senator WONG—Have those conversations continued?

Ms Curran—The nature of the conversation has changed. There are 21,000 places. Up to 21,000 places over three years is the expected demand. It is a demand driven program.

Senator WONG—This is uncapped?

Ms Curran—This is uncapped. Yes, it is a demand driven program.

Senator WONG—It is not just 'up to'. That is a notional allocation if it is uncapped. Yes?

Ms Curran—It is notional, yes. Up to 21,000 is our estimate. It could be more than that, and I think that with the settling down of a new program, providers are generally happy with the flow.

Senator WONG—Can I move to Work for the Dole, please. I think the minister indicated in the House that over one million people in the last 10 years had participated in Work for the Dole. Is that the correct figure or is the figure of half a million released by the Speaker in his press release of August 2006 correct?

Ms Golightly—I think we would have to check the context of those figures. I am not aware of either of the statements.

Senator WONG—Your minister Dr Stone said it yesterday, I think.

Ms Golightly—The minister has obviously made that statement. I just do not have it in front of me.

Senator WONG—Do not worry about who said what. Is it a million or half a million?

Ms Golightly—Can I check that and get back to you, Senator?

Senator WONG—Mr Parsons, in relation to the estimated actual expenditure for the 2005-06 year for Work for the Dole, can you give me the components of the \$171 million.

Mr Parsons—Yes. As you know, the price that contractors charge us for Work for the Dole is contracted. The budget covers two components—that is, the contracted price that we pay and a component for work experience funding, which is used typically to buy materials et cetera for the projects.

Senator WONG—Of the \$171 million, how much falls into each of those two categories for 2005-06?

Mr Parsons—The work experience fund is calculated on average, where we set a figure that each of the Work for the Dole providers needs to work within across the three-year period.

Senator WONG—And that is?

Mr Parsons—It varies between whether it is a metro site or a regional site, but it averages \$1,650 for metro and \$1,800 for more rural applications.

Senator WONG—This is per contract, not per participant?

Mr Parsons—This is for the work experience fund. Every activity that is run across the three years has to average \$1,650, and no more, in a metro site.

Senator WONG—Is that per participant?

Mr Parsons—No, that is for the whole activity.

Senator WONG—So each contractor gets \$1,650 or \$1,800, depending on whether it is metro or non-metro, for their work experience if they choose work experience.

Mr Parsons—No, they can use the work experience fund to purchase materials for the activity and they can use it to purchase some training for the participants.

Senator WONG—I understand that. Of the \$171,439,000 in 2005-06, how much was the contract price and how much was work experience funding?

Mr Parsons—We will have to get that for you, Senator.

Senator WONG—Can you tell me the number of participants?

Mr Parsons—Yes. In the financial year 2005-06, 87,118 people commenced Work for the Dole.

Senator WONG—Completed?

Mr Parsons—48,192 completed places.

Senator WONG—On notice, can you give me the comparable figures for the previous two financial years?

Mr Parsons—Yes.

Senator WONG—Is there an increase in the contract price for the 2006-07 budget year?

Mr Parsons—Again, the contract price for this year was a tendered price. When we ran the tender, contractors asked us, through the exposure draft process, if we would publish indicative prices for them to pitch their price around. I think that some providers pitched above our indicative price and some providers pitched below our indicative price.

Senator WONG—So you purchase contracts at different prices, depending on areas, demand, competition et cetera.

Mr Parsons—Yes.

Senator WONG—Are you able to provide those prices on notice?

Mr Parsons—I can give you the indicative prices. They were published in the final draft.

Senator WONG—How many contracts are there?

Mr Parsons—We currently have 82 organisations under contract.

Senator WONG—In relation to your concern about providing details of those organisations to the committee, I am not interested in who, I am just interested in price.

Mr Parsons—I can give you the average.

Senator WONG—You do not want to give me on notice the price without the names?

Ms Golightly—Theoretically, there could be 82 prices.

Senator WONG—I realise that. That is why I am asking for it on notice. I can ask for the average now but I am asking you to take on notice—

Ms Golightly—Yes, certainly on notice.

Senator WONG—I am not particularly interested in people's commercial details, so you can do it X, Y, Z or A, B, C or just blank it out.

Mr Parsons—Okay.

Senator WONG—The average price?

Mr Parsons—I stand corrected, but from memory I think it is something like \$1,188 per place.

Senator WONG—That is per participant, is it?

Mr Parsons—No. There is a very important distinction. In the old contract we certainly were participant based. In this contract one of the big changes is that we are 'completed place' based. So it is \$1,188 for a completed place.

Senator WONG—To achieve that, someone has to participate in the program for how long?

Mr Parsons—It varies. There are five different attendance regimes.

Senator WONG—Yes, but you have to finish the attendance regime.

Mr Parsons—Correct.

Senator WONG—Is that in the contract?

Mr Parsons—It was, yes.

Senator WONG—And that is public?

Mr Parsons—Yes.

Senator WONG—I will look that up. Is that for the 2006-07 contracts or the 2005-06 contracts?

Mr Parsons—That is for 2006-07.

Senator WONG—The 2005-06 was commencements or participants.

Mr Parsons—Participants, correct. The current contract is a three-year contract, so it is 2006-09.

Senator WONG—Was part of the logic behind going to a more outcome based funding model because the commencements versus completions in 2005-06 was not so flash?

Mr Parsons—No, it was more a recognition, I think, that people come and go from Work for the Dole and that in the old contract we had purchased against a fairly rigid framework which did not move with the changing dynamics of the labour market.

Senator WONG—What component of the \$217 million is the work experience funding?

Ms Golightly—That is what we are checking for you. We are calculating that.

Senator WONG—That is the only thing I think I have on Work for the Dole.

CHAIR—So you are waiting on that figure?

Senator WONG—Will you need a little bit of time?

Mr Parsons—I am not sure how long it will take.

Ms Golightly—Senator, I also have an answer for you on the commencements. Since November 1997 there have been 518,907 commencements.

Senator WONG—How many completions? Do you want to come back after the break with that?

Ms Golightly—Yes. I have got it for the previous financial year but not necessarily for the whole period since 1997.

Senator WONG—Thank you.

CHAIR—We will have a break now.

Proceedings suspended from 9.03 pm to 9.21 pm

Senator Abetz—Dr Stone is very flattered that Senator Wong would read her questions in question time. The sentence now has been drawn to her attention and, in fact, what the sentence should have said, and all that was said around it, is still correct—that it has been hugely successful, with over half a million people, as opposed to a million. So the word ‘half’—chances are that the *Hansard* is right and Dr Stone may not have said it, or she did say it and *Hansard* did not pick it up. Either way, the record is wrong, and thank you to Senator Wong for drawing that to our attention.

Senator WONG—Thank you. The employment assistance and other services: I think I did ask about that line item, didn't I? You gave me what was included in that.

Ms Golightly—That is correct. That was DEN. I also have further information on some of your Work for the Dole questions, through the chair.

Senator WONG—Thank you.

Ms Golightly—In relation to one question, you asked about the number of completions since November 1997. Unfortunately, I cannot give you an answer to that because we do not have the data for the early years, but we do have completions for the last financial year, if you are interested in that.

Senator WONG—I think you have already given them to me—48,192.

Ms Golightly—Commencements, I gave you; completions, I do not think I had.

Senator WONG—It was 87,118 commenced; 48,192 completions.

