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SENATE

EDUCATION AND EMPLOYMENT LEGISLATION COMMITTEE

Estimates

(Public)

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EDUCATION AND EMPLOYMENT LEGISLATION COMMITTEE

Wednesday, 14 February 2024

Members in attendance: Senators Brockman, Cash, Davey, Faruqi, Grogan, O'Sullivan, Payman, Barbara Pocock, Rice, Roberts, Sheldon and Waters

EMPLOYMENT AND WORKPLACE RELATIONS PORTFOLIO**In Attendance**

Senator Watt, Minister for Agriculture, Fisheries and Forestry, Minister for Emergency Management

Senator Chisholm, Assistant Minister for Education, Assistant Minister for Regional Development

Department of Employment and Workplace Relations**Secretary**

Ms Natalie James

Corporate and Enabling Services

Ms Deborah Jenkins, Deputy Secretary and Chief Operating Officer

Mr Tim Ffrench, First Assistant Secretary and Chief Risk Officer, Legal and Assurance

Mr Joseph (Ben) Sladic, First Assistant Secretary and Chief Financial Officer, Finance and Budget

Ms Giorgina Strangio, First Assistant Secretary and Chief People Officer, People and Communication

Mr Adam Shain, Acting First Assistant Secretary and Chief Digital Officer, Digital Solutions

Mr Danny Jones, Assistant Secretary, Technology and Services

Mr Chris Jaggars, Assistant Secretary, Technology and Services

Ms Bridie Cosgriff, Assistant Secretary, People and Communication

Ms Nicole Forbes, Acting Assistant Secretary, People and Communication

Ms Ingrid Nagy, Assistant Secretary, People and Communication

Mr Mathew Gilliland, Assistant Secretary, Finance and Budget

Ms Nevin Gamal, Acting Assistant Secretary, Finance and Budget

Ms Jennifer Hewitt, Assistant Secretary and Chief Internal Auditor, Legal and Assurance

Employment and Workforce

Ms Melissa Ryan, Acting Deputy Secretary

Mr Ian Nicholas, Assistant Secretary, Workforce Australia for Individuals

Ms Quyen Tran, Assistant Secretary, Workforce Australia for Individuals

Ms Fiona MacDonald, Assistant Secretary, Workforce Australia for Individuals

Ms Belinda Catelli, Acting First Assistant Secretary, Workforce Australia for Individuals

Ms Dany Turner, Acting Assistant Secretary, Workforce Australia for Individuals

Mr Alistair Beasley, Acting First Assistant Secretary, Evidence and Assurance

Dr Louise O'Rance, Assistant Secretary, Evidence and Assurance

Mr Bruce Cunningham, Assistant Secretary, Evidence and Assurance

Ms Anna Ritson, Acting Assistant Secretary, Evidence and Assurance

Ms Jodie Chamberlain, Assistant Secretary, Evidence and Assurance

Ms Sharon Huender, Acting First Assistant Secretary, Employment Policy and Analytics

Ms Nadine Groney, Assistant Secretary, Employment Policy and Analytics

Ms Abigail Kuttner, Assistant Secretary, Employment Policy and Analytics

Mr Niran Gunawardena, Acting Assistant Secretary, Employment Policy and Analytics

Ms Edwina Spanos, Acting First Assistant Secretary, Workforce Australia Provider Support

Mr Tim Matthews, Assistant Secretary, Workforce Australia Provider Support

Ms Natasha Ryan, Assistant Secretary, Workforce Australia Provider Support

Ms Samantha Robertson, Assistant Secretary, Workforce Australia Provider Support

Ms Susan Pietrukowski, Acting Assistant Secretary, Workforce Australia Provider Support

Ms Miranda Lauman, First Assistant Secretary, Workforce Australia for Business

Ms Eve Wisowaty, Assistant Secretary, Workforce Australia for Business

Ms Jodie Wearne, Assistant Secretary, Workforce Australia for Business

Ms Nikki Armour, Acting Assistant Secretary, Workforce Australia for Business
Mr Jason Stott, First Assistant Secretary, Pacific Australia Labour Mobility
Ms Sue Saunders, Assistant Secretary, Pacific Australia Labour Mobility
Ms Stacey Lange, Assistant Secretary, Pacific Australia Labour Mobility
Mr Joe Dore, Acting Assistant Secretary, Pacific Australia Labour Mobility
Ms Cary Duffy, Acting Assistant Secretary, Pacific Australia Labour Mobility
Ms Benedikte Jensen, First Assistant Secretary, Planning for My Future Taskforce

Skills and Training

Ms Anna Faithfull, Deputy Secretary
Dr Simon Booth, Chief Adviser, National Skills Agreement Taskforce
Mr Chris Atkinson, Acting Assistant Secretary, Multilateral Policy Branch
Mr George Thiveos, Senior Responsible Officer, Digital Projects and First Nations Division
Ms Ann Borg-Barthet, Acting Assistant Secretary, Digital Projects and First Nations Division
Ms Belinda Campbell, Acting First Assistant Secretary, Apprenticeships and Foundation Skills Division
Ms Carmen Saunders, Assistant Secretary, Apprenticeships and Foundation Skills Division
Mr Thomas Varendorff, Assistant Secretary, Apprenticeships and Foundation Skills Division
Ms Alex Buckley, Acting Assistant Secretary, Apprenticeships and Foundation Skills Division
Ms Laura Angus, First Assistant Secretary, Careers and International Skills Division
Ms Linda White, Assistant Secretary, Careers and International Skills Division
Mr Daniel Langer, Acting Assistant Secretary, Careers and International Skills Division
Mr Alec Wickerson, Acting Assistant Secretary, Careers and International Skills Division
Ms Jane Hayden, Assistant Secretary, Careers and International Skills Division
Ms Vicki Wilkinson, First Assistant Secretary, National Skills Agreement Taskforce
Ms Beth Ross, Acting Assistant Secretary, National Skills Agreement Taskforce
Ms Carmel O'Regan, Assistant Secretary, National Skills Agreement Taskforce
Ms Renae Houston, First Assistant Secretary, Industry Engagement and Quality Division
Dr Richard Bolto, Assistant Secretary, Industry Engagement and Quality Division
Ms Katerina Lawler, Assistant Secretary, Industry Engagement and Quality Division
Mr Chris Alach, Assistant Secretary, Industry Engagement and Quality Division
Ms Natasha Platts, Acting Assistant Secretary, Industry Engagement and Quality Division
Mr Matthew Hardy, First Assistant Secretary, VET Data, Loans and Compliance Division
Ms Nisette Anderson, Acting Assistant Secretary, VET Data, Loans and Compliance Division
Mrs Georgianna Duggan, Acting Assistant Secretary, VET Data, Loans and Compliance Division
Ms Cara Sergeant, Acting Assistant Secretary, VET Data, Loans and Compliance Division

Jobs and Skills Australia

Mr David Turvey, Acting Commissioner
Mr Clifton Bingham, Acting First Assistant Secretary
Dr Damian Oliver, Assistant Secretary
Ms Angela Hope, Assistant Secretary
Ms Natasha Yemm, Acting Assistant Secretary
Ms Maria Shanahan, Acting Assistant Secretary
Ms Joanna Reeve, Acting Assistant Secretary

Workplace Relations

Mr Gregory Manning, Deputy Secretary
Ms Danica Yanchenko, Acting First Assistant Secretary, Employment Conditions

Ms Tara Williams, Assistant Secretary, Employment Conditions
Ms Jennifer Wettinger, Assistant Secretary, Employment Conditions
Mr Henry Jones, Acting Assistant Secretary, Employment Conditions
Ms Angela Wallbank, Acting First Assistant Secretary, Entitlements Safeguards
Mr Ryan Perry, Acting Assistant Secretary, Entitlements Safeguards
Mr Henry Carr, Assistant Secretary, Entitlements Safeguards
Ms Helen McCormack, Assistant Secretary, Entitlements Safeguards
Ms Jody Anderson, First Assistant Secretary, Safety and Industry Policy
Ms Rachel Thomas, Acting Assistant Secretary, Safety and Industry Policy
Mr David Cains, Assistant Secretary, Safety and Industry Policy
Ms Elizabeth de Hoog, Assistant Secretary, Safety and Industry Policy
Mr Justin Bell, Acting Assistant Secretary, Safety and Industry Policy
Ms Sarah Godden, Chief Counsel, Workplace Relations Legal
Mr Adrian Breen, Assistant Secretary, Workplace Relations Legal
Mr Daniel Tracey, Assistant Secretary, Workplace Relations Legal
Mr Stuart Kerr, Acting Assistant Secretary, Workplace Relations Legal

Australian Skills Quality Authority

Ms Christina Bolger, Acting Chief Executive Officer
Mr Ty Emerson, Executive Director
Ms Carmen Basilicata, Executive Director
Ms Fiona O'Brien, Acting Deputy Chief Executive Officer
Ms Melinda Cox Acting Executive Director
Ms Denise Carlus-Lowe, Executive Director
Mr Warren Rushby, Chief Finance Officer

Fair Work Commission

Mr Murray Furlong, General Manager
Ms Joelle Leggett, Executive Director, Tribunal Support Branch
Mr Jack Lambalk, Executive Director, Enabling Services Branch
Ms Katharine Scarlett, Acting Executive Director, Client Services Delivery Branch
Mr Patrick McCarthy, Executive Director, Communications, Legal and Integrity Branch
Mr Chris Enright, Executive Director, Registered Organisations Services Branch

Fair Work Ombudsman

Ms Anna Booth, Fair Work Ombudsman
Mr Michael Campbell, Chief Operating Officer
Ms Kristen Hannah, Deputy Fair Work Ombudsman, Policy and Communication
Mr Mark Scully, Deputy Fair Work Ombudsman, Compliance and Enforcement
Ms Rachel Volzke, Chief Counsel
Ms Michelle Carey, Deputy Fair Work Ombudsman, Large Corporates and Industrial Compliance
Mr Steven Ronson, Executive Director—Enforcement
Ms Kate Anderson, Acting Executive Director—Industrial Compliance
Ms Janine Dennis, Executive Director—Legal Compliance and Enforcement Branch
Mr Anthony Fogarty, Executive Director—Policy

Safe Work Australia

Ms Marie Boland, Chief Executive Officer
Dr Rebecca Newton PhD, Branch Manager—Chemicals and Occupational Hygiene Policy

Ms Meredith Bryant, Branch Manager, Evidence, Communications and Industries Policy
Ms Sarah Costelloe, Branch Manager, WHS Framework and Workers Compensation Policy
Ms Nicole Parkes, Acting Senior Director, Enabling Services

National Centre for Vocational Education Research

Mr Simon Walker, Managing Director

Committee met at 09:00

CHAIR (Senator Sheldon): I declare open this hearing of the Senate Education and Employment Legislation Committee on the 2023-24 additional estimates. I begin by acknowledging the traditional custodians of the land on which we meet today and pay my respects to the elders past and present. I extend that respect to Aboriginal and Torres Strait Islander people here today.

The committee has resolved that written questions on notice should be received from senators by close of business on Friday 23 February 2024. The committee has fixed Friday 5 April 2024 as the date for the return of answers to questions taken on notice. The committee's proceedings today will begin with corporate and general matters of the Employment and Workplace Relations portfolio. Under standing order 26 the committee must take all evidence in public session. This includes answers to questions on notice. I remind all witnesses that, in giving evidence to the committee, they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence.

The Senate has endorsed the following test of relevance of questions at the estimates hearings: any questions going to the operations or financial positions of the departments and agencies which are seeking funds in estimates are relevant questions for the purpose of estimates hearings. I remind officers that the Senate has resolved that there are no areas 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. The Senate has also resolved that an officer of a department of the Commonwealth should not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Witnesses are reminded of the Senate order specifying the process by which a claim of public interest immunity should be raised. I incorporate the public interest immunity statement into the *Hansard*.

The extract read as follows—

Public interest immunity claims

That the Senate—

(a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;

(b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;

(c) orders that the following operate as an order of continuing effect:

(1) If:

(a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and

(b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.

(2) If, after receiving the officer's statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.

(3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.

(4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information

or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.

(5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.

(6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.

(7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).

(8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

(d) requires the Procedure Committee to review the operation of this order and report to the Senate by 20 August 2009.

(13 May 2009 J.1941)

(Extract, Senate Standing Orders)

CHAIR: I remind all senators that, as we continue our work implementing the 'Set the standard' report, as chair I'll ensure that proceedings are conducted in an orderly, respectful and courteous way. An officer called to answer a question for the first time should state their full name and the capacity in which they appear.

Department of Employment and Workplace Relations

[09:02]

CHAIR: I now welcome Senator Murray Watt, Minister for Agriculture, Fisheries and Forestry and Minister for Emergency Management, representing the Minister for Employment and Workplace Relations. I also welcome representatives from the Department of Employment and Workplace Relations, including the secretary, Ms Natalie James. Minister Watt, do you wish to make an opening statement.

Senator Watt: I don't, Chair, but it's good to see you all.

CHAIR: Thank you, Ms James, do you have an opening statement?

Ms James: Thank you. I would like to make a short opening statement addressing three issues, the first being changes in the bench. We've got some changes in who will be appearing today. The second relates to requests from senators for information to be provided to them, and the third relates to some recent commentary in the media about people in my department and their work arrangements.

To go to the first, Martin Hehir PSM, who was deputy secretary of workplace relations last time we sat at this table, has been appointed deputy secretary and chief operating officer, governance and corporate, at the Department of the Prime Minister and Cabinet. We congratulate him on his appointment. While we do miss him and thank him for the incredible work he's done with the department over many years, we also welcome Gregory Manning, who has been appointed to that role and will be appearing here in that capacity today. Tania Rishniw, the deputy secretary of Employment and Workforce Group, is unfortunately unable to attend the hearing today. Melissa Ryan PSM is acting in her role and will be at the table when that appropriate moment arises. Professor Barney Glover AO, who's the current Vice Chancellor of Western Sydney University, has been appointed to the role of Commissioner of Jobs and Skills Australia. He has not commenced yet. He's commencing in April. Mr David Turbey is acting in the role and will be here when we get to that part of the proceedings to answer any questions you have about their role. On 15 January 2024, Mr Craig Ward was appointed as the new Student Identifiers Registrar. He is responsible for any questions in that area. That's the first set of issues that I was going to cover.

The second is that I received letters over the last week from Senator Rice and Senator O'Sullivan. When Senator Rice is here, we are happy to table that information and we're ready to answer any questions she has that she's given us a heads-up about. Senator O'Sullivan wrote to me last Friday afternoon, I think. The time frames are getting shorter. But we have provided a response, which we will now table. That's gone to the committee, but we'll formally table that now so it's on the record and covered by parliamentary privilege. I'm happy to answer any questions there.

Now I'll go to the third issue. There have been some reports about the working arrangements of my department's staff, referencing responses we provided to this committee on notice from last Senate estimates. I thank the publication for correcting its report at our request yesterday about the proportion of our people who

regularly work from home. For the record, as at 31 December 2023 the department had 1,298 APS employees with a regular working-from-home arrangement. That amounts to 33.1 per cent of our people. On average, these people's arrangements involve them working 1.9 days per week remotely on a regular basis. It's worth noting that these work-from-home arrangements are covered by guidelines. Every year there's a discussion between managers and staff about whether it's working. I'm proud of the flexible working arrangements we have in my department. A number of other people would access remote work from time to time on an ad hoc basis, but the proportion of people who have an arrangement of the nature that I just outlined is 33.1 per cent.

To suggest that my people are disconnected from the office when they are working from home could not be further from the truth. They are the opposite of disconnected. They are about as wired into the matrix as you could possibly be. They are connected to our work and our people through technology. They're on calls while often also sending Teams messages to one another. They're speaking to drafters, job seekers, providers, partners and stakeholders using the technology available to them.

The right to disconnect—the new laws that passed the parliament this week—are not about the rules that apply when we are at work. We have longstanding rules that deal with rosters; ordinary hours of work; in our case, flex time; and, yes, remote working or work from home. The new rules are about how we interact when we are not at work—when it's not our ordinary working hours. They set principles around communication out of work time when people aren't expected to be working and aren't being paid to be working.

In my department, we work hard to try and get this balance right, particularly for our senior people, who are remunerated in a way that reflects an expectation that they do work outside of their ordinary hours, but they are still entitled to balance and their wellbeing is paramount. One of our biggest challenges is setting reasonable boundaries around this. They're very committed and sometimes we have to actively manage their wellbeing. I wouldn't say we always get this right, but it's something we regularly talk about, and the new laws will be a prompt for us all to ensure we are having conversations with our people that ensure that we're able to get the job done and also respect boundaries and wellbeing so that we can all make plans for life as well as work. We will no doubt be having conversations over the next six months. The new laws don't commence for six months—until after assent. We've talked to the Australian Public Service Commission about the fact that we'll all need guidance across the Public Service to ensure that we're aware of this new entitlement and that we're getting it right.

That's all, Chair, thank you.

CHAIR: Thank you. Could you pass on to Mr Hehir—I'm sure people still keep in contact with him—that I appreciate all the time he spent in the department when I was in opposition and also in government. He's always carried himself in a very professional and succinct manner. Mr Manning, we're looking forward to seeing you again. Congratulations on your new role. It's certainly earned. Again, I have similar observations of the professional way in which you've handled your questions, answers to questions and commentary. I also welcome the new appointments. We're looking forward to hearing from you—some of you or maybe all of you today, but certainly some of you. I also just want to thank the department for the hard work in the bills. Regardless of the senators' different views about the effect or the value of the bills put forward, there's no question about the hard work in preparing those bills that's taken place. I know there's some commentary, as you've rightly raised, about the group that's working from home. In my office I have people working from home as well, and they work extremely diligently. I know it works. But also, when you see the hard work that's been done, you've obviously got the recipe right. So, again, thank you for your endeavours. I'll now go to the opposition.

Senator O'SULLIVAN: Thank you. I'll just make a few initial comments and then I'll pass to Senator Cash. I certainly do welcome those appointments and changes and thank all those people who have served, particularly Mr Hehir. Ms James, thank you for your response to my letter, firstly. I do appreciate you got it on Friday. That also does underscore my appreciation for getting it to us in the timely way that you have. I will endeavour to get it to you a little earlier next time, but I do appreciate you working through. We do have questions that will go to elements in that letter, but I do appreciate you providing it to us.

Senator CASH: Just in relation to the response given, on page 4 at question 4 there is information given in relation to the underpayment that we discussed at the last estimates. Can I just pick up a line of questioning there. We did obviously spend a significant time at the last estimates hearing going through the underpayment that occurred. I believe you described it being as a result of complexity. At the time, you advised the committee that the department was proceeding with an audit of the payroll. Has this occurred?

Ms James: Senator, before I hand to the officers who are responsible for that: I don't believe that at last estimates I attributed what had occurred to the complexity. I did not use that word—that is my recollection.

Senator CASH: What was it attributed to, then? Perhaps we could go back to that. What did you attribute the underpayment to?

Ms James: If you don't mind, I might just return to the last Hansard. I noted that we got the underpayment issue wrong. I noted that we were traversing consequences of machinery of government changes in the department. We were a new entity. I noted that the Australian Public Service framework involves arrangements that are quite distinct from what other employees are working to in these situations. What that means is that we were working under a Public Service Act determination. It was a determination that had to be—I'm going from memory now—read in line with the Australian Public Service award, which is an instrument that, by and large, people haven't been covered by because of the extent of bargaining in the public sector. You're right, Senator. We did talk about this quite a lot.

Senator CASH: We did. In fact, I don't have it in front of me, but the exact quote was, 'Arrangements for pay and conditions become a little more complex as a result of the machinery of government change'. I was actually giving you the benefit of the doubt by saying it was complex.

Ms James: I didn't quite blame the complexity of the workplace or attribute the complexity of the workplace relations framework for what had occurred.

Senator CASH: It was that the arrangements for pay and conditions had become a little more complex—

Ms James: Well, they had—

Senator CASH: as a result of the machinery of government change.

Ms James: And that played a role, but I did not attribute that as the cause.

Senator CASH: That's fine. But you agree, though, that your quote was that arrangements for pay and conditions became a little more complex as a result of machinery of government changes?

Ms James: Of course, they did at that point, yes.

Senator CASH: And we had a considerable discussion last time in relation to—

Ms James: We did traverse this quite a lot, Senator.

Senator CASH: In February 2023, Minister Burke himself defined wage theft in three different categories in his address to the Press Club. He said that the first group are the people who inadvertently make a completely honest mistake. The second group are the people where it might not have been deliberate but they were reckless to the extent of really not making an effort to do the proper checks and they had the capacity to do so. The third are people who absolutely have their eyes wide open that they are ripping off staff. What category of wage underpayer does Minister Burke's department fit into?

Ms James: This matter is still with the Fair Work Ombudsman.

Senator CASH: It's still with the Fair Work Ombudsman. I hope you're not saying that it's b or c. I hope you'd go straight to a, actually. That's why I was giving you the benefit of the doubt that it was complexity and an honest mistake.

Ms James: I would use my own words, I think, to describe it, but I would hesitate to do so because it's up to the Fair Work Ombudsman as the regulator to scrutinise what has happened here and to form a view. We have been liaising with the Fair Work Ombudsman. We've been providing them with information about where we're at. I would leave it at that.

Senator CASH: I actually am genuinely surprised by your answer, because you've left it open to a finding by the Fair Work Ombudsman that it's the third group of people, where it's absolutely eyes wide open and are ripping off staff—

Ms James: I wouldn't categorise what has happened here as that, but, as I said, I do think it is up to the regulator to form a view about that. I think I put on the record last time that this was not intentional and that, as soon as we identified that there might be a problem, we acted very quickly on that.

Senator CASH: Can I just confirm, then, that you still believe it is open for the Fair Work Ombudsman that you could potentially be found in the third category of what Mr Burke has described, which is people who, with eyes absolutely wide open, are ripping off staff?

Ms James: I would be very surprised if that was the case. But it is up to the Fair Work Ombudsman—

Senator CASH: But you're not ruling it out?

Ms James: to look at what's happened here and form a view.

Senator CASH: Okay. In terms of the audit that we spoke about last time, has it occurred?

Ms James: Work's underway. I'll hand to Ms Strangio and Ms Cosgriff to update you.

Senator CASH: When you say work is underway, has it been finalised?

Ms Cosgriff: The audit has commenced and scoping was commenced and conducted in October.

Senator CASH: That was my next question. On what date did it commence?

Ms Cosgriff: I don't have that to hand. I'll ask a colleague to find that for me while I continue to answer the rest of your question, if you like. That was the scoping and planning of the audit phase—it commenced in October. The field work—the commencement of asking questions and collecting data commenced on 13 December 2023. That work is still underway. We're anticipating an initial report from that audit towards the end of March 2024.

Senator CASH: Just remind me: when was the underpayment first brought to the department's attention?

Ms Cosgriff: It was in June 2023.

Senator CASH: So in June 2023 the department first became aware of the underpayment. The scoping and planning in relation to the audit you referred to commenced in October. We'll get the actual date. On 13 December, what actually happened then?

Ms Cosgriff: That was the commencement of field work for the audit.

Senator CASH: Sorry. So the audit itself didn't commence for another six months? When did you say you hope to have the results of the audit?

Ms Cosgriff: The end of March 2024 would be their initial findings.

Senator CASH: Initial? Okay.

Ms Cosgriff: The full audit is due to be complete before the end of June 2024.

Senator CASH: Okay.

Ms James: There's a number of processes that have been underway since we identified the underpayment. The audit Ms Cosgriff is talking about is a fresh piece of work. We have continued after we identified the—perhaps we can reference the staff communication that went out.

Senator CASH: Well, actually, I've got a series of questions that are going to touch on all of this. So, just for ease of reference, who undertook the audit?

Ms James: There have been at least two pieces of work underway with respect to the conditions that were in place between 7 July 2022 and 11 December 2023, which is the period of time in which the determination was in place.

Senator CASH: Yes.

Ms James: The department has taken a number of steps to analyse that determination and its application with a line-by-line comparison, working with advisors. That is different from the audit. Perhaps Ms Strangio can outline the distinction between those two sets of activities.

Ms Strangio: I'll start with the audit. This is an audit that is being undertaken, in general terms, against our pay and conditions.

Senator CASH: And who by—the department or outside of the—

Ms Strangio: No, this is an external provider.

Senator CASH: Who is the external body?

Ms Strangio: I want to say McGrathNicol—

Senator CASH: You can find out—that's fine. It's an external body and we'll find out later.

Ms Strangio: McGrathNicol is undertaking that audit. We have engaged their services. It is part of our internal audit program. These are regular and scheduled audits that happen from time to time. It is broader than just looking at the analysis of our pay records to determine whether or not we've been compliant with our determination. It is looking at a range of systems and controls in place to provide us with assurance about our pay and conditions systems. Part of that we've asked them to look at is the payment of overtime, because we are aware of this issue that has arisen. That is separate to a number of other processes that we're undertaking to look into what has occurred in relation to the overtime payments that were identified in June.

Senator CASH: The underpayment?

Ms Strangio: Sorry, yes—the overtime underpayment.

Senator CASH: The underpayment.

Ms Strangio: Yes—from June 2023. This is just another check and balance that we've put in place, Senator. We have also undertaken a line-by-line analysis of our determination to look at whether or not there are broader areas other than overtime where we may have been underpaying or not paying correct entitlements. We thought it was a really important step, because we had identified the overtime issue, that we do that broader analysis. That has been completed.

Senator CASH: How many people are working on that at this point in time?

Ms Strangio: That analysis has been completed, so no-one at the moment. The line by line has ended. It ended in November last year. But now we are undertaking the calculation of entitlements that we believe are owed.

Senator CASH: We'll go through that shortly. Can I just go to question 4 in terms of the letter from Senator O'Sullivan: 'Please provide a full breakdown on expenses related to the repayment of the underpayment of your staff. This includes the cost of all external providers, payroll audit, legal advice costs, internal legal advice and advice from the AGS'. You were kind enough to say that the expenses as at 31 December 2023 were: data analysis and calculation of entitlements, \$90,080.54; external legal advice, \$116,426.17; communication services, \$15,378. A total at this point in time—I shouldn't say that; it was as at 31 December 2023—is \$221,884.71. Ms James, can I just confirm what was the estimated cost of the underpayment? Was it \$69,000?

Ms James: At last estimates, we were about to make payments to people in relation to the overtime underpayments and the amount that was paid was \$62,926.52. That amount was paid, as we foreshadowed at estimates. That was for the period 7 July 2022 up to 11 August 2023. There is work continuing in relation to between 11 August 2023 and 11 December 2023, which is when the Public Service minister, Minister Gallagher, made a new determination covering our department. That new determination reverted to the arrangements we had in place, or the arrangements in the enterprise agreement that were in place covering most of the staff prior to the machinery of government change. What that meant was the rules around hours of work and bandwidth reverted to what is common in the Public Service. That was essentially the root cause—the shift in those rules, because of the application of parts of the Public Service Award. So we have a period between 11 August 2023 and 11 December 2023 where we need to make some more payments with respect to that overtime for that cohort of people.

Senator CASH: So the total cost is \$221,884.71 for an underpayment to date, and paid out was \$62,925.60. It could actually go higher—is that what you're saying?

Ms James: Yes. As I've just said, we would anticipate that, for those people who were working rosters and working between 6 pm and 7 pm, which some of them were, there will be some overtime owing to them.

Senator CASH: Okay. Chair, I'll come back on this and explore it further.

CHAIR: Thanks. I should also just mention the rest of the committee members and express my appreciation for the diligent work they did with the closing loopholes bill—and importantly, also, my deputy. I thank everyone for their patience. I think we should just note that Andrew McKellar from the Australian Chamber of Commerce and Industry on the 7.30 report on Monday night also acknowledged the hard work that senators had undertaken, the extensive nature of that work during their inquiries and the opportunity for business to put forward their case for consideration. Again, that extends to the department's contribution as well in that process.

Senator GROGAN: We've had a really big year, obviously, with strong outcomes on jobs, wages, gender pay gap, secure jobs and better pay. It's been a huge year for your department as well, but a great year for Australia in terms of the kinds of changes that we've seen and, obviously, now the closing loopholes bill. Can you just step out for us what this legislation is going to do to actually get wages moving in Australia?

Ms James: Senator, we are in cross-portfolio and corporate at the moment. The people who might assist you with that are from the workplace relations outcome. Chair, I'm in your hands about how you'd like to manage the running order. Last time we were a little flexible about this, but I'm imagining there might be quite a few questions for the workplace relations folks. You've scheduled quite a lot of time for them, so they're here.

CHAIR: I'm happy to go back to the coalition rather than chopping and changing.

Senator GROGAN: Thanks—no worries.

Senator CASH: What we're now seeing is that, just based on what you said, at this stage the department may still be underpaying people. That hasn't yet been determined. You've actually determined the extent of some underpayment, but you're still waiting to see whether or not others have been underpaid?

Ms Cosgriff: I will answer that for you. I do not believe that there are any further—

Senator CASH: 'I do not believe' is not the same as—

Ms Cosgriff: As the secretary explained, on 12 December a new determination came into effect to the department that resolved the cause of those underpayments that were arising from that interaction between the

determination and the APS award. So that has now been resolved. At the moment, the work that we're doing is calculating any of those moneys owing between 12 August 2023 and 11 December 2023. That's the part that is yet to be paid. We're working very quickly on that but making sure we get it right. We need it to be accurate. We are intending that those moneys will be repaid in full, with interest, by the end of March 2024.

Senator CASH: Again, I just go back to—when was the underpayment first brought to the department's attention? It was June 2023?

Ms Cosgriff: Yes.

Senator CASH: Okay. The efforts of the audits to date have still not determined the total underpayment sum. The underpayment sum to this date, paid out as per the letter, is \$62,925.60. But that is not the final sum. Is that correct?

Ms Cosgriff: That's correct.

Senator CASH: Okay. The department also referenced earlier that the audit would not be finalised until June 2024. Has the department got an estimated budget or cost for the legal services and comms, et cetera, that they will need to expend to service the underpayment?

Ms James: This is a priority for us, so we are getting the advice and expertise that we need. We don't have a budget for it. I will say—

Senator CASH: You don't have a budget for it?

Ms James: We haven't set a budget for it.

Senator CASH: Right.

Ms James: I mean, of course, we are managing our expenditure with third-party providers closely and carefully. The audit scope goes—we're talking about a period of time where this determination was in place. I think the audit scope goes to current terms and conditions. Perhaps Ms Cosgriff can clarify that. But I guess what I would say is that it depends on what an audit finds. You have to be prepared to respond to an audit finding at the time and make decisions then. This is being conducted through our internal auditing arrangements. We have a number of internal audits that are always underway, and it's the same with all of them: you need to assess, when you get the findings of that audit, what action needs to be taken and perhaps what further advice or expertise you might require.

Senator CASH: Just in terms of the breakdown of the figures, communication services, as a part of the \$221,884.71, is \$15,378. Could someone explain to me what communication services is and the breakdown of the \$15,378?

Ms Strangio: I'll take that one. I don't have the breakdown with me, but I can provide that on—

Senator CASH: What actually is it?

Ms Strangio: Those services were support from an initial external communications service provider.

Senator CASH: Can I ask who that was?

Ms Strangio: Elm Communications. We sought their assistance with looking at the necessary products that we needed to make sure that we were communicating openly and transparently with staff and stakeholders on this issue. They provided us with some assistance and guidance of a technical nature in relation to those communication strategies.

Senator CASH: What are 'necessary products'?

Ms Strangio: Our internet articles, the letters that we were proposing to send—

Senator CASH: You don't have anyone in the department who can do this? Do you have a communications division in the department?

Ms Strangio: At this time, it was before we had notified our staff. So we were working with a provider and we did not have the staff on the team at the time to undertake those services.

Senator CASH: So you needed to get an external consultant to talk to your staff about how you were underpaying them?

Ms Strangio: No, to assist us and provide us with guidance and assistance in preparing a communication strategy and the necessary products associated with that.

Senator CASH: Okay. Are you able to produce some of those products on notice—not now, but on notice for us, please? Given that the department was able to bring on board Elm Communications to help them in relation to the communication with their staff, Ms James, will you be sharing this with the broader Public Service so that, in

the event an underpayment was found in another department, they perhaps don't need to expend money on communication services?

Ms James: I think that this sort of material is pretty bespoke.

Senator CASH: Can I ask why it is bespoke?

Ms James: Because it depends on the nature of what has occurred.

Senator CASH: Right. So if there is an underpayment in another department—let's just pick Prime Minister and Cabinet. They also may need to go and bring in an external consultant to help them actually consult with their workforce.

Ms James: I'm not going to speculate on what other secretaries may do, Senator. That's a matter for them.

Senator CASH: Okay. Who made the choice in this case to bring in an external consultant, Elm Communications, for communication services? Who made that decision?

Ms James: I'm the accountable authority, so I'm responsible.

Senator CASH: Yes. So you did. Okay. How did you choose Elm?

Ms James: I didn't personally choose Elm. I'm not familiar with people who provide communication services in Canberra.

Senator CASH: How did you go about it? Was it advertised? Is there a panel? How did you choose Elm?

Ms Strangio: We engaged Elm from an existing panel. Elm has worked closely with the Public Service in relation to a range of communications matters.

Senator CASH: Okay. Did you advise the minister you were going to use a consultant to talk to the staff about underpayments?

Ms James: That's a matter for the department.

Senator CASH: Okay. So you made that decision. Did you ever consider, though, Ms James, given it is quite a significant expenditure—\$15,378—and we'll talk about the impact ultimately on small business and how they're going to have the capacity to expend these types of moneys and engage these types of services in these circumstances. Did it ever cross your mind that perhaps you might have a look at whether or not someone in the department did have the capability to do this?

Ms James: Yes.

Senator CASH: And you decided there was no-one? How many people are in the department?

Ms Jenkins: The headcount in the department is 3,916.

Senator CASH: And no-one out of the 3,916 had the technical ability to help you consult with your staff about underpayments?

Ms James: I formed a view that this was the appropriate action at the time.

Senator CASH: Okay. You couldn't ask another department, 'Can you share with us, perhaps, someone in the communications division of your department to draft some internal'—

Ms James: I decided it was the appropriate action at the time.

Senator CASH: No, I'm about asking your thought process.

Ms James: I considered a number of other options and I determined that this was an appropriate course of action.

Senator CASH: Can I ask what the other options were that you considered?

Ms James: The other options were to manage it ourselves—

Senator CASH: Manage it yourself—okay.

Ms James: And, as Ms Strangio noted, we formed a view that we didn't have the appropriate available expertise at the time.

Senator CASH: Okay. Do you think it was a good use of taxpayers' funds to spend \$15,378—and that's as at, to give you the benefit here, 31 December 2023 and we're in February now. Do you think that was a good use of taxpayers' funds?

Ms James: At the time of bringing on the company I determined that it was the appropriate course of action at that point in time.

Senator CASH: That's not the question I'm asking, though. Do you now think it is a good use of taxpayers' funds?

Ms James: I would have preferred not to spend any taxpayer funds on this initiative, of course, but it is important. My view is that it is important that you have the right support and expertise in resolving these issues. That includes how we engage with our people—engaging directly with people impacted, as well as our staff group as a whole.

Senator CASH: And there was no-one else across the Public Service who could have helped you in relation to drafting these products to talk to your staff?

Ms James: I determined that this was the appropriate course of action at the time.

Senator CASH: That's fine. You were determined to bring on a communication services consultant, Elm Communications, at a cost to date of \$15,378 to help you talk to your staff. Can I now go to the external legal advice—\$116,426.17 as at 31 December 2023. Do you anticipate that cost will increase or has increased?

Ms Cosgriff: No, we don't anticipate that cost will increase any further. I believe that we have now finished receiving external legal advice to the point where we now understand the issues that arose from the 2022 determination and are now actively remediating those by calculating the money owed to our employees.

Senator CASH: In terms of the external legal advice, how many firms did you say you went to? I know we discussed it at the last estimates. Just refresh my memory.

Ms Cosgriff: We did seek advice from three external legal providers.

Senator CASH: Three external legal firms?

Ms Cosgriff: That's inclusive of the Australian Government Solicitor.

Senator CASH: Okay—inclusive of AGS. Who were the other two firms?

Ms Cosgriff: Ashurst and Kingston Reed.

Senator CASH: And they're on the panel?

Ms Cosgriff: I believe Ashurst is on a panel. Kingston Reed were procured separately.

Senator CASH: How did that procurement process work?

Ms James: Perhaps I can give some context to this. We initially went to Ashurst. That's because Ashurst assisted us in drafting the determination in question—the instrument that applied. So we went back to Ashurst in the first instance. As we began to identify some of the challenges of interpreting the determination alongside the award, along with the relevant provision of the Public Service Act—

Ms Cosgriff: Section 24(1)(a).

Ms James: Thank you. It has this provision that requires you to read the award and the determination together—not in a way that considers a better off overall test but, rather, almost a line by line. As we became aware of some of those challenges, I made a decision that I wanted to get some independent advice. Ashurst did a wonderful job for us in drafting the initial determination in a very short period of time, which is often the way with machinery of government changes. But Ashurst having crafted the determination and given us the advice, I formed a view that independent advice was important at this point—independent from the firm that had advised us in crafting that initial instrument. Kingston Reed is a specialist workplace relations firm, so we chose to go there.

Senator CASH: I understand that. They're on the panel in any event, so that makes sense. Then you needed additional advice from Kingston Reed, did you? Or you had additional advice and you determined that you'd bring in another law firm?

Ms James: Kingston Reed was that additional—Ashurst was the first or the original.

Senator CASH: And then Kingston Reed was—

Ms James: Kingston Reed was the second. As it became evident, as we were looking at the issues and their implications, not just for us, but the operation of these provisions and potentially the Public Service more broadly, and as we were liaising with the Public Service Commission about this, because the Public Service Act is their legislation, we formed a view—and I should say the advice we sought from the Australian Government Solicitor was in combination with the Public Service Commission—that the broader implications meant that we should have the Australian Government Solicitor advising us both on the interpretation issues, which were challenging—that's because of how the determination was drafted—but also on the broader implications, potentially, for the Public Service framework.

Senator CASH: And was it your decision that you'd bring in the external legal advice and not utilise the legal advice within the department?

Ms James: I wanted independent advice, noting that this involved our own people and their entitlements. I should say that our internal departmental lawyers were involved every step of the way. We had a steering committee.

Senator CASH: A steering committee as well. I think we mentioned the steering committee last time.

Ms James: Yes. We brought together a range of people and our chief counsel or chief lawyer.

Senator CASH: And the chief lawyer?

Ms James: Yes, absolutely, because they had been involved as well in the crafting of that determination within a very few—about a week or a little more initially. As part of this, because the determination under the machinery of government arrangements was crafted quite quickly, we did need to go back to records to understand why certain decisions were made. This was also to inform our views about how the underpayments arose.

Senator CASH: Thank you.

CHAIR: I have some brief questions. Just so I understand this clearly, the order process was that the mistake is discovered or the potential mistake is discovered and then it's investigated to see if it's actually real. It's found to be real. There's an investigation about what the ramifications are for various people. There's an independent audit, so that it builds confidence of staff that this is not—that you're not investigating yourself. I think it's a really critical piece. Also, because of the nature of it being an internal issue, you also get independent advice about the communications, because, again, it's an independent view on the basis of a breach that took place within the department itself. So, to build the confidence of staff around you that this has not only been discovered by yourselves, the concerns, but also tested and audited separately and considered separately, you had the appropriate communication so that there was a feeling of confidence amongst staff. That's my impression, but am I getting this wrong?

Ms James: Chair, that's a good summary of our thinking at the time. I will say that, when you're dealing with your own people's entitlements and something's gone wrong, it is an emotional situation and sometimes you don't have objectivity. It's fair to say you might not have objectivity. Now, it's my job to put in place processes and systems and have discussions to ensure we make the right decisions. Independent advisors are quite important in helping you do that so that there's an element of accountability there. Someone from outside your situation is helping hold you to account. That is what I would say informed all our decisions about the independent advice and particularly the legal advice.

Ms Jenkins: Senator, maybe just to clarify, in case there was any lack of understanding, in relation to the communications, that was for around a two- to three-week period at the height of us trying to discover whether there was an issue and how we should communicate. We are no longer using that communications company. We have the resources within the department who are now fully in charge of all of the communications. I just want to take us back to—we talked about the principles that we wanted to adopt in relation to this. It was around that really clear communication with our people, being transparent and making sure we were updating them. That set us up on day 1. But, to Ms James' point, we were very busy at that time trying to understand the issue. Then, subsequently, we have Ms Strangio's team who do the communications work on this.

CHAIR: Thank you.

Senator CASH: We went through the communications services at a cost of \$15,378. We have worked through the external legal advice at a cost of \$116,426.17. For any business watching, this is a great pro forma for how you are going to have to approach these issues. So you put money aside for communication services and you put money aside for external legal advice. The bad news is, though, that it doesn't stop there. For any business watching, let's now talk about data analysis and calculation of entitlements. The department spent, or has spent as at 31 December 2023, \$90,080.54. Now, I'm assuming there's some form of complexity involved in this, despite our conversation upfront—again, that's why I said 'complexity'—which is why you had to undertake the data analysis and calculation of entitlements. So take me through the \$90,080.54.

Ms Cosgriff: I will say that analysis involves collecting a range of different data from different sources.

Senator CASH: Can you take me through this?

Ms Cosgriff: Yes, I'll take you through some of those. Some of those are payroll information. That includes timesheets for the people who are working in those rostered areas. It includes their general pay information—what classification and pay rate they were on at that point in time for those shifts that we're looking at. It includes

the rosters from those rostered areas so we know in what shifts they were directed to work those hours. It also includes some other information from systems that our rostered areas use to triangulate that data and make sure it all matches up. They are different sources and there is a need, through that analysis process, to match the data together and then calculate the underpayment or the money owed correctly and quality assure that we've got those formulas and calculations right. It is a manual process and it does take time.

Senator CASH: Who undertakes the data analysis and calculation of entitlements?

Ms Cosgriff: We've engaged provider Cobalt Consulting to provide that service.

Senator CASH: Was that the same one that you—when did you engage them? I think we spoke about them last time.

Ms Cosgriff: We did.

Senator CASH: Cobalt Consulting. Okay. And they're an external firm, obviously, that you've brought on board. They're the expenses as at 31 December 2023. Again, the department didn't have the resources or the people available to undertake that work?

Ms James: I consider that, for us, it was very important to have independence in this work. In some ways it's not quite data analysis; it's just bringing it together and doing calculations. I did not wish to have our own people working on a matter that involved their own entitlements, so independence was important. In addition, I did not wish to divert our people from the very important work they do for the government and the community. This really is a matter of having people dedicated to this task so that we are able to make the calculations and make good the underpayments as quickly as we're able to.

Senator CASH: And I appreciate that point of view. The issue I'm having is this, though—and we'll continue to go through what else has been undertaken and how many more people are potentially being underpaid. But, at the end of the day, I look at \$90,080.54 on data analysis and calculation of entitlements by an external person; external legal advice at \$116,426.17; communication services—again, by an external consultant—\$15,378; which is a total of \$221,884.71. What I'm hearing is that the Commonwealth department that is actually tasked with overseeing Australia's workplace laws is, by their own admission, saying they are not fully equipped and they don't have the resources to manage an underpayment from what is now a considerable period of time ago. My question to you is: how do you expect Australian businesses to efficiently and effectively navigate the complexity of workplace law and all of the changes that have been made, as they want to efficiently and effectively pay their staff, but then at the same time undertake the same process that the department has?

Ms James: I don't want to venture too much into commentary about the workplace relations system in this cross-portfolio and corporate part of the proceedings. I will say that it is a lesson in why all businesses should get it right from the outset. It's also a lesson in—and this is one area where I'm very grateful—the importance of having good records. The reason we didn't require, for example, complex data analysis in doing these calculations is because we had a number of records which Ms Cosgriff outlined that we brought together and then validated and verified.

Senator CASH: I didn't hear what you just said or I think I've misunderstood. You spent \$90,080.54 on data analysis and calculation of entitlements. And did you just say the reason was that you didn't require—

Ms James: Complex data analysis.

Senator CASH: Why is this not complex? Good God—I'm quite genuine. If \$90,000 on an external firm doing data analysis is not complex, I need to understand now what is.

Ms James: There's a spectrum.

Senator CASH: And this is at the lower end?

Ms James: Yes. But I would say that, for us, we've also made choices. Because we are an Australian Public Service department, we had records that enabled us to do these calculations. In my experience, matters that become very complex are the kinds of matters where, for example, you might have staff on annualised salaries, you don't have records of their hours of work and you haven't paid them enough to cover their hours of work—so you've not paid all their hours of work and you don't have the records to be able to identify the quantum of the underpayment. So it is a lesson in why every business should keep good records and get it right. In this case, we got it wrong. For us, we have made decisions about the best way to resolve that, noting that much of the cost—the legal costs in particular—relate to the interpretation of instruments that are particular to the Australian Public Service and impacted by a particular provision of the Australian Public Service Act. That is not what most businesses in this country are working under.

Senator CASH: With all due respect, most businesses in this country don't have 3,916 experts working for them. Most businesses in this country—and most businesses are small and medium businesses—do not have the benefit of expending \$221,884.71 on data analysis and calculation of entitlements, external legal advice and communications services. Most businesses in this country are working, when I look at small businesses, 18 hours a day, seven days a week, just praying to God they can open their doors the next day and actually pay the wages. You've just said you don't want to actually comment on the complexity of the workplace relations system in cross-portfolio.

Ms James: I am very happy to talk about the provisions in the Fair Work Act, as amended by the closing loopholes legislation, that relate to small business and how they impact on small business and provisions that relate to the treatment of underpayments at the appropriate time in the program when the relevant people are at the table.

Senator CASH: I was actually, again, giving you the benefit of the complexity of the system. Are you aware of Minister Burke's comments that, if everyone treated workplace law as seriously as tax law, health regulations and planning laws, there would be far fewer underpayments? These other laws are all far more complex than paying someone properly. Given all the changes to the system, do you agree with the minister that other laws are far more complex than paying someone properly?

Ms James: I think, again, we're starting to talk about the workplace relations framework now, as amended.

Senator CASH: No, this all goes to your underpayment. This goes to your underpayment.

Ms James: You're asking me about other businesses. I'm happy to continue the conversation about our department and our corporate arrangements.

Senator CASH: This is your minister making these comments.

Ms James: With respect to workplace relations law reform—

CHAIR: Senator, if it's of assistance, Ms James said when she's got the correct staff she's happy, if that question's still pursued, to answer that question.

Senator CASH: No, I was purely asking Ms James as the secretary of the department.

Senator Watt: Chair, can I just make a point. I think the outcome that these questions relate to is actually next. So, if corporate matters are finished, we could move to them.

Senator CASH: No, we've got a long way to go on corporate matters.

Senator Watt: Okay. Maybe we should deal with corporate matters.

CHAIR: Yes.

Senator CASH: We can repeat this in the next line of questioning as well and pursue it even further. How many people to date has the department identified were underpaid?

Ms Cosgriff: We have identified 99 employees. Six former employees in that 99 have been underpaid. They were paid on 26 October 2023. We have not yet quantified the number of employees in total remaining. As we discussed earlier, we're still working through calculations for the period up to 11 December 2022. I'm happy to take on notice that question. Once we have the exact numbers and confirm that they're accurate, I could provide those.

Senator CASH: Okay, so you've identified 99 who were not paid correctly. That was under the 2022 determination. It says here, 'Initial payments were made to these employees on 26 October 2023. These employees were at the APS3 to APS6 classifications. The total cost of the payments made on 26 October 2023 was \$62,925.60, including 8.1 per cent indexation.' What is 8.1 per cent indexation?

Ms Cosgriff: That's the interest that's been applied to those payments.

Senator CASH: Understood. That's interest that's been applied. When you say 'initial payments', have these 99 employees now been paid or repaid in full?

Ms Cosgriff: We are still working through calculations for employees up to the period of 11 December 2023. A new determination came into effect on 12 December, which we discussed earlier. I anticipate there may be some employees within that 99 that may receive another payment for that period, which is why that says 'initial payments'.

Senator CASH: Secretary, can I just confirm then that these employees potentially have actually not yet been repaid in full their underpayment from the department?

Ms James: Those employees have been paid in full for the period 7 July 2022 to 11 August 2023.

Senator CASH: And we're now in February 2024. How many of the 99 may still be owed from the department?

Ms James: That's something that we're still calculating, noting that the end date for these arrangements was 11 December 2023.

Senator CASH: So you're still working through it?

Ms James: Yes.

Senator CASH: And how long has that taken? From the time you first were made aware of the underpayment to date, how many months is that?

Ms James: We identified the underpayment in June 2023.

Senator CASH: So that's July, August, September, October, November, December, January and February. We're now eight months post the underpayment being brought to the department's attention. When do you anticipate the final repayment will actually be made?

Ms Cosgriff: We anticipate we will pay those employees their full entitlements with interest by the end of March 2024.

Senator CASH: So that's March, April, May, June—about nine months after the initial underpayment. Secretary, is that the expectation for businesses as well—that they would have nine months to work through these issues?

Ms James: Different circumstances require different treatments. I would say we have applied a range of principles when dealing with this matter that included balancing the need to provide people with their back pay as quickly as possible with the need to get it right. That's how we've chosen to go about it. Other organisations, depending on what they're dealing with, will need to make their own choices about how they balance these things.

Senator CASH: Right. Just remind me: what does the law say in terms of making an—you've been made aware of an underpayment. What does the law say in terms of how quickly you've got to pay that back?

Ms James: The law does not say anything about that.

Senator CASH: Right. So nine months is fair?

Ms James: I wish that we had got it right to start with and we didn't have an underpayment to make good. Given that what I wish cannot be made true and we're dealing with the world as it is, not how I would wish it to be, I would hope that we would rectify the situation as quickly as we're able to. What I will say is that we have made this a priority. This is one of the reasons why we've engaged external providers to ensure that we have dedicated resources on this to enable us to get that balance right between getting it right and making good the underpayments as quickly as we're able to. I am very pleased that, because that determination is no longer in place, the situation is not compounding beyond that date of 11 December 2023. So we're talking about a finite period now. We have enterprise bargaining underway at the moment and we hope to have a new enterprise agreement quite soon that has arrangements and terms and conditions that reflect modern ways of working, including the hours of work arrangements that are reasonably longstanding in the Public Service when it comes to the bandwidth.

Senator CASH: So, in terms of those statements, are you able to then guarantee, based on all the work that's been undertaken, the \$221,884.71 that's been expended as at December 2023, the audits that you're undertaking, the steering committee that you have and the multitude of processes that you've put in place, that there are no further underpayments from the department?

Ms James: I can guarantee that we have rectified the root cause of this series of underpayments, because we're no longer operating under a determination that needs to be read in an integrated way with the Public Service award. I think I'm in a position to guarantee that, when we finish our process, which includes independent expert advisors and engagement with our staff who have been underpaid to verify that we're getting it right, we will have made good the underpayments that occurred with respect to some of our people between 7 July 2022 and 11 December 2023.

Senator CASH: Okay. Has the minister expressed his concern or disappointment in the department in terms of the underpayment?

Ms James: I haven't spoken to the minister about this since I gave evidence on this last time.

Senator CASH: And just remind me: had you spoken with the minister then?

Ms James: I had. I'll just wait for someone to find the relevant part of the transcript for me. Can I take that on notice, or maybe come back to it?

Senator CASH: But your evidence was that, since the last estimates, you haven't spoken to the minister?

Ms James: No, I had spoken to the minister.

Senator CASH: No, since the last estimates.

Ms James: I haven't spoken to him again about this. That's correct.

Senator CASH: Okay.

CHAIR: Why don't we just keep going while they're looking for that.

Senator CASH: Absolutely. Secretary, in terms of the criminalisation of wage theft, will there be a criminal investigation into this or a referral or is it just the Fair Work Ombudsman's investigation?

Ms James: The new laws relating to the criminalisation of some underpayment of wages have not come into—were not in effect when this conduct arose. We are getting into the substance of workplace relations amendments now. As we've discussed, we'll be talking about that in the next outcome. Can I just note that these laws only passed the parliament right at the end of last year, you'll recall, so they weren't in operation at the time the conduct arose.

Senator CASH: Thank goodness.

Ms James: I'll need my experts to talk about the various commencement rules, which you're welcome to ask them about in the next outcome. Of course, any regulatory consequences of this are a matter for the Fair Work Ombudsman.

Senator CASH: Understood—which is why you said you didn't want to give an opinion as to which category the department would fall into in terms of—

Ms James: Of course. I'm respecting the Fair Work Ombudsman's role here.

Senator CASH: So there's inadvertently making a completely honest mistake; people who—it might not have been deliberate, but they were reckless to the extent of really not making an effort to do the proper checks; but also the third group—the people whose eyes were absolutely wide open and are ripping off staff. We'll wait for the finding of the Fair Work Ombudsman in that regard. So you haven't spoken to the minister since the last estimates. The minister hasn't expressed any concern to you that you've taken nine months to repay the staff?

Ms James: I haven't spoken with the minister about this since the last time I referenced this, which was, I think, on 25 July.

Senator CASH: 25 July 2023?

Ms James: Yes.

Senator CASH: Okay. I think I've already got, for the record, the total cost of the underpayments. You've stated that in the letter. But, as you said, you're still waiting on the final costing to come through, and that will be in the audit, potentially, when it's actually presented to you later on. The concern I have, Minister, in terms of Minister Burke and the department is that Minister Burke has obviously changed the laws in relation to underpayments. He's prepared to actually set down rules for business. But he doesn't seem to worry when it's happening to his own department. Why is that?

Senator Watt: Well, I don't think there's any evidence to back that up.

Senator CASH: There is evidence to that. He hasn't raised this. The secretary hasn't raised it with him. I haven't seen Minister Burke coming out and condemning the department.

Senator Watt: I think you asked me about this at the last estimates, Senator Cash. My recollection is that I made comments to the effect that the government expects all employers to pay their employees correctly, and that's the case whether they're government employees or private sector employees.

Senator CASH: Yes, but the minister ultimately is the head of the department that has now expended in excess of \$221,884.71 investigating the underpayment. That's only the cost, as I said, to 31 December 2023. Is there a reason, as I said, that the minister is prepared to change the laws and set expectations for others? We've gone through the comments that he's made in relation to his belief about people who underpay. Do you think it's completely acceptable, though, that he has not been spoken to by the secretary since July of last year?

Senator Watt: It's obviously the secretary's responsibility as the head of the department to manage the underpayment. She has taken you through this morning the actions that she and her departmental officials have taken and are taking to rectify this.

Senator CASH: So Minister Burke's washing his hands of this, is he, as the minister?

Senator Watt: That's not what I said.

Senator CASH: You said it was the secretary's responsibility.

Senator Watt: Well, it is, as the head of the department. She has taken you through the actions that she and her officials have been taking and are taking to rectify it.

Senator CASH: Extensive action that I'm sure every business watching will be delighted to know is the pro forma in terms of the expenses that they will need to undertake.

Senator Watt: Well, I don't think it would be right. I don't think anyone has said that. That's you saying that. I think it would be reasonable to assume that dealing with a matter like this in a large government department that employs—

Senator CASH: It's 3,916.

Senator Watt: nearly 4,000 people might be a little bit different to a corner shop. But we know that you are prone to exaggeration, so I'm not surprised that you're doing it.

Senator CASH: A corner shop will be delighted to know that. Secretary, have you provided any ministerial submission to the minister in relation to the underpayments?

Ms James: Not since last estimates—or—

Ms Cosgriff: We have provided a brief to Minister Burke since the last estimates.

Senator CASH: On what date was the written brief provided to Minister Burke?

Ms Cosgriff: On 8 December 2023.

Senator CASH: Did Minister Burke respond to the brief? Did he acknowledge the brief?

Ms Cosgriff: Yes.

Senator CASH: He did. Were there any follow-up meetings as a result of the brief that was sent to him?

Ms Cosgriff: No, it was a brief for noting.

Senator CASH: Okay. Of course, you don't just have to note a brief. You could obviously have a discussion.

Ms Cosgriff: I'll clarify that it was a brief at that point advising or noting for the minister that the APSC had submitted a brief to Minister Gallagher, the Minister for the Public Service, about the section 24(3) determination request.

Senator CASH: Just take me through that.

Ms Cosgriff: We mentioned earlier that there's now an interim determination in place that commenced on 12 December.

Senator CASH: Yes.

Ms Cosgriff: That was made by the Minister for the Public Service. There was a submission made by the Australian Public Service Commission to the minister for that. The brief I mentioned to Minister Burke on 8 December was advising him of that brief that had gone to Minister Gallagher's office.

Senator CASH: That's fine. Secretary, in terms of the expenditure of the \$221,884.71, did you request, via a ministerial submission, permission by the minister to actually expend these funds on the external contractors or is that just a decision by the department?

Ms James: It's not his role.

Senator CASH: It was your—

Ms James: It's not the role of the minister; it's my role. No, we didn't.

Senator CASH: Right. Was the minister advised of this amount of \$221,884.71 or would this be the first time he's hearing of it today?

Ms James: I have not been advising the minister on an ongoing basis about costs. I think I said that from the outset we were taking the appropriate steps to ensure we were prioritising this matter and that we were getting independent advice.

Senator CASH: I'm finished with questions on this particular area, but we might come back to them in the next area. Thank you.

Senator O'SULLIVAN: There's just a quick follow-up from me. Secretary, based on your evidence here and, indeed, in former estimates, it strikes me that you really do seek to ensure that the department is an exemplar employer. Is that right?

Ms James: The APS strives to be a model employer. We don't always get it right, but, yes, we absolutely do seek to be a model employer.

Senator O'SULLIVAN: In earlier evidence just before, in your reasoning for incurring this expenditure by engaging external consultants and doing the work that you've done, you said that you did not wish to divert people from very important work that they do for the government. I want to see if you concur with this. Can you accept that all employers, and I don't think there'd be an exception, are engaged and busy doing their work—you're no different to any other employer in the country—and it would be difficult for any employer in that regard? The steps that you've taken—is this the expectation that any employer would have to adopt?

Ms James: I think each employer has to make decisions based on their circumstances. Certain circumstances we have that are different from some other employers are the root cause of this. The nature of this determination or this instrument is that it's the only instrument in the workplace relations system that is read in an integrated way with the award as a live and applying instrument. Part of what we were addressing is not something that almost any other business, other than some Public Service entities following a machinery of government change, need to deal with. That's the first thing. When it comes to whether these issues arise, there's a huge range and diversity of how they arise—the root cause of it. If you want to get a sense of it, have a scroll through the Fair Work Ombudsman's media releases to get a sense of the different situations where these issues can arise. All employers—including us, obviously; we need to get better at getting this right—if they find a problem, need to make their own decisions about how they're going to address it. We have chosen to apply certain principles, and we also have certain obligations as an Australian Public Service agency. We have terms and conditions that are distinct, in this case through this determination, because we are a Public Service agency that had a machinery of government change without an enduring enterprise agreement.

Senator O'SULLIVAN: Thank you.

Senator CASH: I'll just quickly sum up. Just looking back at my notes, if I look at Minister Burke's quote again, the first group of people are the people who inadvertently make a completely honest mistake. The second group are the people where it might not have been deliberate, but they were reckless to the extent of really not making an effort to do the proper checks and they had the capacity to do so. When I look at the breakdown here, you have 3,916 people—an entire department—looking after industrial relations laws. You yourself have put on the record in estimates that you are the former Fair Work Ombudsman. We used to have you in a different capacity, in fact. I put to you then: isn't it clear that Minister Burke's own department—you had the capacity to pay your staff correctly, but the fact that there was a significant number of underpayments shows that, according to Minister Burke's own classification of underpayers, you didn't really make an effort to do the proper checks? Would you agree with that?

Ms James: I would say that we made an error in not identifying these issues from the outset, when the new determination came into operation, and it was not intentional. When we identified that error occurred, we moved quickly to put in place processes to enable us to rectify both the root cause, which was the determination that was in place and is no longer in place, and the making good.

Senator CASH: Do you accept, though—just going back to where we started and based on everything we've discussed—that this actually was a complex situation?

Ms James: Yes, I would say it was a complex situation. I would say that the situation we found ourselves in as an APS agency without an enterprise agreement and a determination being read in an integrated manner alongside the APS award is a highly unusual situation. And, in fact, we may have been the only department at the time who was in a position where we were required to do that, and we no longer are. We thank the Public Service minister for making a new determination that does not have to be read in an integrated manner with the award under the Public Service Act, thereby reverting us to the bandwidth and the sorts of working arrangements that had been bargained for by our people and that are longstanding in the Public Service.

Senator CASH: I've finished with that line of questioning. Am I able to move on to another topic, Chair?

CHAIR: Yes.

Senator CASH: I will table a document. It's document No. 2 in my list. It's an article from the *Canberra Times* that popped up in my feed. It's 'DEWR call centre staff say they're being refused breaks, fair pay'. As I said, I'll give you the benefit of the article from the *Canberra Times*, 5 December 2023. I'll take you through it:

Call centre staff at the Department of Employment and Workplace Relations have claimed the agency is denying them eye-breaks and refusing to pay for the time it takes to set up and pack down each day.

A Contact Centre Branch staff member, in comments provided via the main public sector union, said that staff were "burnt out" and taken to task if they left their desk for more than five minutes.

Then they actually say this:

"Management often request that toilet breaks be deducted from their allocated tea breaks which makes it difficult to get fresh air [or] go for a walk because there's no time left," they said.

'I've noticed lots of people losing their voice because they're on calls all day, non-stop, and then they have to take unpaid leave, as they are contractors.'

'In a statement on Tuesday'—obviously, this refers to the date of the article:

The Community and Public Sector Union said that it had tried to raise concerns in bargaining, but accused the department of refusing to move on the issues.

A DEWR spokesman told *The Canberra Times* that the department "continues to negotiate in good faith with bargaining representatives, including the CPSU".

'CPSU deputy secretary Beth Vincent-Pietsch said, "The union, its members and the DEWR staff are incredibly disappointed by the approach management are taking to these negotiations. On a daily basis contact centre staff deal with volatile people in sometimes very complex situations. Many of the phone calls our members take would see most people wanting to take a breather afterwards, but our staff in DEWR are being denied this. Staff at the contact centre branch are required to log into four different programs by 8.30 am, after which every action, keystroke and mouse click on the computer is tracked". Staff via the union said that everything was micromanaged down to the minute and that they would have to justify why they are taking too long on the phone. "We have to placate the customer who has been on hold for an hour, been transferred two or three times before we can even begin to sort out the purpose of the call", they said. The union said the staff had been advised that the time it takes to get set up before 8.30 am and pack down at the end of the day was not considered paid work time. "Their entire day is not only tracked in a way that denies adequate breaks for staff but also in a way that denies them pay for the time it takes to set up and pack down each day", Ms Vincent-Pietsch said'. Ms James, were you aware, first, of the article but, secondly, of the allegations in the article against the department?

Ms James: I was aware. When I read this article, I was very concerned. These are rostered staff and they need to be paid for every hour they work. They do important and intensive work talking to people who are participants in our Workforce Australia and other programs. They often have complex issues to work through with respect to Centrelink and mutual obligations. So I was concerned and I did ask for a report back on this. I will note—

Senator CASH: Who from—the report back from who?

Ms James: I'll ask Ms Strangio because this has come up in the context of our APS bargaining. Also, I observe that in bargaining there is obviously positioning that goes on between unions and organisations around key issues, and this has been something we've been bargaining on.

Senator CASH: There is?

Ms James: Absolutely.

Senator CASH: Right.

Ms James: I think there are reasons that a union might wish to put these things in the paper and they're absolutely entitled to do that.

Senator CASH: So it was a union line?

Ms James: I did not say that.

Senator CASH: Hold on—you've just said—

CHAIR: I can just assure you, Senator Cash, that I've never positioned—

Senator CASH: Senator Sheldon, you of all people—an outstanding—

CHAIR: And I've never tried to position their workforce either.

Ms James: I was absolutely concerned because call centre environments—I'm not sure if any of us have worked in a call centre environment.

Ms Jenkins: I have.

Ms James: Ms Jenkins has worked in a call centre environment, but I have overseen one at the Fair Work Ombudsman. They can be environments of low autonomy. But, absolutely, people need breaks and there are ways of introducing more autonomy, which is something we're working on. We have expanded our contact centre, so we do have work to do in making sure we're best practice in this area. But it has come up in bargaining. Ms Strangio has been dealing with those conversations, so I'll ask her to—

Senator CASH: Just based on what you've said, though, because I'm a little concerned about this, if this was a business, there'd be very different questions being asked. This is on behalf of a union. You have just said they raise these issues in the context of bargaining. Let's look at one of the issues that you say is being raised in the newspaper in the context of bargaining. Can you confirm that no manager in your department has made a request that toilet breaks be deducted from allocated tea breaks?

Ms James: I'll ask Ms Strangio to talk to how these—

Senator CASH: No, I'm asking you, Secretary. This is now serious. These people have raised issues. As you said—I've actually been to many a call centre in my life myself—these people are making calls all day in what can be incredibly stressful environments. I'm assuming the union hasn't just dreamed up these issues—in particular, one of this nature. Can you, as the secretary of this department, confirm that no manager in your department has made a request that toilet breaks be deducted from allocated tea breaks?

Ms James: When I read this article I asked for this to be immediately looked at and I made clear that would not be acceptable.

Senator CASH: Well, hold on, that's not an answer to my question.

Ms James: And I will answer—

Senator CASH: That is not an answer to my question. As the secretary of the department, you oversee everybody. You've made points before saying it's your decision. We just talked through who was the person who decided to spend certain things. You accepted responsibility for that. You asked for this to be investigated. Can you confirm that no manager in your department has made a request that toilet breaks be deducted from allocated tea breaks?

Ms James: I have made it clear that—

Senator CASH: No, that's not—Ms James—

Ms James: I can't comment on—

Senator CASH: the answer is yes or no.

CHAIR: Ms James has just got five seconds into her answer. Can I hear Ms James's answer? There was a legitimate question asked. Ms James, can you answer it?

Ms James: Senator, I don't know who has suggested that's occurred, but, if any individual ever suggested to us, as part of our situation in the department and the way people raise issues, that that had occurred, I would say that it was inappropriate and it shouldn't have. We have put practices in place to ensure managers are aware of how to appropriately manage that balance between dealing with that pressure of taking calls, particularly if there are a lot of calls in a queue, and, of course, taking care of their wellbeing.

Senator CASH: So you cannot give me a guarantee that no manager in your department has made a request that toilet breaks be deducted from allocated tea breaks?

Ms James: I am not aware of any person having suggested that in our workplace, but I'm not the person directly responsible for their management. I think that, if you're looking for something so definitive—

Senator CASH: I'll go to the union and ask them.

Ms James: I'd need to ask the manager of that area to come forward to talk to that. Ms Strangio can also talk to how these conversations, including responding to this, proceeded in the bargaining system.

Senator CASH: Could I ask, in the first instance, how many people work in the DEWR call centre? I'm assuming that's what it's called—the DEWR call centre.

Ms James: We might ask our people from the employment outcome to come forward in order to address those details. This has risen in the context of bargaining, so I don't think—

Senator CASH: Again, let's not make excuses. Are you aware that the Federal Court in 2020 required a McDonald's franchise to pay \$30,000 for denying toilet and drink breaks? You're the former Fair Work Ombudsman. This case was Retail and Fast Food Workers Union Incorporated v Tantex Holdings 2020 FCA. Are you aware of that case?

Ms James: I'm not specifically aware of that case, Senator.

Senator CASH: You're the former Fair Work Ombudsman. You're not aware of that case?

Ms James: Can you repeat the title of the case?

Senator CASH: Yes: Retail and Fast Food Workers Union Incorporated v Tantex Holdings Pty Ltd. In that case, the Federal Court—

Ms James: Can I have the date, please?

Senator CASH: It's 2020 No. 2. It required a McDonald's franchise to pay \$30,000 for denying toilet and drink breaks. You're saying you're not aware of that case?

Ms James: I may have read about it. I was not working for government at that time. I was not in a government role. I was not working for this department, nor was I the Fair Work Ombudsman.

Senator CASH: My point is this: a company was fined a significant amount of money for doing this. There is a *Canberra Times* article whereby—it's not me; it is the relevant union raising these issues. You have now said they raised them in the context of enterprise bargaining and they like to get them in the media. Are you demeaning the nature of the allegations that have been made?

Ms James: I don't accept that is an accurate reflection of what I said.

Senator CASH: You don't accept it as an accurate reflection? You might want to tell me what you did say to ensure it's reflected on the *Hansard* record.

Ms James: I think I said that the reason it was in the paper may have been that we were bargaining or something to that effect. I didn't say what you just asserted.

Senator CASH: Would you expect the CEO of a business to investigate allegations of this nature?

Ms James: We did.

Senator CASH: That's not my question. I'll get to that shortly. Would you expect a CEO of a business to investigate allegations of this nature?

Ms James: I would expect them to seek assurance around what arrangements are in place in that workplace.

Senator CASH: Not an investigation?

Ms James: Whether an investigation is required is something that needs to be considered by an individual. An investigation is a very formal process. You could start by asking people.

Senator CASH: For example, the union, in this case, which has made the allegations, as you call them, or raised the issue in the context of enterprise bargaining?

Ms James: It was raised and being discussed in the context of enterprise bargaining.

CHAIR: Ms Strangio, you've been trying to give some evidence for the last 15 minutes. Can you just go forward with that evidence that you were going to give to the previous questions?

Ms Strangio: Thank you. Just in relation to discussions that have occurred through bargaining on matters that relate to our rostered employees in contact centres, in general terms, some of these issues have been raised by the CPSU in those discussions. We have negotiated an outcome with the CPSU through bargaining, which is still ongoing, I might add. We will work with them and consult with them and staff and managers in our contact centres to develop a rostering policy that addresses a range of matters raised through feedback during bargaining in relation to our contact centre employees. We have reached that agreed position and that will commence once we have an enterprise agreement in place.

CHAIR: So the matter has been raised in negotiations. At this point, there's a meeting and understanding between the union and the workforce about what the next steps will be, and the ongoing negotiations for the rest of the agreement are taking place. Is that correct?

Ms Strangio: Correct. In addition to that, we have a principal agreement at this stage on a clause that recognises what we already do to a large extent in practice, but in fact is more beneficial, around allocating time for preparation at the commencement of a shift. That was a reflection of the negotiations and discussions that have been really productive and in good faith during enterprise bargaining.

CHAIR: The issues which were raised in the papers, obviously, are issues of genuine concern. I know Ms James also pointed that out as part of her evidence before. In a lot of my comments, I might just also emphasise that as well. They are serious concerns that people raised that need to be addressed. As it stands at the moment, the parties have addressed those issues and the rest of the negotiations are ongoing?

Ms Strangio: That's right.

CHAIR: Back to you, Senator.

Senator CASH: With all due respect, Senator Sheldon, if it were an employer in this situation, I don't necessarily think your comments would be as kind as they are to the department.

CHAIR: I did highlight, as I said, that these are serious matters.

Senator CASH: They're really serious because there's a basic toilet break that someone's saying they're actually having their pay deducted for.

CHAIR: And what I'm trying to ascertain in my line of questions is whether the matter has been dealt with. Is it being dealt with, where are the parties up to and what are the next steps? That has been answered.

Senator CASH: What are the rules under the relevant agreement? I know many agreements do provide such details in terms of toilet and meal breaks.

Ms M Ryan: Excuse me, Senator. Can I go back to one of your earlier questions. I can confirm that, in our contact centre branch, staff that are rostered to take calls and respond to emails—we currently have 293 staff working there.

Senator CASH: Thank you.

Ms M Ryan: Then, in relation to the allegations raised in the article by the CPSU in the *Canberra Times* article around toilet breaks, I can confirm that staff are not deducted any pay for attending. They can take toilet breaks. What we do ask staff, though, to do is record it in the system that they're not—what I mean by that is that they're not available to take calls. But it does not come out of their tea breaks. We confirmed that and we verified that after that article was reported in December as well, because some of those allegations in that article were very alarming and disturbing.

Senator CASH: Thank you for saying that.

Ms M Ryan: I have responsibility for the contact centre. I take a lot of pride in how it is supported. The staff morale and engagement is absolutely paramount. I can't categorically say that there might not have been some people that had different practices—

Senator CASH: May have made a request?

Ms M Ryan: but, as I said, it's not deducted from their tea breaks. They can take as many breaks as they need, particularly if they've dealt with a very challenging call. We have call coaches. They can take breaks. They can walk away to debrief and to reset. It is quite an intensive environment that staff find themselves working in in the contact centre. So their wellbeing is paramount.

Senator CASH: Thank you. I appreciate that answer. One of the issues that arose when I read the article—and I will get you to take me through the investigation, et cetera; we'll go through that shortly. When you look at these allegations—that management often request that toilet breaks be deducted from their allocated tea breaks, making it difficult to get fresh air or go for a walk, lots of people losing their voice, et cetera and people being burnt out—that jumps out to me as the work health and safety side of things, and potentially allegations of an unsafe work environment. When you saw the article, what then happened? Did you actually commence a formal investigation into the allegations?

Ms M Ryan: I didn't request a formal investigation, but I did bring together the relevant senior leadership teams to unpack that and then have discussions—I personally didn't, but the team leaders in each of the call centre locations had discussions with staff about those allegations and their concerns. In that particular branch, they have a very active consultative forum where they regularly meet and discuss issues around work health and safety, staff wellbeing and other issues to improve the operations of the contact centre. These allegations were quite surprising to us, because we hadn't had those put to us before. But we were open to that. We were looking at ways that we could improve our work. One of those initiatives was to facilitate the 15-minute start-up preparation time and so forth and also reinforce that people can take breaks, they can step away and they can do what they need to do. If they're under that misnomer that they couldn't then we reclarified that they're entitled to it and they should. We have staff coming in often—new people coming in from other areas and from other agencies and workplaces that maybe had different rules and arrangements. So sometimes it's about onboarding them to familiarise themselves with what our practices are.

Senator CASH: Was a risk assessment undertaken?

Ms M Ryan: I'll have to take that on notice, Senator.

Senator CASH: Okay, take that one on notice. But there was no investigation? The issue was—can I just go back to the eye breaks. My understanding of 'eye breaks' is eye strain.

Ms M Ryan: Yes.

Senator CASH: So denying them eye breaks—I would have thought that would actually trigger, given that is a work health and safety issue, that a risk assessment be undertaken.

Ms M Ryan: Senator, we don't mandate eye breaks—five-minute eye breaks is what was being proposed. But in good work health and safety practice we encourage staff to look away, have rest breaks and things of that nature. As I said, they have regular breaks to do that. What was being proposed is that—

Senator CASH: Sorry, can I just confirm. You're talking about it now in the context of bargaining. I'm not talking about this—this is totally separate to bargaining. You still have a number of allegations that have been raised. Separate to bargaining, I want to know what the department did in relation to what are serious allegations. In particular, you've now got issues of the eye strain, et cetera—the work health and safety issues. You've said you'll take on notice whether a risk assessment had been undertaken. What has actually been specifically done, though, separate to the bargaining process, to look at these issues?

Ms M Ryan: In the branch, we have specifically reminded staff about the importance of having regular breaks in accordance with our work health and safety policies. They can stretch, look away from the screen and do a range of different things. We're reinforcing what was already in practice, just to remind people of the importance of taking those regular breaks and so forth.

Senator CASH: Just from your perspective, are you able to give me a guarantee that no manager in your department made a request that toilet breaks be deducted from allocated tea breaks?

Ms M Ryan: Senator, I can't give you a guarantee on that. I would have to—honestly, I can't.

Senator CASH: That's fine.

Ms M Ryan: I would be disappointed if someone did do that and I would have remedied that, but I can't give you a guarantee that hasn't happened.