Ms Golightly—Yes, Senator. You also asked about the total funding for work experience for 2005-06. We are still calculating that, and that will be another 15 minutes or so.

Senator WONG—Thank you. When does the completion data commence?

Mr Parsons—In 2003, I think.

Senator WONG—Can you give me, on notice, commencement and completion data for those periods for which you have both?

Ms Golightly—Certainly.

Senator WONG—Thank you, and if you could indicate in the answer whether they are cumulative or if you are doing it year by year?

Ms Golightly—Yes.

Senator WONG—What is JPET child-care funding attributable to? It is in which appropriation?

Ms Golightly—I think that is a FaCSIA appropriation.

Senator WONG—It is only FaCSIA? I have asked about it in FaCSIA, but I just wanted to check.

Mr Carters—It is FaCSIA, Senator.

Senator WONG—Thank you. In the annual report at page 23, payment to voluntary work agencies appears: \$3.913 million for 2006-07; \$3.847 million for 2005-06. Can you tell me what that relates to?

Mr Parsons—That relates to a contract that we have for a program called the Voluntary Work Initiative.

Senator WONG—Is there a community work program as well?

Mr Parsons—There is a community work program which is part of Work for the Dole. That is a different appropriation.

Senator WONG—We might put on notice some details about that. That is the entirety of that appropriation of \$3.84 million?

Ms Golightly—Yes.

Senator WONG—Back to JPET, non-child care: can you tell me the components of that \$19.908 million for 2005-06?

Ms Curran—That is basically the fees. JPET, until the new funding arrangement, was essentially a grant based program. We have introduced a new payment model with the new funding deed. It has a commencement fee and then payments based on acquittals.

Senator WONG—So the \$20.338 million in the 2006-07 comprises commencement fee, payments on acquittals, and what else?

Ms Curran—Sorry—2006-07?

Senator WONG—Yes.

Ms Curran—It is a fee of \$1,400. That is the total amount. We estimate that there is going to be about 14,000 participants in JPET.

Senator WONG—Fourteen thousand?

Ms Curran—Commencements, I am sorry.

Senator WONG—Commencements?

Ms Curran—Yes.

Senator WONG—Estimated completions?

Ms Curran—It is based on a commencement, so it is our KPI. Let me get the KPIs for the program.

Senator WONG—No, that is okay. Just in terms of the budget, the 2006-07, that line item at page 23 comprises essentially \$1,400 times the number of commencements. Is that right? There is no additional component?

Ms Curran—No.

Senator WONG—Thank you. Vocational rehabilitation services: is that included in the rehabilitation services line item at page 44 of the PBS?

Ms Golightly—It is the rehabilitations line item.

Senator WONG—Yes, that is what I just asked. Does that rehabilitation line item include any other program?

Ms Golightly—No, it is just our payments to voc rehab.

Senator WONG—Your payments to vocational rehabilitation services?

Ms Golightly—Yes.

Senator WONG—In the annual report, the budget target of \$125.739 million was the final result, so there was no variation. Is it a fixed contract price? How does that work?

Ms Curran—We have an RFT out at the moment for vocational rehabilitation services.

Senator WONG—I am asking about the 2005-06 year.

Ms Curran—We had a funding arrangement with CRS. With the move to contestability for CRS, we have moved to a different funding model.

Senator WONG—And there is a request for tender out?

Ms Curran—Yes.

Senator WONG—Predicated on how many participants?

Ms Curran—We have two streams: capped and uncapped. I am sorry, I do not have that folder at the table, so could you bear with me while I get the numbers?

Senator WONG—Yes.

Ms Curran—The total number of capped places per year is 23,000. The estimate was in the—

Senator WONG—Welfare to Work announcement.

Ms Curran—We had a little information booklet, an industry alert, prior to the exposure draft of the RFT. The numbers there were: 15,676 in 2006-07; 21,003 in 2007-08; and 12,128 in 2008-09.

Senator WONG—So 21,000 in 2007-08 and—

Ms Curran—12,128 in—

Senator WONG—2008-09.

Ms Curran—That is correct.

Senator WONG—And that is uncapped?

Ms Curran—That is an estimated number of people who would be assisted through the uncapped stream.

Senator WONG—But it is uncapped?

Ms Curran—Yes.

Senator WONG—So it is demand driven?

Ms Curran—Yes.

Senator WONG—This probably is a question for Centrelink, but I want to check. The new Welfare to Work contact model which was previously trialled and has been announced, too—

Ms Golightly—It would depend on the question. Some of that lies with us.

Senator WONG—What lies with you?

Ms Golightly—The overall policy responsibility.

Senator WONG—Yes, but in terms of any appropriation relevant to that, other than policy advice?

Ms Golightly—There is no separate appropriation for the trial. We have a contact model already in place. What we were doing was changing it, so it is being done within the Centrelink purchasing authority.

Senator WONG—I am aware of that. Are any additional moneys from DEWR going to the new contact model?

Ms Golightly—No, there are no additional moneys going from us to Centrelink.

Senator WONG—If I had questions about the costing of the new model, should they be directed to Centrelink?

Ms Golightly—Yes. They have done the costings for the models.

Senator WONG—I have a quick question about the interaction between changes to the Family Law Act and the participation requirements under the welfare changes. There has been a suggestion made, I think publicly, that in situations where parents have been ordered to share care fifty-fifty, a principal carer determination is precluded and therefore both parents face the same Job Search requirements as other job seekers. Are you aware of this issue, Mr Carters?

Mr Carters—No. There would always have to be one principal carer parent.

Senator WONG—In your model. But under the family law changes, if there is a fifty-fifty care and custody arrangement, how does the principal carer get determined by your policy?

Mr Sandison—The principal carer for our purposes is identified as the person looking after the dependant. The task force has looked at the crossover with the child support reforms and has looked at what was going on with the Welfare to Work changes. The chair of that task force, I think it was, did not see that there was an issue with implications for Welfare to Work.

Senator WONG—I have been advised that there are people who have moved into a fifty-fifty care arrangement who have been determined not to be a principal carer and therefore have Job Search requirements.

Mr Sandison—One person only can be the principal carer, and they would be the person with the majority care.

Senator WONG—If the court has ordered fifty-fifty, how do you determine that?

Mr Sandison—It is the first person who identifies as the principal carer.

Senator WONG—The first person? What do you mean by ‘the first’?

Mr Sandison—The person who puts in the claim for payment. Normally there is already somebody who is on—

Senator WONG—So it is just a race as to who puts in the claim first?

Mr Sandison—If it is a fifty-fifty, yes.

Senator WONG—That cannot be the way it would work, surely?

Mr Carters—There has to be a decision made, and it is negotiated.

Senator WONG—With whom?

Mr Carters—With the two parents involved and with Centrelink, to make that determination.

Senator WONG—What if they cannot agree?

Mr Carters—There can only be one.

Senator WONG—I know that is your position. What if they cannot agree?

Mr Carters—Ultimately, it has to be a Centrelink decision, as the delegate.

Senator WONG—Yes, but you are the policymaker here; you set the policy parameters. If a fifty-fifty care arrangement is ordered by the court and the parents do not agree about who is the principal carer, what is your policy direction to Centrelink about that?

Mr Sandison—It is that the delegate has discretion to make the decision, but there will be a single person who will be the principal carer and the other person, if they are on Newstart, might receive the dependant child rate.

Senator WONG—If they do not agree, the delegate makes the decision?