Senator CASH: I appreciate that as the evidence. Ms James, did you have any meetings with the call centre managers after this article was published?

Ms James: I don't recall meeting specifically to discuss this. We have had conversations over the course of the bargaining, which is how these issues have arisen, about what our current arrangements are and what we're proposing to do in terms of our future arrangements via the enterprise agreement.

Senator CASH: These are serious allegations that have been raised. You continue to say they're raised in the context of bargaining and, as such, you treat them as being raised in the context of bargaining. You didn't have any separate meetings in terms of meeting with the managers to clearly say what has been reported is not acceptable? Also, in terms of the Comcare guidelines and responsibilities of persons conducting a business or undertaking, at page 9—in particular, this is in relation to eye health in the workplace—you're obviously aware of your obligations under this. Did you ensure that these obligations were discharged?

Ms James: I think Ms Ryan has articulated the steps that we took. I'm very comfortable with the way in which she handled this. I had full comfort and confidence in that. I did ask, when I first read the article, 'What's going on here? We need to look at it'. I think that Ms Ryan's response was entirely appropriate and I'm comfortable and confident with it. I thank her and the team for it.

Senator CASH: But ultimately, Secretary, the article was published two months ago. You're unable to say to me—you can't give me a guarantee that the allegations did not occur. You are continuing to discuss this in the context of bargaining. So I'm assuming that you'd be very comfortable with businesses responding to these issues, if they're raised in the context of bargaining, as just that: they're raised in the context of bargaining—no separate investigation; no separate meetings. They're raised in the context of bargaining. I agree with you that these issues get raised in the context of bargaining. We see them all the time in the paper—unions raising allegations against business. But this is not the response that the Labor Party gives. Are you comfortable that this is the way, based on what you have said, that business can handle allegations from unions in the same way the department has handled these allegations?

Ms James: I'm comfortable and confident that we have responded appropriately in this case.

Senator CASH: That's good, because the evidence shows you dealt with it in the context of bargaining. Why can't you just sit down with managers and tell them what needs to be done?

Ms James: I trust my people who are closest to the work to have those conversations, and that's what unfolded here.

Senator CASH: Did you speak to any of the workers directly yourself?

Ms James: I didn't. I'm very comfortable that Ms Ryan's response as a very senior person was entirely appropriate. I am sure that her people responded very well to the way that she took this issue up. In my experience, when these issues arise, the conversations are best had with managers directly. But, of course, we need to assure ourselves that they're happening appropriately. Ms Ryan has articulated the way in which she

spoke to managers and made her expectations clear but also asked them to go direct to those staff that were impacted.

Senator CASH: At what point do you personally, as the secretary, get involved with matters like this separate to the bargaining process? Allegations are made. At what point do you get involved?

Ms James: It depends on the circumstances, but it's important that, as an accountable authority and a final decision-maker, sometimes I am formally held apart. That's because sometimes I have to make decisions on things that come to me. So, if there's a requirement formal investigations, it's important to preserve the integrity of the accountable authority's role as often a final decision-maker. What I will say is that I do ask people—sometimes I'll give them a frame. For example, I'll ask them to prioritise something and I'll ask them to keep me informed as to issues such as this.

Senator CASH: Okay. Can I commence now on the department's work from home policy, given, obviously, you addressed that in your opening statement. You referred, obviously, to, at that point in time, the *Australian* article dated 12 February. I table it, because you've already referred to it. Secretary, do you get to work from home at all? Do you have a working from home arrangement?

Ms James: I don't have a formal arrangement. I'm not covered by this because I'm not an employee.

Senator CASH: No, I'm just asking generally about your level.

Ms James: I work from home for some days and some part days. It depends on what formal commitments I have face to face.

Senator CASH: So you're not in the office as a secretary five days a week?

Ms James: I would say I am in the office four to five days a week. There are some days where I might do some things away from the office to start with. I consider that there are many things—particularly if you've got a morning, for example, of Teams calls that aren't going to be face to face, then, as long as you've got good wi-fi, it doesn't matter where you are for that. So I encourage my people similarly. I find that they're where they need to be when they need to be there. But, yes, I do work from home in certain circumstances, but I would be in the office four to five days most weeks.

Senator CASH: Just looking at work from home for, say, call centre staff, are they able to work from home?

Ms James: I'll ask Ms Ryan to return to the desk. Call centre staff in some circumstances can work from home if they have the right equipment. I'm not sure whether we've established that with our call centre, but I would love to see us—because I know it's possible—enabling that because they're working through technology. It's important people are supported, though, as we've just discussed. The nature of their work can be quite intensive, so I would like them to have the choice. But there are infrastructure issues there, so perhaps Ms Ryan can comment on that.

Ms M Ryan: I actually can confirm that we do actually permit contact centre staff to work from home and approximately—not approximately; 111 staff in the contact centre have regular working from home arrangements.

Senator CASH: Can I ask what you define as a regular working from home arrangement?

Ms M Ryan: It could be one day a week or it could be two days a week. There are certain criteria, obviously, for staff who are taking calls from individuals. They need to do it in a way that's secure and private and so forth.

Senator CASH: Do you check up in the workplace to ensure that's all happening?

Ms M Ryan: In terms of applying for working-from-home arrangements, all staff, regardless of who—whether it's a contact centre or a policy officer, need to establish the protocols about how they're going to work from home and the work health and safety arrangements.

Senator CASH: But do you check up on it to ensure that's occurring—the only reason being when you actually look at the types of calls they're having?

Ms M Ryan: We don't obviously do home visits, but what we can do is that, if a staff member is taking a call, our systems are such that the call coaches can see whether or not a contact centre operator has been on a call for a length of time. That staff member can message their team leader to say, 'Look, I'm actually having some challenges with this call. I need some help'. That can be done remotely. It doesn't need to be done in an office environment. What we do ask, though, is that, when new staff are onboarded, they do have a period of working in the office to get the appropriate training and so forth. Then after that, if they choose to work from home, we'll consider their application.

Senator CASH: In terms of the period in the office, how long is that period in the office?

Ms M Ryan: I'll have to take that on notice.

Senator CASH: That's fine.

Ms M Ryan: I think the flexibility of being able to accommodate staff working from home has been really paramount in terms of business continuity. Particularly when COVID was rife, we needed staff to be able to still answer calls from job seekers. If there was an outbreak of COVID, we would often uplift staff and say, 'Work from home', because the calls still needed to be answered. So that's been really important. Likewise, for any natural disasters, like the recent floods in Brisbane, we were able to pivot and redirect staff to work from home where they had the facilities to do that. In some instances, some staff may have still had to come into the office or be redeployed to somewhere else, but it's been a really positive experience for staff.

Senator CASH: I was always fascinated with call centre staff, for want of a better term, with all due respect, because I've been out to these departments and I've seen how hard they work and the types of calls that they do have to take. How do you ensure the productivity? Do you actually track the computer activity that's occurring?

Ms M Ryan: We can see in our technology whether or not somebody—

Senator CASH: Is on the phone?

Ms M Ryan: is on break or who's on the phone. Likewise, when I said about toilet breaks, we ask staff to just record that they're away so they're not available to take a call. But that's our normal thing. We don't track keystrokes—we don't do any of that.

Senator CASH: I was going to ask about that. The CPSU said that the rostering software used in the contact centre requires staff to log into four different programs by 8.30 am, then every task, keystroke and mouse click is tracked. This includes time on calls, plus any time spent checking emails, taking notes or other administrative tasks. Was the CPSU incorrect? They were wrong?

Ms M Ryan: In terms of tracking keystrokes, yes. We don't track those at all. What we do, though, is look at a person's output. We'll look at what they're doing. It could actually be a training and development opportunity. If someone is struggling with a call, sometimes we want to have first call resolution, so we try to help people and say, 'Well, you were on that call for an awfully long time. What is it that caused that call to be of that nature? Were you uncertain about how to resolve something or was it that the nature of the call was very complicated and the person had a range of issues?' It's from a place of coaching and support of staff. It's not a punitive measure at all.

Senator CASH: Can I just confirm, though, because this is what was quoted in the media, that the CPSU were wrong in what they said?

Ms M Ryan: In terms of keystrokes, absolutely.

Senator CASH: Mouse clicks?

Ms M Ryan: No, we don't track mouse clicks either.

Senator CASH: Every task?

Ms M Ryan: No, I don't think we track every task.

Senator CASH: Four different programs being logged into by 8.30 am?

Ms M Ryan: I'm not sure—

Ms James: I would just reflect that our protected work environment, from an information technology point of view, does require a lot of maintenance. There's a lot of updating and sometimes it takes a little while to log on for all of us. So when I read the article and I saw that it was taking them a while to log on, that seemed absolutely aligned with many of our experiences. The reason it's really important to take into account with these employees is that they are rostered, which most of our staff aren't. So I absolutely thought that's something we might not have thought about as we move to a protected network. The updates and such things can take quite a while to run.

Senator CASH: In this article, there are claims that were made. I just want to work out whether or not they're all correct. What you're saying is that there are elements of this that are not correct?

Ms James: There might be some days where logging on might take quite a while.

Senator CASH: No, I'm talking about the other parts of the—

Ms James: I understand—I was just continuing on that point.

Senator CASH: On that point, what is the most senior level of employee in the department—because I know you have all of your classifications—who has a formal work from home arrangement in place?

Ms James: I think we'd need to take that on notice.

Senator CASH: Well, do you know any deputy secretaries who do?

Ms James: Yes.

Senator CASH: Okay. There you go. I'm assuming under you is a deputy secretary.

Ms James: Well, that would be right, yes.

Senator CASH: So we can answer that question: a deputy secretary. How many of the deputy secretaries have working from home arrangements?

Ms James: We'll take that on notice.

Senator CASH: That's fine.

Ms James: I will say that all of the deputies from time to time would work from home.

Senator CASH: I didn't ask for that. I asked for a formal—

Ms James: Understood.

Senator CASH: work from home arrangement. But people have flexibility in workplaces. That's accepted for now.

CHAIR: Senator Cash, I don't want to break your stream of questions, so we can go to the break a little bit later.

Senator CASH: I probably have a few more. I'm happy to go to the break and then come back if that assists.

CHAIR: Thank you. Then we'll go on a break. Safe Work Australia is released. Thanks, Safe Work.

Senator CASH: They will be happy.

CHAIR: If there are any questions, I'm sure people will be putting them on notice, but thank you to Safe Work.

Proceedings suspended from 11:00 to 11:19

CHAIR: Senator Waters.

Senator WATERS: Hello, folks. My questions actually belong in the next section, but I need to leave very soon, so I'm hopeful that you might have someone who can assist me, even if it's in the general rather than the specific. It's about funding for the Working Women's Centres.

Ms James: I think we might be able to assist you with that.

Senator WATERS: That's great news. Thank you very much.

Ms James: We're familiar with the interest.

Senator WATERS: We have covered this ground in previous estimates. Thank you for your answer on notice, which gave me a bit more detail about time frames. I just want to follow up on those time frames. As to the grant grounds to fund the existing three Working Women's Centres, you told me on notice that they would be open in December and that the funding decision would be made in this first quarter. My advice is they haven't yet opened. When will they open and what is the new time frame for when the funding will be decided upon?

Ms Wallbank: I'm familiar with that question on notice and you're correct that the funding round has not gone out publicly at this point, but the plan is that it will go out shortly.

Senator WATERS: My question was: when? When will the final decision be made? Has that time frame changed as well?

Ms Wallbank: The final decision on timing is one for government so I can't really share any more than that at this point.

Senator WATERS: What was the reason for the delay in opening the grant funding round?

Ms Wallbank: I think you'd probably just put it down to final decision-making and details being sorted out.

Senator WATERS: What does that mean?

Ms Wallbank: The question on notice goes through the funding model that was consulted on and decided and then I think it goes through and talks about the grant opportunity guidelines process that the department and government need to go through. We're just working through that process at the moment.

Senator WATERS: Why has it taken you longer than you anticipated?

Ms Wallbank: I'm not sure I have an answer for that. We're continuing to work on it. It is a several-step grant process and the plan is definitely to get funding to organisations this financial year, which is the way that the funding model has been shared and consulted on. We are working behind the scenes to make that happen and, yes, the plan is that it will happen quite soon.

Senator WATERS: For the guidelines themselves you're saying that's the holdup; you haven't finished drafting them yet? Is that what you're telling me?

Ms Wallbank: That is one of the elements.

Senator WATERS: Was there some sort of unexpected change of circumstances? Why have those guidelines taken longer than anticipated? What's happened?

Ms Wallbank: I think it's just that they take a lot of time because of the number of people who have to agree on them, and we're just going through that process.

Senator WATERS: Have you had different versions or options you've put to government that haven't yet been selected? You told me they would be done in December and they're not, so why did you tell me December if it was always going to be a bit flexible?

Ms Wallbank: I'm sorry. I wasn't actually working in this area at that time—not that's a good answer for you. I'm not sure of the complete reason for that.

Mr Manning: Also, I wasn't working in the area at the time, but my understanding is it is just an accumulation of a range of little delays and consideration about what to do. All that being said, the proposal is to have them out in time for the money to be out this financial year, but we just haven't been able to meet the time line that was indicated in the previous answer, unfortunately.

Senator WATERS: Could you take on notice for me to check whether there have been any unexpected things that have happened to cause that delay? If it's anything other than as you've said, please let me know.

Mr Manning: The circumstances, decision-making et cetera have all just taken a lot longer than was anticipated to finalise.

Senator WATERS: We've just talked about the closed non-competitive grants. I'm interested now in open competitive grants for the remaining jurisdictions. Recommendation 49 was really clear that funding should be for Working Women's Centres to go national. Can you explain to me who is eligible to apply for the open competitive grant to establish Working Women's Centres across the country?

Ms Wallbank: That will be something that's detailed in the grant opportunity guidelines when they're published.

Senator WATERS: Are they the same guidelines as apply to the non-competitive grants?

Ms Wallbank: They'll probably be separate.

Senator WATERS: What's the time frame for the guidelines on the open competitive grant round?

Ms Wallbank: We're planning to send them out at the same time.

Senator WATERS: But you weren't able to tell me what that date was?

Ms Wallbank: No. We don't have that yet.

Senator WATERS: You said 'shortly', I think?

Ms Wallbank: That's correct.

Senator WATERS: Has one process held up the other or have they been concurrent and independent?

Ms Wallbank: They're all very interwoven.

Senator WATERS: So you're not sure yet who will be eligible to apply for the open competitive grants?

Ms Wallbank: We have broad guidelines that align with the governance and funding model that was consulted on. They will be in line with those guidelines.

Senator WATERS: Can you remind me of what that might mean?

Ms Wallbank: Just to be clear, the grant opportunity guidelines will have specific criteria that will need to be met, but the guidelines go to organisations that are not for profit, which can provide gender specific services with a focus on cultural safety and inclusion. There's an idea that it be a physical location in each state and territory. They need to be identifiable as Working Women's Centres and also accessible to all working women who identify as women, including women from CALD, Aboriginal and Torres Strait Islander backgrounds, LGBTQIA+ women, young women, women with disability, and women in rural and remote locations. Another principle is that they ensure a holistic trauma informed service delivery for working women. Then it sets out what types of activities the funding will provide for.

Senator WATERS: Are you anticipating that only the existing Working Women's Centres or people they have collaborated with will be the successful recipients of that open competitive grant or are you anticipating that maybe other CLCs, union groupings or private legal firms might be eligible to apply?

Ms Wallbank: Yes, they would be.

Mr Manning: It's within not-for-profit.

Ms Wallbank: They still have to fit all of the criteria.

Mr Manning: Understand that the aspect of the grant program we're talking about is that it's an open competitive grant process.

Senator WATERS: Hence my question about how open is open. Rec 49 is really clear that it should be for national working women's centres. To me that implies that you have the imprimatur of the existing Working Women's Centres. Will they have a say in who gets this tick-off? If it's someone that's not associated with them already and a fresh standalone org, will the existing Working Women's Centres at least be asked if that's appropriate? What's the process?

Ms Wallbank: The process would be as per usual grant processes. A government panel—public servants—will assess the applications that come in against the criteria that have been set. I'm not sure—I'll have to take on notice—whether there will be any consultation with others, but it's not normal that you would ask other organisations as part of that assessment process.

Mr Manning: Although it is quite common that in making their case in their grant application they would be pointing out their linkages and often submitting referees, for example, who can attest to their ability to meet the grant criteria. That's separate from saying there's a formal process in place to get the imprimatur of existing centres in other jurisdictions.

Senator WATERS: Lastly, have you checked off with former Commissioner Jenkins that having this open competitive grant is in keeping with the recommendation? My interpretation of this is slightly different from yours.

Ms Wallbank: I'll have to check that.

Senator WATERS: If you could do that would be great.

Mr Manning: We'll have to take that on notice.

Senator WATERS: If you haven't checked with her, can I ask you to and then let me know what she says.

Ms Wallbank: Certainly.

Ms James: Our world when it comes to grants and procurement does require us to balance recommendations such as this, which the government is fully supportive of, and very keen to implement as quickly as possible with the rules around procurement and commissioning, which of course the Auditor-General oversees. It's important that we get that balance right. There is generally a preference for open competitive grants, in particular when you're asking for something new, which technically we are. Of course, the established Working Women's Centres are very familiar with the nature of the work and our stakeholders in this, but we need to balance our obligations to ensure that we don't get into trouble with the Auditor-General. It's just a matter of working our way through that to best meet Commissioner Jenkins's recommendations.

Senator WATERS: Thank you very much. Thank you, Chair, for giving us the time.

CHAIR: Senator Cash.

Senator CASH: I'll just pick up where we were in relation to work from home. I'll also get on notice, if possible, a breakdown, just by level, of how many people are on different levels—not, as we said, those who work from home but those who have a formal work-from-home arrangement. I assume that in the department you've put in place a formal work-from-home arrangement so someone knows, 'These are the days I'm at home.' The department knows? Is there a stock standard one or do you negotiate with each individual person a formal work-from-home arrangement?

Ms Wallbank: Each working-from-home arrangement is negotiated between an employee and their manager.

Senator CASH: Individually? What's the minimum time they have to be in the office?

Ms Strangio: We have an expectation that employees generally will spend some time in the office.

Senator CASH: What's your definition of 'some time'?

Ms Strangio: I hesitate because we are through bargaining looking at arrangements going forward around working from home.

Ms James: Ms Strangio is right; we are in the process of bargaining and there are provisions that directly relate to this—

Senator CASH: Let's talk about the current situation.

Ms James: Right now we have no centrally mandated requirement.

Senator CASH: Is there anyone who works from home the entire time and doesn't come into the office?

Ms James: It wouldn't be the norm but it may well be the case. We're happy to take that on notice.

Senator CASH: Understood. That's fine. Because of the levels, as a deputy secretary you would have people who work from home or are in charge of teams, et cetera, who have a formal work-from-home arrangement? They're two different things.

Ms Strangio: Yes, that's right.

Senator CASH: You did correct the record in terms of the article, which stated approximately more than 70 per cent of the DEWR department have a working-from-home arrangement. What was the figure that you corrected the record with?

Ms James: In what I said at the outset of the hearing I was using more up-to-date figures. I think the question on notice took us to the end of October, and the figures I provided you were to the end of December.

Senator CASH: And that was?

Ms James: That was 33.1 per cent?

Senator CASH: So where did the 70 per cent come from, did you say?

Ms Strangio: The number referenced, we believe, comes from the APS census results for our organisation and refers to a question asked of our employees around May-June last year, May-June 2023. The question asked was whether or not, in the previous 12 months, employees had accessed working away from the office/working from home. It didn't provide any formality to that, and represented both formal and ad-hoc arrangements.

Senator CASH: Understood. So, in terms of the 33.1 per cent, you're saying that is the percentage who have a formal working-from-home arrangement as opposed to those who might also work from home occasionally?

Ms Strangio: Correct.

Senator CASH: That's the formal 33.1 per cent? Are you able to provide on notice a breakdown across the offices in the department of how many have a formal working-from-home arrangement?

Ms Strangio: We can provide that on notice. Can I just ask a point of clarification? What are you referring to when you say 'the offices'? Do you mean state locations?

Senator CASH: No. The answer is, yes, state locations, but then within them the different sections, the major sections, within each location?

Ms Strangio: So a breakdown by group?

Senator CASH: Yes, that would be great. You've also taken on notice how many staff work permanently from home. One of the issues that's been raised—this article had a lot of people talking; that was all—is whether any staff have remote working arrangements? For example, remote working arrangements within Australia but also based outside of Australia?

Ms Strangio: Yes, we do have a limited number of arrangements outside of Australia.

Senator CASH: How many of them do you have?

Ms Strangio: There are four of those. I don't have the specifics in front of me. They generally relate to circumstances where an employee is accompanying a spouse on a posting.

Senator CASH: Understood. This won't be the only department, obviously, that has such an arrangement. In terms of the protocols the department has in place for their access to DEWR systems et cetera, how does that work?

Ms James: I would start by saying all of our people have a laptop, and what that means is that they have the ability to access the network subject to the security protocols from anywhere.

Ms Jenkins: Were you asking specifically about those who are international?

Senator CASH: Yes, the international ones in particular?

Ms Jenkins: There is a business case put forward by the area and then there is a security assessment done by our IT people to look at what the risks are and how those are mitigated—for example, if they're in a compound, if they're in an embassy. Do we make sure that the laptop gets updated? We're constantly reviewing this. As you can

imagine, this situation is rapidly evolving. So the business case goes up and it has an HR element to it as well. Can we make sure they've got workplace health and safety sorted out? What about their own personal tax obligations if they're overseas? The whole case comes up, and then that comes to me for my final approval. Then I look at that and I see if the risk is a risk that we can live with. Is it mitigated? Do we reassess it? That's the situation. Mr Jagers has come to the table—he is the acting first assistant secretary who looks after our IT branch—in case we need him. But that's the level of assessment we undertake.

Senator CASH: That's fine.

Ms Jenkins: We are, as a general rule, not allowed to take our laptops overseas.

Senator CASH: Yes.

Ms Jenkins: You can imagine that there are very specific requirements and very specific bits and pieces—I'm not a technical person—that go around that. If we are to allow our staff to do that, we do need to make sure that the safety is paramount. We are, as the secretary referenced earlier, on a protected network, and so that does mean we need to be able to secure our network. Hopefully, I've answered your question.

Senator CASH: Absolutely. I do understand those arrangements. I've heard of them before in terms of a partner on a posting.

Ms Jenkins: Exactly.

Senator CASH: How do you assess productivity? Again, this is a question that many people ask in terms of businesses, departments, et cetera. In terms of the department, how do you assess the productivity of employees in terms of them working from home?

Ms James: I'll start by saying we don't on a regular basis think of ourselves as monitoring the productivity of our people. Stuff gets done, and obviously managers are responsible for balancing workloads and what have you. Productivity of individuals is a matter that we need to pay attention to irrespective of where they are—if people are meeting expectations about how quickly they work and the quality of what they're producing et cetera, on an individual basis. On the question of productivity from a macro level, I did note in yesterday's *Financial Review* Workforce Summit. She noted how difficult it is to measure productivity when it comes to working from home and hybrid work. I would agree with her when she said: 'We're not in an equilibrium yet. I think we're still learning.' I think many businesses or employers who are working with work from home are evolving and adapting their processes and very much keeping things closely monitored about how they're going. That's one of the reasons our work-from-home arrangements are reviewed formally every year, to make sure it's working. It's something we're very pleased we're able to offer, and that balance is very important to our people. I think that in the bargaining it is evolving as well.

Senator CASH: Those are bargaining conversations. Just in terms of your definition of 'productivity', you said that stuff gets done. What is, though, the definition of 'productivity' within the department?

Ms James: When we think about productivity of our people, it's not something we measure. In terms of productivity, from a labour market point of view, that's a different matter. Given we're in cross-portfolio at the moment, I don't think we would say we measure the productivity of our people at a macro level.

Senator CASH: In terms of people working from home, that's often the question asked: how do you measure productivity of people working from home?

Ms James: Again, I don't think it's a question of measuring their productivity versus other staff. We're always working with our people to help them perform well and to ensure ongoing coaching and the like to help them do their best work while they juggle workload requirements and other things.

Senator CASH: You don't measure productivity as such?

Ms James: Yes, that would be right. We don't have different measures in place centrally for people who work from home versus not when it comes to performance. It is something that managers and staff talk about with their teams and with individuals. I think we all learnt during COVID that we did need to adapt in how we worked when all of us were remote, in my case in Victoria. There are ongoing discussions about that.

Senator CASH: Just talking about performance, as you said, and in particular working from home, how do employees undergo performance appraisals?

Ms James: I'll ask Ms Strangio to comment on that. We will just observe that the average work-from-home arrangement involves 1.9 days work at home.

Senator CASH: What do you define as 1.9 days? Is it technically two days at home?

Ms James: That's an average across all of the agreements.

Senator CASH: Understood, yes.

Ms James: You did ask before, and we'll come back to you on notice, whether there are people working full time at home. I said I think that would be an outlier but it might be the case. It would depend on the situation. We would always prefer that those discussions happen face to face, and I imagine mostly they do. During lockdowns and the like many of us had to use different mechanisms for these things. Ms Strangio can share some insights.

Ms Strangio: I would say that in general performance conversations tend to happen face to face and that's a better way of establishing rapport and having a conversation about performance. However, we are now in a situation where working remotely using other technology to have conversations, including staffing conversations and performance conversations, is more part of the norm than it perhaps used to be, and it is possible that there are conversations that occur, and certainly in circumstances where we have someone working 100 per cent remotely they need to occur via Teams, which is the virtual communication system we have.

Senator CASH: When you get me the questions on notice, can we look at the Canberra office headquarters as well—how many employees are based in your Canberra department office building and how many of them have working-from-home arrangements? If you're working from home, do you get a desk in the department or do you hot-desk?

Ms Strangio: The answer to that would be that it depends. We don't have hot-desking as such, which I think is commonly understood to be you turn up to an office and sit wherever there's an available desk. However, we do have some arrangements in some offices where we have what we call a neighbourhood. For example, a group of 12 employees might share 10 desks and might have a means of determining who sits where on which days. But otherwise in particular because 1.9 is the average, so roughly two days—

Senator CASH: Yes, two days.

Ms James: There are people who are in the office for at least some of the time and they would have an allocated desk for those days.

Senator CASH: How many employees took another day other than Australia Day as the public holiday?

Ms Strangio: We don't collate that information centrally.

Senator CASH: How do you know if they were at work or not at work?

Ms Strangio: It's an arrangement between an employee and their manager where they may substitute another day for Australia Day and they've agreed to that at the management level. So, it could occur for any of our 3,900 employees.

Senator CASH: Do you note then that they worked that day and took another day so there's at least a record?

Ms Strangio: Correct. Their time sheets would reflect that. However, for Australia Day, 26 January, their time sheet would reflect that they worked on that particular day, but as to when they have agreed on a substitute day, that will occur as agreed with their manager.

Senator CASH: So it won't be reflected in data you actually hold?

Ms Strangio: Correct. That's right.

Senator CASH: Just in terms of working-from-home days, are Mondays and Fridays the most frequent days worked from home?

Ms Strangio: I'll have to take that one on notice.

Senator CASH: Would you mind, just in terms of what the most common arrangement is et cetera?

Ms Strangio: Just to clarify: our system records a formal flexible working arrangement as agreed, but there is still flexibility within that. For example, if I had an agreement with my manager that I would work from home on a Friday and for whatever operational or personal reason I requested to change that day to a different day in a particular week, that's a local arrangement, but the formal agreement reflects that's one day from home.

Senator CASH: Understood.

Ms Strangio: I just wanted to clarify that our data would be limited in that way.

Senator CASH: That's fair enough. I'll just quickly go to some questions on the right to connect, but not in relation to the working aspects of it as such that sit within here. It's in relation to the Greens right to disconnect amendment, which passed through the Senate recently. Can I confirm: does it apply to the Public Service?

Ms James: I can confirm it does. I will note that we are venturing into outcome 2 territory when we're talking about the amendments in detail at large. But, yes, it does apply to the Public Service.

Senator CASH: I'm not going to go through the amendments in detail. We'll get to that. What role did the department have in the drafting of the amendment?

Ms James: I think if we're going to the drafting of amendments we are firmly in outcome 2.

Senator CASH: That's fine. I'm happy to hold off. I will have a number of questions there. I think Senator O'Sullivan might have some questions very quickly.

Senator O'SULLIVAN: Are there any in-person meetings, roundtables or engagements scheduled by the department in Melbourne on this coming Friday, 16 February?

Ms James: That's a very specific and yet broad question.

Senator O'SULLIVAN: I'm going somewhere with it, of course.

Ms James: It is entirely possible that there might be some sort of stakeholder or event schedule, but without knowing perhaps what the topic is about it's a bit difficult—

Senator O'SULLIVAN: In general, are there any in-person meetings? In particular, is anyone scheduled to be travelling from Canberra to Melbourne or from elsewhere to Melbourne on this coming Friday from the department?

Ms James: It's not something we would know to hand.

Senator Watt: Even in the entire department?

Senator O'SULLIVAN: Yes, specifically for a meeting that might have been scheduled on 16 February?

Ms James: I think we might take that on notice.

Senator O'SULLIVAN: I'm happy for you to do that.

Ms James: We're just not in a position to know. It would require us to query our travel—

Senator O'SULLIVAN: And then the same question for Sydney next week, on the 23rd?

Ms Jenkins: We will check.

Ms James: Again, I think we'd need to take that on notice.

Senator O'SULLIVAN: I'm happy for that. That's perfectly fine.

Ms James: We'll do that.

Senator O'SULLIVAN: Have any department staff been authorised to fly to Melbourne to attend any other meetings on 16 February? If you can take that as part of that?

Ms James: We'll have to take that on notice.

Senator Watt: Are you going to Melbourne on 16 February?

Senator O'SULLIVAN: I'm flying to Perth via Melbourne with about a half-hour stopover.

Senator Watt: Not making it to a concert?

Senator O'SULLIVAN: No, I'm going straight home. It's Valentine's Day today. I'm not there so I'm going to make up for it when I get home on Friday. Have any staff been authorised to take a personal stopover and return later that weekend in Melbourne?

Ms Jenkins: We will take that on notice.

Senator O'SULLIVAN: You've mentioned that there is a concert happening in both of those locations. Taylor Swift is performing at concerts on 16 February in Melbourne and on 23 February in Sydney. Do you believe at all it would be appropriate for staff to use any confected in-person meetings that cost taxpayers' money to subsidise their travel and accommodation to attend a concert?

Ms Jenkins: We have a very clear travel policy. I know that it has a lot of detail around the purpose of people's travel. The policy is very much around the travel needs to be for official purposes, and it's very clear on that.

Senator O'SULLIVAN: Has the department done any analysis of the cost difference in flights and accommodation compared with other dates that do not have inflated prices because of a sold-out concert at all?

Ms Jenkins: We have not done that analysis.

Senator O'SULLIVAN: And you'll come back to me on notice if there have been any bookings? If there is, can I ask you to take this question on notice further to what I've already asked. Has there been authorised travel to occur either this Friday to Melbourne or next Friday to Sydney, and if you could do a cost analysis on the difference in the prices compared to a regular Friday?

Ms Jenkins: Yes.

Senator CASH: Just on the right-to-disconnect questions: as I said, I can move a lot of them to the next section, but I just wanted to make sure that I have people here to ask these ones. Just in terms of the application to the department itself, how will the right to disconnect work in federal departments?

Ms James: I expect that, as they always do, the Australian Public Service Commission will issue some guidance to public sector agencies on this. I have had some conversations to alert the Public Service Commissioner to the changes, noting that there are six months before they formally come into play. We would hope that the provision that's going to be law is fairly consistent with what we would hope our arrangements that we already have in place are.

Senator CASH: I was going to ask you about that. Tell me about the arrangements you already have in place as a department in terms of the right to disconnect?

Ms James: I talked from the outset of the hearing about the fact that the right to disconnect is new. We are very familiar with laws that regulate when we go to work, when we are at work, breaks, which we've also covered in this hearing, and a number of other things. The right to disconnect is about communication when you're not in your normal working hours and you're not expected to be at work. We do have people who are on flexitime and who work within ordinary hours that they've established with their managers and, as a rule, we would not expect to be contacting them out of their normal hours except in an emergency where it's reasonable to do so.

Senator CASH: Do you have a list of those people? How do you know?

Ms James: They would be our APS1-6 staff. For our executive-level and above staff, their remuneration reflects that they are sometimes expected to do reasonable additional hours.

Senator CASH: Are EL1-2 counted in what you just said?

Ms James: Yes, and executive level 1—

Senator CASH: And SES bands?

Ms James: The remuneration is higher for executive level 1, executive level 2 and the SES bands. It reflects an expectation that there's sometimes a requirement to work additional hours. What we do with respect to that is, obviously, we like to minimise it, but when it is required we have conversations in the workplace about it. If we feel we need to connect or communicate with someone outside of when they would expect to have a conversation, we would absolutely weigh up if it's reasonable or not. I would expect that our people are discerning between something that has some urgency about it and something that doesn't. My people work very hard and it can sometimes, I think, be possible when we're working in intense periods that we forget what time it is or what day it is. It's important that we do always, when it's out of normal hours, reflect on whether the communication is necessary or whether we can work out what we need to know without disturbing particularly more junior staff, but as well any of our people. I myself do try to minimise that. We often have conversations about this. I will say to folk, 'If you need me, ring me. I'm not monitoring my emails over the weekend, but if something comes up and you need me, call me.' That is exactly the kind of conversation I would hope is happening throughout our department now.

Senator CASH: At the workplace level?

Ms James: Absolutely.

Senator CASH: Did you just say you do exercise the right to disconnect yourself?

Ms James: I do.

Senator CASH: You do? Can I ask: how often do you exercise the right to disconnect and do you put something in writing so people know?

Ms James: We all have our own practices and our own habits about when we look at emails and when we don't. There are studies, I think, around those notification things and the impact that they have psychologically on people. There's a reason Twitter, or whatever they call it these days, and so on keep prompting you to have notifications in place. From my point of view, I do have the luxury of support staff. I err on the side of ringing when it's the weekend, for example. If you need me, ring me, because I don't want to be looking at my emails all of the time. What can happen when you're doing that is you can see emails that aren't urgent but suddenly you start thinking about what you've been emailed about and maybe responding to it. Another thing people can do is they might be choosing to do some work on the weekend and sending emails to people, but they might not be urgent; they can choose when it's sent. They can delay the email. Or they can say, 'This isn't urgent. I'm just doing my emails now. You don't need to worry about this.' There is a range of things we might do. I do that when I can. As a secretary when I ask people to do things, they tend to do them. I'm very circumspect about the fact that I

might be interested in something, but it might not be urgent, so I say, 'This can wait till Monday. It's just I've had this thought bubble now so can we talk about it on Monday?' I try to regulate that. That's how I manage it with respect to myself and my people.

Senator BROCKMAN: I do the same thing to my staff. I'll send a message late at night to my staff with the clear expectation that's communicated in advance that I do not expect it to respond to, and the same on weekends. From your point of view, and the legislation that has just passed, that is—as long as that preset understanding is in place—an acceptable way of dealing with staff, and the right to disconnect?

Ms James: There's a full range of circumstances in the workplace. I'm talking about my situation. I'm not prepared to say that will work for everyone in every workplace. What I will say is I think what's important here are the conversations that people can have around what does and doesn't work for them. I think, for example, if people are working intensively on a project and there's a need to do, let's just say, work overnight, if a person says, 'I'm having dinner with the kids between 5.00 pm and 7.00 pm and I'm going to be offline', then don't communicate with that person between 5.00 pm and 7.00 pm. They've set a boundary.

Senator CASH: But how do you know?

Ms James: I think you have the conversation, is what I'd hope. We have conversations now, but sometimes there is ambiguity around this. I had one of my staff early on say to me—I might be revealing too much—that 'If people are calling me after 7.00 pm, should I be expected to always be ready to have a conversation at 7.00 pm at night on a weeknight?' I said, 'It depends what it's about. If it's urgent, yes.' If it's not urgent, I think you could have a conversation—this is someone in my office who's probably being called by more senior people—about whether it can wait. Or if you're out to dinner, text them and say, 'Can we chat tomorrow?' I think it's an ongoing negotiation. I am of course talking about our situation here, and what you might describe as knowledge workers, or people whose tool of the trade is a laptop who may be in and out of work at different times of the day depending on what suits them. These are the kinds of conversations I think that have been had in recent times.

Senator CASH: At the workplace level.

Ms James: At the workplace level.

Senator CASH: As you were saying.

Ms James: But I do think they're not always had. In the case of my staff member asking for clarification, I really did reflect in that moment on this point: it's easy for me to tell people 'Don't call me unless it's an emergency,' but does everybody feel empowered to do that? This staff member was seeking my guidance on that because they were dealing with people more senior calling them after 7 pm, when maybe they were still at their desk, it's daylight savings and the sun hasn't gone down, and they've not quite reflected, 'Actually it's quite late and it can wait till tomorrow.' I think that this conversation is a good prompt for that. I think the purpose of the legislation goes to having these sorts of conversations.

Senator CASH: We'll obviously get into that. In terms of EL1 and EL2 and SES bands, you're the secretary, the highest paid person in the department. You exercise your right to disconnect. I'm assuming that you then have the expectation that, if other SES bands or EL1s or EL2s want to exercise their right to disconnect, they're able to.

Ms James: I hope that everyone is able to have these conversations. I wouldn't assume that everybody is. People don't always feel that—

Senator CASH: Sorry. It's not about assuming that they can. It's about your expectation. It flows down.

Ms James: It is. I will say that, with my people, I have often talked about these sorts of things, about the need for balance. We can get into modes when we're dealing with urgent projects where we've had to work very intensively and suddenly we're in the habit of working out of normal business hours. We do talk to people about managing that and help people actively manage wellbeing. Yes, I would hope that everyone is in a position where they can have these conversations to set boundaries. It's a balance. We do need to get the job done.