Mr Sandison—Correct.

Senator WONG—In the Prime Minister's skills announcement it was indicated that, in priority order, work skills vouchers would be allocated to unskilled workers, then income support recipients and then unemployed job seekers et cetera. Can you indicate how many of the 30,000 vouchers are intended to be for income support recipients, such as parents and carers returning to the workforce.

Mr Sandison—That is an issue for DEST. We have not been advised of a decision on that.

Senator WONG—Have you changed the participation requirements in relation to persons who gain access to this voucher who fall within either of the income support or unemployed job seeker categories?

Mr Sandison—No. We have proposed they stay the same.

Senator WONG—I have nothing more for 1 and 3, thank you.

[9.38 pm]

CHAIR—We will now move on to outcome 2, Higher productivity, higher pay workplaces. Could those officers who are not involved leave the room, thank you. Senator Wong has some questions on outcome 2.

Senator WONG—Thank you. Mr Pratt, can I take you to page 16 of the additional estimates portfolio statement.

Mr Pratt—Yes.

Senator WONG—You might have to remind me—and I hope that we have fair play, Mr Pratt—of what I asked you before which you said you would come back to me on.

Mr Pratt—Coincidentally, I was preparing to give you an update on how we are proposing to handle what I interpreted as three questions that you asked. In relation to page 16 of the additional estimates statement, in terms of expenditure against the items for 2005-06 and year-to-date expenditure for 2006-07, we think we can provide that information to you. I do not think we have ever provided expenditure information against measures like these, because the money goes into our outputs and we report against the outcomes and outputs. However, we think we can do it. We will take on notice to give you a break-up of that expenditure, and I

was going to propose that we do that to the end of October for this financial year, if that suited you.

Senator WONG—You cannot provide it tonight?

Mr Pratt—No. It is quite a big exercise. I will give you an idea about how we do our budgets. We get money for a measure like this and that money is then split into the funding which will go to the various groups to deliver the activities. A proportion of the money is split off for enabling services—corporate overheads and state offices—and that is then reported on against the output prices which you find in our PBS. We can probably reverse all of that and give you figures against those measures, but it will take a while to do it.

The third thing I believe you asked for was in relation to our portfolio budget statement, page 56. We can probably do this in the next week or two. As for the budget estimate for 2006-07, we can give you a quarterly breakdown to the end of September against those output prices. Once again, this is a reasonably big exercise. We only do that quarterly, but it is possible to do it.

Senator WONG—If you are not able to give me those tonight, in relation to page 16 can you give me figures to the end of the financial year? You were going to do 2005-06, then the current financial year to the end of October: can you tell me what the 2009-10 estimate is for each of those outcomes on page 16?

Mr Pratt—We do not have out-year funding for 2009-10. We do not have funding that far out.

Senator WONG—This is the 2006-07 budget.

Mr Pratt—Sorry, Senator, did you ask for 2009-10?

Senator WONG—Yes.

Mr Pratt—No, we do not have that.

Senator WONG—The 2006-07 budget covers that estimates period, so I am just wanting to confirm what happens to those figures for the next year.

Dr Boxall—It is the same issue that we discussed earlier in outcomes 1 and 3. These measures here in page 16 of the additional estimates give the current year as it was then, 2005-06 and three years. The budget for this year gives the budget year 2006-07 and three years out, and funding of this nature would be rolled into the 2009-10 figures. The government adds up the numbers for 2009-10. We do not have these separately.

Senator WONG—Do not take my silence as acquiescence; I just cannot be bothered having another argument tonight, Dr Boxall, on the same issue. Mr Pratt, can you just remind me what output 2.2.1 on page 56 covers?

Mr Pratt—That covers the work of the workplace relations industry group. Their functions include liaison with major industries about what is happening with regard to workplace relations in those industries. They provide advice on Australian government employment. They look after our interests in relation to the building industry. That is what that covers.

Senator WONG—And the appropriation there is staff salary. How is that broken up—staffing plus what other?

Mr Pratt—That is a combination of salaries and supplier expenses.

Senator WONG—Which includes consultancies and so forth?

Mr Pratt—That is right. It also includes our enabling costs, the corporate overheads.

Senator WONG—On-costs?

Mr Pratt—Yes.

Senator WONG—Do any of the functions that you have just outlined also draw on any other area of the PBS or any other output or line item? In other words, is the cost of people doing this credited against that line item and something else?

Mr Pratt—No, that is basically the workplace relations industries group.

Senator WONG—The policy advice function: is that changes to policy? Is that where advice, in terms of policy changes, will come from, or another unit as well?

Mr Pratt—Both are correct, Senator. The majority of the policy advice comes from 2.1.1 but also under the output of 2.1.2, Workplace relations legislation development. The group that is covered by that also—

Senator WONG—Sorry, 2.1.1?

Mr Pratt—And 2.1.2. Both areas provide policy advice.

Senator WONG—Does 2.2.1 do any policy advice other than in relation to Australian government employment?

Mr Pratt—Yes, Senator. 2.1.1—

Senator WONG—No, 2.2.1.

Mr Pratt—They provide policy advice in relation to Australian government employment, the building industry and a range of other industries—automotive, aviation, manufacturing and any other industry that we have an interest in.

Senator WONG—When you say ‘advice’, what sort of advice to industry? I am a little unclear. Is this the implementation of WorkChoices, Mr Maynard?

Mr Maynard—Yes, we provide advice to industries in relation to government policy, so advising them on the implications of WorkChoices. We also liaise with them to understand their experiences in relation to WorkChoices and feed that back into the policy development processes.

Senator WONG—How many staff are attributable to this output?

Mr Maynard—At present we have approximately 90 staff.

Senator WONG—What proportion of those deal with government and what proportion deal with industry?

Mr Maynard—We have approximately 20 staff that deal with the Australian government employment functions. The remainder deal with specific industries such as, as Mr Pratt said, the building industry or general industries. We also have a unit which looks after a framework of clients.

Mr Pratt—Senator, page 113 in our annual report provides a neat description of the work of this group.

Senator WONG—Can I turn to 2.2.2. There has been an increase in funding over the period 2003 to 2006-07 for this output, I think. Is that right?

Mr Pratt—Yes. That is the funding which is provided to the Employment Advocate. That is the funding for the area.

Senator WONG—Is the entirety of that for the Employment Advocate unit or office?

Mr Pratt—That funding goes entirely to the Office of the Employment Advocate.

Senator WONG—Are any costs associated with the Office of the Employment Advocate attributable to any other output?

Mr Pratt—No.

Senator WONG—Can we go to workplace relations and services. That is 2.2.3. I think this includes the call centre operations, from memory, and the information line. Is that right, Mr Pratt?

Mr Pratt—That is correct, Senator. It also includes our state office functions in relation to outcome 2, the Workplace Advisory Service and the call centres.

Senator WONG—Are you able to tell me how much of that is attributable to the WorkChoices Information Line?

Mr Pratt—I suspect we can, Senator. We will just have to dig that out.

Senator WONG—I am sure you thought I was going to ask you that, Mr Pratt, so I am sure you have that figure.

Ms Connell—Within 2.2.3 there is approximately \$16 million, which is provided to the state offices for both the WorkChoices Information Line and the Workplace Advisory Service around Australia, and approximately \$5.5 million for staff in the national office on Work Choices related activities.

Senator WONG—Which year are you looking at? 2005-06 or 2006-07?