Senator CASH: In terms of the comment you made at the beginning, APS1 through to APS6 are all in, but then obviously you have different forms of remuneration that are meant to compensate you for additional hours worked. What people are now asking the department—and it's a perfect example—is: what level of compensation is enough to actually not exercise the right to disconnect because you are actually compensated for working and being there when the question needs to be asked?

Ms James: Yes, and I think that goes to the nature of the role as well as the remuneration and the circumstances. We are venturing into the legislation proper here.

Senator CASH: No. Let's go to the department. You currently have a right to disconnect. People exercise it. How do you work out what remuneration says you don't take a call at 11 at night? 'Hold on. You're getting a

hundred grand for that.' You're paid a few hundred grand a year, and you're getting overtime. I do expect you to take a call at 11 at night.' How do you work through that?

Ms James: Our remuneration is set by our enterprise agreement.

Senator CASH: Yes.

Ms James: Those different bands have different duties attached to them. It's already reflected. Let me reframe. I would say that managers need to be conscious of where those boundaries are, because there have to be boundaries. When the question is, 'How much is reasonable?' it does come back to this reasonableness factor that I think is reflected in the legislation.

Mr Manning: One of the factors that will always be considered is the reason for the contact or attempted contact.

Senator CASH: I'm talking about people who are paid hundreds of thousands of dollars per year. In the real world, most people aren't getting hundreds of thousands of dollars and they're certainly not getting the ESA or the overtime allowances that people in this place get. That's what I'm talking about.

Mr Manning: I understand that. The concept of reasonableness will be determined taking into account factors such as those you've done as well as the reason for the contact. To use another example, if you're calling at 1 am, for many people that might seem unreasonable for a matter that could be dealt with just as easily at 9 am the next day. But if it were—just making something up—something about the IT system crashing completely and service provision were going to be impacted at 8 am, they'll both weigh as to the reasonableness of the call.

Senator CASH: Again, we're going to the fact that you have a right to disconnect. I'm not talking about the legislation here. How does, though, your right to disconnect work in terms of daylight saving and Western Australia? I think you once said something to the effect of the bandwidth for work hours within the Public Service was between 7 am and 7 pm. Technically, there's a three-hour time difference for six months of the year. We face it every day. I take calls at 3 am. That's life when you're from Western Australia. Seven am, if I kick in in WA, is 10 am in the eastern states. How do you manage that?

Ms James: We do have staff in Western Australia, and they would work their ordinary hours. Again, it does depend on these questions of level a little and their remuneration. But by and large, say, the APS1 to 6 level staff in Western Australia would be working their ordinary hours. They're agreed. You would know better than I. I'm from Queensland originally. In Western Australia, some people may start earlier. I've noticed a practice in Queensland that people rock up to the office a lot of the time from 7 am or 8 am. I think that's to avoid the heat. I have observed in different states their climate and time zones do impact on those agreed ordinary hours. That does come down to what the staff have agreed about whether they might be coming in earlier than business hours, 9 to 5. Ms Godden has come to the table. We're venturing a little into the amendments proper.

Senator CASH: No, I'm not talking about the amendments. I'm talking about—

Ms James: I appreciate this issue came up in the context of the debate. I'll ask Ms Godden to talk to those principles.

Senator CASH: the right to disconnect as it currently applies in the department. You said you exercise a right to disconnect. I'm very interested in how it currently works in Western Australia. Do you have a rule in terms of certain levels that you cannot contact them before, for example, 10 am eastern daylight time, because that's when the 7 am western time kicks in?

Ms James: I think we're all conscious of those time differences and seek to avoid unreasonable contact outside of those hours.

Senator CASH: What's the process? Is there a process? Most people wake up in the morning and make a call. They don't go, 'I'm on Sydney time' or, 'I'm on Melbourne time.' They never say, 'What's the time in Perth?' I'm trying to work out: do you have rules in place in relation to when people in Western Australia are able to be contacted?

Ms Jenkins: The secretary was talking about conceptually in the department we are talking quite proactively about people's right to disconnect. Having worked in departments that do have large quantities of staff right across the country, there are conversations that go on. I think the secretary was alluding to the fact that these are not formal agreements. We have obviously the enterprise agreement. But within that it is really up to a discussion between the staff member and the manager. As the secretary was alluding to, there are conversations that go on to say, 'If I come in a little bit earlier, because it means I can spend more time with my kids in the evening', that's the kind of level of conversations—

Senator CASH: You have the capacity to do that, because you're a department with almost 4,000 people.

Ms Jenkins: You asked the question whether there was anything formal currently in relation to this? No, there is not currently anything formal in relation to this.

Senator CASH: How does it work with flexitime? In terms of the right to connect in the department, you said there are plenty of people who work on flexitime. Whom works on flexitime? What levels?

Ms James: Staff at APS1 to 6 work on flexitime. Just to emphasise again, the right to disconnect is about engagement outside their normal hours. If they've agreed that their normal hours are eight till six or whatever their normal band is, that's their normal hours.

Ms Jenkins: It could be anything.

Ms James: These new rules would apply outside their normal hours. As I said before, we would apply that reasonableness test. By and large, it would be better if we're not having to contact them outside those hours. But if it's reasonable because of the circumstances, then that would occur.

Senator CASH: For someone who's on flexitime, I'm trying to work out the interaction here. They accept contact after their scheduled time. Does that then fit into their flexitime?

Ms James: If we were contacting—

Senator CASH: Do you see what I mean? My flexitime is this but I'm now taking it outside of here?

Ms James: This goes to the reason for the communication, which Mr Manning spoke about before. If we were calling someone to say, 'You've left and you're still in this file, and I need to save it. Can you get out?' If they have to go home and log on and close and save a file, then I would expect that there be a conversation, especially given what we've said about logging on before. If that took very much time, I would expect that overtime or flex would be adopted to compensate for that. If it's a quick call to say, 'Are you coming in tomorrow?', possibly not. If we're contacting an APS1-6 staff member out of their normal hours and asking them to do substantial work, there are provisions in our agreement or determination that address that. Those provisions go to time in lieu, flexitime or overtime, subject to what we're asking of them.

Senator CASH: This is the perfect example, where we are today. For example, how does the right to disconnect work in terms of Senate estimates and the long hours that are worked?

Ms James: There's no disconnecting from estimates. Most of the people appearing at the table are SES staff and it's part of the expectation—I don't know that anyone would disagree with me—that if their outcome happens to be on at the death knell, then we expect them to be there. I'll ask Ms Jenkins to talk about support staff and the arrangements in place for them, some of whom absolutely will be at the APS1-6 levels.

Ms Jenkins: In particular, when you think about the people around the room today, maybe fixing the IT or monitoring or photocopying for us, that is part of their job description. When they enter into that, they know that supporting us at Senate estimates is part of that. I know from a management level, the team behind us will talk to their team about, 'Are you available? Can you make it on that day? Will you take time off in lieu as a result of working that?' Especially when some of them work late hours, 'Don't come in the next day till later on.' They're manager-level discussions because they know the reality of being in the parliamentary services team or the IT team, who happen to be here as well, is like that. It is a manager-led discussion, with a range of options that we have available to us, as set out in our determination.

Senator CASH: Would any APS1-6 be contacted after 7 pm today?

Ms Jenkins: There will be some people who are from APS1-6 who are in the room, and they have been asked to work today.

Senator CASH: Do they get time off in lieu?

Ms Jenkins: Or whatever arrangement, because the manager has—

Ms James: In terms of, say, should you ask me a difficult question at 9.30 pm, and I didn't know the answer, I would probably take it on notice. I would turn around and see who was here who might know the answer, but I think it's highly unlikely I'd ring an APS1-6 staff or ask for that to occur to clarify something happening out of their normal hours of work. For the people who are here with us till the death knell, it's part of their work hours and expectation of work hours that when estimates are on it's here. Again, it's that distinction between arrangements around working hours and compensation for different sorts of hours versus your right to not engage with work when you are not at work, when you're not expected to be at work and when you're not being paid to be at work.

Senator CASH: Again, it's great that you can have these conversations because when you have almost 4,000 people, there's the ability to have those conversations at a workplace level. We have one final topic here, labour

hire, which Senator O'Sullivan will ask. Then I have a whole lot of questions on the right to disconnect which go into the next outcome. I'll put a whole lot of questions on notice just in relation to FOIs.

CHAIR: Senator O'Sullivan.

Senator O'SULLIVAN: Secretary, can either you or one of your officials let me know: what are the current numbers of staff in your department, both APS and non-APS? That's the 3,900 figure? Was there any difference to that?

Ms Jenkins: Our total headcount—I think these are the numbers you're after—at 31 December was 4,702. That comprises the 3,916 we referred to earlier. We have another 786 who are contractors. I would like to say that we have been working very hard since I came into the department—and before I came into the department—and it's a real focus. That is 17 per cent of our workforce. In 2022 that was 29 per cent of our workforce. In terms of the use of labour hire, we have significantly reduced that. Just to give you some further information, you'll recall from previous discussions we've had about this that we have a combination of those who are, we call them, ICT contractors. They are our IT contractors. They comprise around 537 of that 786. There are 249 who are non-ICT. So that's the ICT people. The others are generally used where we've had a genuine period that we needed to staff up for; we haven't been able to recruit someone specifically for that role. There's a temporary need in that role.

Senator O'SULLIVAN: What changes do you expect in relation to those numbers over the forwards?

Mr Sladic: That's a conversation we'll be continuing to have during the coming months around where can we continue to try to hire APS staff rather than labour hire contractors. We've not set a target to reduce that. We will be doing so under the strategic commissioning requirements. At this stage I think it's just to repeat what Ms Jenkins said; we have a good look at whether we can do the work in house. A big proportion of those staff are IT specialists and contractors, but it's certainly something we monitor proactively. We're looking at how we set appropriate targets for our department around IT contractors versus non-IT contractors. We'll be looking to reveal those in our corporate plan for next year. There are no targets over the forwards just yet.

Senator O'SULLIVAN: In terms of the quantum of permanent APS and non-APS staff, is there an expected projection?

Mr Sladic: I think part of that is impacted by the budget cycle. Part of what we need to always have capacity for is a lot of IT work. We do a lot of IT work for lots of other departments as well. I think part of what we need to take into account is that surge need might go up rather than down compared with current levels. That's something we're having active conversations about in the department and have to feed into our targets.

Ms Jenkins: The other thing I will say is we're also looking at how we can have a pool of APS staff available to us. As we know, the market in Canberra is quite tight. We have been expanding our recruitment in particular for ICT staff in hubs. In Sydney, we have North Ryde. We have Melbourne, Newcastle and Adelaide. We're also making sure we're recruiting in particular in the IT space graduates—IT graduates. There are other levers that we have. They're slightly longer term levers, but those are some of the things we've been doing to address this.

Senator O'SULLIVAN: Are you expecting any redundancies, either voluntary or involuntary, over the next period?

Ms Jenkins: I haven't considered that at this stage.

Senator O'SULLIVAN: So there are none? Thank you. Of your staff members, how many are ongoing, non-ongoing, part time or casual?

Ms Jenkins: Let me start with the easier one. We have four casuals in the department.

Senator O'SULLIVAN: They're non-ongoing casuals, I take it?

Ms Jenkins: By their very nature.

Senator O'SULLIVAN: By definition, yes.

Ms Jenkins: They are casuals. Ms Strangio has the details.

Senator O'SULLIVAN: I heard of a business that employs permanent casuals, the other day.

Ms Jenkins: Ms Strangio has stepped up to the table. She might be able to give you that information. Casuals is the one that was at the top of my head. I knew it was four. I've given you the non-ongoing/ongoing. Sorry. No, I gave you headcount.

Ms Strangio: So it is four casual employees. As at the end of December 2023—so 31 December 2023—we had 224 non-ongoing employees. I just realised I've got the wrong number. And we had 3,692 ongoing employees.

Senator O'SULLIVAN: And part time? Did you say that figure?

Ms Strangio: We have 3,692 ongoing employees, 242 non-ongoing employees and four casuals.

Senator O'SULLIVAN: Any part-timers?

Ms Strangio: Yes.

Senator O'SULLIVAN: Is there a breakdown of permanent and non-ongoing?

Ms Strangio: We might need to take that on notice.

Senator O'SULLIVAN: We've discussed the labour hire and the contractors already so I'll skip that. Regarding those that are engaged on short-term contracts, what's the shortest length of contract a person is engaged and what is the longest of terms?

Mr Sladic: I'll refer you to our question on notice answer. I think 35 calendar days was the shortest period we had for a contractor and the longest was 995 days.

Ms James: What was that date?

Mr Sladic: Sorry. As at 31 October. That's SQ23-001196.

Senator O'SULLIVAN: Have you got a 31 December figure?

Mr Sladic: That was at 31 October.

Senator O'SULLIVAN: Can you give us an update?

Mr Sladic: I don't have that to hand. Can I take that on notice?

Senator O'SULLIVAN: You can take that on notice. How often are these contracts being rolled over?

Mr Sladic: I think that's probably, to get into the data you're after, something I need to take on notice. I think one thing we're finding is people are extending options in some instances. I can get you some detail on notice about how often that's happened, but I wouldn't have the specific number for you right now.

Senator O'SULLIVAN: Are you able to tell me now if there are any people who are working on contracts that have worked for the department for more than three months?

Mr Sladic: In a different capacity to bring in a contractor?

Senator O'SULLIVAN: As a contractor, yes. How many of those on these contracts have worked for the department for more than three months?

Ms Jenkins: We'd have to get a specific breakdown for you. Can I clarify that what you're after is anyone who is on a labour hire contract that is greater than three months, currently or historically?

Senator O'SULLIVAN: Presently.

Ms Jenkins: We will take that on notice.

Senator O'SULLIVAN: What is the total cost to the department of its use of labour hire?

Ms Jenkins: We're just seeing if we have it broken down that way.

Senator O'SULLIVAN: Can I confirm that the same job, same pay laws that have passed the parliament now apply to the public sector?

Ms James: The closing labour hire loopholes laws do apply to the Public Service; that's right.

Senator O'SULLIVAN: Can we go back to that question on the total cost? Have you got that?

Ms Jenkins: I don't have it broken down in that way.

Mr Sladic: We'll get that back to you today. Sorry. I just don't have it in front of me.

Senator O'SULLIVAN: Can you come back today? That's great. Secretary, what actions are you taking to ensure that you comply with these laws within the department?

Ms James: I'm going to ask someone to come to the table who's familiar with the commencement dates. The closing labour hire loopholes laws passed the parliament last year. The way they apply is, if someone wishes to seek an order that certain labour hire workers should be paid the same as employees of an employer, they go to the commission and they apply for an order. To be technical, there are no obligations unless and until someone goes to the Fair Work Commission and seeks an order, which I don't think is able to happen yet. But, of course, should that occur we would comply with that order. We would hope that our practices are such that wouldn't be necessary, but I'll just ask Ms Godden to refresh all of our memories about how the closing the labour hire loopholes rules work and when they commence from.

Senator O'SULLIVAN: I don't want to take up too much time. We understand how they work. What steps is the department taking to prepare itself for those laws coming into effect?

Mr Sladic: We're very conscious that new labour hire contracts for non-ICT labour hire contractors go through the Department of Finance's people panel. We're proactively managing our reporting and monitoring of the use of labour hire contractors. I think we're certainly, as we approach November, conscious of the laws coming into effect, and making sure managers are aware that they need to engage new contractors through that panel. I think through the ICT panel, which we use a lot, we're seeking more information from them on payments received by the contractor and getting better fidelity around that in terms of the payments made to the contractor. So we are making sure we're moving through and getting as much information as we can to give ourselves some assurance that our labour hire contractors are being remunerated in a way that's going to help us meet the obligations that will come into effect.

Senator O'SULLIVAN: So you are working on that?

Mr Sladic: Yes.

Senator O'SULLIVAN: How many people are affected within the department or that are engaged by the department?

Ms James: There's no legal obligation, unless and until someone seeks an order and obtains an order from the Fair Work Commission. What we're really talking about here is our work in the realm of wanting to be best practice and a model employer. As a matter of principle, we want to ensure our labour hire workers are fairly remunerated. That's something that we're not required to do, but we consider it to be the right thing to do, and hence some of the measures that Mr Sladic has set out. But there are no legal obligations unless and until there's a Fair Work Commission order that applies. We would hope that, if people had concerns about the conditions or remuneration of any of our labour hire workers, we would be having conversations about it, if any of these mechanisms fail. There is some complexity, of course, because we don't always have visibility of what goes into people's pay packets, which is why we're taking the steps we are to get better visibility of people's pay-packets. But, generally speaking, we aspire to make sure that the labour hire companies are paid a sufficient amount to ensure the workers are being paid fairly and in a way that aligns with the conditions of our own workers.

Senator O'SULLIVAN: What are you doing with those labour hire companies? Are you asking to see that information? What proactive steps are you actually taking?

Mr Sladic: Certainly in the IT space we're asking for additional information. That's a big proportion of our labour hire contractors. It's not a requirement at the moment under that digital marketplace panel to provide that, but we're certainly looking to get more information on that. As I said, any new contracts coming through the finance people panel should give us that visibility for some of the non-IT contractors. We'll keep working through it and making sure we're getting the information that we need.

Senator O'SULLIVAN: Has there been any application made to the commission or has anyone raised anything with the department in relation to the fact that they might apply for one?

Ms James: No.

Senator O'SULLIVAN: I did ask you how many people were affected, didn't I? Were you able to come back to me?

Ms James: As we discussed, no-one is directly affected or impacted unless and until a Fair Work Commission order is made. I've just checked—

Senator O'SULLIVAN: As you've been engaging with the labour hire companies, have you been able to identify any staff who need to have an adjustment?

Mr Sladic: Not to my knowledge.

Senator O'SULLIVAN: Can you just check that?

Mr Sladic: We'll take that on notice.

Senator O'SULLIVAN: Could you then also come back to us with what levels they are employed or contracted on, if there is anyone?

Mr Sladic: Yes.

[12:29]

CHAIR: We'll now go to outcome 3, workplace relations. This question is to the minister. The shadow Treasurer has confirmed the opposition will take a package of 'targeted repeals of workplace relations policies to the election'. Angus Taylor, on *Insiders* said: 'We'll certainly take a targeted package of repeals to the next election. There's no question about that.' If my recollection is correct, also on *Insiders* he said there were several

areas. Could the minister outline for the committee some of the measures included in the government's first package of reforms, including secure jobs, better pay, which could be part of the opposition's repeals?

Senator Watt: I saw that interview, and I thought that was a very disturbing comment from the shadow Treasurer, Mr Taylor, the man who would be the Treasurer under a Peter Dutton-led government. He said that the opposition will 'certainly take a targeted package of repeals to the next election'. I think what we know from that is that Mr Dutton and the coalition now have a target on the back of every Australian worker. They have said they have a targeted package of repeals in mind for the next election.

Senator CASH: Chair, with all due respect, the minister can't put words into the mouth of the opposition. I'm really sorry. This is a set-up, and I have no issue with that at all, but seriously!

CHAIR: Firstly, there has been a series of questions asked by the opposition that I have not interfered with which have been of a highly political nature and have not been technical or factual questions. This is a question which goes to the heart of our industrial relations system and business certainty.

Senator CASH: We're not in government. This is the expenditure of government, Chair.

CHAIR: The opposition is saying this is about certainty for the Australian economy, the Australian business community and the Australian public—what the future holds and the sorts of pressures coming to bear as a result of a possible incoming conservative government. The Liberal-National Party has said quite clearly—

Senator CASH: So now at estimates we talk about opposition policies that have not yet been drafted? Are you kidding me? This is now what estimates under the Albanese government have been reduced to? You can't talk about your own policies, so you talk about what you think ours are going to be?

Senator Watt: You're very worried about this.

Senator CASH: This is hilarious. I'm loving it. Do you have a script you could table?

Senator Watt: Did Angus go off script?

Senator CASH: Do you have a script you could table?

Senator Watt: I have the quote from Angus Taylor I can table.

Senator CASH: This is fantastic!

Senator Watt: Did Angus go off script? Is that why you're so worried about this? Great job, Angus! Well done, Angus!

CHAIR: I can appreciate you don't want to talk about issues involved in secure jobs and better pay.

Senator CASH: Seriously?

CHAIR: The minister has every right to say what the validity of those policies are.

Senator CASH: I'm sorry, this is farcical!

CHAIR: And those who are opposed to it. The fact is—

Senator CASH: Chair, I'm prepared to accept a lot on this committee, but the minister has now been asked to give evidence about hypothetical opposition policies that might be put to the Australian people at a future election. This has turned Monty Pythonesque.

Senator Watt: You're very defensive about this.

Senator CASH: I'm not. This is our one chance to ask questions about—

Senator Watt: And you've had the entire morning.

Senator CASH: the operations of government.

Senator Watt: You've had the entire morning. I think there's barely been a question from government—

Senator CASH: You didn't have any questions. We were the ones interrogating the government.

Senator Watt: You're all very defensive about this. Did Angus get a bit of a tongue lashing in your party room this week for going off script?

Senator CASH: This is hilarious!

Senator Watt: You think it's hilarious that the opposition will be taking a targeted package of repeals to the next election? You think that's hilarious? You've been laughing a lot about a targeted package of repeals to the next election. I think Australians would be quite interested to know what that targeted package of repeals involves.

Senator CASH: Yes, we've said we'll restore the Australian Building and Construction Commission. How obvious was that?

CHAIR: Could I ask everyone to hold for a moment. I've asked a question, very diplomatically. I'd now ask for a response to that question. I have not interfered with the questions that have been asked from the opposition.

Senator CASH: I'm going to remember this the next time I'm sitting there.

CHAIR: The vast amount of time we've had this morning has been with the opposition. There has been a whole list of questions that I wish to ask but we have deferred our time to the coalition to ask questions. Now this is a time for the government to also ask a question. You'll still be way ahead of us in time. I've been on many committees where it doesn't operate this way. I've allowed it to operate this way; you've had more time than the government has. I'm happy to continue to do that, but here is my opportunity to ask a question. Minister Watt.

Senator Watt: As I said, it's very revealing how defensive Senator Cash and the coalition are.

Senator CASH: With all due respect, Chair, I will not be verbally. I am in hysterics because this has taken on a farcical atmosphere.

Senator Watt: You've barely stopped speaking since I started answering the question. You've barely stopped speaking since I answered one of the first questions from the government of the day. Is there a problem? Are you embarrassed?

CHAIR: Senator Cash, it's 12 seconds into the question. You don't have to explain why you're feeling uncomfortable—

Senator CASH: I'm not feeling uncomfortable, seriously.

CHAIR: I'll now hand back to Minister Watt.

Senator Watt: Thank you, Chair. An incredible reaction from Senator Cash!

Senator CASH: How many times can you say my name, seriously, this afternoon? Let's start counting, like you do in question time.

Senator Watt: What's the problem?

CHAIR: I'll ask Senator Cash to stop interrupting the minister. This is a very important question. The Australian public want to know the answer to it. This is an opportunity for business to know what surety they have about this industrial relations legislation into the future. Minister Watt.

Senator Watt: As I said, I think it was a pretty important contribution from the shadow Treasurer, Mr Taylor, in saying on the *Insiders* program last weekend that the opposition will 'certainly take a targeted package of repeals to the next election'. No-one made him use those words. No-one made him use the word 'targeted'. That was his choice, and that's why it is clear there is now a target on the back of every Australian worker, from the targeted package of repeals that the opposition intends to take to the next election. Again, I thought it was pretty remarkable that the first industrial relations policy that Mr Dutton announced as the leader was to eliminate the new right to disconnect that workers have been provided, to provide them with some rights to stop unreasonable contact outside paid hours. That was the first policy.

I did notice also Mr Taylor said on the weekend the opposition was also committed to abolishing multi-employer bargaining. I don't know if that's an official policy of the opposition, but that change to Australian law obviously is also one of the key things our government has done, which is starting to lift the wages of low-paid workers in some parts of the economy, especially the care economy. They seem to be planning to get rid of that as well. I think the question now for the opposition is: what else is going to be in this targeted package of repeals? Your question was, what were the measures in the secure jobs, better pay bill that we passed that was opposed by the coalition? Are they now part of the targeted package of repeals? That was things like a prohibiting pay secrecy clause. Is that now going to be repealed by the opposition? Adding gender equality and job security to the objects of the Fair Work Act; is that part of the targeted package of repeals? That bill established care and community and pay equity expert panels within the Fair Work Commission. Is that on the chopping block as well? It regulated the excessive use of fixed term contracts where permanent positions should be made available. Could that be in the targeted package of repeals? It updated the equal remuneration positions to allow low paid female dominated sectors to be paid appropriately for the value of their work. It gave employees with parenting or caring responsibilities an enforceable right to seek flexible work arrangements.

Senator O'SULLIVAN: Chair, the minister is reading from a script. Can he table it?

Senator Watt: I might just review this, but I'd be pretty happy to table it, because it also includes all sorts of quotes from the opposition claiming that the secure jobs, better pay bill is a 'grotesque' piece of legislation, and

comments from Mr Joyce. That's right; Senator Cash warned us that it was going to prompt strike action against industries and potentially close down Australia. I'm quite happy to table something that has all of those ridiculous quotes that we saw from the opposition.

Senator O'SULLIVAN: Can you table what you have there?

Senator Watt: So, the question is—

Senator O'SULLIVAN: Are you tabling what you've got, what you're holding in your hand?

Senator Watt: I'll review this document, but I can't see any reason that I wouldn't table a list of quotes from the opposition and a list of what the bill does. The question is: why does the opposition want to repeal a range of rights that this government and this parliament has given working people in Australia that has assisted to lift wages in a serious way for the first time we've seen in years, has seen less industrial action than what we saw under the former government, has seen more jobs created than any first-term government has ever delivered and is now seeing inflation come down.

But despite all of those outcomes from the legislation we passed, which was apparently going to take us back to the dark ages, that was apparently going to see supermarket shelves be emptied, was apparently going to close down Australia, was apparently going to see strike action across industries—those were all of the things Senator Cash and her colleagues were saying would happen, and we've seen completely the opposite. Despite all of that, we now know that the opposition intends to take a targeted package of repeals to the next election. I think they owe it to the Australian people to say what's in that package.

CHAIR: What uncertainty does that bring to business and to discussions that have taken place between the work force, either directly or certainly through the unions? Does it bring uncertainty into workplaces, because of the challenges of appeal for these matters?

Senator Watt: I would imagine so. As I say, following the legislation that was passed that is now at risk from the coalition, we've seen jobs go up, wages go up, inflation starting to come down, and closing the gender pay gap to its lowest level in history. That's all of the things that are at risk. I would have thought they're pretty good things for the country. Industrial action has come down. I would have thought those are pretty good things for the country and have provided certainty for businesses. But apparently they're now at risk.

CHAIR: And in particular areas there are many areas of deep interest. There are also industry-wide arrangements with respect to the gig economy and in respect of the road transport industry there are wide arrangements and support for the now bill. What uncertainty does that bring if there's a question whether that legislation will have longevity?

Senator Watt: I think we're all uncertain about what is in this targeted package of repeals that the opposition intends to take. We know it includes removing the right to disconnect. Because apparently the opposition thinks it's appropriate for employers to be able to repeatedly contact workers after hours. We're unclear whether it's about removing multi-employer bargaining. The laws we've passed prohibit sexual harassment under the Fair Work Act. Is that on the chopping block from the opposition under their targeted package of repeals? As you say, Senator Sheldon, the laws we passed only last week, despite the opposition from the opposition, provide minimum standards for gig workers. There's a whole lot of questions that the opposition now has to answer about what's in their targeted package of repeals. We know the Liberals are the party of WorkChoices. It seems they just can't help themselves.

CHAIR: Even though my time was broken up from comments from the opposition, I'll—

Senator CASH: Please take five more minutes. I'm enjoying this.

Senator Watt: We know you enjoy—

Senator CASH: Even the *Guardian* is running that we're now getting dixer in estimates about opposition policies.

Senator Watt: low wages. We know you enjoy more industrial action. We know you enjoy having low wages as a deliberate design feature of your economic policy. We know you enjoy those things. You know what? Australian workers are enjoying getting a pay rise. Australian workers are enjoying getting a pay rise.

Senator CASH: Do you know the *Guardian*—is currently mocking you?

Senator Watt: Australian workers are enjoying—

Senator CASH: In the *Guardian* it's saying we're now getting dixer in estimates about opposition policies.

Senator Watt: having a prohibition against sexual harassment in the Fair Work Act.

Senator CASH: That's going really well for you. That's going so well for you.

Senator Watt: Australian workers are enjoying having secure jobs and better pay.

Senator CASH: I will turn to—

CHAIR: Sorry. We have five more minutes.

Senator CASH: Go for it, please. I'm enjoying this. The *Guardian* is loving it.

Senator Watt: I never knew you liked the *Guardian* so much.

Senator CASH: It was actually sent to me by others, and your people as well.

Senator Watt: Have you got the *Guardian* blocked on your iPad?

Senator CASH: Your people think you're funny.

Senator Watt: I get that a lot.

CHAIR: Our people? I'd like to thank the minister for that response, and also, quite clearly, there is legislation in place that is important about giving surety to business about what the future holds. Of course, the coalition has left lots of businesses and workers up in the air about several areas where they're going to destroy rights. In the case of the business rights that had been put in place, in particular in the road transport industry, those business rights in the road transport industry go along with workers' rights and the supply chain and will save lives. You might think it's funny. You might want to be laughing about those sorts of things and gig workers getting minimum standards; I'm not.

Senator PAYMAN: At an inquiry in Canberra on Friday, 10 November last year, the committee heard from teachers from the Independent Education Union of Australia, who strongly supported the right-to-disconnect laws. Eugene Lehmensich, a secondary school teacher in the ACT, stated, 'Digital apps can literally create connection between parents and teachers 24/7.' Abigail Butler, a teacher of 16 years, described colleagues replying to emails at one o'clock in the morning from parents or students. Peter Dutton has said his party would repeal the right to disconnect if they won government. He wants teachers to be available 24/7 and to work more for less. How will this measure protect teachers from unreasonable contact outside of work hours?

Mr Manning: The way the right to disconnect has been framed is, essentially, that it gives an employee the right to refuse to monitor, read or respond to contact or attempted contact outside of working hours unless that refusal is unreasonable. It then sets out a non-exhaustive list of factors that go to the reasonableness of the conduct. Then it establishes a framework for resolving disputes about it. So, essentially, at that point in time, if there's a dispute around that, it would only be, for example, if the employer thought that the refusal to monitor outside of work hours was unreasonable. Noting, as the committee has been hearing, it involves time when you're not being paid, although there are some positions where it's envisaged you would be available, you try to resolve that at the workplace in the first instance. If you're not able to resolve it in the workplace in the first instance, it establishes a framework whereby an employee could seek to get a stop order, that is, if we haven't been able to resolve it and my employer is going to take disciplinary action against me. It adds to the already existing suite of avenues available to an employee to seek to stop that action being taken against them.

Senator PAYMAN: We've also heard that the Police Federation of Australia has demanded Peter Dutton dump his promise to repeal the right-to-disconnect laws. The federation's Chief Executive, Scott Weber, said, 'As police we understand there are operational requirements for out-of-hours contact to occur but police should be paid for this, otherwise it is simply wage left.' He also said that Mr Dutton's position will have a significant impact for all first responders and that he should unwind this ill-conceived thought bubble. This government supports the right for workers to be paid for the time they work. It's up to the opposition to decide if they want to stand against frontline workers. Can you outline how this measure will protect first responders from unreasonable contact outside of work hours?

Mr Manning: I'd adapt my earlier answer to the different contexts, which is relevant here because the key feature is whether or not the out-of-hours contact is reasonable. That goes to things like the reason for the contact or attempted contact, how it's made and the extent to which the employee is compensated to be available and to remain available to perform work outside of work hours, and also the nature of the employee's role, level of responsibility and personal circumstances. All those matters can be considered, as well as any additional relevant matters in determining whether or not the contact is reasonable and whether the refusal to monitor the contact is unreasonable. As I said earlier, the way it's been constructed, though, is that if at one level it's accepted that it was reasonable not to be monitoring, that's the end of the matter. It's only in circumstances where an employer wanted to take action against the employee to the detriment of the employee for that otherwise reasonable conduct, and have a dispute about it, that there could be circumstances that arise. I think what should be occurring as was touched on in relation to the department earlier is conversations in the workplace around what is occurring and

what might need to occur, which goes to that factor of reasonableness. In a way, the right, I suppose, by clarifying that the employee can refuse to monitor, read or respond to contact outside of work hours unless it's unreasonable, promotes those conversations and promotes the circumstances in which those conversations might occur.

As we were touching on earlier, as to what is reasonable—there might be some officers, to use your example, who are senior officers who are paid an allowance or others who are paid an allowance to be available, even if they're not working, as compared with others who might have worked many days in a row and are taking a scheduled break. What's reasonable would depend on those circumstances as well.

Ms Godden: I'll add to Mr Manning's evidence that where you're looking at first responders and shift workers particularly, of course they have different hours of work from, for example, people who have what are typically called nine-to-five jobs. I just want to add that the right is really focused on that out-of-hours contact. That doesn't mean that contacting someone who's on a shift is unreasonable, because you may be rostered to work at one o'clock in the morning if you're a police officer. This right to disconnect only applies when someone is not working. So it would apply to that police officer, for example, if they might be working a night roster and might be sleeping during the day. In that circumstance, it might be reasonable for them to refuse to monitor, read or respond to that contact, if that's the time they have to sleep because of the roster they're working. In another employee's circumstance it might be flipped around, because that police officer might be working a day roster at that particular point in time or it's a nurse or someone else who works those rostered hours.

The amendment that was passed actually really focuses on the employee's right to refuse to monitor, read or respond to contact that is outside their working hours, and provides, where it's reasonable to do so, that they have a right to refuse. It doesn't prohibit the contact itself. I think that's really important to understand; that the right is flexible enough that it doesn't just apply 9-to-5. It looks at when an employee is working, but crucially it gives them a reasonable right to refuse to monitor, read or respond outside those working hours. So, it's particularly acute for people on shifts. It's also acute for people who have flexible working arrangements, for example, where they might have negotiated a different set of ordinary working hours to standard to allow them to take a longer break in the middle of the day to pick up their children or where a parent might have a regularly scheduled medical appointment. If someone's parent is on dialysis or something like that, they might have negotiated that in the workplace. What we're really looking at is outside-of-work-hours contact, noting that a lot of employees will have different working hours to each other. We're not in a world where everybody works nine-to-five.

Senator PAYMAN: Minister, would you like to add anything to that?

Senator Watt: No, I think the officials have given a good summary. I think it is very useful to get the facts about this on the record.

CHAIR: Coalition questions?

Senator Watt: Chair, I've reviewed the document that I was reading from and I'm very happy to table the list of coalition quotes about the secure jobs, better pay bill and what that bill contained—

CHAIR: Thank you.

Senator Watt: with a few markings that I have made myself.

Senator CASH: Near my name?

Senator Watt: I don't think so. You're a treasure trove of hyperbolic quotes, I'll give you that.

Senator CASH: Thank you so much. I live rent free in your head, I know. Just in terms of the right to disconnect, when did the department first see the Greens amendment in relation to the right to disconnect that passed through the Senate?

Ms Godden: It was post introduction of the closing loopholes bill last year. I'd have to take the exact day on notice.

Senator CASH: Just remind me, what month was the introduction of the loopholes bill?

Ms Godden: I'm just having a look. My recollection is that it was in September it was introduced and read for the first time, on 4 September.

Mr Manning: That's when the legislation was introduced.

Ms Godden: After that point; it was after introduction, but I would have to take the exact—

Senator CASH: No, that's fine. The answer is that it was around September of last year?

Ms Godden: It might have been later. I really would have to take that on notice. But it would have been last year, in that period before, between introduction and Christmas. I'm sorry. I just don't have—

Senator CASH: Could you come back today on the exact date, because I might have more questions this afternoon? It was established it was last year, and I do appreciate that. If someone could just check on the departmental file? The Senate only got the amendment circulated last Wednesday, but you're saying the department did see it in 2023?

Ms Godden: The department was aware of the amendment. It had provided advice to government on the drafting of the amendment and assisted with the drafting of the amendment, but I would have to take on notice exactly when we first saw that draft.

Senator CASH: That's not a problem. If you come back today that would be great. But it was 2023. Did you say the department assisted with the drafting of the amendment?

Ms Godden: With Office of Parliamentary Counsel.

Senator CASH: On behalf of the Australian Greens or the government?

Ms Godden: We were advising the government on ways to frame the right. As it ended up, it was moved by the Australian Greens.

Senator CASH: And that's fine. Who gave the drafting instructions in relation to the amendment?

Ms Godden: I couldn't speak for the whole amendment, but certainly there were drafting instructions sent to the Office of Parliamentary Counsel by the department in relation to the amendment.

Senator CASH: So this department?

Ms Godden: By this department.

Senator CASH: I'm just making sure it was this department. On what date were those instructions sent?

Ms Godden: I'd have to take that on notice. I'd expect that there would be multiple occasions. I'm certain there were multiple occasions.

Senator CASH: That's fine. Could we just get the dates on which the instructions from the department were sent to the Office of Parliamentary Counsel in relation to the amendment? Did the minister approve the amendment or the minister's office?

Ms James: This was a Greens amendment. As to the process: unlike government amendments, where there's a very formal approval, I'm not sure; I'll ask Ms Godden to respond to that.

Senator CASH: It's unfair to ask you. Sorry.

Ms James: There were a lot of amendments.

Senator CASH: Understood. We know which amendment we're talking about. Did the minister or the minister's office actually approve the amendment?

Mr Manning: They voted for the final amendment. The government voted for the final amendment.

Senator CASH: That's not the question I asked, Mr Manning. I asked: did the minister approve the amendment? So, we're saying here the department had the amendment in 2023. Instructions were given on multiple occasions to the Office of Parliamentary Counsel by the department in relation to the amendment. I assume they were on behalf of the government; you're not giving instructions on behalf of the Australian Greens?