Ms Connell—Sorry. This is 2006-07.

Senator WONG—Does the \$5.5 million include the info line?

Ms Connell—The national office staff for managing and coordinating the information line, yes, but the bulk of the information line funding is with the state offices, so it is part of that \$16 million.

Senator WONG—What component of that \$16 million is actually attributable to the info line?

Ms Connell—There are three information lines: one in Sydney, one in Melbourne and one in Perth. I will just check that these are the correct figures. In total of the \$16 million, about \$12 million is for the WorkChoices Information Line.

Senator WONG—And the remainder is?

Ms Connell—The remainder is for the Workplace Advisory Service.

Senator WONG—Thank you—\$21.5 million. So what is the remaining \$24 million?

Ms Connell—The remainder of the \$45 million?

Senator WONG—Yes.

Mr Pratt—Can I take you to page 121 of the annual report. It sets out what the rest of the Workplace Relations Services Group does.

Senator WONG—I was aware of that. I am just trying to get a handle on what the components of the remaining \$21 million are.

Dr Boxall—Employee entitlements.

Senator WONG—So how much does that cost to manage?

Ms Connell—For GEERS it is about \$7.4 million.

Senator WONG—Thanks.

Dr Boxall—Trade recognition.

Ms Connell—Trade recognition is approximately \$3.5 million. These are departmental costs only. There are the two schemes—unlawful termination and alternative dispute resolution—which are about \$5.3 million.

Senator WONG—Yes.

Ms Connell—There are communications around the independent contractors bill of about \$2.6 million.

Senator WONG—Communications. So advertising?

Ms Connell—No, education and communication products. There is also \$0.89 million as a budget for a COAG initiative that came out of budget, and there is about \$3.6 million which covers things like a project office, executive, corporate and the Remuneration Tribunal secretariat—a group of other activities.

Senator WONG—So \$3.6 million for the remaining—

Ms Connell—And the Defence Force is a separate budget.

Senator WONG—Sorry. The Defence Force is not that line?

Mr Pratt—2.2.5—the Defence Force.

Senator WONG—Sorry. Is the Remuneration Tribunal—

Ms Connell—The Remuneration Tribunal secretariat is part of that \$45.853 million, yes, which is the budget for 2.2.3 for this year.

Senator WONG—Yes. I did not hear the figure which was the Remuneration Tribunal.

Ms Connell—It is within that \$3.66 million.

Senator WONG—Right. Of various—

Ms Connell—Various things: corporate, executive and Defence Force.

Senator WONG—Thank you very much.

Mr Pratt—Senator, to clarify, I will just add to Ms Connell's answer. You will find the Remuneration Tribunal costs against 2.2.6, so they are covered by the money that Ms Connell's group receives.

Senator WONG—Are you able to do a similar disaggregation for 2.2.1, Mr Pratt?

Mr Pratt—Potentially. I will invite Mr Maynard back.

Mr Maynard—Unfortunately, having returned to the table I am not going to provide you with any advice at this point. As Mr Pratt outlined at the beginning, the figures for 2.2.1 include the on-costs of which I do not have a separation according to each of the functions, but I would be happy to take that on notice and provide you with that information.

Senator WONG—So that line item is all salary and on-costs, I think you said.

Mr Maynard—That is correct.

Senator WONG—Thank you. When I was questioning about workplace relations reform targeted education activities and the announcement of an additional \$7.3 million in 2005-06 for education activities to explain workplace relations reform—

Mr Pratt—This is going back to page 16 of the additional estimates statement.

Senator WONG—The reference I have is page 175 of Budget Paper No. 2. Do you have that? 2006-07, Mr Pratt.

Mr Pratt—Yes, Senator. This is the—

Senator WONG—Targeted educational activities.

Mr Pratt—Yes, and this is the line 'Targeted educational activities' also on page 16 at the bottom of table 1.2.

Senator WONG—The same number. Where does that come out of in terms of the PBS, page 56.

Mr Pratt—It is in 2.2.3 of Ms Connell's group. In 2005-06 that funding was used to cover off the employer advisory program that we talked about earlier, in addition to things like the website, pamphlets and so forth.

Senator WONG—So is it continuing for 2006-07?

Mr Pratt—Yes. The EAP element of that was the up to \$12.5 million I mentioned earlier, where we will get that funding in additional estimates.

Senator WONG—Sorry. Can I just clarify, Mr Pratt: does any element of the figures that Ms Connell gave me relate to the \$7.3 million?

Mr Pratt—Ms Connell gave you the break-up of the figures for 2006-07.

Senator WONG—Yes.

Mr Pratt—The funding for the EAP for 2006-07 is the up to \$12½ million that we will get through additional estimates.

Senator WONG—So it is not currently covered in your appropriation.

Mr Pratt—That is correct.

Senator WONG—It is what you have been given permission to—

Mr Pratt—That is right. That \$7.3 million was in last year.

Senator WONG—It is \$7.3 million for 2005-06 and \$12.5 million for 2006-07.

Mr Pratt—Correct.

Senator WONG—Do any of these targeted activities include research activities?

Mr Pratt—The consensus position is no.

Senator WONG—Is there any revision to the additional estimates figures at page 16?

Mr Pratt—As we discussed before, in relation to the funding we got for Work Choices, covered by the bottom half of table 1.2, there has been no change to the estimates there, with the exception that we are going to get that extra \$12½ million.

Senator WONG—And with the exception, presumably, that the compliance line item has now been disaggregated or has been transferred to OWS.

Mr Pratt—That is correct. A proportion of that line has gone to OWS. For example, in 2006-07 and out years, I think approximately \$27 million or \$28 million of that has gone to OWS. In addition to that, the funding that was already expensed by the department on previous OWS activities has transferred, as I believe Ms Graham discussed earlier.

Senator WONG—Yes, she did. It might be that I am just being slow, but I am still not clear about the difference. Where has the difference gone? OWS, I think, is around \$30 billion.

Mr Pratt—Yes. The rest of it covers off Wageline, the workplace advisory services, interventions, those sorts of activities.

Senator WONG—Can you give me a breakdown of that. From Mr Wilson's discussion with me this morning, and also tonight, we know what the estimates for OWS are over the forward estimates.

Mr Pratt—I am going to give you an indicative breakdown because, as I mentioned earlier, the issue of the attribution of our enabling costs is something which we would have to do a special exercise on.

Senator WONG—Yes, that is fine.

Mr Pratt—In terms of compliance, for 2006-07 the funding splits like this: approximately \$22.7 million to OWS, \$10.8 million to the state offices, \$8.9 million on enabling costs, \$2.87 million on legal costs, and another \$1 million on Wageline management and administration. But, just to provide a caveat to that, the funding that went to the states is split between Wageline and the Workplace Advisory Service, as Ms Connell outlined.

Senator WONG—That \$10.8 million represents a proportion of the state office funding, the remainder being the—\$2.3 million, was it?

Mr Pratt—That is correct. I will take on notice to give you the proper attribution of all of those costs once we give you the breakdown by measure.

Senator WONG—Are you able to provide that disaggregation for that line item for 2007-08?

Mr Pratt—Yes, we can.

Senator WONG—Are you taking that on notice?

Mr Pratt—Yes.

Senator WONG—You cannot do it now?

Mr Pratt—I may have it. No. Sorry, Senator, I will have to take that on notice.

Senator WONG—Okay. Could you take that on notice for 2007-08 and 2008-09.

Mr Pratt—Yes.

Senator WONG—And in terms of the table for page 16, are you able to disaggregate in relation to all those? Is that what you have taken on notice previously?

Mr Pratt—Yes.

Senator WONG—How many booklets do we still have, Mr Pratt? They were taking bets as to when I would ask that.

Mr Pratt—I have an update. As we have discussed before, the numbers are always fluid. At present we have around four million remaining. However, I am advised that over the course of the next couple of weeks, when a back order is processed, we will be down to 3.347 million.

Senator WONG—Where is the back order to?

Mr Pratt—There is a large order to Job Network members. It is being processed at the moment.

Senator WONG—Is that a requirement of the contract?

Mr Pratt—No. My memory of the Job Network contract is getting a bit hazy, but I do not think we require them to deliver Work Choices information.

Senator WONG—So who negotiated that?

Mr Pratt—We did.

Senator WONG—You offered it to them.

Mr Pratt—That is correct.

Senator WONG—Free of charge.

Mr Pratt—Yes. We certainly did not charge them.

Senator WONG—No, you would not want to. You have got a supply and demand problem, I think.

Mr Pratt—No, there was never any intention to charge people to access these informative booklets.

Senator WONG—Will every job seeker who goes to Job Network now be provided with one?

Mr Pratt—They will have an opportunity to get one.

Senator WONG—Did every Job Network member say yes?

Mr Pratt—I believe so.

Senator WONG—Is any of the ‘Agreement making’ line item on page 16 attributable to OEA?

Mr Pratt—That is entirely OEA.

Senator WONG—And ‘Development and implementation’.

Mr Pratt—Yes. That covers off the funding for policy development, legislation development, legal interventions, the fit-out IT infrastructure for the department.

Senator WONG—Are you able, for the 2006-07 year, to give me that disaggregate?

Mr Pratt—Yes.

Senator WONG—You can’t do that now.

Mr Pratt—No, I cannot break that up now.

Senator WONG—You could in relation to compliance. Was that because I told you about it before?

Mr Pratt—Sorry, Senator. I do actually have 2006-07.

Senator WONG—Thank you. Yes, I thought the problem was the outer years, but you had it for the budget year.

Mr Pratt—That is right—\$14.1 million for enabling costs; policy development, \$1 million; legislative development and legal costs, \$4.4 million. We have a legal contingency fund of \$3.7 million. Our implementation task force is \$1 million; the ILO, \$900,000; education activities, \$1.7 million.

Senator WONG—Is the legal contingency fund in relation to Work Choices litigation?

Mr Pratt—That is correct. It is in relation to any legal costs that are unforeseen. We can only use it for legal costs once we have used up our other legal funding.

Senator WONG—And is ‘Advice and education concerning termination of employment’ folded into OWS funding?

Mr Pratt—No. That is a UTAS program—Unlawful Termination Assistance Scheme.

Senator WONG—Perhaps you can take me through the components of that.

Ms Connell—Are we talking about 2006-07?

Senator WONG—Yes.

Ms Connell—The \$5.1 million is for the Unlawful Termination Assistance Scheme, \$3.2 million of which I believe is under a contract under a national advisory network program to advise employers and employees on best practice employment.

Senator WONG—Go on.

Ms Connell—The other \$2 million relates to our internal departmental costs.

Senator WONG—Associated with?

Ms Connell—Associated with unlawful termination and Unlawful Termination Assistance Scheme.

Senator WONG—How much is actually for the scheme?

Ms Connell—That is an administered amount, not departmental.

Senator WONG—So that would appear elsewhere?

Ms Connell—Yes.

Senator WONG—The \$2 million is, what, staffing and—

Ms Connell—Staffing, contract management, product development and information services.

Senator WONG—ADR?

Mr Pratt—That is the funding for our ADRAS program.

Ms Connell—The Alternative Dispute Resolution Assistance Scheme. Again, they are the departmental costs associated with administering the scheme, and it is an administered amount.

Mr Pratt—If you are interested in the administered funding for those last two schemes we have looked at, it is at the top of that table.

Senator WONG—Yes.

Senator BARNETT—I wanted to ask a question about the Tasmanian government's appointment of OH&S inspectors and the ACCI's public statement of 26 October, where they announced that they were considering an appeal to the ILO as a result of an alleged breach by the Tasmanian government of ILO Convention 81.

Mr Kovacic—We are aware of the issue but, in terms of a view as to whether there is an issue as to compliance with international obligations, that is not something that we have examined.

Senator BARNETT—Are you aware that the Tasmanian government has appointed four unionists—two AWU and two CFMEU appointees—to act exclusively as occupational health and safety inspectors in Tasmania?

Mr Pratt—Yes.

Senator BARNETT—The Attorney-General initially indicated that they have had industry support, and the industry responded and said that, no, they are opposed to this trial—the pilot program—which started on 1 December. There has been a good deal of opposition and good deal of media about this in Tasmania and a good deal of concern and consternation about why this would occur. Are you aware of that?

Ms Parker—Yes, we are aware of that.

Senator BARNETT—The view put by the state Attorney-General was that this model of appointing unionists as occupational health and safety inspectors was a good idea and appropriate, contrary to the view of industry associations that this particular model was

unique throughout Australia. Do you agree that this particular model of appointment and this particular pilot program is unique throughout Australia?

Ms Parker—Tasmania's is the only act that allows it, so it absolutely is unique.

Senator BARNETT—In terms of the ACCI's public statement that they are considering an appeal to the International Labour Organisation, they say:

The ILO Labour Inspection Convention (Convention 81) was ratified by the Whitlam Government in June 1975 and its ratification has continued to this day. That Convention requires all governments to make sure that its inspectors do not exercise other duties that could 'in any way' prejudice their 'authority and impartiality'.

The ACCI statement goes on to read:

Any ACCI action in the ILO would be based on this issue of principle, without needing to draw on the specific circumstances or conduct of individual officials or inspectors.

Are you familiar with that particular statement or that appeal option?

Ms Parker—I am familiar with what ACCI is proposing to do but not the detail of it.

Senator BARNETT—So you cannot share your views as to the prognosis with respect to the likelihood of success or the nature of the appeal and how long it will take and so on?

Ms Parker—No, I cannot.

Mr Kovacic—Were ACCI to proceed with making a complaint, the likelihood is that it would be considered by the ILO's Committee on the Application of Standards and there would be an opportunity for presumably both the Tasmanian government and the trade union movement to comment on the complaint. Those various views would be taken into account by the ILO and at some stage the ILO would form a view in terms of whether the Australian government had an opportunity to participate in the processes. I am not entirely sure whether that would be the case.

Senator BARNETT—The Australian Building and Construction Commission appeared before us earlier today and advised us that they were investigating three incidents with respect to alleged breaches by the unions involved, and they indicated that they had written three letters to the state Attorney-General expressing their strong concern about the trial. Do you have any feedback from them or any advice or information that you have received in the department about the trial?

Ms Parker—No. We are aware of the ABCC's concerns, but we do not have any further advice.

Senator BARNETT—I think I will finish on that and ask a question on another related matter.

Senator Abetz—Before you do, I am thinking out aloud here, but what you have read out seems to be a clear breach of the ILO and one wonders whether the federal government, under its foreign affairs power et cetera, might have the power to override that particular Tasmanian provision.

Senator WONG—I was not aware the Australian government was too keen on ILO standards from their past practice, Senator, but if there is even a change of position, I am sure most people would welcome it.