Mr Manning: The minister's office was negotiating with the Greens about the form of the amendment, and we were assisting the minister with that. As part of that, on occasions, as Ms Goddard outlined, we gave instructions as it developed.

Ms Godden: As you'll be aware, there are processes set out in the *Legislation Handbook* for the approval of government bills and government amendments; it's a cabinet approved process known as the Legislation Approval Process. For non-government amendments there are corresponding processes required to be gone through before the government can agree to vote for non-government amendments. Certainly, that process was followed in respect of the right-to-disconnect amendment and, indeed, all of the non-government amendments that were voted for by the government in relation to the closing loopholes No. 2 bill.

Senator CASH: Did the department provide advice to the government in relation to the amendment? I'm not asking about the nature of the advice, I'm asking if it provided the advice.

Ms Godden: Yes, we did.

Senator CASH: On what date did you provide that advice and on how many occasions?

Ms James: There were many conversations, ongoing conversations, about a range of amendments. I think there would have been many conversations about this amendment as well. I think we'll need to take that on notice. But you can assume that there were several.

Senator CASH: Prior to the Greens amendment being provided to the government, did the department draft any potential clauses in relation to the right to disconnect or send instructions to the Office of Parliamentary Counsel in relation to the right to disconnect?

Ms Godden: I think we'd have to take that on notice. Initially the matter would have been handled by Mr Still. Mr Stephen Still was the relevant branch head. He's subsequently transferred to the Attorney-General's Department.

Senator CASH: Mr Stephen Still?

Ms Godden: Yes, he was the branch head for the branch in my division that would have been responsible for sending those drafting instructions. I think I might have to take that one on notice.

Senator CASH: Mr Manning, did the department provide any instructions in relation to any amendments on the right to disconnect before seeing the Greens amendment?

Mr Manning: No. I'd have to take that on notice also. The department had some discussions with the minister's office, for example, after the introduction of the bill because, as I understand it, it was being put forward as something that would have to be negotiated to secure passage of the bill. There were some conversations with the minister's office before there would have been a draft. But as Ms Godden indicated, in relation to the specifics of that question, we'll take that on notice.

Senator CASH: That's fine in terms of being taken on notice. If you did draft clauses, can we also have a copy of the clauses that were drafted. Just in terms of the amendment from the Greens, could I confirm: you did give instructions to the Office of Parliamentary Counsel on multiple occasions in relation to a right to disconnect amendment?

Ms Godden: Yes.

Senator CASH: Essentially the amendment from the Greens was originally authored from the Department of Employment and Workplace Relations?

Ms Godden: I can't quite recall who originally would have authored that.

Mr Manning: We have taken it on notice to look at the timing of those amendments. That will be part of that.

Ms Godden: And where it originated, yes.

Senator CASH: I'm more than happy for your offsider to answer questions. I can't quite see your name. I'm sorry. If you believe that Ms Godden can provide information, I'm more than happy for her to provide the information so we don't have to go down the path of having the department undertake all of the work afterwards to provide answers to questions on notice. If the answers are there, that would be greatly appreciated. As to the drafting instructions that you provided to OPC, did they address the criminal penalties currently associated with the right to disconnect?

Senator Watt: Do you mean the criminal penalties that we attempted to remove and you prevented us from doing?

Senator CASH: No, I mean the criminal penalties we voted against and you voted for.

Senator Watt: You do recall Senator Gallagher, because I was sitting right next to her, when she sought leave to move the amendment to remove those criminal penalties, and you did not grant leave? So the criminal penalties that are only—

Senator CASH: That you voted for and we voted against?

Senator Watt: The criminal penalties that are only in because the coalition—

Senator CASH: No, not at all. You didn't test your numbers on the floor of the House. Why didn't you bring that to a vote? I don't have the numbers in the Senate. The coalition doesn't have the numbers in the Senate.

Senator Watt: We couldn't because you denied leave to move the amendment.

Senator CASH: You could have then disputed that. You could have suspended standing orders.

CHAIR: Can we stop for a moment. One person is asking the questions. It is the time for the coalition to ask questions. One person asks questions and then once the answer is given they can continue to ask or I'll give the questioning to another senator.

Senator CASH: In terms of the amendment, did the drafting instructions address the criminal penalties currently associated with the right to disconnect?

Ms Godden: Only on 8 February.

Senator CASH: How did it come to your attention on 8 February that potentially employers and third parties—we'll work through that; is a third party a work colleague or a client—

Mr Manning: And employee.

Senator CASH: And an employee as well?

Mr Manning: In the sense that the issue we're discussing was an oversight.

Senator CASH: Good grief! An oversight? A criminal penalty was an oversight? That is so good coming from the department. Did you just say that a criminal penalty was an oversight?

Mr Manning: The interaction of the right to disconnect provisions with section 675 of the Fair Work Act, as Ms Godden said, wasn't something that we briefed the minister on prior to becoming aware of it on 8 February.

Senator CASH: So you're saying a criminal penalty in relation to a breach of a stop order is an oversight? You gave drafting instructions to insert a right to disconnect and you forgot to rule out criminal penalties?

Ms James: There was no criminal penalty inserted.

Senator CASH: There's a criminal penalty in place now.

Senator Watt: I wonder why that is?

Senator CASH: You voted for it.

Ms James: The right to disconnect establishes a right in the Fair Work Act. The provision that we're talking about here applies criminal penalties to breaches of orders of the commission. It's in a completely different part of the act and it stands and applies to any order of the commission.

Senator CASH: To any order of the commission?

Ms James: It's longstanding.

Senator Watt: It was probably there when you were the minister.

Senator CASH: It certainly was.

Ms James: Its history is what's used to be known as contempt of the commission. Its history is along the lines of contempt of court. So you would be aware, I'm sure, that if you don't comply with a court order contempt of court rules apply. In the case of the commission, there has been a longstanding provision. It is now section 675 of the Fair Work Act. It also existed in the preceding Workplace Relations Act. It applies a criminal penalty for breach of all commission orders. However, that provision has some exemptions. As to the nature of those exemptions—and I'll ask Ms Godden to outline what they are—they are of a similar line.

Senator CASH: I don't need to know the nature of the exemptions.

Ms James: A criminal penalty was not inserted in the amendment.

Senator CASH: No. That's not the point. There is a criminal penalty in place now. The department gave drafting instructions to OPC months ago. The government was aware of this amendment months ago. It was brought to the Senate's attention in the dying days, on 8 February, when apparently it was brought to your attention. Can I ask how this was missed?

Ms James: We were speaking over one another when I was responding to your previous question. If I might finish?

Senator CASH: How was this missed, though?

Ms James: If I can respond to your previous question and then we'll move to your subsequent question. You had asserted that the amendments inserted a criminal penalty. I was explaining that they didn't and that the provision is a longstanding provision relating to contravening a Fair Work Commission order. There are a number of exemptions to that order or exclusions. I'll ask Ms Godden to talk through what they are, and when she does I think the framework will become a little bit clearer about how this provision should have been added to section 675.

Mr Manning: Before we do that, can I clarify this. There is no criminal penalty now in the sense that the provision hasn't commenced.

Senator CASH: Really? Wow! When does that commence? Yes, I'm being sarcastic. I'm so sorry. Obviously, I know that.

Mr Manning: It's just that a number of comments have been made saying it's there now.

Senator CASH: I know that. But the reality currently is—

Senator Watt: You know that, but it hasn't stopped you running around the country saying there will be—

Senator CASH: that the criminal penalty may apply to anyone who violates the right to disconnect. It doesn't stop the fact that because of the amendment your department drafted and the government voted for there are now criminal penalties.

Senator Watt: No, there's not. They haven't taken effect and won't for six months.

Senator CASH: There are criminal penalties in the bill. How did the drafting go so wrong? How many people were looking at this in OPC?

Ms Godden: Two.

Senator CASH: So you had two people looking at this?

Ms Godden: There were two drafters. It's standard to have a drafting team of two drafters in the Office of Parliamentary Counsel.

Senator CASH: So you gave drafting instructions to insert a right to disconnect and, to quote yourself, Secretary, longstanding provisions so we all knew there were criminal penalties that could apply. But you actually forgot in this case to rule out criminal penalties? Was it a junior and a senior drafter?

Ms Godden: I can't quite recall off the top of my head.

Senator CASH: Take that on notice.

Ms Godden: It would be the standard combination for a drafting team.

Senator CASH: When did someone discover there was this mistake?

Ms Godden: I first became aware of it on 8 February.

Senator CASH: How did you become aware of it on 8 February?

Ms Godden: I had a discussion with an adviser in the Prime Minister's office.

Senator CASH: An adviser in the Prime Minister's office?

Ms Godden: That's correct.

Senator CASH: What time did that discussion occur?

Ms Godden: It would have been late morning, some time after 10.30 in the morning.

Senator CASH: Late morning you were made aware that this was the case. But the government, Minister Watt, didn't seek to address this until we were in the middle of a guillotine; is that the case?

Ms Godden: If I may, I had that discussion with an adviser from the Prime Minister's office, and more than one from our minister's office. We sought to address that and to correct the drafting. The government amendment, however, was drafted promptly and provided to the Senate table office but wasn't able to be circulated before 1.30 pm.

Senator CASH: Are you saying it was the Prime Minister's office that discovered the potential for criminal penalties?

Ms Godden: That was when I first became aware of it, when I was asked a question from an adviser from the Prime Minister's office.

Senator CASH: Secretary, do you know who first discovered the potential for criminal penalties?

Ms James: I don't have any evidence to add beyond what Ms Godden has said in relation to how we became aware that this insertion that should have been included wasn't.

Senator CASH: So your department didn't know that there was a problem?

Ms James: We had not identified it, no.

Senator CASH: You had not identified it? Minister, do you know how the Prime Minister's office became aware of this issue?

Senator Watt: No.

Senator CASH: Are you able to take that on notice and find out?

Senator Watt: Yes.

Senator CASH: Secretary, as the evidence has been given, the department provided on multiple occasions drafting instructions to the Office of Parliamentary Counsel in relation to the right to disconnect amendment. Given that the government had the amendment and had seen the amendment last year, can you take me through the consultation process that you had both with internal and external stakeholders about the amendment before it was introduced to the Senate floor?

Ms James: I'll ask Mr Manning and Ms Godden to talk to the detail.

Senator CASH: That's fine, if they've got the information.

Ms James: Given this was a Greens amendment, it wasn't our role to consult with third parties in the way that we might on behalf of the government with a government amendment. I'll ask Ms Godden to talk about what she's aware of with respect to conversations had about this amendment.

Ms Godden: The department wasn't authorised to consult on the amendment.

Senator CASH: When you say 'not authorised to consult', do you mean an instruction was given that you were not authorised to consult?

Ms Godden: Under the standard legislation process—I can't recall if this is set out in the legislation handbook or not, but I suspect it is—we would ordinarily seek the Prime Minister's or cabinet's approval to consult on draft legislation. This was obviously not a government amendment, but I believe the same requirements would apply. We weren't authorised to consult, to share those amendments ourselves, which would be fairly standard for non-government amendments. It's a fairly standard process. We were asked to support some limited discussions on the bill and the amendments.

Senator CASH: Whom asked you to do that?

Ms Godden: A request would have come from the minister.

Senator CASH: When did that request come to you?

Ms Godden: I would have to take that on notice.

Senator CASH: Last year? This year, when the amendment was being drafted?

Ms Godden: Sorry. I'm just—

Senator CASH: That's fine. You can take that—

CHAIR: I don't want to break your line of questions. We have just passed quarter past 1. Do we break now? I'm happy to give you a couple more minutes.

Senator CASH: When you say 'limited discussions', who were you told to have limited discussions with?

Ms Godden: It wasn't so much that we were told to have limited discussions with certain parties. But we might be asked on an ad-hoc basis to support the minister's discussion. For example, the minister had a meeting with business group CEOs, which department officials attended, which is confidential but was reported to be a wide-ranging discussion about matters in connection with the bill. I'd just have to check and see. I'm thinking about instances like that.

Senator CASH: Is this specifically in relation to the amendment?

Ms Godden: I don't know.

Senator CASH: I'm talking about this particular amendment.

Ms James: We are endeavouring to give you the best we can. I appreciate you're very interested at the moment in one amendment. From Ms Godden and her team's point of view, there were a number of amendments they were working on. A lot of the time the discussion with the office, with the minister or where we assisted with third parties, would have involved a suite of amendments. This may or may not have been in the suite, particularly noting the distinction between how we might engage on government amendments as opposed to other senators' amendments.

Senator CASH: I'll come back to this after. Is it possible over the lunchbreak to get a time line about when the amendment was drafted?

Ms James: There was a lot of activity back and forth and it would not be possible for us to do that.

Senator CASH: At least the date the initial instructions were given.

Ms James: We'll take that on notice.

Mr Manning: We've taken it on notice, noting that not everyone who might have been involved is in the department anymore. We'll look at what we can.

Senator CASH: I do appreciate that. But you are a department. The mere fact that someone moves on shouldn't limit your ability to provide information, because otherwise departments wouldn't function.

Ms James: You're absolutely right. It does go to us wanting to ensure we're giving you an accurate answer. We will do our best.

Senator CASH: We'll continue this after the luncheon adjournment.

Proceedings suspended from 13:18 to 14:18

CHAIR: We'll recommence.

Senator Watt: Chair, I want to update you on something I took on notice. This relates to the amendment regarding the right to disconnect. I am advised that the issue with the amendment was identified shortly before debate resumed on the bill at 11.45 am on Thursday, 8 February.

Senator CASH: That was 11.45 am?

Senator Watt: It was 11.45 am, shortly before debate resumed. The issue was first raised jointly by an adviser from the Prime Minister's office and an adviser from Minister Burke's office. It was raised with the department's officers who were attending outside the Senate chamber. The amendment was provided by the department to the minister's office at 1.11 pm. After completion of the legislation approval process, when the amendment was presented to the Table Office, the cut-off had been missed. That, of course, occurs at 1.30 pm. As Senator Cash would recall, the government sought leave from the opposition to table the amendment and leave was refused by the coalition.

Senator CASH: An amendment that we obviously hadn't seen. Is there a reason you didn't pull the bill, which was my suggestion to Senator Gallagher, and then bring it back at the next sitting so that you could ensure an amendment like this could get through? We will continue to pursue the fact that this amendment was drafted last year. The question that arises—this was the point I was making is: what else is wrong with the bill? Things were drafted in haste, unfortunately, that were not explored, as in this case. We'll go through the consultation process shortly again. There are over 100 amendments dropped for the cross bench and the coalition to look at. We did our very best. Seriously, what is the difference? You've now got to bring this bill back in any event.

Senator Watt: Well, you asked what else is wrong with the bill. Senator Cash, we know that you and the coalition think there's a lot wrong with this bill, such as defining casual work properly, providing minimum standards for gig workers and improving casual conversion procedures. We know that there's a whole lot to do with this bill that you think is wrong. It's not true to say that the bill has to be brought back. It's also not true that employers are subject to criminal penalties in the way that your colleagues have been suggesting over the last few days.

Senator CASH: The last time I checked the bill that went through the House of Representatives, that was correct.

Senator Watt: Well, as Mr Manning pointed out—

Senator CASH: That was correct.

Senator Watt: As Mr Manning pointed out, and you well know, this provision won't take effect for six months.

Senator CASH: So that makes sloppy drafting okay? That's a good excuse. I like that. Sloppy drafting is okay as long as you pick up the sloppiness in time.

Senator Watt: They are your words. It is not true, as you claim, that employers are subject to criminal penalties, because they are not. It is also not true that we have to bring the entire bill back. What we need to do is simply pass a very simple amendment. That was the amendment we sought leave to move. I will remind you, Senator Cash—I remember this clearly because I was sitting next to Senator Gallagher as it occurred—on 3.46 pm on Thursday, Senator Gallagher said:

I seek leave to move amendments on sheet AE107, which would ensure that a breach of a right to disconnect order made by the commission is not a criminal offence. If these amendments are not allowed to be moved, it will remain a criminal offence.

Leave was not granted. Senator Gallagher could not have been clearer in the chamber—

Senator CASH: So why didn't you suspend standing orders and test the vote on the floor of the Senate? We don't have the numbers in the Senate, Minister Watt.

Senator Watt: Why should anyone need to do that when what they are seeking to do is to make—

Senator CASH: Because you rushed an amendment in with no consultation at all—

Senator Watt: Can I finish my answer?

Senator CASH: after the Prime Minister's office had found out earlier in the day.

CHAIR: Stop for a moment. I appreciate that there's a desire for commentary and question. Let the minister answer the question first. When he has completed the answer, by all means, commentary and question will be available.

Senator Watt: Thanks, Chair. I don't know why anyone should need to move a suspension motion to ensure that employers would not be subject to criminal offences, as was always intended. It is entirely on the opposition that legislation was passed in the way that it was, because we attempted to fix it and we weren't given leave to do so.

Senator CASH: Well, just for the record, once again, you're blaming us for an amendment that you voted for. The last time I checked, colleagues, did we vote against it? So we're now being blamed for the government's bad policy. The government voted for employers to be subject to criminal offences. We voted against it. That's what the record actually shows.

Senator Watt: You had every opportunity to fix it, though.

Senator CASH: Over lunch, did the department find out when the Greens' right to disconnect amendment was first drafted by the department? You were going to see if you could get me the drafting instructions dates.

Ms James: Senator, over the lunch break, we've done some searching and some conferring. It's clear—this aligns with our memories as well—that there were ongoing and intensive conversations and advising going on about the bill and amendments for a pretty lengthy period continuously. Often these amendments were batched. Again, while we're focusing on one amendment here, often conversations about amendments were in groups. We're not in a position to say with accuracy today when formal instructing of the OPC began. Another thing I was reminded of is there was a private members' bill moved by the Greens in early 2023 containing a range of provisions in and about flexibility at work, including the right to disconnect. That provision being before the parliament, we were advising the government—this is in March 2023—on that measure and that bill.

Senator CASH: So earlier—March 2023? Understood.

Ms James: This is advising the government on the concept. The work and care inquiry that was happening in the second half of 2022 was putting these matters squarely on the table. We're just not in a position today, relying on our memories and ad hoc lunchtime searching, to be clear. I will also observe that some key people, including Mr Hehir, who may have had conversations about this, aren't here. We'll take this on notice. We'll confer with them. We'll also, of course, check records that Mr Still and Mr Hehir no longer have access to, and we'll come back to you on the specifics, because there was a lot of drafting and a lot of conversations of various status, and we're just not in a position to be clear about it with you today.

Senator CASH: That's fine. There's only just under 4,000 people in the department, so I accept that as an answer. Can I confirm what you've just provided to the committee by way of evidence? You were providing advice to the government on the right to disconnect in March 2023.

Ms James: I will ask Ms Williams, whose team was monitoring the work and care inquiry and that Greens private members' bill, to tease out the specifics of that.

Ms Williams: The department is first on the record as publicly acknowledging that we are monitoring the issue in the hearings of the work and care inquiry that happened in September 2022. The interim report for the work and care inquiry came out in October 2022. Recommendation 4 of that report was that the department consider legislative reforms to the Fair Work Act in relation to a right to disconnect. Obviously any reforms to the Fair Work Act are a matter for government. From a policy perspective, my team was monitoring both domestic and international developments in relation to these issues from that time. In March 2023, the work and care inquiry handed down its final report. Recommendation 23 was in relation to a legislated right to disconnect. The leader of the Greens, Adam Bandt introduced a private members' bill in March 2023 in relation to a right to disconnect in the national employment standards. In terms of, I guess, the policy context around that right, throughout that time I think also during hearings in Senate estimates and as part of the committee inquiries I have previously given evidence about domestic and international developments in relation to the right to disconnect.

When the closing loopholes bill No. 1 passed the parliament on 7 December, the minister put out a media release that said:

The Government is also working constructively with the crossbench to deliver an agreed amendment which would provide Australian workers with a right to disconnect from unreasonable contact from their employer—

Senator CASH: Say that again. I missed what you said.

Ms Williams: Sure. I will slow down, Senator. On 7 December, the minister, Tony Burke, put out a press release that went through the passage of the closing loopholes bill No. 1. In that media release, it was stated:

The Government is also working constructively with the crossbench to deliver an agreed amendment which would provide Australian workers with a right to disconnect from unreasonable contact from their employer outside of work hours.

So in terms of, I guess, the policy context, over 18 months as a department, of course, we monitored regularly both domestic and international developments in minimum standards. We gave evidence to that effect. We were monitoring what was also happening in enterprise agreements. That is the broader policy context.

Senator CASH: Thank you for that time line. As you said, it dates back to March 2023 when advice is given. March 2023 was in relation to—

Ms Williams: I should add, Senator, that typically we would provide advice to the minister's office and the minister as required where there are significant events, such as an interim report into work and care, such as the introduction of a private members bill and such as the final report into work and care. That's a standard practice that we do.

Senator CASH: So in terms of, as you said, the press release now of 7 December that Minister Burke released, if it was the government's policy in December, why wasn't the amendment released for scrutiny then—I said November 2022—so people could actually comment on it? If it had been released for scrutiny, I can tell you now that someone would have picked it up and said, 'There's an issue in this' and you could have actually had it properly drafted and presented to the Senate instead of the debacle we now find ourselves in. Why wasn't it then released for scrutiny?

Ms James: Minister Burke's media release, I think, said that the government was working constructively with the cross bench. There were ongoing and intensive conversations with a number of senators. That is the government conducting those conversations. We were from time to time assisting and advising. I am certain there was not an agreed draft of the amendment at that point. There wasn't something to release and consult on.

Senator CASH: The time line will obviously show us that. But a media release isn't a substitute for consultation. They are very different things. Why not release an exposure draft so you could get employers talking about it and understand not just the impact but, as I said, the fact that the drafting was sloppy and had included the potential for a criminal penalty?

Ms James: Well, the drafting did not include a potential criminal penalty, as we have already discussed. These were matters being worked on by the government. It's a matter for government when it's comfortable with it and finalised something. That had not occurred at the time of Minister Burke's press release.

Senator CASH: And the time line will show, then, that clearly that was not finalised. What date did this bill go through?

Ms Godden: It was 8 February.

Senator CASH: So, based on that, there was no reason to consult because it wasn't finalised until 8 February. Is that what you are saying?

Ms James: No.

Senator CASH: When was the amendment finalised? When did the department actually see the final amendment?

Ms Godden: I would have to take that on notice.

Ms James: We'll take that on notice. There were a number of amendments being worked on simultaneously. I don't recall. A lot of the time, conversations, including formal conversations, would have batched a number of amendments up, so I'm not in a position to respond to that.

Mr Manning: It would have been close to the introduction of the non-government amendment that we would have seen the form in which it was introduced.

Ms James: Very close.

Mr Manning: Yes. As Ms Godden said, we'll take it on notice.

Senator CASH: On notice, you are already providing me with timelines et cetera. I have also asked for copies of the drafting so we can look at the iteration of the clause and what we ended up voting on or not voting on in the Senate. In terms of the people across the detail of this, are you saying they've left the department? Was that the evidence before?

Ms Godden: Not all of them, Senator.

Mr Manning: No.

Senator CASH: Not all of them?

Ms Godden: No.

Senator CASH: Where are they?

Mr Manning: The evidence was that in order to be sure, we need to consult with people, including two who were involved in this process who have left the department.

Senator CASH: Is there anyone else who is actually across the detail of the drafting and the instructions who could assist us?

Ms James: A large number of people were involved in a large number of amendments. It's not a matter of one person. The issue is that there are a large number of documents and a large number of communications. We're not in a position to be confident that we can accurately respond to these questions of detail about one of a number of amendments here today. We will take your—

Senator CASH: You said the two people you referred to left in December last year, or last year?

Ms Godden: We referred to Mr Still.

Senator CASH: And he left?

Ms Godden: He left for A-GD last year, I think, towards the end of October.

Senator CASH: What was Mr Still's role?

Ms Godden: He was the branch head for the employment standards branch, so the senior executive lawyer, an assistant secretary.

Mr Manning: Mr Hehir, I think, went on a period of leave in December 2023 before starting in Prime Minister and Cabinet. I will clarify, Minister. The witnesses at the table, including myself, were involved in the process. What we were saying earlier is that, to be certain about some things, we would need to consult others involved in the process, some of whom are no longer with us.

Ms James: We would also need to review a large number of records about all the amendments.

Senator CASH: I have a few more questions, which I will come back to. In terms of the definition of 'third party', was the evidence that you gave before the break, Mr Manning, that it was colleague or employee?

Mr Manning: No. My recollection is that I was confirming that the stop order provision, and so the current flow-on potential impact of section 675, applies to both employees as well as employers. The bill as drafted permits an employer to seek a stop order in relation to an employee's refusal to monitor, read or respond to contact being unreasonable. So certainly those concepts—

Senator CASH: So an employee could potentially be in breach of this provision and have a penalty brought against them?

Mr Manning: The right to disconnect permits employees to refuse to monitor, read or respond unless the refusal is unreasonable.

Ms Godden: I would say that not only do the provisions not commence for six months but the parties must first try and resolve such a dispute at a workplace level. If they can't, the employer or the employee or someone representing them can apply to the Fair Work Commission to resolve the dispute. Then you have the Fair Work Commission being empowered to make a stop order, if that's appropriate, to resolve the dispute. There are other powers that the Fair Work Commission has. They are preserved at 333V of the bill. It may resolve through mediation or conciliation, expressing an opinion, making a recommendation or if both parties agree that the Fair Work Commission may arbitrate the dispute. If none of that is successful and the preconditions are met, the Fair Work Commission could make that sort of stop order. It would only be if that stop order was breached to a criminal standard that you are looking at section 675 of the existing Fair Work Act framework coming into play. I would say that the department has searched. We're unable to find any record of criminal proceedings ever being brought under section 675.

Senator CASH: That will give hope to every small business out there. Thank you so much for that. I am assuming that, in relation to the process, you will be putting that out for small businesses so they can, at midnight on a Sunday, have the opportunity to peruse the process you've just articulated and actually understand what they will need to do?

Ms James: There are a number of measures, I think, as a result of the bill that ensure that the Fair Work Ombudsman is well positioned to provide advice and guidance to all workers and businesses and, in particular, small business.

Ms Godden: For small business in particular, commencement has been delayed for a further 12 months, so a total of 18 months, post royal assent. The Fair Work Commission is also required to make written guidelines in relation to the operation of the division. So by the time the right comes into effect and will affect small business

employers, you will have not only 12 months of practice but also those written guidelines in operation in addition to what the secretary mentioned around additional support through the Fair Work Ombudsman, for example.

Senator CASH: If a small business knows where to go in terms of the Fair Work Ombudsman. In relation to the right to disconnect, can you take us through which employees will have the right to disconnect and which workers or employees won't have the right to disconnect?

Ms Godden: I am not sure I quite understand the question.

Senator CASH: In the department, for example, everybody has the right to disconnect. Correct?

Ms Godden: Yes.

Senator CASH: Does that work across all workplaces? Every employee is going to have the right to disconnect?

Ms Godden: Where there is Fair Work Act coverage, Senator, yes.

Senator CASH: Yes, exactly, yes.

Ms Godden: Broadly speaking, national system employees.

Senator CASH: Exactly. So it's all covered. Will employees be banned from calling each other on the weekend about work matters? How is that going to work?

Ms Godden: Again, I think I referred earlier to there being no prohibition on making contact. The right is whether you monitor, read or respond to that contact. So no employees will be banned from calling one another on the weekend.

Senator CASH: How do you get the stop order? I continually call you on the weekend. You don't respond to me. How does the stop order work?

Ms Godden: The Fair Work Commission may make a stop order in three different circumstances, broadly. They are set out in proposed section 333P of the bill. These are to prevent an employee from continuing to unreasonably refuse to monitor, read or respond to contact or attempted contact; if the employee's refusal was reasonable to prevent the employer from taking disciplinary or other action within the meaning of the drafting against the employee; and if the employee's refusal was reasonable in order to stop the employer from continuing to require the employee to monitor, read or respond to the contact or attempted contact.

Senator CASH: When you say the employer, how does the third party fit?

Ms Godden: It may be the third party which is making the contact.

Senator CASH: Yes.

Ms Godden: As I said, there's no prohibition on that third party making contact or attempting contact. The drafting recognises that contact may not just be coming from the employer. It may be coming from a third party.

Senator CASH: What are the implications for the third party?

Ms Godden: None.

Senator CASH: None?

Ms Godden: The stop order doesn't really apply to the third party. It applies between the employer and the employee.

Senator CASH: Will the employer have to say to the—

Senator Watt: I think there might be one. I might be wrong. I think there was also an intention to protect an employee from being punished by their employer if, for example, they were being punished for refusing to have contact with the third party in a way that was reasonable. It is a protection against punishment as well.

Senator CASH: Yes. I thought that was actually stated.

Senator Watt: Because there is no employment relationship, obviously, with the third party. If an employer sought to take disciplinary action against an employee because, for example, that employee was being repeatedly contacted by a third party after hours in an unpaid time of day, the employee would be able to invoke this right. Is that correct?

Ms Godden: That's correct.

CHAIR: I have a supplementary question. We had evidence during the Senate inquiry from teachers saying that they were getting contacted by parents and students at 1 am in the morning and 3 am and then demands about why they were not responding quickly. There was an assertion that they were also being held to account by the school system itself more generally as well as specifically their employer. This is a defence as well.

Ms Godden: There's nothing prohibiting that good faith contact, if you like, from that third party. There's nothing prohibiting good faith contact by that third party. The right is considering what the employee does either as a result of that contact or what the employee has chosen to do that means that contact is unsuccessful.

Mr Manning: As the minister indicated—I think I gave some evidence about this earlier—if someone accepts that refusal to monitor as reasonable, that's the end of it. It's only when someone says that's not reasonable and then takes action that the stop order, for example, regime may come into place. To go to your point, Chair: I think that is why certain EBAs have started a right to disconnect in education. That situation you've described is one that has happened. This principle, I suppose, establishes itself as a principle that applies for all employees in all workplaces. It might still be tailored by EBAs. There is also provision in the bill, as passed, for the Fair Work Commission to tailor it in relation to each award within six months before it commences as well. So you take the general principle, if you like, and tailor how it might play out in relation to awards. The Fair Work Commission, of course, in varying awards, hears evidence from both sides about how it should play out in a particular industry which is covered by that award. So that will occur as well.

Ms Godden: The stop order is really focused on that employer and employee. That is really where the drafting is directed. You could perhaps come up with remote possibilities where if the third party has conspired with another party to breach the order, they might be drawn into it. I would stress that they are very unlikely. That is not where the drafting is directed.

Senator BROCKMAN: I want to ask a supplementary question in the same area. If an employer seeks to contact an employee on an urgent issue—a server is going down, a privacy breach is about to occur—and the employee is disconnected, so has the right not to look at that communication, how does the legislation work in that context?

Ms Godden: What the legislation does is look at whether that refusal is reasonable. In your circumstance—

Senator BROCKMAN: But if you have the right to disconnect—

Senator CASH: And exercise that right and the employer—

Senator BROCKMAN: how do you know if it's urgent or not if you disconnect and don't answer the communication?

Mr Manning: It permits disconnection in circumstances where it is reasonable.

Senator CASH: But who determines what circumstances are reasonable? The Fair Work Commission?

Senator Watt: Yes. But also there are factors set out in the legislation that guide the Fair Work Commission as to what could be considered unreasonable. It's obviously a decision for the Fair Work Commission. This is a hypothetical situation, Senator Brockman, that you are putting. I would have thought that the Fair Work Commission would not consider a one-off request from an employer in the situation you are describing, when a server is going down or an emergency situation, to be unreasonable contact.

Senator CASH: But the employers have to now go to the expense of it in any event.

Senator BROCKMAN: But that's not my point. If the employee has disconnected and has the right to disconnect—

Senator CASH: How do you address the urgent situation at this point?

Senator BROCKMAN: how do they even know that the urgent situation has arisen?

Ms Godden: I think you have to look at the role the employee has. For example, if you are someone who works in IT security or you are responsible for IT for that company, you are likely to have a job description which involves responding to urgent IT crises, if you like, such as a server going down. In that circumstance, you look at the reason for the contact. You look at the extent to which the employee is compensated to remain available for working those hours, the nature of their role and their level of responsibility.

Senator BROCKMAN: I don't think you're quite getting my point. How does the employee, without looking at the communication in the first place, even know whether it is an urgent or a non-urgent matter?

Mr Manning: I think we need to bring it back to the nature of the right. The right isn't for every employee to never deal with any work related matter outside normal work hours.

Senator CASH: The person has disconnected and an urgent email comes in. What do you do? The employee is not looking at it. Do a workaround?

Mr Manning: What you would do is the same as what you would do now in circumstance where an employee is not fulfilling their responsibilities. If someone's responsibilities include being available out of hours to deal with emergencies as they arise, this doesn't affect that.

Senator CASH: No. That's not the point. The point is that an emergency has arisen. It's not an emergency that this person is being employed to actually take care of. Something actually happens in the workplace that I need that person who has disconnected to deal with, but they have disconnected. What are we now doing?

Ms James: I think this is a bit about, as Ms Godden said, role and expectations. If you run an IT system, usually someone is a nominated emergency contact for when emergency crises happen. In my department, it's often Brad. Brad knows it's his job to take calls in relation to systems things. In many cases, people are paid in my organisation—I can only talk for mine with this level of specificity—via either emergency payments or remittal allowances, as I think they are called, to compensate them for that. I think it is about what the expectations are of a person and their role. If you are the first point of contact for any IT emergency, you would probably know that it's within your role to pick up a call on the weekend. That is part of your job. If you are not doing your job, there are a range of ways of dealing with that. I think the kind of situation we're sometimes talking about here is where individuals who don't have that kind of responsibility are repetitively called about things that are not emergencies. I think one of the senators read material from one of the police representatives earlier. They talked about understanding, as first responders, the difference between an emergency call, which they absolutely understand they should take, and getting a lot of calls that related to perhaps administrative things that are not urgent. I don't think we're talking about people whose role it is to be on call or deal with emergencies—

Senator CASH: And we were never talking about those people.

Ms James: or senior people.

Senator CASH: We were never talking about those people.

Senator Watt: Well, Senator Brockman was.

Senator BROCKMAN: I was, to be fair.

Senator Watt: Yes.

Senator BROCKMAN: I think there is a gradation of responsibilities. Even the sheer concept of urgency is so grey.

Senator Watt: Hang on.

Senator BROCKMAN: What is urgent to a small cafe is totally different to what is urgent to a big business.

Senator Watt: There has been a lot of catastrophising from certain people—

Senator BROCKMAN: It's not catastrophising. It is a lack of clarity.

Senator Watt: about what this right means. We have just gone through the way this right operates in practice. Again, please correct me if I am wrong. As a result of this legislation, all employees covered by the federal system now have a right to refuse to monitor, read or respond to contact or attempted contact from an employer or a third party outside of the employee's working hours unless the refusal is unreasonable. That is a right that already exists in Australia in a number of different enterprise bargaining agreements—including in some police services, as I understand it, some Public Service agencies, some teacher EBAs, some newspapers from your home state of Western Australia—and the sky hasn't fallen in. That right exists already for those who have negotiated it in their enterprise bargain. As a result of this legislation, that right is now extended to all employees covered by the federal system. Now that they've got that right, the way it would be put into practice is that if an employer, for example, were repeatedly contacting an employee at all hours of the day for relatively minor items, the employee would have a right to go to the Fair Work Commission and seek a stop order to cease that kind of behaviour. Surely even the coalition must recognise that it is fair for an employee to be able to seek protection from an employer who is repetitively contacting them at all hours in unpaid hours for minor matters. That's the first way.

The second way is that if an employer sought to take disciplinary action against an employee who refused to respond to repeated emails in the middle of the night, refused to respond to repeated phone calls in the middle of the night, if the employer tried to take disciplinary action against that person—sack them, demote them, whatever it might be—the employee would be able to point to that right and say that they had a right to refuse that contact unless their refusal was unreasonable. I think everyone would expect the Fair Work Commission to consider, in the type of situation you are putting forward—a system crashing, a genuine emergency—an employee refusing to deal with that request as unreasonable. The legislation makes clear the types of matters that the commission can take into account in determining whether the refusal was unreasonable. One is the reason for the contact. If an entire IT network is going to go down and an employee says it's unreasonable to respond to an email or a phone call, I dare say the commission would say that's unreasonable. But if an employee were being repeatedly contacted in the middle of the night for basic administrative matters, I think most Australians would say it's reasonable for the employee to refuse that contact. I suspect the Fair Work Commission would do the same.

Just to complete that, the legislation makes clear that other matters can be taken into account by the commission—how the contact or attempted contact is made, the level of disruption and the extent to which the employee is compensated, such as by receiving an on-call allowance or an after hours allowance in recognition of the need to be contacted. The Fair Work Commission would consider that. There is the nature of the employee's role and the employee's level of responsibility. I think we all accept that, for more senior people in organisations, part of the job is being available after hours. It is less so if you are a junior employee. Finally, the employee's personal circumstances can be taken into account. I find it hard to believe that any Australian would consider that it is a disaster or a terrible thing for a junior or mid-level employee to be able to say to their boss: 'Can you give me a break? Can you stop calling me 10 times in the middle of the night about something that can wait until tomorrow?' That's what this is, not the catastrophes that certain people have been painting.

Senator CASH: Well, unfortunately, we get back to the fact that you haven't determined what is reasonable and what is not reasonable. It's all up to the Fair Work Commission. Unlike the department, small businesses don't have around \$221,000 set aside to fix matters like this.

Senator Watt: But you've made the point, Senator Cash, that people should be able to work these things out in their workplace. And they should.

Senator CASH: Exactly. And you're legislating it.

Senator Watt: And they should, and they will and they do. I have confidence that employers and employees can work out what is reasonable. We're functioning human beings who can work out that one call in an emergency situation is reasonable and that 10 calls at midnight about a minor situation is not reasonable. People can work this out. The point is that now an employee has a statutory right they can point to and use if their employer seeks to punish them or if they want to take action to stop their employer from continuing the behaviour. That's what has changed.