Senator Abetz—If you have any questions, Senator, be careful. Time is running out.

Senator BARNETT—I will ask a supplementary question of the minister in light of our section 51.29, the external affairs power. The Australian government would have the power to act, if we are a signatory as indicated by ACCI, to override the Tasmanian government law in that regard.

Senator Abetz—On the face of it, as I said, I was just thinking aloud in relation to the matter, but it may be worthy of further consideration. I am sure the minister's office might give that some consideration.

Senator BARNETT—The article in the *Herald Sun*, Wednesday, 1 November, 'ACTU whip-around', reads:

The ACTU wants unionists to donate more for the campaign against WorkChoices.

It says:

About 1.9 million union members pay a \$5.50 annual levy to the campaign fund, but they will be asked to dig deeper at an ACTU executive meeting this month.

In the context of workplace reform and secret ballots, based on those figures over \$10 million would be raised by the ACTU. I want to clarify from your perspective that there is no breach of any law in regard to applying a levy of \$5.50 on their members, notwithstanding that their members may not have directly consented to such a levy.

Mr Kovacic—My sense is that as long as the decision was made in accordance with the rules of the relevant organisation and any provisions in legislation, it would be legal. But I think the key issue is in terms of the rules of the organisation.

Senator BARNETT—Do you have a response or a view to the fact that, though the ACTU support collective bargaining and majority rule, in this case they have not sought a secret ballot of their membership with respect to obtaining extra funds?

CHAIR—I think that is asking the officer to express an opinion, to be honest, Senator.

Senator BARNETT—Okay. So as far as you are concerned, if it is consistent with the ACTU rules and the constitution—

Mr Kovacic—No, Senator. If it is consistent with the rules of the relevant organisation, the individual union in terms of its rules, I cannot see how it would be illegal.

Senator BARNETT—I am making that point: that it is their rules or their convention, their support for majority rule; nevertheless, they do not obtain consent from their members.

Senator WONG—If that is the point, you can make a speech about it.

CHAIR—Do you have a further question?

Senator BARNETT—No, I am happy to leave it there, thanks.

Mr Pratt—Madam Chair, I have a correction to an answer I gave before. Senator Abetz was correct. The consensus view was incorrect. Senator Wong, you asked whether or not there was any expenditure on research in relation to that \$7.3 million.

Senator WONG—In the last line item on page 16?

Mr Pratt—That is right. And there was. We spent just under \$350,000 on tracking research.

Senator WONG—Tracking what?

Mr Pratt—Tracking reactions to the WorkChoices advertising.

Senator WONG—Is that included in the consultancy, the very long list at the back of the annual report?

Mr Pratt—Yes, Colmar Brunton.

Senator WONG—Thank you. I have a few more questions with outcome 2 and then we quickly want to get the Fair Pay Commission in for a short period.

CHAIR—All right.

Senator WONG—Thank you. Very quickly, is the consultant funding that is outlined in the annual report in addition to or partly inclusive of the \$55 million spent on the WorkChoices advertising campaign?

Mr Pratt—Just to be completely accurate, I think we spent in the order of about \$44 million to \$45 million all up, not \$55 million. Some of that is covered by the consultancies here, but if I take you to page 334 of the annual report you will see that there is expenditure associated with the WorkChoices advertising campaign under table 7.4.

Senator WONG—There was one issue in relation to the duress transmission of business provisions, which OWS, I think, invited me to put to DEWR.

Mr Pratt—Ms James will answer your questions on that, Senator.

Senator WONG—Ms James, did you witness the discussion with OWS regarding the Hilton IGA issue and, at a policy level, the tension between the duress provisions and the transmission of business provisions?

Ms James—I did, yes.

Senator WONG—I wonder if you could give me your view, or what the department understands to be the position.

Ms James—Our position in relation to this area of the law is that the law has not been changed by the WorkChoices reforms, so the situation before and after WorkChoices is that it is unlawful to apply duress in relation to the making of an AWA. Duress has been interpreted in this context by the courts roughly to mean a form of illegitimate pressure. It has been found reasonably specifically in relation to transmission of business that, in that context, it can be and it has been found to be an AWA duress where an employee is told that, for their employment to continue following a transmission of business, they must accept an AWA.

The WorkChoices legislation did not change this position. A provision was inserted into the legislation that says that to avoid doubt a person does not apply duress merely because they

require another person to make an AWA as a condition of engagement. That emphasised the existing state of the law. I can refer you to page 26 of the supplementary explanatory memorandum, which refers to Justice Moore's decision in the *Schanka v Employment National (Administration) Pty Ltd* decision in this regard. It also says that it reinforces the intended effect of the pre-WorkChoices law.

Senator WONG—I appreciate the position, and I think you have put this before, or Mr Smythe from ILO has; but I think the issue that we were putting to Mr Wilson is that making an offer of employment contingent upon signing an AWA, in the context of transmission of business where an employee is entitled under the provisions of the legislation to continue to enjoy the existing conditions of employment for the 12-month period post transmission, can be obviated by the transmittee employer saying, 'You only get this job on the basis of signing an AWA.' If merely requiring an AWA to be signed is not duress—that is, there are no other extraneous factors to which you could have regard to establish duress—then doesn't that really obviate the transmission of business provisions?

Ms James—What the *Schanka* decision held was that that situation is different from the mere offer of employment where there has been no relationship before. So *Schanka* is a different sort of decision from the Burnie Port Authority decision which found that when someone is offered a job off the street conditional on an AWA, that is not duress, that is permissible. So what the *Schanka* decision found was the context of transmission of business was different. It produced a different set of circumstances and in that case it was found that there had been duress.

Senator WONG—So in the situation where there is a transmission of business there is no other evidence of duress to which you might have regard other than, 'You only get this job if you take it on the basis of this AWA.' Can an employer avoid the transmission of business provisions?

Ms James—I do not believe so, no. Duress is always a case-by-case situation. You have to assess the pressure and the particular circumstances. But if an employer in a transmission of business context says, 'I'm not going to give you a job. Your current job will not continue when we take over the business if you do not accept this AWA,' then my view is that that is on all fours with the *Schanka* decision and is likely to be found to be duress.

Senator WONG—Notwithstanding the provisions in the act—yes, I understand what you are saying. Is that the advice that is going to be provided to OWS?

Ms James—I understand OWS has obtained its own independent legal advice on this matter. If I were to discuss the issue with OWS, as a general principle that is what I would say to them. We would not normally provide detailed advice about a particular case scenario to OWS.

Senator WONG—If your construction is correct, then presumably there is potentially action that could be taken in relation to the 63 in the Hilton IGA.

Ms James—I believe they have initiated it.

Senator WONG—No, only in relation to outcome 2, as I understand it.

Ms James—Okay. I am not familiar with all of these.

Senator WONG—We have nothing more for outcome 2. Thank you very much. Could we have the Fair Pay Commission?

CHAIR—Thank you very much to everyone. We are now moving on to the Australian Fair Pay Commission.

[10.33 pm]

Australian Fair Pay Commission

CHAIR—Welcome, Ms Taylor. We have some questions for you, I understand.