Senator CASH: I want to come back to this in a minute. I need to go back to something else. In terms of the evidence given previously—I think it was Ms Williams, not Ms Godden—you mentioned the previous policy context on the right to disconnect, including the work and care committee and the private senators' bill from March 2023. Has there ever been a request from the government to look at the right to disconnect prior to the closing loopholes bill?

Ms Williams: I think we would have to take that on notice.

Ms James: Ms Williams's evidence is that we were, as we do as a department, advising the government on these issues because of the work and care inquiry and because of Mr Bandt's private members' bill. It is business as usual for our department to advise ministers of those sorts of developments.

Senator CASH: And I think my question is slightly different to that.

Ms James: Whether they've requested it or not, I'm not sure.

Senator CASH: Could you take on notice whether there was any request from the government to look at the right to disconnect prior to the closing the loopholes legislation? When was it first raised? In what format? Who requested it et cetera? This is in relation to the work by the government, not what you were looking at as a department and advising. It is specifically work undertaken or at the request on the government on the right to disconnect.

Senator Watt: Senator Cash, I will add one point. It doesn't exactly respond to your question. The Australian Labor Party adopted as a policy our intention to establish a right to disconnect at our national conference, I think, last year, which would have made it about August last year.

Senator CASH: Yes. I am aware of that. That begs the question: why didn't you consult? That's all business wanted—some consultation. Why wasn't it included in your legislation other than that you needed to get the Greens on side? You've now admitted that the right to disconnect was always your intention. Why didn't you consult on this? All business wanted was consultation so they could provide you with feedback.

Senator Watt: Well, you want more than that. You want to abolish the right. It would therefore follow that you want employers to have the ability to contact junior and mid-level employees a dozen times at midnight. That's what we're seeking to stop here. I am not surprised that is your position.

Senator CASH: I won't be verberled. That's your assessment. What I am saying is that you have now admitted that it was part of your platform. You were looking at it. You sent off drafting instructions. You create legislation. You don't put this through. All business needed was consultation, yet you decided to rush it through parliament and, in your haste, you now end up in a situation where businesses potentially face criminal penalties if they breach a stop order.

Senator Watt: Well, we all know who is to blame for that, Senator Cash, and I'm afraid it's you.

Senator CASH: We voted against it. Our record stands. We're in opposition. Apparently we're not. Apparently we're in government and we control the Senate.

Senator Watt: You could have granted leave to amend it.

Senator CASH: It is very bizarre, because the last time I checked, we don't have the numbers in the Senate. Apparently we do.

Senator Watt: You could have granted leave.

Senator CASH: Apparently we do.

Senator Watt: The consequences were pointed out to the entire Senate chamber and you decided to stop this.

Senator CASH: Apparently we do. You voted for the legislation. You didn't have to. You could have pulled it and gone out to consultation. You decided not to.

Senator Watt: You wanted us to pull the entire bill.

Senator CASH: You decided not to.

Senator Watt: That is because you also wanted to pull minimum standards for gig workers.

CHAIR: This is your last question, Senator Cash.

Senator CASH: On the third party issue, the third party, for example, could be an overseas client. They are calling an employee. The employee says, 'I've got the right to disconnect. I'm not answering' et cetera. They can't get hold of the organisation on the weekend on an urgent matter, so they decide to withdraw their business from the organisation. There's no penalty for the client, is there?

Ms Godden: It is a little hard to speak to hypotheticals.

Senator CASH: It's not a hypothetical. It is the legislation. I am trying to work through what a third party is and how it's going to apply. Who is the stop order brought against?

Mr Manning: The framework around disputes applies where there's a dispute between an employer and an employee.

Senator CASH: It is a third party that is constantly calling. Is it for the employer to go to the third party and say, 'Back off?'

Mr Manning: If businesses are relying on international business in the circumstances you are talking about, it would be for the business to put in place arrangements to meet those clients' needs.

Senator CASH: So that's what they'd have to do. But they'd have to tell the client: 'You cannot contact this employee. They have the right to disconnect?'

Ms Godden: They wouldn't have to, because there's no prohibition on the client contacting. What you would expect—

Senator CASH: That is the point I want to get to. The client continually calls. How do I stop that?

Ms James: I suggest that, if I am in a role where it's my job to work with international clients, it's probably part of the expectation that I am making myself available in the relevant hours. I am probably—

Senator CASH: Not in all businesses.

Ms James: My role would reflect that. I think that goes to the reasonableness question. If that's a regular part of your role, I imagine that it would be clear that it's part of your job. It would be reasonable for you to be taking those calls. Of course, if there are excessive calls going on beyond what is reasonable, perhaps even causing a health or a wellbeing concern, it would be up to the employer, who is responsible for the health and wellbeing of the employee, to intervene in that case. I am not going to play out a hypothetical to every possible scenario. I think there are a number of conversations and choices that can be had there or made there about how to manage a situation like that.

CHAIR: I have a supplementary question. Obviously, this doesn't change where there are employers already having those conversations with their workforce. I imagine that there are many employers out there that don't like the idea that their employees are being rung 24/7, but there will be some that won't take that concern. There's a group of people who would normally deal with that issue. Employers would deal with that issue because of concerns of having their employees being able to operate appropriately. This bill doesn't interfere with that. The second part of the question is: where employers don't take that into account fairly or reasonably, there is a recourse. The recourse is conversations and recourse potentially in provision.

Ms Godden: Certainly, Senator. You can see from the evidence in your EBAs, for example, that these discussions are happening at workplace levels. I would expect that with the passage of this legislation, once it receives royal assent, the first thing that would happen would be those discussions at a workplace level. It's really important. This bill certainly in a sense encourages those discussions to happen at a workplace level. Even where there are disputes, the first recourse is to try to resolve it at the workplace level. I think I am furiously agreeing with the first part of your question. It is certainly envisaged within the scope. You are correct that it's only where there's a dispute about the reasonableness or otherwise of the employee's actions in refusing, monitoring or responding that you would get through to that dispute resolution procedure that I outlined. It has quite a number of steps before you get to the potential for the Fair Work Commission to issue a stop order.

Senator BROCKMAN: I have a follow-up question. Perhaps I wasn't making myself clear in my question. I am an employee. I am outside normal work hours. I am a junior employee. I don't get paid a special amount to answer a phone after hours. I see my phone. The light flashes three times in half an hour. It's objectively an urgent issue for my workplace. How do I know whether it's an urgent issue or not without connecting? I just don't see how this actually works.

Senator Watt: No-one is coming around to confiscate people's phones to stop them looking at them. No-one is coming around to turn off the Internet.

Senator BROCKMAN: How does an employee know whether it's urgent without connecting?

Ms Godden: I think that goes to the importance—

Senator BROCKMAN: How do they know it's urgent or not without connecting?

Ms Godden: of first having that discussion at a workplace level. For example, that junior employee would speak to their manager, or the manager would proactively say, 'Look I know you're a really junior employee, but if anything happens really urgently, I will call you and I will try to call you more than once. I expect you to pick up in that circumstance or return my call within a certain amount of time.' That's why we say the first thing we would really expect is a discussion at the workplace level. It may be that discussion resolves that there are very few circumstances in which that would occur. For example, for a junior employee, it might be that there has been a natural disaster at the workplace and you can't attend the office. It might be only in very limited circumstances that would occur. That is the real benefit of encouraging these discussions at a workplace level first rather than waiting for the contact or the attempted contact.

Ms James: Perhaps I could add to that. I was watching another committee one night—it might have been last night—and Senator Colbeck was talking with members of the Public Service Commission, I think, about workload issues. He was sharing evidence from another inquiry about the private sector and workloads and the intensity of work issues. I think it was in relation to EY. He was asking the Public Service Commissioner whether they had looked to the private sector. He talked about the fact that what was often at the core of these issues was human behaviour issues. In a situation like that, we imagine that we're human, which these people are. I rarely get calls out of hours, so it's not something that generally happens. Maybe we haven't even talked about it because it's so rare. Let's say I do a really regular shift. There's not really a reason for us to talk out of hours. If my workplace calls me three times in half an hour, as a human, I'm probably going to go, 'Oh, is something up? I'll respond to that call.' I think that is what most people would do. This is really about the kind of situation where people have set a reasonable boundary. For example, I am a nurse. I work shifts. I'm happy to take calls about extra shifts, but please don't call me about that possibility when I've just come off a night shift and I'm sleeping. Please don't call me about an extra shift if it's on the weekend, because that's the only time I get with my kids. That's a reasonable boundary, in my view. We can talk about hypotheticals and people in the abstract. I think most people are reasonable.

The minister has observed that most workplaces and most employers are having these conversations. But there are cases where they are not. I must admit I was quite surprised that there had been an issue in the police force. I had felt that, as rostered workers and first responders, is an area where there would have been some pretty clear boundaries. So it can be surprising where issues can arise. This entitlement is about providing a principle that we can all reference. I think if your boss calls you three times and it's a genuine emergency and you don't pick up the phone because you are choosing to ignore it, that is worth a conversation. If you don't pick up your phone because you're out of range, because you're on a bush walk, that's also not unreasonable. I think we need to remember that people are doing a lot of different things during their non-work hours, particularly if they are not expected to be on call.

Senator Watt: When they are not being paid.

Ms James: When they are not being paid. The flipside of this conversation is that an employee is obligated to pick up the phone every time their boss calls. I don't think that is what anyone would suggest is what the law is or should be.

Ms Godden: May I also add—

Senator CASH: The minister raised the Labor Party's national platform in relation to the right to disconnect. In the national platform, there are also calls for a default super fund through the Fair Work Commission. It also says that it is considering a possible role for a new employment court. Has the department been requested to undertake any work options or advice in relation to those policies?

Ms James: I think we need to take that on notice.

Senator CASH: You don't know whether you are or you aren't? Does anybody here know that? I would have thought it's pretty obvious—yes, we have or no, we haven't.

Ms James: I think we'll take that on notice. What was the first one, sorry?

Senator CASH: The first one is they've called for a default super fund through the Fair Work Commission. They are considering a possible role for a new employment court. Can you provide on notice whether the department has been requested to undertake any work options or advice on these policies? If so, when? Minister, is the government considering these changes? Will you be announcing them?

Senator Watt: I will have to take that on notice as well.

Senator CASH: You do not know?

Senator Watt: I do not know.

Senator CASH: But you are not ruling it out?

Senator Watt: I am not aware, so I will take it on notice.

Senator CASH: That's good. I thought you would rule it out, but that's fine.

Senator Watt: I'm sure, Senator Cash, the Liberal Party platform contains many commitments to do things. It is always within the province of the parliamentary wing of the party to determine the time frame and conditions of implementation of the platform.

Senator CASH: Just like the right to disconnect. That's exactly right. It's in the platform.

Senator Watt: And we have decided—

Senator CASH: You didn't consult on it. Admittedly, you didn't consult on it.

Senator Watt: That is an element of our platform that we decided to move ahead on because we think that employees should not have to be contacted 10 times at midnight by an employer over a minor issue. We think employees have a right to have a sleep, have a rest—

Senator CASH: Well, you're defining what is reasonable and unreasonable.

Senator Watt: when they are not being paid.

Senator CASH: That is a matter for the Fair Work Commission. Has the department formed a unit to work on changes to portable leave provisions?

Mr Manning: We haven't formed a unit to do that.

Senator CASH: Do you have anything in the department or any section working on portable leave provisions?

Mr Manning: I think it came up in the jobs summit, from memory. Ms Wettinger is here. Her branch has responsibility for that issue.

Senator CASH: Is she here?

Ms Wettinger: I do have a team in my branch that is looking at portable entitlements.

Senator CASH: Is that what you call it—portable entitlements as opposed to portable leave provisions?

Ms Wettinger: Yes.

Senator CASH: How many are in that team?

Ms Wettinger: I would have to take it on notice.

Senator CASH: Approximately?

Ms Wettinger: About six or seven.

Senator CASH: If you can take it on notice how many, that would be great. When was the team formed?

Mr Manning: When we talk about portable entitlements at the Commonwealth level, we often talk about coal long service leave, for example. That's the same team?

Ms Wettinger: Yes. That's the team that brought us—

Mr Manning: It is the coal long service scheme, which was amended by legislation recently. There's not some new team that has been established to look at the issue of portable entitlements generally. There is an existing—

Senator CASH: But there's a team looking at portable entitlements, which I think is what the evidence establishes. It is approximately seven people. You call it a team. I had down unit. When did the team commence its work?

Ms Wettinger: I think that goes to Mr Manning's point in terms of the work. There are multiple functions within that team. Some section of the team looks at that coal long service leave.

Senator CASH: Take me through what the team is looking at in terms of the sections.

Ms Wettinger: Certainly. One part of that team, as I said, looks at the coal long service leave. They've been looking at potential reforms and, indeed, some of those reforms that you would have seen through the protecting worker entitlements bill in terms of casuals who receive coal long service leave. That's what one part of the team looks at. There's another part of the team that is exploring the government's election commitment on portable entitlements.

Senator CASH: Just remind me what the government's election commitment on portable entitlements is.

Ms Wettinger: The government's election commitment—I will make sure that I am stating it correctly—

Senator CASH: Absolutely. Not an issue at all.

Mr Manning: I think, from memory, it was to consult with state and territory governments, unions and industry to develop, where practicable, portable entitlement schemes for Australians in insecure work.

Ms Wettinger: Perfect.

Senator CASH: Did you memorise that, or were you reading something?

Mr Manning: I don't know. I read.

Ms Wettinger: He turned a page, Senator.

Senator CASH: What are you actually examining in that regard? What consultation are you having et cetera?

Ms Wettinger: That's subject to ongoing discussion with the minister. At this stage, what we are looking at is certainly consulting with certain industries and sectors and obviously businesses and unions et cetera on the possibility of establishing—

Senator CASH: Portable entitlements.

Ms Wettinger: a portable entitlements scheme.

Senator CASH: When do you expect that consultation to commence?

Ms Wettinger: We're looking at the first quarter of this year.

Senator CASH: The first quarter of this year. That's good for next estimates. We'll have something to follow up. That's excellent.

Senator Watt: A new scare campaign.

Senator CASH: Just in terms of portable entitlements, does that look at long service leave and holiday leave? What entitlements do you look at when you talk about portable entitlements?

Ms Wettinger: That's open to part of the discussion, so that's what we will be looking at. Certainly the disability royal commission and the NDIS recommendations look at portable leave and training entitlements. They are some examples of what we might look at. It might vary per sector.

Senator CASH: Obviously you would consult across sectors?

Ms Wettinger: Indeed. Again, some of the micro details are still subject to the approval of government. They are certainly subject to finalisation in terms of who, what, where and when. But it's certainly something the government is looking at.

Senator CASH: They are going to consult on it, as you said, in the first quarter of this year. Hopefully, within the next few weeks we should be able to see what the consultation is. How does portable leave work, as a general concept?

Ms Wettinger: There are a number of different schemes for portable leave.

Senator CASH: If you are just looking at your stock standard long service leave and holiday leave et cetera? I am not thinking of the coalmining industry, because that is quite different, but just generally. What does a portable leave entitlement do?

Ms Wettinger: We have just managed the coal long service leave, for example. Certain employees who work in the same industry or sector are able to bring their leave entitlements—in the case of coal long service leave, it's their long service leave entitlements—from one employer to another so they don't lose their entitlements when they change employers.

Senator CASH: So the employer doesn't pay them out? The other employer picks up the entitlement?

Ms Wettinger: No. Again, I'll refer to the Coal Long Service Leave corporation. The employer pays a levy to Coal LSL.

Senator CASH: That's the coal long service leave?

Ms Wettinger: That's the one I'm most familiar with.

Senator CASH: They are essentially going out to consult in terms of how that would work.

Ms Wettinger: How it would work et cetera.

Senator CASH: What would a portable entitlement scheme actually look like?

Senator Watt: I have a bit more information for you, Senator Cash. As I think has been acknowledged, it was an election commitment that we would consult with state and territory governments, unions and industry to develop, where practical, portable entitlement schemes for Australians in insecure work. Portable long service leave schemes, for example, allow workers to move from project to project or job to job within a single industry to accumulate an entitlement to long service leave that would otherwise be denied to them because of the nature of their work. Variants of portable entitlement schemes have existed in different industries, such as construction, mining and cleaning, for many years. Around the country, state and territory Labor and Liberal-National governments have introduced and administered these schemes.

Senator CASH: Thank you.

CHAIR: Minister Watt, I couldn't hear the last sentence.

Senator Watt: The last sentence was that, around the country, state and territory Labor and Liberal-National governments have introduced and administered these schemes.

Senator CASH: I will now jump to some questions on the gig economy. I might come back to others. I apologise. I have one or two questions on the gig economy. I know that Senator O'Sullivan and Senator Brockman have some questions as well. I will refer, if it's possible, to specific parts of the act. I will go to the test outlined in proposed section 15P(1)(e). Are all criteria to be treated as equally forceful in determining if a worker is an employee-like worker?

Ms Godden: The person has to satisfy two or more of the following criteria.

Senator CASH: Two or more.

Ms Godden: Following amendments in the Senate that were accepted by the House.

Senator CASH: The criteria themselves are all equally forceful, so it is two or more of any of the criteria?

Ms Godden: That's correct.

Senator CASH: In terms of 15P(1)(e)(i), can you define 'low bargaining power' within the confines of its meanings, as listed in that proposed section?

Ms Godden: That's really a factual inquiry.

Senator CASH: Who understands the factual inquiry?

Ms Godden: This is essentially a gateway provision to determine whether someone is or is not an employee-like worker. If they are an employee-like worker, they or their representative have the ability to apply, for example, for a minimum standards order. It is essentially a gateway that someone has to pass through before some of these rights are attracted. So, in the first instance, you would expect either that person or their representative to try and make an assessment of that. In terms of whether someone has low bargaining power, this is a concept that we've seen in other Commonwealth legislation. For example, in the Australian consumer law, I think it's a relevant concept to the unfair contracts regime. You are really looking at to what extent someone is able to negotiate the terms and conditions.

Senator CASH: If there's no actual definition as such, does the Fair Work Commission determine? They would make the assessment of whether or not a person has low bargaining power? So there's no actual definition as such?

Ms Godden: Ultimately, yes. There's no defined term 'low bargaining power'.

Senator CASH: Are you able to provide some indicia which may indicate that a person has low bargaining power?

Ms Godden: There are some initial matters that the commission must be satisfied of, which I'll just ask Mr Kerr to go through.

Mr Kerr: I might just add to the evidence that Ms Godden has given to note that section 536K of the bill provides a further gateway, which are some initial matters that the commission must be satisfied of or consider before making or varying a minimum standards order. One of those is that the class to be covered is employee-like. So the test will arise in that gateway for the commission as well as for the parties.

Senator CASH: You are bringing it to the commission. The commission has to make the determination. What does a low degree of authority over the performance of the work mean? I have an example I will put to you in a minute that has been raised. What does low degree of authority over the performance of the work mean? We know what it means. How do people look at it and go, 'Yes, this is a low degree of authority over the performance of the work?'

Ms Godden: This is a concept that has been drawn, I think, from the case law in determining whether someone is an employee or an independent contractor, so it does have some consideration behind it. In this instance, as I said, it's really a question of fact to be determined.

Senator CASH: Again. It is a question of fact that needs to be determined. You said it was potentially an issue that has been drawn from case law, or the concept is drawn from case law. An example has been raised with me. It is a very relevant example because the person is an independent contractor. If a person directs an independent contractor in the renovation of their home, so the independent contractor is obviously doing all the work but the person is selecting anything from aesthetics to the parts to be used, does that person have a higher degree of authority over performance of the independent contractor's work?

Ms Godden: It's difficult to talk in hypotheticals. Certainly you're looking at—

Senator CASH: I promise you that it's not a hypothetical situation. It's a genuine situation that was raised.

Ms Godden: It's often—

Mr Manning: Can I just clarify? Is it digital platform work?

Senator CASH: Yes, exactly—the independent contractor.

Ms Godden: Has been engaged via—

Mr Manning: A digital platform?

Senator CASH: Yes, so they're captured within. You've got to get through the first—exactly.

Ms Godden: So you're looking at the degree and nature of the control and the capacity to delegate.

Senator CASH: Say that again. Degree?

Ms Godden: And nature of the control and capacity to delegate would be relevant factors. In the explanatory memorandum, we've tried to give a bit of guidance in that the intended effect of the provisions is not to capture persons who have a high degree of bargaining power, are comparatively well paid and have a significant degree of authority over their work regardless of whether they perform the work on a digital platform. It's intended, for example, that skilled trades people would not be captured, even if they work on a digital platform. That's paragraph 1192 of the revised explanatory memorandum

Senator CASH: Intended, but it's not a carve-out. So you could still have an application that could be made. In terms of—

Mr Manning: The application is made in relation to classes of digital platform workers. We're talking about one particular set of facts, which, as Ms Godden said, we can't comment on definitively. The order would be sought to bind the digital platform operator in relation to digital platform workers who work on it. I can't envisage a situation where a whole class of tradies, for example, is being captured by such a provision.

Senator CASH: You can't envision, but it's not a carve-out. That's what I'm trying to work through.

Mr Manning: It's got to be digital platform work—

Senator CASH: Correct.

Mr Manning: done by an employee-like worker.

Senator CASH: It requires a determination. Yes. It requires a determination ultimately.

Mr Manning: It requires a determination in relation to a class of workers. You are talking about a particular set of circumstances involving one individual.

Senator CASH: Which could translate to others, though. There's still a lot of talk about Airtasker. Airtasker itself, though, would be included in this, wouldn't they? That's the discussion we've had at previous committee hearings, Senator O'Sullivan. Airtasker are actually included. I know they made a statement saying they weren't included. My understanding is that, because of the type of platform they are, they would be included.

Mr Kerr: I think we expect that Airtasker probably would meet the definition of a digital labour platform in section—

Senator CASH: You said it would meet the definition—yes?

Mr Kerr: Noting that is only one of the gateways to the new jurisdiction. There's the separate test about the employee-like status of the worker that we've just discussed.

Senator CASH: For example, if Mable's in, Airtasker is in? Is that where we're at?

Ms Godden: No, because there are multiple gateways. Even, for example, if Airtasker met the definition of a digital labour platform, their workers would still have to be employee-like workers. They would still have to get through that second gateway.

Senator CASH: I understand. But they're not out? Airtasker were never exempt, even though they came out at one stage and said they were. They were never exempt. Airtasker at this point in time could be in if they get through the gateways?

Ms Godden: I'm assuming that what they've done is look at the various gateways and determined that they don't meet all the criteria that would be necessary to go through.

Senator CASH: And then they would argue that, again, in relation to whether or not an application—

Mr Manning: As I have said, it's difficult to compare Airtasker, which has a whole range of different workers, with, for example, ride share workers, who might be working through a digital labour platform. I think there are very different factors that the commission would be taking into account in making its determination.

Senator CASH: I have some questions about casuals.

CHAIR: Before we move off the gig economy, I have some questions. The gig platform HungryPanda have slashed their base rate from \$7 to \$4 for motorcycle riders and \$6 to \$5 for bicycle riders. This is unilateral, the reduction of 42 per cent in pay for motorcycle riders and a 16 per cent reduction for bicycle riders. Delivery rider Zhuoying Wang organised a protest in Burwood with colleagues about these pay changes and safety issues. HungryPanda then stopped giving her orders. In the two months prior to the protest, she completed 30 to 70 orders per shift. But around the time of the protests, this dropped down to zero. How might the closing loopholes act allow gig workers to challenge adverse action in the activation? How might the act prevent companies from engaging in a race to the bottom on pay and conditions?

Mr H Jones: I suppose there are two parts to your question. The first is around the activation protections. The closing loopholes bill provides a deactivation protection or an avenue for employee-like workers to challenge their deactivation if it was unfair. There's a couple of, I suppose, parts to that. The first is that they have a minimum service period they have to be on the platform to do that. Secondly, there is also the ability for the platform to stand them down for a certain amount of time—seven days—to do an investigation if there's a particular issue there. It does allow that to be tested before the commission and for those workers to win reinstatement on the platform. In terms of the second part of your question about the minimum standards and how it would address them, if the workers at HungryPanda are covered by a minimum standards order, that minimum standards order sets a minimum rate of pay. That means that HungryPanda would have to pay at that rate and couldn't unilaterally cut the rate of pay below that. It would depend on the circumstance of that order in terms of what the application is and what the Fair Work Commission's determination is on the standard. But that is the way it could deal with that situation.

CHAIR: So, depending on the order given, of course, there would be a change from now, where there are arbitrary decisions of a company just to slash wages, rates of pay or incentive payments literally overnight? An arrangement would be potentially be entered into in front of the commission which would have standing for those workers. So if there were an attempt to change your rate, there would have to be a discussion, potential negotiation and potentially a matter before the Fair Work Commission to argue the case rather than just, 'This is

what you're getting paid today. This is what I'm paying you tomorrow' and you don't know what you're getting paid on the third day, fourth day or the rest of your days?

Mr H Jones: That's correct. Once the order is in place, that sets a minimum standard or a floor. If they want to move beyond that, it would then be a matter of seeking a variation of that order before the commission.

CHAIR: Seems like pretty minimum standards to me.

Senator O'SULLIVAN: I want to ask about the casual changes. By way of prelude as you come to the table, I have been contacted by a lot of employers that are somewhat confused about what steps they need to take now. I am really hoping that, through a discussion we can have here, you might be able to take what they are interpreting as a quite complex set of steps that they need to take. I am hoping you will be able to allay that concern by making it really simple for them. So I can understand, what is the definition of 'casual'?

Ms Godden: The core definition is that two things need to be satisfied. One is that there is a firm advance commitment to continuing and indefinite work. The second is that the employee would be entitled to a casual loading or a specific rate of pay under the terms of a fair work instrument or contract of employment.

Senator O'SULLIVAN: Can you explain to me the 12 steps that need to be considered?

Ms Godden: I wouldn't characterise the test as being a 12-step test. I would characterise it as having those two components. What the legislation does is go on and provide some indicia or guidance as to when the first of those criteria, or the first limb, is satisfied. There are some indicia that apply that you can use to help you determine whether there is a firm advance commitment to continuing and indefinite work. There are some provisions in subsection 3 that are there to guide and assist. There are interaction issues for the specific instance where the casual might be on a fixed term contract as well. They are there to guide and clarify. The test has two core components.

Senator O'SULLIVAN: Sorry, I just missed that last bit.

Ms Godden: So those other provisions are there to guide and clarify. The test has two core components.

Senator O'SULLIVAN: Okay. A spokesman for the government has confirmed that those making deliberate misrepresentations in terms of employing casual workers will be targeted. Can you outline what you consider to be a deliberate misrepresentation?

Ms Godden: There are two provisions in 359B and 359C. I might get Mr Tracey, who got to the page before me, to run through them.

Mr Tracey: The first prohibited conduct that you're referring to there is set out at section 359B. It relates to dismissing an employee in order to engage them as a casual. That provision provides that an employer must not dismiss or threaten to dismiss an individual who is an employee of the employer and performs particular work for that employer in order to engage them as a casual. So we're talking about people who are presently engaged as permanent. This is a prohibition on dismissing them in order to engage them as casual thereafter. Section 359C relates to making misrepresentations regarding casual employment. Effectively, it provides that an employer that employs or has at any time employed someone to perform particular work other than as a casual—so as a permanent employee—must not make a statement that they know to be false in order to persuade them to enter into a casual contract of employment. They are the two types of behaviour expressly prohibited by these provisions.

Senator O'SULLIVAN: If a small business is found to have incorrectly defined someone as a casual due to a later interpretation of the Fair Work Commission of their employee's entitlement arrangement, would that small business owner fall under deliberate misrepresentation or sham casual arrangements?

Mr Tracey: I think, Senator, you mentioned in your question them accidentally mischaracterising someone as casual. I think these two provisions—359B and 359C—go towards employer behaviours where the person knows what they are doing and saying to the employee is false. It is expressly in here. It is not intended to pick up accidental conduct. You might recall—

Senator O'SULLIVAN: There's that word 'intended' again, though. There would have to be an application and then a determination. The employer has to go through that process, don't they, to have that determined?

Mr Tracey: For these provisions?

Senator O'SULLIVAN: Yes.

Mr Tracey: Is that your question? Yes, that would generally be the case.

Mr Manning: I don't think it's right to categorise an employer having to go through a process to not intentionally misclassify their employees. It is something they can just not do.

Senator O'SULLIVAN: That's right. At the end, if there is an application made, there's still a process they have to go through.

Ms Williams: Just to assist, I might add that it seems to me that you are talking about what happens when you engage someone. Just to be really clear, if you engage someone in line with the definition, that person will remain a casual. The definition that has been passed by the bill is similar to the current definition in the act. So provided that small businesses are continuing to do the behaviour and the appropriate classification on engagement that they are doing now, there is nothing in the bill that has been passed that would allow the Fair Work Commission to retrospectively say that they were misclassified. I want to be really clear about that.

Senator O'SULLIVAN: Yes. My question is that if there were a later interpretation of the Fair Work Commission in relation to the arrangement, you are saying that it's not possible for that business owner, particularly a small business, to fall under deliberate misrepresentation if it's determined at that time to have been incorrect when they were first employed?

Ms Williams: It couldn't be. You get it correct if you classify them appropriately on engagement. There is no scope for a changing of classification at a later date and for the Fair Work Commission to retrospectively determine it so.

Senator O'SULLIVAN: Thank you. If a small business has one of its casual employees defined as permanent on a decision by the Fair Work Commission, will the business be forced to define other casual employees who are employed under the same arrangements as permanent, even if those individuals want to remain casual?

Mr Manning: To clarify, this is an individual who has sought conversion and conversion has occurred?

Senator O'SULLIVAN: Yes. And there are other employees within the business that were employed under the same arrangements who want to remain casual.

Mr Manning: It requires a conscious act. I will get Ms Williams to explain it. It requires a conscious act of each employee.

Ms Williams: The bill that has passed the parliament is really about—we've spoken about this before—centring the choice of each individual employee. If you are classified appropriately on engagement as a casual employee, the employer needs to take no further action in relation to your classification or, indeed, the classification of any other employees in their business. When a single employee says, 'I think I no longer meet the definition', they need to look at that. If that is the case, they convert that employee. That decision and that investigation and consideration applies only to that employee. There's no automatic flow-on effects to any other employees. Obviously, other employees may then in the workplace say, 'I would also like to exercise my employee choice and think about my status.' Each time an employee choice pathway is activated, it is activated in relation to that individual employee and their individual circumstances in relation to the definition.

Senator O'SULLIVAN: Okay. Again, just to help clarify the confusion that there is—I am getting feedback from employers wanting to know—can you take us through the factors that will allow the Fair Work Commission to redefine someone as casual?

Ms Godden: These are set out in proposed new section 15A(5). There are four of them. One is that the employee has gone down the employee choice pathway and has elected to convert and met the requirements of that pathway. The second is that the Fair Work Commission has arbitrated the dispute. That would be as a result of the employee going down that employee choice pathway. The third is that under, for example, an award or an EBA, the employee's employment status has been changed or converted in accordance with the terms of that instrument. For example, an EBA may set out circumstances in which an employee can convert casual employment into permanent part-time or full-time employment. The final one is by agreement. The employer and the employee are free at any time to agree to a change in status from casual to either permanent full-time, permanent part-time et cetera. That is preserved at any time the employer and employee are free to do so.

Senator O'SULLIVAN: Section 15A(3)(c) states:

(c) a pattern of work is regular for the purposes of subparagraph (2)(c)(iv) even if it is not absolutely uniform and includes some fluctuation or variation over time (including for reasonable absences such as for illness, injury or recreation).

Can you define what 'absolutely uniform' would mean in this situation?

Ms Godden: Perhaps I could explain it. For example, I am a permanent full-time employee. From time to time I may take leave. That might be annual leave or sick leave. A casual might have breaks from employment in a similar way. For example, if I were unwell last Thursday and took a day of personal leave and I'm a permanent employee, that's totally fine. But a casual employee who was unwell and couldn't complete a shift on Thursday

last week because they were unwell could be found not to have a regular pattern of work, even though they are working in the same way that a permanent employee could. Does that make sense?

Senator O'SULLIVAN: I think so.

Ms Godden: So a minor break in regularity because someone caught a cold, for example, or had COVID and was self-isolating did an extra shift—

Senator O'SULLIVAN: Or absolutely went beyond. An abnormal situation.

Mr Manning: It means that it doesn't have to be exactly the same to be a regular pattern of work. A casual might work the same hours for four weeks in a row and then accept a shift or stay on for half an hour later and then go back to it. It doesn't mean it's not uniform.

Ms Godden: Yes. For example, for a retailer worker, you might have had a particularly hard day in a store. Someone may have thrown up on the floor five minutes before closing time. They may have agreed to stay back for an extra half hour. They got paid for that extra half hour to clean up because it just took longer on that occasion. It wouldn't be absolutely uniform, but we wouldn't see those sort of minor differences as breaking that regular pattern of work.

Senator O'SULLIVAN: Thank you. When is a pattern of work, then, absolutely uniform which could lead to an employee being classified as permanent when it's not absolutely uniform?

Ms Godden: It's important to pause and reflect on the test. This goes to the first part of the test I was discussing—that there's a firm advance commitment to continuing and indefinite work. If you turn to the indicia, you see that whether there is a regular pattern of work for the employee is just one of the indicia that may indicate a further advance commitment to continuing and indefinite work. Simply having a regular pattern of work does not make somebody entitled to convert to permanent work. We've tried to make this clear in the note under 15A(2). In a sense, whether someone has an absolutely uniform or a nearly uniform pattern of work is not actually determinative. The test is whether there's that firm advance commitment to continuing indefinite work. Different things are relevant to that. We've tried to set out some of those factors to assist employers in subsection 2 paragraph C.

Senator O'SULLIVAN: I want to come back to that regular pattern of work. If there is a disagreement between the employer and the employee, can you take us through the circumstances as to whether an employee should be redefined as casual or not?

Ms Godden: I will ask Mr Tracey to go through the employee choice pathway.

Mr Tracey: Senator, just to be clear, is your question in relation to post engagement? Work has been undertaken and then the parties are in a disagreement about what the classification should be going forward?

Senator O'SULLIVAN: Yes.

Mr Tracey: The employee choice pathway is set out in the bill. It starts at section 66 AAB. Effectively, it provides a casual employee the opportunity to give their employer written notification if certain circumstances are met or satisfied. The first of those is that with regard to the definition of 'casual employment' at section 15A, where the employee believes that they no longer meet the requirements of those subsections. There are requirements with respect to not having had a dispute about these provisions within a particular period of time—so before issuing that notification. That is generally six months for employees of larger businesses and 12 for employees of small businesses. If such a notification is given, it is received by the employer, of course, and they have a 21-day window to consider that notification. What they will do in that 21-day period is consult with the employee. That gets to them understanding why it is the employee has formed this view and why it is they put a notification forward.

If after considering that they want to accept the notification and convert the person to permanent, they'll go about having conversations to that effect. If they choose not to accept the notification, they can do so with regard to a number of grounds. The first, of course, is looking back at that definition in 15A and saying, 'Well, I've had regard to your circumstances. I don't believe that you're anything other than a casual, so I'm not accepting the notification.' That's fine. Amendments moved and accepted in the Senate last week, which have been incorporated into the bill, now provide that businesses can refer to fair and reasonable operational grounds to refuse these notifications. Those grounds and examples of them are provided in the bill. That is where accepting the notification and changing from casual to permanent might cause substantial changes to be needed to the way work is organised in the employer's enterprise, that it might cause significant impacts on the operation of the enterprise or that substantial changes would need to be made to the employee's terms and conditions to avoid contravening an enterprise agreement or a modern award. Of course, there is the provision that we discussed previously, but it

was in the bill as passed by the parliament this week, where accepting the notification would cause the employer to be in breach of a Commonwealth, state or territory law regarding recruitment and selection processes. They are the grounds on which an employer can refuse an employee notification.

Senator O'SULLIVAN: You talk about the firm advance commitment. What would constitute a firm advance commitment?

Mr Tracey: In each circumstance, that is a factual assessment based on the nature of the engagement and the particular workplace and the worker's circumstances.

Senator O'SULLIVAN: Would it need to be written as something that could be discussed?

Mr Tracey: It could be reflected in the contract of employment. When you look at 15A(2), there is an active contemplation in the drafting that you can have regard to the terms of a contract to determine whether there's a firm advance commitment in addition to any other evidence that might suggest there's a mutual understanding between the parties. There could be separate conversations or separate records distinct from the contract that demonstrated whether or not such a firm advance commitment existed. Parties can have regard to that as well.

Ms Godden: We would say that the concept of a firm advance commitment is in the test at the moment. It is drawn from the previous case law. So there is a reasonable amount of discussion.

Senator O'SULLIVAN: Could it be verbal? Can the commitment be verbal, or does it have to be documentary evidence?

Ms Godden: It is possible that evidence of oral communications could be used to establish a firm advance commitment to continuing indefinite work.

Senator O'SULLIVAN: In relation to a regular pattern of work, can you give us a clear definition so that small business can understand what is defined as a regular pattern of work? Is this left to the Fair Work Commission?

Ms Godden: In the first instance, it will be discussed at workplace level. It may be discussed on engagement. It may be discussed later if an employee elects to use a casual conversion pathway or otherwise elects to use a right under an existing EBA. There is an example in the revised explanatory memorandum that is designed to illustrate this on page 61. That's where the contract of employment contains terms to the effect that Alex, in this example, will be required to work rostered shifts each Thursday late night and at least one weekend day each week and be paid a 25 per cent loading. That stated requirement is for, in this example, Alex to work these rostered shifts on Thursday evenings and over the weekend. It looks like there's not an ability to accept or reject work. That does tend to indicate a firm advance commitment to continuing indefinite work.

Senator O'SULLIVAN: Are you able to guarantee to a small business that if they have a casual employee with a regular pattern of work that they will not be classified as permanent if the employer has not given a firm advance commitment to continuing and indefinite work?