Senator BARNETT—I want to ask just a few questions about a couple of newspaper reports that I have read, including one from the *Australian* newspaper on 30 October, which is headed 'Pay umpire rigged result: Shorten'. The first paragraph reads:

John Howard's new wage tribunal for low-income earners has been accused of lacking credibility by a prominent union official, who claims it granted higher pay rises than expected to help the Government at next year's federal election ... Mr Shorten's accusation is a serious attack on the integrity and independence of the commission chairman, economics professor Ian Harper, and four fellow tribunal members—Judith Sloan, Patrick McClure, Mike O'Hagan and Hugh Armstrong ... 'It's an extra \$27 you wouldn't get unless there was an election next year,' said Mr Shorten ...

Can you comment on the accuracy or otherwise of those statements.

Ms Taylor—I find it difficult to offer comment about a newspaper article and about the various merits of the argument.

Senator Abetz—I dare say the director would find it difficult to advise as to what would have been in the minds of the four commissioners in coming to the determination. I get the drift of what you are getting at—unfortunate and regrettable comments—but I am not sure that the director—

CHAIR—No, I think it would not be possible.

Senator BARNETT—All right. Let me rephrase the questions, Chair. Can you tell us on what basis the \$27-a-week increase in the minimum wage was made?

Ms Taylor—The commission has published its reasons for decision. It is a fairly substantial document. The process that the commission undertook was to call for submissions, to undertake a range of stakeholder meetings, to hold public consultations and commission its own research. Based on that information that went to the commission and they made that determination and they have published the reasons for the decision. Professor Harper, as chair of the commission, has made comment about how they came to that.

Senator BARNETT—It would be a very brave director that would seek to add to the commission's written findings.

Ms Taylor—Absolutely.

Senator BARNETT—Indeed. Do any of those views or conditions upon which the decision was made involve political outcomes?

CHAIR—Again, with due respect, Senator, I think it would be unfair to expect Ms Taylor to answer that question.

Senator Abetz—Without putting words into Ms Taylor's mouth, I would suggest that the answer would be that the written decision stands on its own. You would need to trawl through the decision and then make your own personal judgement as to whether of the considerations could be labelled as political with the election in mind—the sorts of comments that Greg Combet made. I am sure you would not find anything of that nature in the written decision.

Senator BARNETT—Thank you, Minister, and I appreciate that, Chair. In terms of the feedback or otherwise you have had since the decision was made, can you share any of that with the committee?

Ms Taylor—We have received little feedback at the secretariat about the decision. Most of the inquiries that we have had since the decision have been really about people saying, 'What does this mean for me?' et cetera. There has obviously been a lot of comment in the media, but in terms of the secretariat and the commission the feedback has been limited to that.

Senator BARNETT—Finally, how many do you employ?

Ms Taylor—As at 31 October there are 24 people employed at the Fair Pay Commission secretariat.

Senator BARNETT—Is that expected to change radically over the next six to 12 months or will it be about the same?

Ms Taylor—No, Senator, on average that would be our staffing level.

Senator BARNETT—Thank you.

Senator McEWEN—Ms Taylor, can I just refer you to page 16 of the additional budget estimates, the line item there establishing the Fair Pay Commission?

Ms Taylor—Yes.

Senator McEWEN—Can you just give me an update on page 16, table 1.2, 'Establishing the Australian Fair Pay Commission'. Can you tell me whether there have been any variations?

Ms Taylor—There are no variations to that for 2006-07, 2007-08 and 2008-09. The actual outcome was less than in 2005-06 but there are no variations to those.

Senator McEWEN—What was the actual for 2005-06?

Ms Taylor—I can give you the exact outcome of the actual for 2005-06.

Senator Abetz—Do a lot of questions flow on from this or could it be taken on notice, given the time constraints that we are under?

Ms Taylor—I have it. Senator, the actual expenditure was \$1.364 million.

Senator McEWEN—So less than half of what was appropriated. Are there any expectations that there will be a similar shortfall in expenditure for—

Ms Taylor—No, Senator.

Senator McEWEN—Do you have figures for 2009-10?

Ms Taylor—No.

Senator McEWEN—Why not?

Ms Taylor—They are the forward estimates, Senator. That is what we have.

Senator Abetz—Yes. These have the same rationale that Dr Boxall was providing.

Senator McEWEN—Can you, Ms Taylor, give me some indication of the composition of the funding. What are the major components of the funding?

Ms Taylor—The major components of the funding are detailed under three outputs. We have wage review, wage setting and information services.

Senator McEWEN—I take it the information services are advertising and the website.

Ms Taylor—Communications, publications, website, website development, advertising and consultations.

Senator McEWEN—Wage review is?

Ms Taylor—Wage review is the actual process of undertaking a wage review that the commission goes about. It includes calling for submissions, the receiving of submissions, the commissioning of research, and undertaking consultations with stakeholders.

Senator McEWEN—That is an annual task?

Ms Taylor—Yes, it is.

Senator McEWEN—And what portion of the overall expenditure would that be, roughly?

Ms Taylor—Of the \$7.718 million, the wage review output is \$5.730 million, the wage setting output is \$1.070 million and the information services output is \$0.918 million.

Senator McEWEN—And the \$1.070 million is the funding, I presume, for the commissioner and the processes of the commission. Is that right?

Ms Taylor—Yes. It is for the actual decision making and for the funding of commissioners, although, if I can clarify, part of that is also spread across the other outputs.

Senator McEWEN—What other outputs?

Ms Taylor—The wage review and—

Senator McEWEN—Right. In relation to the decision with regard to the minimum wage, when did the AFPC first advise the government about the quantum and details of its decision, who was advised and how were they advised?

Ms Taylor—The commission made available prior copies of the report to a range of stakeholders on the morning of the decision under an embargo copy. The government was one of those.

Senator McEWEN—Who were the others?

Ms Taylor—The others were the ACTU, ACCI, AiG, ACOSS, and the opposition.

Senator WONG—Was that the first time the government was advised?

Ms Taylor—Yes, it was, as I understand it.

Senator McEWEN—And the minister was advised?

Ms Taylor—Minister Andrews was advised.

Senator McEWEN—So the minister and those other organisations were all advised at the same time?

Ms Taylor—At roughly the same time. We had copies of reports delivered. I do not know what time the couriers got to some places, but it would have been within an hour of each other.

Senator McEWEN—And it was advised by report?

Ms Taylor—It was advised by report, as I understand. The copies were either picked up from the commission or delivered there, from my understanding.

Senator McEWEN—From your understanding?

Ms Taylor—From the secretariat's point of view.

Senator McEWEN—I see, but the report actually came from the commissioner.

Ms Taylor—The report came from the commission, yes.

Senator McEWEN—That occurred on the morning, you said, of the public announcement?

Ms Taylor—That is correct.

Senator McEWEN—And that was the first communication to those groups?

Ms Taylor—Of the quantum, of the amount, yes.

Senator McEWEN—There was only a short period of time between the advice from the commission to those organisations, including the minister, and the public announcement. Is that right?

Ms Taylor—Yes, Senator.

Senator McEWEN—Was there any discussion between your office and the minister before the public announcement was made?

Ms Taylor—No.

Senator McEWEN—When did the Fair Pay Commission advise DEWR of the content of the AFPC decision regarding the FMW?

Ms Taylor—Senator, can I make a correction to those we delivered to. We also delivered a copy to DEWR.

Senator McEWEN—That was at the same time as everybody else?

Ms Taylor—Yes.

Senator WONG—You said an embargo copy was released to various stakeholders, the department, the minister, the opposition et cetera. Was any other information in relation to the commission's process associated with setting the FMW communicated as between the commission and the government?