Ms Godden: Certainly. If there's no firm advance commitment to continuing indefinite work, the person is a casual employee. That concept of being a regular casual employee already exists in the Fair Work Act.

Ms Williams: I will add that the concept of a regular pattern of work is in the Fair Work Act in terms of casual conversion. All employers are required to give employees on commencement a casual employment information statement. That also includes guidance to those employers and employees about what a regular pattern of hours is. The Fair Work Ombudsman obviously will be supporting businesses and employees to implement these measures.

Senator O'SULLIVAN: We'll ask them about that when they come before us. Section 66L(1) of the legislation states:

- (1) An employer must not do any of the following in order to avoid any right or obligation under this Division:
 - (a) reduce or vary an employee's hours of work;
 - (b) change the employee's pattern of work;
 - (c) terminate an employee's employment.

How will this provision be policed?

Ms Williams: I understand that this provision was an amendment by Senator Thorpe in the Senate debate. It's really to make sure an employee's workplace rights in relation to casual employment are clear in the appropriate section of the legislation. Those instances that you are talking about are already protected under the general provisions as workplace rights and regarding employers taking action against them. You'd be able to go to the

Fair Work Ombudsman or, indeed, the Fair Work Commission if you had a dispute about those rights. That is the same as currently is the situation, Senator.

Senator O'SULLIVAN: There wouldn't be any act of surveillance of the workplace to make sure that has been—

Ms Williams: No. Those rights in terms of not taking adverse action against an employee because they have a workplace right apply not only to casuals but right across the Fair Work Act.

Mr Manning: Obviously, if the employee decided to pursue action, they would take their evidence, which is their knowledge of their own circumstances in the work, to the Fair Work Ombudsman, for example. But there's no surveillance envisaged by the legislation beyond that, Senator.

Senator O'SULLIVAN: If an employer changes an employee's hours or their pattern of work for operational reasons, and then they are accused of changing their hours to avoid an employee being classified as permanent, will the onus of proof be on the employer to prove why they were changing an employee's work pattern?

Mr Tracey: If that allegation is brought within the context of the general protections framework, usually the sequence of events for a general protections claim is that the employee with a grievance in this circumstance would come forward and say, 'I feel as if I've been the subject of adverse action for a prohibited reason.' The existing framework in the Fair Work Act for general protections imposes a reverse onus on the employer to demonstrate their reasons for taking particular behaviour. Historically, the reason for that is that the employer is best placed to speak to what was in the mind of the decision-maker. I point back to this section 66L, as you've highlighted. The prohibition really is on the employer to not do those things in order to avoid a right or obligation under the casual provisions. It really does speak to intent there, which the employer will be best placed to speak to.

Senator O'SULLIVAN: I have a couple more questions before we are ready to dismiss the employment department representatives. I want to go to the review of the Fair Work Ombudsman. Thank you for your time.

CHAIR: We have a question about casuals.

Senator PAYMAN: My question is about casuals. We've removed the need for large and medium businesses to continue offering casuals the opportunity to convert to permanent. Could you please elaborate on that in terms of the removal of the red tape imposed?

Mr Tracey: Certainly. I'm happy to talk in the first instance—I can pass to my colleagues if I miss anything. The version of the bill that was debated in the Senate last week and passed through the House at the start of this week repealed the existing employer offer pathway to convert from casual to permanency. I think from a policy perspective, one of the things that informed that decision was feedback from stakeholders throughout the inquiry process around the onus on businesses flowing from that existing obligation and weighed against the new requirements set out in this bill regarding employee choice. The decision was ultimately made by government to favour this employee choice pathway as a single clear pathway for conversion from casual to permanency, I suppose, in order to streamline the operation of these provisions within the Fair Work Act itself. Removing that secondary stream will ultimately provide clarity regarding that one pathway to permanency, as provided in the act.

Ms Godden: That's complemented by one of the other amendments made in the Senate, which provided for the casual employment information statement to be provided more frequently than the bill on introduction initially envisaged. So they are complementary amendments, if you like.

Senator PAYMAN: Thank you very much.

Senator O'SULLIVAN: I want to stick with the department but in a different area. I want to go to the review of the Fair Work Ombudsman. Can I confirm that the review into the office of the Fair Work Ombudsman and its resourcing is finalised? According to the government's facts sheet, it was meant to be provided to the minister by 30 November 2023. Is that correct?

Mr Manning: It was provided to the minister in December, so a little later than that.

Senator O'SULLIVAN: But it has concluded?

Mr Manning: Correct, Senator, yes.

Senator O'SULLIVAN: When is it expected that the government will release the report?

Ms Wallbank: The Fair Work Ombudsman is currently considering the report. There are discussions ongoing between the Fair Work Ombudsman and the department and the office on when that report might be published.

My understanding is that the Fair Work Ombudsman wanted time to consult with staff and stakeholders before that report was made public.

Senator O'SULLIVAN: Is there an indication on the time line, though?

Ms Wallbank: I don't think it will be a long time, but there's not a date.

Senator O'SULLIVAN: Are we talking days, weeks or months?

Mr Manning: Weeks. We would envisage February or March at this stage.

Senator O'SULLIVAN: Is there anything that the minister can add to that in terms of time line?

Senator Watt: No.

Senator O'SULLIVAN: Has the department received the review itself and drafted any responses to that report?

Mr Manning: We provided it to the minister. We received it and provided it to the minister in December.

Senator O'SULLIVAN: As a brief to the minister?

Ms Wallbank: I will have to take that on notice.

Mr Manning: People at the table weren't in the positions doing it at the time, unfortunately, that's all.

Ms Wallbank: It was certainly provided to the minister with a—

Senator O'SULLIVAN: Do you want to get them to the table, or are they not here?

Mr Manning: No. They've had a change of responsibilities.

Ms Wallbank: I am acting for someone who is on some long leave at the moment.

Mr Manning: We'll confirm on notice, Senator.

Senator O'SULLIVAN: It would be helpful to get back before the ombudsman comes back. We have the ombudsman later.

Ms Wallbank: I confirm that a brief was sent from the department to the minister with that report.

Senator O'SULLIVAN: Have you drafted any response yet that the minister would use?

Ms Wallbank: Do you mean in response to the recommendations? Basically, the review is being considered by the Fair Work Ombudsman at the moment. The response will come from the Fair Work Ombudsman. The matters in the report go to operational matters rather than policy or anything like that. So it's appropriate—

Senator O'SULLIVAN: You're not expecting the government to respond?

Ms Wallbank: That's correct, yes.

Senator O'SULLIVAN: Minister, has cabinet considered those recommendations, or are you just leaving it squarely with the—

Senator Watt: I wouldn't comment on matters that cabinet is or is not considering.

Senator O'SULLIVAN: Is it the position of government that this is just a matter for the ombudsman?

Senator Watt: The officials might be able to provide you with some more information about that.

Mr Manning: The review goes to the FWO's operating environment and looks at some potential for efficiencies, so they are considering it. As Ms Wallbank said, given that it goes to their operating environment, they just want time to talk it through with staff who might be impacted by any changes.

Senator O'SULLIVAN: Secretary, are you aware of any legislative proposals that are part of the report?

Ms James: I haven't read the report. I am of course interested in it. It is in the preliminary stages of the Fair Work Ombudsman discussing and considering it. I imagine that the recommendations will inform the Fair Work Ombudsman in terms of their future operations and perhaps the government in terms of future decisions around their funding and their functions.

Ms Wallbank: The funding level that the Fair Work Ombudsman has been asked to reduce—that 2.5 per cent reduction—is already taken account of. My understanding is that this report will assist the Fair Work Ombudsman in deciding how best to make those savings without impacting on core deliverables. But it is very operational. I know it's difficult because we don't have the report to look at at the moment, but that is the flavour of it.

Senator O'SULLIVAN: Obviously, that would be helpful. I am trying to understand where it's going. Secretary, you said you haven't read it. Has the department looked at any of the drafting legislation proposals that might be required?

Ms James: From what is being described, it's not that kind of report, Senator. It goes to the operational prioritisation issues. It is in the very early stages of being considered by the institution, the Fair Work Ombudsman itself. It would only be right and proper that their views be taken into account in any further consideration of it by government.

Senator O'SULLIVAN: Fair enough. Finally, has the government made a decision in relation to the Employer Advisory Service, which is due to run out next financial year? I am interested to know whether that was considered in the report.

Senator Watt: I think that's under consideration by the government at the moment.

Senator O'SULLIVAN: It's due to run out. Is it at the end of this financial year or the next?

Ms Wallbank: I understand that it goes until the end of this financial year. The government did outline a media release on 7 December that they would boost the funding to the EAS.

Mr Manning: As the minister said, final decisions are still subject to government deliberations.

Senator O'SULLIVAN: Particularly with the changes in the industrial relations framework, there's going to be—

Mr Manning: It is an important role.

Senator O'SULLIVAN: a lot of inquiries made and clarification required. We went through a few issues before. I hope I get a bit more simplicity provided. I am not sure that I've succeeded in that. It is a complex situation. But the expectation is that it would continue?

Mr Manning: I refer back to that media statement from December. That is the basis we're working on, yes.

Senator O'SULLIVAN: Thank you.

CHAIR: Outcome 3 is over. We'll go on a break now for 15 minutes, when outcome 1 can come on.

Proceedings suspended from 16:13 to 16:28

CHAIR: We will resume with outcome 1.

Senator O'SULLIVAN: I'd like to ask about mutual obligation requirements. How many Workforce Australia Services participants have mutual obligation requirements?

Ms M Ryan: I'll just have to get some caseload data.

Ms James: Senator, can you repeat your question?

Senator O'SULLIVAN: How many Workforce Australia Services participants have mutual obligations? I take it everyone would.

Ms James: The starting point is that most people who are on JobSeeker have mutual obligation requirements unless for some reason—and there are cases where they are suspended or paused—

Ms M Ryan: Paused or commenced. Senator, we might answer the question. We have Dr O'Rance here. We can answer it in the sense of those who have actively got mutual obligation requirements as of 31 December.

Dr O'Rance: I think the concept you're referring to is what we would call 'compellable'. At a given point in time—

Senator O'SULLIVAN: Was that compellable?

Dr O'Rance: Compellable, yes—you have mutual obligations at any given point in time. On 31 December 2023, the compellable caseload in Workforce Australia Services was 315,480 people. In Workforce Australia Online, it was 116,415 people.

Senator O'SULLIVAN: This is in relation to the select committee's report. The report states that when a person doesn't fit the work ready assessment criteria, they're required to:

... 'participate meaningfully' in employment services by undertaking agreed activities set out in a person's Participation and Jobs Plan.

When someone is assessed as being work ready, the report states that:

... 'meaningful participation' should generally include appropriate job search requirements.

So, for those not considered to be job ready, could you please clarify what items would be included in their job plan?

Ms James: You are talking about under the current system?

Senator O'SULLIVAN: Yes.

Ms James: I guess I would say that the job plan and the activities that people in Workforce Australia Services are engaging with will always be matters discussed at the provider level. Not everything, I think, is included in the job plan itself.

Ms M Ryan: No. In the job plan, it will just specify that a person agrees to attend appointments and agrees to meet a certain points target. In the job plan itself, we don't specify what the points target is. That's discussed between either the provider and the individual to assess what they're capable—

Senator O'SULLIVAN: Because it's bespoke for every person?

Ms M Ryan: Yes, it is. At the moment, the settings are that the maximum points a person is maybe subscribed to do is 100 points. A minimum job search is four job searches a month. That can be and is reduced on the individual's circumstances. Job search can be reduced down to zero and points can be suitably reduced as well, taking into account a person's readiness to take in work activities. It does bring into question whether or not that payment is appropriate for them, though, because it is a job seeker payment as well. It may be that the other payments are more appropriate for that individual to receive as opposed to JobSeeker.

Senator O'SULLIVAN: Yes. Is the department currently working on any changes to the mutual obligations framework?

Ms James: The Senate select committee looking at Workforce Australia handed down its report on a date in November—

Senator O'SULLIVAN: You've elevated the status. It was a House of Representatives committee.

Ms James: Ms Huender will remind me of it.

Ms M Ryan: It was 30 November.

Ms James: It was 30 November. It was a sizable tome. It was a first principles review with a large number of recommendations in it, some which the report itself acknowledges will take longer to implement than others. So we are, of course, in the process of advising government on the recommendations in that report. I'm not able to go into details, of course, about our advice; that's advice to government. They will be considering all of the things contained in that report. Of course, there were recommendations that went to the mutual obligations system. They are matters that, like the rest of the report, we're advising the government about.

Senator O'SULLIVAN: I want to go to Work for the Dole. Since Workforce Australia started, there were 4,316 participants for Work for the Dole up to March 2023, we were told. Up to September 2023, the total number of commencements increased to 9,605. What is the number now?

Ms M Ryan: Currently, as at 31 December, there are 1,157 participants that had commenced in a Work for the Dole activity at that date.

Senator O'SULLIVAN: That's commencements. There were—

Ms M Ryan: It was 1,157 that were current as at 31 December 2023. The cumulative number, if you are interested, from the commencement of Workforce Australia in July 2022 to 31 December 2023 is 12,035 commencements. The proportion of people referred was higher, so the referral number was 17,653. Sometimes it doesn't manifest into a commencement because they may have secured work. They may have found another activity to do.

Senator O'SULLIVAN: What is the total caseload now, then, that are involved in Work for the Dole cumulatively?

Ms M Ryan: I'm not sure if I have that number on me.

Senator O'SULLIVAN: That's alright. You can take that on notice.

Ms M Ryan: Thank you.

Senator O'SULLIVAN: So that's a decline. It went from 4,316 up to 9,605 and then down to 1,157.

Ms M Ryan: Just to clarify, that's how many were actively participating in a Work for the Dole activity on that date—

Senator O'SULLIVAN: Okay. Can I get a figure—

Ms M Ryan: of the 12,035. That's the cumulative one. You can see that it's progressively increasing over the duration of Workforce Australia.

Dr O'Rance: It's worth noting that date is 31 December, so that is activities that would have started and continued over the new year. That is an unusually low number for the period of time. There are not a lot of things happening in that week of the year.

Senator O'SULLIVAN: Why is there such a decrease? Prior to the election, there were considerably more people under the previous government involved in Work for the Dole. Why has there been such a change?

Ms Catelli: Under Workforce Australia, Work for the Dole was changed. It used to be a mandatory requirement. It still is, but now there are a lot more provisions where providers can take into consideration a person's individual circumstances and say that they don't necessarily have to undertake it, whereas before it was a lot more mandatory under previous settings.

Senator O'SULLIVAN: Is there a change of policy, Minister, in relation to Work for the Dole from the Albanese government?

Senator Watt: No, there's not. There's no intention from the government to get rid of Work for the Dole. As I understand it, the recommendations from the report, known as the Julian Hill report, something that he really struggles with—

Senator O'SULLIVAN: I'm sure he does. It was elevated before by the secretary as being a Senate select committee report. It was a House of Representatives report.

Senator Watt: It hasn't quite reached that.

Senator O'SULLIVAN: It hasn't reached that status.

Senator Watt: On a serious note, as I understand it, there's no recommendation within that report that Work for the Dole be abolished. The government has no intention of doing so.

Senator O'SULLIVAN: Can I get the number of Work for the Dole participants who currently undertake the program voluntarily to meet their mutual obligation requirements?

Ms James: Perhaps while the crew are looking for that figure, it's worth remembering that people are compulsorily referred once they've been in the Workforce Australia Services system for six months. We had a new system on 1 July 2022. Because people had not been in that system for six months, referrals didn't pick up again until the end of 2022. So we are in a transition. That would explain part of the lag. I think that's a key thing to note in addition to the things that Ms Cattelli noted.

Ms M Ryan: Notably, as well, participants are doing another range of activities instead of Work for the Dole that meet their activation requirement. They could be doing some part-time work. They could be doing some other voluntary work. They could be doing other activities, such as career transition assistance and so forth or some other study and training. Depending on what they've been doing and how frequently they have been doing it, they wouldn't then be subject to the mandatory activation requirement to do Work for the Dole.

Senator O'SULLIVAN: On that, how many people are voluntarily engaging with mutual obligation requirements?

Ms M Ryan: We'll have to take that on notice. I don't have that with me.

Senator O'SULLIVAN: That's fine. If you could also come back to me with those that are mandatorily required.

Ms M Ryan: Of course.

Senator O'SULLIVAN: I will go back to the report. Recommendation 48 is that Work for the Dole be retained primarily as the last resort activity for people who failed to meaningfully engage or comply with their participation and jobs plan over the longer term. Do you have any data in relation to how many participants fall within this category?

Ms James: I think this recommendation has been made in the context of a whole set of framework recommendations, if you like, or recommendations looking at changing the framework. I think that recommendation goes to the role that Work for the Dole would play in the new system based on the blueprint outlined by Mr Hill and his colleagues in the committee report.

Senator O'SULLIVAN: Does the department have a standard definition? Can you help define what 'long term' means?

Ms James: Again, these are concepts that the committee used in its report.

Senator O'SULLIVAN: Does the department have a view of what long term is? We talk about long-term unemployment. Does the department have a definition it relies on?

Ms James: Obviously there are definitions around the long-term unemployed. I don't think that's what this report was going to here. It's talking about participants not meaningfully engaging with their obligations. I think perhaps what is being alluded to there is a situation where people aren't engaging with their provider, they aren't having those conversations about their future, and they aren't applying for jobs or engaging in any other activities

that would assist them to find work. They are not meaningfully engaged. It's a concept. Should we design this in a new system, we would have to create definitions for these constructs.

Senator O'SULLIVAN: But what is the current definition of long term?

Ms James: Well, this is not a concept that is used in our current system. By and large, everyone does have mutual obligations requirements. They are at a baseline fairly uniform. Ms Ryan pointed out that there is some variability around activities through the new points based system. But there are a number of things that are fairly uniform about what the expectations are here in terms of meeting with providers, applying for jobs and engaging in other activities. At the six-month mark, if you're still on income support, you are engaging in these activation programs. I think what is envisaged in the Hill report is something where the requirements are more tailored.

Senator O'SULLIVAN: Okay. I am curious to understand. So the department doesn't consider someone or define someone as being long-term unemployed?

Ms M Ryan: We do.

Ms James: We do have long-term unemployed. Here the report is talking about people who have not meaningfully engaged with their job plans over the long term. We probably have other language that we use for that. It's different from how long someone has been in the system, so to speak.

Ms M Ryan: Yes. There are a lot of people who are on our caseload who are long-term unemployed who are meaningfully participating and fulfilling their mutual obligation requirements and so forth.

Senator O'SULLIVAN: I see.

Ms M Ryan: So there's a slight nuance there.

Senator O'SULLIVAN: The recommendation also states that people who choose to participate in or are referred to Work for the Dole should receive a supplement that at least realistically covers their costs of transport and participation. Are you able to give a rough estimation? Have you had any consideration of what that supplement might be?

Ms M Ryan: I think participants who are enrolled in Work for the Dole currently—and it hasn't been changed for several years now—receive a supplement of \$20.80 a fortnight. When the committee became aware of that, they questioned the adequacy of that supplement. We are obviously working through what the potential revised reimbursement or supplementation would be. The current supplement is \$20.80 a fortnight.

Senator O'SULLIVAN: Is that only available to Work for the Dole participants?

Ms Catelli: Yes, it is. It's actually in social security law, that particular amount.

Senator O'SULLIVAN: But it's uniquely only available—

Ms Catelli: It's \$20.80. It hasn't changed since the program was introduced.

Senator O'SULLIVAN: Sure.

Senator RICE: The cost of public transport is \$10.

Senator O'SULLIVAN: Thank you. It's only available to Work for the Dole participants? It's not a payment that's available to other programs?

Ms Catelli: No. You have to have commenced in the activity. For transport costs, we do encourage providers to help participants out with employment fund reimbursements on that side.

Senator O'SULLIVAN: This is a quick question for the minister. Minister, do you agree that a person's employability is increased by getting them into the discipline of a daily routine and actively participating?

Senator Watt: You are asking me for an opinion.

Senator O'SULLIVAN: It's a political opinion.

Senator Watt: What I can say is that the government is very keen to ensure that our employment services are working and structured in a way that genuinely assists them find work and, equally, genuinely helps employers find the workers they need.

Senator O'SULLIVAN: But by actively engaging in work-like activities, such as getting on a bus and going to meeting appointments, dressing appropriately and all of those things, do you agree that is part of a person's journey into—

Senator Watt: Of course it helps people find work to have those basic skills.

Senator O'SULLIVAN: And giving them a sense of responsibility. It gives them the social skills that they will need and the confidence.

Senator Watt: The Labor Party very much supports the dignity of work and people finding work.

Senator O'SULLIVAN: I have plenty more questions, but I'll share the call.

Senator RICE: Hello, everyone. Nice to be with you here again. I want to table a range of documents that I have forwarded to the secretariat. They are here and I will be referring to them this afternoon. And there is my letter requesting particular documents. Has that information been tabled?

Ms James: I think we were going to wait for you to arrive before we tabled it, Senator. We have it available and we can table it now.

Senator RICE: Terrific. Thank you. I probably won't be able to refer to this in this block of questions, but hopefully we'll have time to go through it before my next one. I want to start with the report in the *Guardian* on Monday that revealed that job providers had been forced to hand back more than \$8½ million in government payments because of faulty claims over a year. Can you give me some more information, please, about what these faulty claims are and how job service providers have been able to claim taxpayer money incorrectly?

Ms M Ryan: I will start. This recovery was in relation to assurance and deterrence activities that the department regularly undertakes in looking at claims and provider tip-offs and so on.

Mr Beasley: The claims can relate to a number of things. Generally speaking, it's where we pick up a noncompliance with the deed and guidelines and where documentary evidence is lacking for claims.

Senator RICE: Can you talk me through in a bit more detail what that noncompliance looks like? What is the proportion of claims of particular types?

Ms Chamberlain: When it comes to the noncompliance of claims, when we assess claims, the deed and guidelines have specifications in terms of what providers have to retain in terms of documentary evidence to validate that claim. When we undertake an assurance activity, be it part of our regular assurance work or a specific targeted activity, we request that documentary evidence from providers. They submit it and we undertake an assessment.

Senator RICE: Have you got a breakdown of the particular types of noncompliance and where most of this \$8½ million arose? What types of noncompliance involved \$8½ million that has been inappropriately claimed?

Ms Chamberlain: It's through a range. I don't have a breakdown by percentage in terms of the types of noncompliance. I can say that the mechanisms by which we have identified the payments for recovery have been through our targeted activities, provider-initiated disclosure and then our contract management activities.

Senator RICE: That is how you got to it, not what type of noncompliance it was. Mr Beasley has said that some of it is because they haven't kept the right documentation. Are others, for example, where they have made referrals to related entities that they are not meant to do?

Mr Beasley: It might be that referral to a related entity is deemed to be not value for money or not training that person required. That could be an example of a circumstance. In terms of the specific breakdown you are after, it's something that we probably can take on notice and provide you.

Senator RICE: Thank you. In terms of how you have managed to be alerted to these claims, I think the article said it varies from year to year depending on the program monitoring activities. You just talked about tip-offs. Do you have a regular schedule of activities that you do to look out for noncompliance?

Ms Chamberlain: Yes, we do. We run a regular activity called the CAPI activity. It's the continuous assessment of payment integrity. That runs each month, where we get a sample of claims from the providers. We determine what claims we're going to assess across a range of payment types. We request the providers to provide us with that documentary evidence and then we do those assessments. Those results are published on a regular basis. We also publish provider learnings so that providers can learn where they can make improvements in that compliance.

Senator RICE: So why is there such variation, then, if you have that regular schedule of working through and looking out for things that aren't right? Why is there the variation that you see?

Mr Beasley: I guess the activities vary from year to year. Some of the amounts can be quite large, which can sway numbers quite a bit from year to year. That's the reason for the variation. As Ms Chamberlain said, we've got the continuous assessment of payment integrity. We also undertake targeted assurance activities. They are specific activities where we think there might be a particular risk of Commonwealth funds being poorly spent. That can reveal certain things. We undertake specific investigations in response to tip-offs or data and investment monitoring. We also have a range of assurance activities across the group. There's self-identification from providers as well. The variation is really driven by the fact that we are doing a whole range of activities. Sometimes the amounts recovered can be quite large, so that can swing the numbers from year to year.

Senator RICE: The amounts might vary, but, in terms of the numbers for noncompliance, have you got data on that as well?

Mr Beasley: Yes. I think we do.

Senator RICE: And whether it varies?

Mr Beasley: We might have to take the exactly analogous data on notice to get that right, but we can do that, yes.

Senator RICE: Thank you. The *Guardian* reported that while the majority of recouped payments had genuinely been returned at the job agency's initiative, only 18 per cent of the funds clawed back in 2022-23 were returned proactively. Can you talk me through what that actually means? What has been the process for recovering these funds? If only 18 per cent were returned proactively, does that mean that the other 82 per cent said, 'No, we're not returning them?'

Mr Beasley: It means that 18 per cent identified themselves, saying: 'Hey, we've made some sort of error here. We need to return this money to you.' The remaining 82 per cent were a result of investigations that we undertook or the payment integrity monitoring that Ms Chamberlain mentioned.

Senator RICE: How does that fit, then, with the statement that the majority of recouped payments have generally been returned at the job agency's initiative? What is the difference between being returned at the job agency's initiative and being returned proactively?

Mr Beasley: Is that a statement in the article?

Senator RICE: Yes.

Mr Beasley: I think probably over the four years the majority are provider initiated. If you just focus on the last year, 2022-23, that's not the case. I suspect that's where that has come from.

Senator RICE: So the rest of it is things you have picked up?

Mr Beasley: Yes.

Senator RICE: Is the process for recovering that straightforward?

Mr Beasley: Yes. Ms Chamberlain can talk to it in more detail. It is an administrative process that we have.

Ms Chamberlain: Yes. We recover at claim level. The offset shows claims against future payments that are scheduled to go to providers. In the majority of cases, we do offer a range of payment options for providers should they require that.

Senator RICE: Have you had any instances where the providers have challenged that and said, 'No, we think we deserve this money?'

Ms Chamberlain: We do have a dispute process as part of our assurance activities. That is part of the process that occurs before we finalise the results in the assurance activity. When it comes to the repayment or the recovery of the moneys, some providers do opt to pay on an invoice, pay a bulk amount, as opposed to wait until that has come out of their future payments.

Senator RICE: Can you take on notice what proportion of the claims have been challenged and have gone through a dispute process? How many of those have ended up in the provider's favour and how many in the agency's favour?

Ms Chamberlain: Sure.

Senator RICE: You talked about tip-offs. There are opportunities for Workforce Australia to report providers. What are those opportunities? What does a tip-off actually mean?

Ms Chamberlain: We get tip-offs from a range of different avenues. It can be coming through our NCSL, the national customer service line, and through participants ringing up and highlighting behaviours that they don't think are appropriate by employment services providers. We also have an option for employment services provider staff, current and previous, to report a tip-off to the department as well. That can be done anonymously or they can reveal their details.

Senator RICE: Can you take on notice who the worst offenders were in terms of the employment service providers? What are the top 10?

Mr Beasley: We can take that on notice.

Senator RICE: Is there any ongoing disciplinary action, or is it just a matter of them paying back the money? Is there anything else that occurs if they are repeat offenders, for example?

Mr Beasley: Essentially, depending on the severity of the breach, we have a sliding scale of regulatory action we might take. At one end, it can be the education of the provider. At an extreme end, it might be not renewing licences or so forth under this newer system.

Senator RICE: Have you had any that you haven't renewed licences for as yet?

Mr Beasley: Not as yet in this system because that hasn't come up. We can formally breach. That can impact their provider performance score as well.

Senator RICE: Are income support recipients informed about which providers are the worst offenders?

Mr Beasley: No. That's not something that we communicate at the moment to them.

Senator RICE: Do you think it would be appropriate to inform income support participants to avoid these ones because they are not nearly as reliable in terms of sticking to the rules?

Mr Beasley: You are probably asking for an opinion there, I think.

Senator RICE: Alright. What are proactive steps that you've taken to limit these faulty claims? You talked about education. Are there other proactive steps that you are taking?

Mr Beasley: Yes. There is a whole range of things. At a high level at least, we've run through the activities that we undertake. For example, there is communication to providers all the way through to that licence removal. That gives us our triangle of how we enforce.

Senator RICE: I will move on to the Workforce Australia inquiry. When can we expect an official government response to the report?

Ms James: Senator, I am not sure if you were in the room a little earlier when we noted that it's a substantial tome. The government is considering those recommendations. It will provide a response. There's a lot to consider in there.

Senator RICE: Given that, obviously you've had it for a bit. You've had a chance to look at the scope of it. What is the expected timeline for a response?

Ms Huender: It is a substantial report. The committee chair notes in the report that it's a complex piece of work. It recommends that the government publishes a roadmap by the end of the year. In terms of a response, it's now a matter for government in terms of when the timing of that will be.

Senator RICE: Minister Watt, do you have any further information?

Senator Watt: I can't add to that. Obviously it's under consideration by the government.

Senator RICE: I now want to go to payment suspensions, which I asked questions about at last estimates. I was told that 39½ per cent of people engaged in Workforce Australia Online and 70.4 per cent of people engaged in Workforce Australia Services had their payments suspended between July 2022 and September 2023. Can I get an update on those figures, particularly those percentages? I have the tables off the website that tell me about the number of people but not the percentages.

Dr O'Rance: We are publishing data quarterly. In the tables they include the percentage. I think it might be table 7. The next publication will be on Friday next week. That will cover the December quarter. I will get that referenced for you. It is table 7 of the targeted compliance framework data we publish. It's not table 7 but the response.

Senator RICE: I won't attempt to look at it while you are talking.

Dr O'Rance: What I have with me is the October to December quarter. We're reporting that on a quarterly basis now so that we can track over time whether things are improving within an equivalent time period. I will grab that for you. For the quarter to 31 December, in Workforce Australia Online, 20.5 per cent of participants who were compellable at some point during that quarter had a payment suspension. It was 43.4 per cent in Workforce Australia Services.

Senator RICE: That's a significant improvement on the 70 per cent from the previous quarter.

Dr O'Rance: It is down, yes. Sorry, the 70 per cent was over the entire 15-month period. So 43.4 per cent is at any point in the quarter. It is lower than when we look at the previous quarter.

Senator RICE: What was the previous quarter?

Dr O'Rance: I will grab that as well. From our published data, from the July to September quarter last year, for suspensions, it was 28.6 per cent of people in Workforce Australia Online and 50.80 per cent in Workforce Australia Services. So that has come down a few points in both cases.

Senator RICE: So it's improving. Do you have any understanding as to why the number of suspensions has decreased?

Ms M Ryan: Since we last appeared at estimates, I think in my evidence previously we had been actively working with providers to make relevant adjustments to individuals' points target. We are strongly encouraging them to reduce their points target. It is likewise in our online service as well. We have also released some communications material for First Nations people, who are overrepresented in the data—we acknowledge that—to help them to understand their requirements in—

Senator RICE: The participants?

Ms M Ryan: The participants and the providers themselves to make adjustments.

Senator RICE: I want to go to some of the providers. I will come back to that.

Ms M Ryan: I think you can see that with those interventions—and more can be done; we acknowledge that—we are proactively working with those providers, particularly those we see who maybe are applying payment suspensions or demerits in a case. Mr Nicholas's team will go in and investigate and maybe lift them and educate providers to say, 'That was an inappropriate application of the compliance framework.' They remove and educate them. That's how we have been working. There's still, as I said, more to be done.

Senator RICE: I don't know whether it may be already here. Can I have a breakdown of cohorts per suspensions? I want the percentage of people experiencing homelessness, who identify as Indigenous, CALD and people with mental health problems.

Dr O'Rance: We don't include cohort breakdowns in the published data. We can provide you with some details of particular cohorts. We note that they are approximations; the number of people in the denominator is an approximation.

Senator RICE: You can take that on notice.

Dr O'Rance: Absolutely.

Senator RICE: Do you have that information?

Dr O'Rance: I have some cohorts in front of me. I may not have all the ones are you interested in. If there are particular cohorts, I can look them up for you. You mentioned—

Senator RICE: Indigenous, people experiencing homelessness, CALD or with mental health problems.

Dr O'Rance: I will need to go through Online and Services separately because they are quite different for them. Do you have a preference?

Senator RICE: Well, the higher one is Services.

Dr O'Rance: Sure. This is the October to December quarter. We are looking at what percentage approximately of participants in a cohort had a suspension over that quarter. For Indigenous participants, it is 49.1 per cent. For people who are homeless—I note that homeless includes, in our categorisation, people who are in stable housing, short-term rental and so forth.

Senator RICE: Yes. Couch surfing.

Dr O'Rance: We're not able to distinguish different levels. It is 48.1 per cent. For people from a culturally and linguistically diverse background, it is 28.1 per cent.

Senator RICE: And people with mental health problems?

Dr O'Rance: For people with a mental health diagnosis that we have recorded, it is 37.1 per cent.

CHAIR: Senator Rice, how much longer do you think you might have? I am trying to catch up time.

Senator RICE: I am happy to break. If you want to come back to me, I have quite a few more.

CHAIR: Can we get through them in 10 minutes?

Senator RICE: Probably not.

CHAIR: Are there any questions you can put on notice?

Senator RICE: Yes. I have lots of questions I will put on notice. These are the ones that I am keen to ask today. Is there anybody else who has questions here?

CHAIR: There is. I am mindful of the time.

Senator RICE: I am happy to break here if you can come back to me.

Senator DAVEY: I have some questions about the PALM scheme. During last Senate estimates, it was confirmed that two labour hire companies had been granted an exemption to the deed and guidelines. Has that exemption all been worked through now?

Mr Stott: To clarify, I don't think we gave evidence that some people were exempt from the deed and guidelines. What we were doing in a couple of cases was working with some particular approved employers on how we implemented the scheme settings with a view that we would get those folks engaged in the program or keep those approved employers complying. I will turn to Ms Saunders, who can probably give some more accurate information.

Ms S Saunders: I believe that what you are referring to is two labour hire approved employers who were given an additional month to meet the pay parity requirement arrangements under the scheme.

Senator DAVEY: Did they meet the requirements within that month?

Ms S Saunders: Yes. They were given an extra month to meet those requirements, and they met them.

Senator DAVEY: Was it just given to those two because they were the only ones who were failing to meet the requirements? Were they the only two who proactively came to you? There are some approved employers who are questioning why they weren't offered the same leniency.

Ms S Saunders: They were the two employers who actually proactively reached out to us to advise that they needed more time because of the large scale involved in the spread of different, I guess, enterprise agreements and employment arrangements that they had across their entire labour hire operation.

Senator DAVEY: Can you explain why it was decided to inform the Australasian Meat Industry Employees Union about this arrangement but not provide the same insight to other employers, such as mum and dad farmers who might have also been struggling to meet the new compliance requirements?

Mr Stott: I think the question takes me to how we undertake consultation and engagement with the scheme. There are longstanding and quite a number of consultation and engagement fora that exist within the structure. Some of them have standing engagement mechanisms around particular industries. Meatworking is one of them, and food and fibre processing, where we have a longstanding engagement. It wouldn't be unusual to be consulting with stakeholders, including unions, civil society groups and approved employers and other industry groups, when changes like this are being undertaken. I suggest that the engagement with the meatworkers has occurred—

Senator DAVEY: Someone has come forward and said, 'We've got this issue; we're struggling to meet the requirements,' and you think, 'Okay; we'll give you a month.' Is there not a point where you go, 'We should probably now inform everyone that this is occurring because maybe there are people out there who are in the same circumstances who we could afford the same arrangements to'? They haven't thought to come forward because they could be much smaller operations without the same ability to provide that active feedback to the department.

Mr Stott: We are actively engaged right across the program with a high number of stakeholders. It is quite usual for us to discuss mechanisms not unlike this one when we engage with those stakeholders. In this instance, Ms Saunders has indicated that there was a high degree of complexity with a number of industrial instruments across a number of areas. When we make changes to the scheme or we make particular arrangements, it's not unusual to talk to support groups, civil society groups and community connections partners. Sometimes unions are included in that as a natural part of our business.

Senator DAVEY: So can you confirm that only those two extensions were granted?

Ms James: We traversed this territory last time. I think the evidence then was that there were these two requests that were granted and they were—

Senator DAVEY: So you haven't had any since the last estimates?

Mr Stott: We would have to take it on notice and be quite precise. We talk to 469 employers about 36,000 workers across a range of fora. In order to be precise and give the committee and yourself, Senator, the right evidence, we'd need to take it on notice.

Ms Lange: I can confirm that it was Regional Workforce Management and Labour Solutions Australia. They were the only two that were given an extension to meet pay parity requirements only. Under the deed and guidelines, they were required to meet that requirement as at 1 October. It was extended to 31 October. As my colleagues have mentioned, that was in relation to the large volume of workers in particular. The minister was briefed on this matter at the time.

Senator DAVEY: As of now, everyone has met the pay parity requirements?

Ms Lange: Correct.

Senator DAVEY: I want to ask about the standdown provisions in the new PALM scheme deed and guidelines. Am I reading it right that if there's no other similar or safe work available, a PALM worker must be stood down with full pay equivalent to their standard hours? Am I reading that right?

Mr Stott: I'll invite Ms Saunders to give us some particulars on the settings. I think when we think about standdown provisions or we talk about particular settings in the scheme, we usually start with the objectives of the scheme, which include ensuring the welfare and wellbeing of our workers. When we think about the settings, we move to thinking about how we're attempting to ensure that they have safe and stable incomes so that they don't become disrupted or even disengage from the scheme. The scheme settings are designed around that. They also recognise that we ensure that employers have access to a reliable and productive workforce and that workers have access to ensuring that their workplace rights and provisions are upheld. That includes industrial frameworks and industrial instruments. There are those particular to standdowns. I think your question goes to standdowns again in the meatworking industry?

Senator DAVEY: Predominantly in the meatworking industry, yes.

Mr Stott: I will hand over to Ms Saunders. She can talk us through that approach.