Ms Taylor—No, with the exception of the disability wage orders. We held two disability wage roundtables, which included representatives of the Department of Employment and

Workplace Relations. It included a range of other stakeholders who had an interest in the issue of disability.

Senator WONG—Thank you.

Senator McEWEN—The most recent decision will take effect from 1 December 2006, and the AFPC has indicated that your next decision will be mid-2007. How was that time frame determined, Ms Taylor?

Ms Taylor—That was a time frame determined by the commission.

Senator McEWEN—Do you know what they took into account in determining that time frame?

Ms Taylor—It is part of the written decision. They have made reference in there to the next wage review being mid-2007.

Senator McEWEN—Do you know whether there was any consideration given to scheduling the next increase, bearing in mind that the next federal election is expected in the second half of next year?

Ms Taylor—Senator, that would call for me to speculate on why the commission made that decision.

Senator BARNETT—Chair, I make a point of order, if you do not mind.

Senator WONG—The question has been asked.

Senator BARNETT—The point of order is that that question should be ruled out in the same way that the earlier question that I asked has been ruled out, because it is talking about speculation on a political matter.

CHAIR—Indeed.

Senator BARNETT—It would be consistent.

CHAIR—Thank you, Senator, I will decide whether I am consistent or not. That question should not be answered by the witness.

Senator McEWEN—Ms Taylor, if the decision is due mid-2007, does that mean that any increase is likely to be awarded from that date?

Ms Taylor—That would be a matter for the commission to determine and make an announcement at that time.

Senator McEWEN—What normally used to happen in the wage cases is that the decision would be made 12 months from the last decision. Would you expect that principle to apply, so that the next pay increase will be 1 December 2007?

Senator Abetz—She is being asked to look into the mind of the commissioners, and I do not think that the director—

CHAIR—That is quite speculative. It is, I would say, at least 12 months hence, and no-one would wish to put words into Ms Taylor's mouth. I think you should leave that question alone, Senator.

Senator McEWEN—Bearing in mind that the commission has indicated that it will make another decision in mid-2007, has the secretariat of the AFPC undertaken any preparation for the next round of consultations and seeking submissions and researching whatever needs to be researched?

Ms Taylor—We are currently undertaking that. We are in the planning phase for the next round and we are speaking with the commissioners about what they want to see in the next process. We are also looking at time lines if we call for submissions, undertake consultations—the process that we are going through. All of that will be finalised by the end of this month. That will be announced and put in train.

Senator McEWEN—By the end of this month—that is November—you will be able to go public with the program of community consultations, submissions and research.

Ms Taylor—Yes. We will be able to announce the processes that the commission wishes to undertake as part of its next wage review.

Senator McEWEN—What will be the closing date for submissions?

Ms Taylor—We have not determined that but I would think that we would be looking at a fairly lengthy time. Given that in December-January a number of the key stakeholders are away, the process would be several months.

Senator McEWEN—Effectively, it is a reasonably short period of time in which people are going to have to get their submissions in and you are going to have to do your research?

Senator Abetz—We know the time. Whether you describe it as lengthy or short, we know the actual time. Trying to describe it is for you and others, and not fair on Ms Taylor.

Senator McEWEN—Would you expect that having only, say, six months between determinations would create an expectation, Ms Taylor—and this might be likely to be picked up in your research and in submissions—that any determination in 2007 would be smaller than last week's increase?

CHAIR—Senator, with due respect, you are the one who has made the time interval of six months. That may or may not be true, and I think it is unfair to ask Ms Taylor to speculate on what may happen in that time.

Senator WONG—On a point of order, on your ruling, I am sure that Senator McEwen has other questions that she can ask. As I understood the question, it related to what attitudes might be picked up by research, given the time frame that has been outlined, on the consultation process that was being discussed.

Senator Abetz—It is speculative as to what the research might pick up about whether people expect a smaller increase than has just been granted. The research will undoubtedly speak for itself.

CHAIR—Other than the fact that Ms Taylor said that preparation for consultation would be starting almost immediately, I do not know that she did describe a time frame. Therefore, I think that it is unfair to ask her to speculate on that. I am ruling the question out of order.

Senator McEWEN—With regard to the decision that has already been made in terms of a pay increase, what monitoring and audit mechanisms does the AFPC have in place to determine the effects of that decision?

Ms Taylor—Part of the decision says that it will be monitored and part of what we are undertaking at the moment is planning for that monitoring. That will include a research component. But, again, by the end of this month we will have the full details of the monitoring component of that as well.

Senator WONG—Do I understand from that that the architecture—as one might call it—for that kind of monitoring is, in fact, not yet in place?

Ms Taylor—Part of it is and part of it is not.

Senator WONG—Perhaps you could tell us about both of those bits then.

Ms Taylor—Part of the monitoring is of course looking at a range of statistics that are already collected through agencies such as the ABS. Part of that is the architecture that is being developed and will be developed with further research.

Senator Abetz—The monitoring of the impact of these things will be from business organisations undoubtedly saying, ‘It’s far too hard to pay these increases,’ and ACOSS undoubtedly saying, ‘It’s not enough,’ and then the Fair Pay Commission has to try to draw the conclusions.

Senator McEWEN—Thank you, Minister. That is very helpful. Ms Taylor, will the process of audit review be done within the AFPC with your staff, or will it be done externally?

Ms Taylor—Audit and review of?

Senator Abetz—The impact of the decision.

Senator McEWEN—The impact of the decision.

Ms Taylor—Partly that will be commissioned research and partly it will be done in-house in the secretariat.

Senator WONG—So that decision has been made?

Ms Taylor—Yes, to do part of it. As I said, that first part is internal, in looking at what information is currently available for analysis. But at this stage we may have to go outside for further research.

Senator McEWEN—Are there any tenders being put out for external assistance?

Ms Taylor—No, Senator, not at this stage. That is what we are finalising in this coming period.

Senator McEWEN—At the end of November you will know whether you are going to do that or not.

Ms Taylor—Yes, Senator.

Senator WONG—What is your budget for tenders, for that coming external consultancy?

Ms Taylor—In looking at our research budget—

Senator WONG—What component of your budget would be relevant to this function?

Ms Taylor—Approximately \$490,000.

Senator WONG—That is available in terms of external—

Ms Taylor—Commissioned research.

Senator WONG—commissioned research for the purpose of this activity. Is that for the current financial year

Ms Taylor—For the current financial year, yes.

Senator McEWEN—As part of this review process, is it intended to make both employers and employees aware of their ability to make representations; give feedback?

Ms Taylor—As I said, we are working out the detail of that, but certainly in terms of the submission process and undertaking similar processes, that is something that is under consideration—about how we gain the views across a range of stakeholders.

Senator McEWEN—Has the Fair Pay Commission forecast the number of Australian workers likely to be relying upon the minimum wage in future years?

Ms Taylor—No, Senator.

Senator McEWEN—Is that likely to be part of any of your review and audit mechanisms about the impact of the decision?

Ms Taylor—As I said, at the moment, we are looking at what we do into the future. It is also something that has already been raised in submissions and we would expect it to be raised in submissions again.

CHAIR—We have now reached 11 pm which is the designated closing time. Thank you very much, Ms Taylor, for your first appearance here before us.

Ms Taylor—Thank you.

CHAIR—Thank you Minister, thank you Senators, thank you Hansard and thank you committee secretariat.

Committee adjourned at 11.00 pm