Ms S Saunders: You are correct; there are those particular provisions in the deed and guidelines in recognition of the particular vulnerabilities of the PALM workers. During standdown events, there are a range of options that employers need to undertake. They need to source alternative work for the workers but still pay them what their standard rate of pay is. They could source another alternative temporary redeployment with another approved employer. The expectation is that they would continue to receive their normal daily rate of pay. They could activate a contingency plan that has been approved by us. That contingency plan could include any number of things. One in particular in relation to the meatwork industry is that some of those employers have a 10 per cent loading incorporated into their pay. That compensates, I guess, for the fact that there are standdowns in the industry. Part of their contingency planning could be that they could take into account the extent to which loadings paid may actually cover the amount of standdown days that are being experienced.

Senator DAVEY: Can this lead to an occasion where, for example, a meatworker has an enterprise agreement with their Australian employees or employees with permanent residency—Australian migrant employees? They've got an enterprise agreement that doesn't have those provisions in there. A worker on a PALM scheme ends up getting better entitlements over and above how the Fair Work Ombudsman actually describes standdown provisions.

Mr Stott: In this instance, we're actively engaged with industry. We have been since late last year. We have been communicating as recently as the last few days. We're meeting with industry stakeholders and other community groups—civil society groups and the like—I think in about seven days, next Wednesday, to advance this conversation. The PALM scheme settings require that the industrial instruments are the same for PALM workers as others and that PALM scheme workers have the same rights and entitlements as Australian workers. The settings in the scheme go to the domain where you've entered into. Those particular settings recognise that PALM scheme workers have unique vulnerabilities. Some of those include the connection or the tie between the worker and their employer. A PALM scheme worker can't exercise mobility. They don't have access to social security or Medicare or other protections within our national framework. The settings take on the objective to protect the welfare and wellbeing of the worker. That staged approach that Ms Saunders outlined is seeking to ensure that avenues to protect the wellbeing of the worker are advanced. The scheme settings seek to ensure that the worker has every possibility of receiving a safe and secure income so they can look after themselves in Australia, support their families at home but also produce that productive, prosperous outcome for regional communities and employers where they are employed. It seeks to find that balance.

Senator DAVEY: When do you expect that engagement and that consultation to be resolved?

Mr Stott: It is a consultative process, Senator. I would hope with every goodwill that we can do that rapidly. I think the department wants us to do that. Industry wants to. All other stakeholders want to see that resolved rapidly.

Senator DAVEY: Is that engagement the ongoing work? I know that a working group was formed in November with union representatives and industry representatives. It's part of that process, is it?

Mr Stott: Yes.

Senator DAVEY: But you've already released a facts sheet on the implementation of standdowns relating to PALM workers despite that process not being complete?

Mr Stott: I wouldn't characterise it as despite that. I would say to complement that work so that we can advance the conversation. I recall a conversation about consultation here before, Senator. We spoke about how sometimes the challenge is to consult with people but not offer something. It is difficult. To offer something can prompt commentary. In that vein, we're seeking to advance the conversation and get the best outcome through those fora.

Senator DAVEY: You raise the very important issue of the unique vulnerabilities of PALM workers, including the fact that their employment is not mobile. They can't just go from one employer to another. We also hear about the issue of PALM workers absconding from employers. Do you track that data as well?

Mr Stott: The responsible portfolio for collecting data about visa holders is the Department of Home Affairs. We have access to some of their data. We share information. But particular aspects of visa holders are a Home Affairs matter.

Senator DAVEY: Do you get advice from approved employers when PALM workers have absconded? That is not on the visa issue. I know that's Home Affairs. It is on the issue of whether they ring you and go, 'Well, I've just lost my employees?'

Mr Stott: Yes, Senator. If a worker disengages, we describe the process as disengagement. There can be a range. It is important, out of respect for the individual employer and employee, to consider that a range of things could have occurred. It could be, for example, quite lawful for a worker to leave one employer and go to another if they are holding a visa other than the particular visa for the PALM scheme, such as the 403 or the 408.

CHAIR: This is the last question.

Senator DAVEY: If you can come back to me later, yes, sure.

Ms Lange: And it's a matter under the settings that approved employers report to the department where a worker has disengaged as well as report it to the Department of Home Affairs.

Senator DAVEY: I'm happy to leave it there if I can have another block later.

CHAIR: It will put us over time, and we're already an hour over time. Do you want a few more minutes?

Senator DAVEY: Yes. I will try to condense it all together. I have a couple of quick questions about the horticulture industry and then more general PALM scheme questions. One of the concerns in the hort industry—again, it's not exactly the same as the standdown—is the minimum hours. In the past, it was my understanding that PALM workers must receive 30 hours a week but averaged over a rolling four-week period, so it is 120 hours a month. That was recognising the stop-start nature of horticulture.

Senator Watt: I will just pull you up there, Senator. The original position, as I understand it, was that the workers needed to receive a minimum of 30 hours on average over the life of their time in Australia rather than over a month. Some of the changes made to the deed are phasing in changes to that, and where we're currently at it is averaged over a month. But the original position was over the entire term of their period here. Is that correct?

Mr Stott: That's right, Minister.

Senator DAVEY: Is it right to say that it is moving to 30 hours a week not averaged over a month? It will become 30 hours a week—

Senator Watt: The new deed that, from memory, commenced on 1 January this year—

Mr Stott: It was 26 June, Minister.

Senator Watt: On 26 January.

Senator DAVEY: Australia Day?

Mr Stott: It was 26 June last year.

Senator Watt: It was 26 June last year, sorry. The new deed, which commenced on 26 June last year, ushered in this change. As I say, it was to be phased in. From 1 January this year, it introduced a minimum 30 hours on average over four weeks rather than the lifetime of the period. The second stage was to move towards a minimum 30 hours each week. That commences on 1 July this year. Is that correct?

Ms M Ryan: Yes. That's correct.

Mr Stott: That's correct, yes.

Senator Watt: There are a number of reasons for that change. A primary reason was that we received many representations from PALM workers, unions, church groups and other civil society groups that provide support to PALM workers and from Pacific nations. They said that the majority of PALM employers do the right thing, and

farmers who use PALM do the right thing. Unfortunately, there were too many complaints that workers were being brought to Australia having been promised they would get lots of work and make lots of money that they could send back home, which of course is the program from the workers' point of view, but they would come here, they would have to pay the deductions to the employer for accommodation, transport and other things and they wouldn't be receiving enough work to pay those costs. At best, that meant that people weren't making the money they thought they would make and agreed to come here to make. At worst, there were instances where people were having to contact their family back in the Pacific and ask for money to be sent to them so they could pay their deductions and survive, which of course is the complete opposite of what this program is about.

Senator DAVEY: In my conversation with farmers and people in the hort industry, the rolling average was one step. At least it gave them some flexibility with seasonal issues. If it's pouring with rain out there in the orchards, you can't work. The actual 30 hours a week fixed gives them no flexibility. They are very concerned that where they can't actually send their workers out for a period of time, they will be penalised. Is there an opportunity for workers in those scenarios to be able to explain and justify why they haven't met those criteria for that week?

Senator Watt: Why don't I kick off and then the officials can elaborate? I am certainly aware of the concerns from the horticulture sector, in particular. Obviously, as the ag minister, I have been dealing with them on this, as has my office. Those concerns were one of the reasons that the government decided to phase in these changes—to give people time to adjust. The officials can probably give you the figures. The concern that was raised with me was that farmers would walk away from the PALM scheme. In fact, what we've seen is an increase in the number of employers seeking to use the PALM scheme. There has been no collapse in PALM worker numbers. It would appear at least for the moment that we're not seeing the exodus from the PALM scheme that some of those groups thought. As I say, the officials could give you the figures.

Senator DAVEY: That was my next question. How many approved employers, if any, have walked away from the scheme since October last year?

Senator Watt: My understanding is zero.

Mr Stott: Since the implementation of the new deed and guidelines in June last year, there were 424 approved employers and there's now 469. At the end of June last year, when we implemented the new deed and guidelines, there were 276 active approved employers. That means that not all employers in the scheme have workers. As at 31 December, when we had 469 approved employers, there were 341 active approved employers. We've also noticed—it would be of interest to you, I'm sure, Senator—that the size of the cohort of workers held by direct employers is increasing. Last year, in June, about 25 per cent of employers had about 75 per cent of the workers. They were largely sitting with labour hire companies. Direct employers now have about 36 per cent of workers working directly for them.

Senator DAVEY: For the direct employers, what is the average wait time to become an approved employer?

Mr Stott: I would have to take that on notice.

Senator DAVEY: If you wouldn't mind. Also take on notice the period of time or the average period of time it takes from becoming an approved employer to actually being able to recruit and have employees on the ground. I am also hearing that the process to become an approved employer is quite onerous, arduous and time consuming. There's a bit of a frustration with the process.

Mr Stott: The process is publicly available. One can look at the PALM website and see what is asked of it. In some instances, we don't get decision ready applications. There are often gaps with the provision of financial information or delays with checking compliance with workplace relations compliance or the process to become a temporary activity sponsor through Home Affairs. When those application processes vary, it impacts what we do. The purpose of taking it on notice is so we can look at those things and give useful information to the committee.

CHAIR: Senator Davey, are you able to wrap up?

Senator DAVEY: Last question. Have the approved industries that can apply for the PALM scheme varied much in the last 12 months? Have you added new industries or taken any other industries off?

Mr Stott: I'll take the specifics on notice. There are about 33 different sectors where we have workers. Overwhelmingly they are in food and fibre processing, agriculture, the care sector—predominantly aged care—and then 'other', which is a big category. We'll need to be precise there.

Senator DAVEY: You can take the specifics on notice. Thank you very much.

Senator GROGAN: Senator Davey has asked a lot of the questions and elicited a lot of the answers that I was looking for.

Mr Stott: Excuse me, Senator. My sincere apologies. I need to correct a figure. I gave a figure of 469 approved employers. It is actually 459. That is my bad. My sincere apologies, Chair.

Senator GROGAN: I will be really brief. There's a lot of material out there from our friends in the opposition, the National Farmers' Federation and the Horticulture Council about PALM employers moving away. They feel like this change in how the PALM scheme is being run, with the new deed and guidelines, is going to mean that employers are not going to sign up, that they're not going to get involved in this, which is a really important scheme. It is vital for a lot of our agricultural areas, particularly. There seems to be a bit of a disparity in some of the noise that's out there compared to what you've just told us, Mr Stott. Are you hearing from employers that they are finding the new deed and the new guidelines an improvement or a burden, which is what we are hearing from some of our colleagues?

Mr Stott: We hear from a range of stakeholders. It might be fair to say that there's a broad church. Some stakeholders, as I acknowledged earlier, are quite enthusiastic about the changes and some are not. At the point in time that we're undertaking this work implementing the new settings and noting that some are coming online and some have already come online and some are progressively coming online, we have also in the department taken on responsibility for managing the long-term scheme. Not only are we implementing new settings; we're also taking on a series of employers we hadn't managed before who had been managed under a different scheme. So there's a bit of noise in the system between the new management by the new provider, being the department, of some long-term employers in particular. Having said that, the information available to the scheme is that the number of workers we have in the country is consistent with our forecasts and what we expect.

Senator GROGAN: No drop-off?

Mr Stott: We've seen the usual fluctuations we would expect. We are seeing the impact of the ending of the 408 pandemic visa. There is a high number, we think, of other visa holders in the program. We expect a high number of those other visa holders, the holders of 408 pandemic visas, to go home. That visa type is no longer available.

Senator GROGAN: Because there's no longer a pandemic?

Mr Stott: Yes. That is self-evident, of course, Senator. We are seeing those people progressively being replaced. We're seeing requests for workers being slightly higher than the monthly average and accommodating that movement. So there are fluctuations. There always has been in the scheme. In fact, we answered a question on notice about whether there had been drops in numbers before, as I recall. I heard the senator ask earlier about demand by employers to come into the scheme. We have well over 100 employers seeking to enter the scheme. We are seeing the number of active approved employers rise.

Senator GROGAN: Great. Minister, you could make a comment here. This committee has had quite a significant engagement with the PALM scheme through inquiries. It has heard some fairly horrific stories over time regarding worker welfare and how they've been treated. Do you have any comment about the changes in the deed and the guidelines and how that's going to potentially make a difference?

Senator Watt: Obviously, as the agriculture minister I have a deep interest in this program working effectively for farmers in particular. I think all of us as Australians have a deep interest in making sure this program works well. It's an important source of labour. It's a really important diplomatic connection to the Pacific. It is all in our interests to see it work. The horticulture sector and the meat processing sector in particular, which host a lot of the PALM workers, would struggle in some cases to function without the PALM scheme. It's a really important source of labour. I think for the program to work we need to make sure that the people on the program are treated fairly. As I said before, I think the vast majority of farm employers, PALM employers, do the right thing. Unfortunately, there have been some really terrible cases. All of us have an interest in making sure that kind of thing doesn't happen. As Mr Stott said, there's a wide range of views about the changes that the government has made. Some are very opposed and some are extremely supportive. The whole idea, as I said, was to phase in these changes to give people time to adjust rather than have everything happen overnight. We've also committed to do a review of the deed and guidelines in 12 months. I presume that was from when the changes came into effect?

Mr Stott: We expect so, yes.

Senator Watt: For, say, July this year. So there will be a review to see how it's going. I'm certainly hopeful and confident that the deed as it now stands will work for everyone.

Senator GROGAN: Fantastic. Thank you very much.

Senator RICE: I want to move to suspensions and provider suspensions and the response to my question on notice about the top five providers with the top five number of suspensions. I note that you've also given me the

equivalent data for between October and December 2023 in the pack. According to the question on notice data, the top two worst providers are On Q and Wugu Nyambil. They applied five suspensions per participant in the 15 months between July 2022 and September 2023. I notice that it's pretty much those ones in the top lot in the last three months as well. It works out at about a suspension every three months for some of those providers. Does the department think this is an appropriate and acceptable number of suspensions person?

Ms M Ryan: We have provided you with updated information today in that pack. We elected to actually share with you all of the providers.

Senator RICE: Thank you for that.

Ms M Ryan: We shared with you the top five. I know your request asked for the top 10. It may be inappropriately targeted to particular providers by the nature of their caseload. It amplifies how many suspensions are being applied. Notwithstanding that, we are working with those providers to understand why they feel the need to use the targeted compliance framework in that manner. We are working with them in particular on tailoring their use of the point system, how they schedule appointments and make adjustments to a participant's points target. We are actively working with those providers to unpack what it is—staff education or something else in the nature of their caseload. We are working with them to reduce the proportion. We don't have a target for how many people should get a payment suspension. We don't want anyone to get a payment suspension. We just work with them to say, 'What is driving that behaviour? What can we do to help?'

Senator RICE: Have you got any understanding yet as to what is driving that higher number of suspensions for those ones at the top of the list?

Ms M Ryan: I don't have it with me, Senator. I am happy to take on notice to share some of that analysis that we may have done to date. I just don't have it in my folder.

Senator RICE: Right. You say that you are working with those providers to try to understand it. Implicit in that is that you think the number of suspensions per participant is unacceptably high?

Ms M Ryan: It's more about just trying to understand whether or not that was a valid application of the payment suspension. It may well be that it was entirely appropriate. The individual may not have had a reasonable excuse. There may have been a range of different circumstances. So that's why we're just trying to unpack that some more. We'll go and do site visits with those providers to sit with the staff to see how they are engaging in supporting those participants.

Senator RICE: On the data that you provided on notice, we have the top ones that were suspending people the most. Three out of the five of them specialise in First Nations employment. I suspect that those three are still up there in having considerably more suspensions person than other providers. What are you doing in particular to address this issue of First Nations people being suspended at a very substantially higher rate than other participants?

Mr Nicholas: As Ms Ryan alluded to earlier, we have recently released some additional information for First Nations people specifically that goes to how they meet their PBAS requirements and to help them understand the different approaches they can take in doing that. We are continuing to work on improving the engagement and communication to First Nations people to help them understand how they go about meeting their obligations. We will continue to work, as Ms Ryan said, with relevant providers so that they are better understanding the cohorts. We are reaching out to providers to get an understanding of where they are getting low compliance—the nature of their engagement—and to try to better understand the cohorts they are dealing with and the issues they are facing. That puts us in a position to work with the providers on whether they are tailoring correctly.

Senator RICE: You told me earlier that you have 49 per cent of Indigenous people being suspended. The agencies working with them are suspending those people not just once but once every three months. I know from other inquiries we have done that there is a very large cohort of First Nations peoples that should be getting income support who have opted out of the system altogether because they find that the whole bureaucracy of the system is just too much for them to cope with. To me, it seems like it's an appalling situation. It is an incredibly racist bureaucracy, basically, that is very unfairly impacting First Nations people.

Ms James: I might make a comment without going to the specifics of what you've said. We are working with a current system and its current settings. Within that, we are actively working with providers. The Hill report has laid out a blueprint for reform of the employment services system. One of the things I would observe is that the employment services system works well for a large cohort of people, particularly people who have recently been close to the labour market who are reasonably job ready. There are people who have been in the system for a long time and haven't worked at all in that time. They are not a large group. But people who have been on income support in our system for five or more years are people for whom the system is clearly not working. This is

something that the government is looking at. The minister said in correspondence to Dr Cassandra Goldie—I don't think she will mind me noting it—that, in relation to this question of suspensions, the government remains committed to ensuring safeguards apply for vulnerable people while effectively helping people into suitable employment. The minister has also said that the government supports the concept of mutual obligations and that it is critical that people are not penalised unfairly. You might imply from that this is an issue, along with the recommendations of the Hill report, that also goes to the mutual obligations framework that we are actively looking at.

Senator RICE: Implicit in those statements is an acceptance that there are cohorts of people—I particularly want to focus on First Nations people, vulnerable people—who are being impacted unfairly.

Ms James: In fact, in the last proceedings, we tabled some material on notice in response to a question from Senator Cash about a presentation I gave to providers where we were looking at different cohorts and how the system is working with different cohorts. That quadrant, if you like, is something that we're using as we think about employment services reforms as well as how our system is operating right now. I think we would say that the activity settings, particularly around mutual obligations, the requirements around job seeking and the way the points based system is designed, are not necessarily going to help some groups of people in the situation they are currently in. We need to ensure that we have a system that accommodates these people as well.

Senator RICE: These are the people who are not able to go online. They are not the cohort for whom the whole system is tailored towards. They are very vulnerable. They are suffering now. Meanwhile, the response to the Workforce Australia report, you've told me, is going to take some time. You are not even willing to put a time line on it. Will the government consider suspending mutual obligations for these cohorts to make sure that these vulnerable people aren't being impacted? This is having a real impact on people's lives. People are starving. People are homeless. We know. We've just had the data that people who are homeless are dying 30 to 40 years younger than other people yet they are being penalised by these mutual obligations that clearly are not working and are not being effective in helping them to find employment.

Ms James: I don't think I can add.

Senator RICE: I did have a question in amongst that. It was about suspending mutual obligations in the period for these cohorts who are vulnerable, who are being impacted, until the government has completed its consideration of the Workforce Australia inquiry.

Ms James: The issue of the committee's recommendations is a matter for government. That's not something the committee recommended. The committee did, however, note that some recommendations should be acted on with more urgency than others. One of those was a recommendation of urgent interim changes to the mutual obligations compliance framework, including a range of things that go to introducing more discretion on the part of what activities result in suspensions, what the consequences are for, say, missing a meeting and the like—

Senator RICE: Well, exactly.

Ms James: and more flexibility around the points. I think all I can say, Senator, is that this is a matter for government. It is being actively considered by government.

CHAIR: Senator Rice, you have another five minutes.

Senator RICE: Thank you. We know from the other information you've given me that the vast majority of people are being suspended because of not attending a provider appointment. It is 168,000 of your suspensions. Clearly, the system is not working. I want to go to the providers. These are the cohort of people who aren't online. They are having to deal with providers. You have real issues with the behaviour of these providers and where they are acting inappropriately. I asked about this at the last estimates. If you find that the provider has acted inappropriately, I asked what action you take. I want to continue along this line of questioning. Is it correct that when a person calls the national customer service line to make a complaint about a provider, the first step is to refer them back to the provider?

Ms M Ryan: That is correct, Senator. The reason we do that is that we are trying to resolve the relationship between the participant and the provider. Often it can be resolved in that first call in terms of that first call resolution. Where it's not able to be facilitated in that way, we will then act as a broker to go back to the provider to get further information pertaining to the issue. Often the things may be a breakdown in communication. It may be that it's not to the particular consultant. It may be for a more senior person within that provider organisation to resolve that issue.

Senator RICE: How does the department track this? If you refer the person back to the provider, do you continue to track that case?

Ms M Ryan: I might refer to Ms MacDonald, who looks after the national customer service line.

Ms MacDonald: When someone makes a complaint to the national customer service line and we refer the complaint to a provider, the provider has seven days to come back to us with advice. Three days after that, we will make contact with the participant to see if they are satisfied with the response that they've received or the action that has been taken from the provider. That is the way the system is working. It is almost closing the gap.

Senator RICE: Do you have some data on how many complaints are able to be resolved that way?

Ms MacDonald: I don't have that with me, but I can take that on notice for you, Senator.

Senator RICE: Thank you.

Dr O'Rance: Deep apologies. I need to correct those last percentages I gave to you. I was looking at the wrong column. I have my glasses now, so can I read them back to you? I will give you those percentages so you have the correct numbers in front of you. That is for Workforce Australia Services just for the cohorts. That is where I gave the wrong numbers. For Indigenous participants, it's 62.7 per cent.

Senator RICE: So it's far worse than the 49 per cent. It is more evidence why we should be suspending mutual obligations.

Dr O'Rance: Again, my apologies for that. For people with mental health conditions, it is 46.0 per cent.

Senator RICE: Almost half.

Dr O'Rance: For people who are homeless, it is 61.1 per cent. For people who are culturally and linguistically diverse, it is 33.2 per cent.

Senator RICE: These are my last couple of minutes. I have other questions about the complaints process that I will put on notice. I want to go to the issue of, again, these cohorts and particularly the homeless cohort and in the situation where we have got a blowout in wait times. I have just been questioning Services Australia today. We know that on average people seeking income support are having to wait 48 minutes on the phone. Twenty per cent of them are having to wait more than an hour on the phone. We know that the claims processing time has blown out. People who are homeless, which was I asking about, who have mutual obligations are basically having their payment suspended because they can't meet their mutual obligations. They are being told to go and get wi-fi at a public toilet or a community centre in order to fulfil their mutual obligations.

Ms MacDonald: Senator Rice, would you like our average wait times? I can provide them to you now, if you like, for the national customer service line.

Senator RICE: Perhaps you could table them. I now have very little time here. I really want to go to the question of why we're continuing to penalise these people with mutual obligations in such appalling circumstances who are not working. We are having people whose payments are being suspended. For First Nations people, it's two-thirds of the time. It's just wrong. Surely the case is so strong that we should be suspending mutual obligations in this period where we have claims blowing out and where the mutual obligation system is clearly not working for particular cohorts.

CHAIR: I took that as a comment rather than a question.

Senator RICE: No. I want to know whether the government is actively considering suspending mutual obligations, because the system is not working. The departments are not fulfilling their side of the bargain. It's not mutual.

Senator Watt: We had this discussion at the last estimates, Senator Rice. My answer at the time was no. My answer at the time now is no. The minister has already expressed concern about the issues that you are raising. That is one of the reasons we are reviewing the system.

CHAIR: This is your last question, Senator Rice.

Senator RICE: I will go back to complaints. I understand that the department recently gave the *Guardian* data about complaints received via the national customer service line. Can you table that data as well? Is that here in the pack? Are you able to table or provide on notice this data for the digital contact centre as well?

Ms M Ryan: We might have to take that on notice, Senator.

Senator RICE: According to the *Guardian* article, the top three reasons for complaints about providers are inappropriate or inadequate service, dissatisfaction with the employment consultant advocated by the provider and unprofessional behaviour. What other categories are used to record reasons for complaints?

Ms MacDonald: I might have to take that on notice, Senator, and get back to you.

CHAIR: Thanks, Senator Rice.

Senator O'SULLIVAN: I would like to ask about ParentsNext and its replacement program. I will start with my prelude. In the report that we've been discussing, the *Rebuilding Employment Services* report, it states: The Committee suggests that the service to replace ParentsNext may ultimately become part the generalist case management service ...

The government has until the release of the report been adamant about ParentsNext being replaced with a new and voluntary program in July this year. The impact analysis done by the Office of Impact Analysis outlines three options, two of which relate to the replacement program. Has the department been given any clarification as to whether there will definitely be a replacement program? Will it ultimately become part of a generalist case management service, as the report seems to suggest it should?

Ms James: Ministers issued a press release on 7 December 2023 outlining the new voluntary pre-employment service for parents. That will commence from 1 November 2024. This follows a consultation process that the department undertook. I am happy to table that press release, if you would like it.

Senator O'SULLIVAN: No. I've seen that. Maybe others want to see it.

Ms James: That's the government's decision. We are in the process of implementing the new program.

Senator O'SULLIVAN: Is it a unique program, or is it going to be part of a generalist case service?

Ms James: It is a distinct program. It will have its own set of providers. We're in the process of designing the detail on that now.

Senator O'SULLIVAN: Have you got a name yet for it?

Ms James: I'm open to suggestions.

Senator O'SULLIVAN: Can you provide the committee with a time line, then, leading up to the commencement of the new program?

Ms James: It will be commencing from 1 November 2024. I will ask Ms Spanos to—

Senator O'SULLIVAN: That's the end date.

Ms James: outline our expectations around that.

Ms Spanos: As the secretary has outlined, we're aiming to have that program implemented on 1 November. We're at the moment finalising the detail for the request for tender. We will be releasing that as soon as we are able. The government also announced, as part of that media release that was referred to, that we will be extending the ParentsNext program by four months. So that's the time frame we're working to.

Senator O'SULLIVAN: Just in terms of sequencing, you would release the final design of the model at the time the tender goes out, or do you intend to bring it out—

Ms Spanos: Correct. When we release the request for tender, it will detail the parameters of the program in that.

Senator O'SULLIVAN: You've said as soon as practicable, or words to that effect. Is there an indication of when you are intending to go to market?

Ms Spanos: As soon as we're able.

Senator O'SULLIVAN: Weeks, months?

Ms Spanos: We're working on the detail now. As soon as we are able to release that request for tender, we will.

Senator O'SULLIVAN: Will the funding model for the replacement program likely be outcome based, or is it program or block funding?

Ms Spanos: We're working through that as well. That will be part of the detail in the request for tender.

Senator O'SULLIVAN: The current contracts for ParentsNext are set to conclude on the 30th. You've said that they are going to be extended for four months. Is that what you said?

Ms Spanos: Correct.

Ms Robertson: Can I just add to my colleague's response to the tender documentation? One principle we have is that we want everyone who potentially may be tendering for a particular service to have the same information at the same time. The way we do that is through encouraging people to register on AusTender. That way, when a procurement exercise is ready to go, we actually release it through that site so that everyone is getting the same information at the same time.

Senator O'SULLIVAN: That makes sense. Anyone listening, register on AusTender and you will get notified. Is that your advice?

Ms Robertson: Exactly.

Senator O'SULLIVAN: That's good. In terms of the extension, have providers been notified?

Ms Spanos: We have written to providers and told them that there will be an extension of the program.

Senator O'SULLIVAN: Will they all get an extension, or is there any kind of selection?

Ms Spanos: We are yet to provide them with the deed and the extension. We will obviously consider that as we provide it. At this stage, we're looking to extend to pretty much all providers, unless there is a good reason not to.

Senator O'SULLIVAN: Sure. I appreciate that there might be other reasons. Can you provide the committee with a report on the consultation outcomes for the new program? According to the response to the previous question on notice, you did engage with some consultation between July and September.

Ms Robertson: There's a report on our website that actually details all the consultations. The summary is on the DEWR website under 'consultation', 'new voluntary parent support service'.

Senator O'SULLIVAN: Could you provide us on notice the hyperlink to that?

Ms Jensen: I note that a response to QON SQ23-001548 has an attachment A, which is that consultation summary. If you can find that—

Senator O'SULLIVAN: Which number is that? 1548? Is that what you said?

Ms Jensen: It is SQ23-001548. It has attached as attachment A the new voluntary service for parents and what we've heard from parents, which is the summary of the consultations. That also appears on our website.

Ms James: I have an annotated version of that in my brief, if you would like it, Senator.

Senator O'SULLIVAN: If that's easy to provide. Does that have the list of the meetings held, the attendees and themes of the discussions?

Ms Jensen: That QON did provide you with a list of the organisations we met with and the attendees. We've also got here an update with the dates of the meetings, if you would like that.

Senator O'SULLIVAN: I don't want it. I can look it up, of course. I will check it.

Ms Jensen: It's also attached to the QON, yes.

Senator O'SULLIVAN: Thank you. At the last estimates, the department confirmed that there were 53 ParentsNext providers. Are there still 53?

Ms Robertson: Correct.

Senator O'SULLIVAN: At the last estimates, Ms Robertson, you gave some figures in relation to the ParentsNext caseload since the program became voluntary. From 30 April to 30 September 2023, the caseload decreased from 96,764 to 88,560 total participants, with some 58,000 who are actively participating in the program. Are you able to provide us with an update since that time up to the latest figures you've got?

Ms Robertson: Yes. As at 31 December, it's 46,002. I would stress, in saying that—

Senator O'SULLIVAN: That's a big reduction.

Ms Robertson: that the way in which we have calculated those numbers is slightly different because there were system changes made on 1 October to actually look at how people are connecting with their provider.

Senator O'SULLIVAN: Right. If I am looking at that 46,000 figure—

Ms Robertson: It would be so close as to be almost immaterial.

Senator O'SULLIVAN: would I be right to compare it against the 58,000 that were actively participating previously?

Ms Robertson: Yes. That's correct, yes.

Senator O'SULLIVAN: Thank you. Again, Minister, this is to you. In relation to mutual obligations, this is now voluntary for this program. Do you acknowledge that having mutual obligation requirements in pre-employment programs motivates many participants to prepare themselves for a job so they don't need a transition to a JobSeeker payment and rely on this when the child reaches the relevant cut-off age?

Senator Watt: Well, I've said in this committee before—and I know the minister has said—that the government supports the concept of mutual obligations. But we do also recognise that the particular group we're

talking about here, being ParentsNext participants, have children under six. Many of them are single parents. We think that it is appropriate to be treating them in a particular way that recognises their personal circumstances.

Senator O'SULLIVAN: It justifies a need for a distinct program?

Senator Watt: Yes. Obviously, the government is in the process of designing that program at the moment. I think it's important to note that the group we're talking about here has different circumstances to many other people who are looking for work.

Senator O'SULLIVAN: Yes. But the government has taken the decision not to require people within that cohort to engage.

Senator Watt: Well, it's voluntary. We've said it's a voluntary program.

Senator O'SULLIVAN: Yes. And it will continue to be voluntary once the new program—

Senator Watt: That's my understanding.

Ms James: That's right.

Senator Watt: Our view—and this is supported by many stakeholders; there was a Senate inquiry—was that the system as it previously applied under the former government was overly punitive, threatening to cut parenting payments to parents of children under six years old. They are the reasons we decided to take a different path.

Senator O'SULLIVAN: Chair, that will conclude the coalition's list of questions.

CHAIR: Thank you, deputy chair. There's one very quick question from Senator Rice.

Senator RICE: Yes. It reflects more on the statistics that Dr O'Rance shared with us of almost half of people experiencing homelessness being suspended and 62 per cent of First Nations people being suspended. When I was asking questions in Services Australia this morning about homeless people, they said, 'Well, it's not up to them. It's up to Employment who decides who has their payment suspended and imposes the mutual obligations.' I understand that the application of demerits under the targeted compliance framework is an administrative decision. It's not one that's made under social security law. Department officials and Secretary, you are not obliged to impose those penalties. Why are we continuing with this punitive system for these cohorts while there is such evidence, Ms James, that they don't work and that we have an absolute blowout in call wait times at Services Australia? You have the ability to say, 'You can suspend mutual obligations for these cohorts.'

Ms James: Senator, I think we have traversed this territory before. This is a matter that is under discussion in the government. It is a matter for government.

CHAIR: That brings us to a conclusion of DEWR. That is the conclusion of outcome 1.

Senator Watt: Could we take a one-minute break, Chair, while we swap over?

CHAIR: We certainly can. Up next is the Fair Work Ombudsman. We will suspend.

Proceedings suspended from 18:08 to 18:12

Fair Work Ombudsman

CHAIR: I thank representatives from the Fair Work Ombudsman, including the Fair Work Ombudsman, Ms Anna Booth. Welcome. Do you have a short opening statement?

Ms Booth: Senator, I don't have an opening statement on this occasion.

CHAIR: Thank you. That's very efficient of you. We appreciate it.

Senator FARUQI: Good afternoon, Ms Booth and your team. Thanks very much for coming here today.

Ms Booth: Almost 'good evening', Senator.

Senator FARUQI: Yes, that's true, actually. It is 'good evening'. In January this year, the Australian Catholic University admitted to underpaying approximately 1,100 casual staff around \$3.6 million between 2016 and 2023. This is, as you know, the latest in the long list of organisations or universities that have stolen staff wages. The ACU has said that it provided details of the underpayment to the Fair Work Ombudsman. Again, we are seeing these grim consequences of a corporatised university system where staff are often left quite powerless at the hands of unis exploiting their labour. I find it very disturbing that while the vice chancellors are being paid \$1 million, ACU has underpaid 1,100 casual staff to the tune of millions. Have you looked into what has happened at the ACU? Is this university now part of your active investigations into wage theft?

Ms Booth: ACU is one of a number of universities that have self-reported. If you would like some more detail about ACU, I will need to go to the person who is responsible.

Ms Carey: Obviously, you are aware that ACU self-reported. It's quite early in the self-report so the matter is subject to investigation. We don't generally comment on the details of those investigations. But I can confirm that it is an active investigation.

Senator FARUQI: In October 2023 estimates, you said that the Fair Work Ombudsman had 23 active investigations into universities for wage theft and 10 of them were in the public domain. How many active investigations do you have at the moment?

Ms Carey: So it's now 24 active investigations. It is the ACU that has been added. That is the additional investigation that is in the public domain.

Senator FARUQI: So there's 11 now in the public domain?

Ms Carey: That's correct.

Senator FARUQI: None of those investigations have concluded since October?

Ms Carey: Not yet.

Senator FARUQI: Ms Booth, you will know that on 5 December an NTEU report on uni wage theft found that almost 100,000 university staff have suffered \$159 million in wage theft across 31 institutions since 2009. That is most of the universities. They say that the true amount is likely to be even higher, given ongoing investigations. Does your office have an estimation of the total amount and the number of staff who have been short-changed?

Ms Booth: Senator, we of course are aware of the NTEU report. We can't verify the methodology that has been used by the NTEU. What I can say is that from 1 July 2019 to 31 December 2023 the FWO has recovered \$143 million for employees in universities. The NTEU report cited the figure of \$159 million.

Senator FARUQI: You said since 2018?

Ms Booth: From 1 July 2019 to 31 December 2023, \$143 million has been recovered for employees of universities.

Senator FARUQI: And they are all investigations that have completed?

Ms Booth: They are the investigations that are—

Ms Carey: It is a combination of ongoing investigations and oversight of the remediation programs.

Senator FARUQI: Thank you. That report also says that high rates of casualisation in tertiary education drive wage theft, with casually employed workers more vulnerable to wage theft than those with secure employment due to power inequities and fear of dismissal or reprisal. Do you agree that the high rates of casualisation in universities is a key driver of wage theft?

Ms Booth: We certainly agree that there is a very high correlation between the incidence of casual particularly academic staff and the underpayments of wages, which has often occurred in the area of marking. There have been benchmarks sets, and payment has been made to a benchmark rather than to time spent in marking.

Senator FARUQI: The NTEU has estimated over 97,000 university staff. In the recovery of that \$143 million, do you have an estimation of how many staff that covers?

Ms Booth: I do have a figure for 2022-23, if that's helpful. That is a different, of course, recovery amount of \$96 million in that period for over 26,520 employees.

Senator FARUQI: Do you know what proportion of those employees were casual employees and in insecure work? Was it 100 per cent of them?

Ms Booth: I don't have that figure here.

Ms Carey: We'd have to take that on notice, Senator.

Senator FARUQI: Do you have any idea? Would it be most of them?

Ms Carey: I would be speculating. We'd have to take the question on notice.

Senator FARUQI: Take that on notice. If you have the figure of the whole \$143 million that Ms Booth said from 2019 until now, what staff numbers does that cover? What proportion is casual and otherwise? The NTEU report also says that rampant corporatisation and a lack of accountability of public universities has fuelled the fire of wage theft, including due to opaque governance arrangements and unaccountable university executives. Do you agree that the corporatised governance structure of universities has also contributed to wage theft? Have you looked into that?

Ms Booth: We have not looked into corporatisation. What we have been on the record as saying is that the management devolution to faculties, departments and academic managers being responsible for the payroll processes is a contributing factor.

Senator FARUQI: As you know, the government is yet to respond to the universities accord report. That is covering issues of wage theft and governance as well. Have you raised your concerns about casualisation and what you have just mentioned about academics now managing wages with the accord or with the education minister?

Ms Booth: We have met with the accord group on a number of occasions. We certainly have discussed our findings in relation to universities. We have discussed the subject of correlation with casual employment and, as I said, the devolution of management in universities without governance oversight that is adequate.

Senator FARUQI: Chair, this is my last line of questioning. In October estimates, your office said that all six of your teams were engaged in investigating wage theft in universities and that the workload for these investigations was significant.

Ms Booth: Yes.

Senator FARUQI: Is it possible to provide an update on the workload at the moment? Has it increased since October, or is the scene still the same?

Ms Booth: I will ask Ms Carey, who is the strategic lead for our university strategy, to respond to that.

Ms Carey: I would say, Senator, that it's around the same. We've obviously got the addition of the ACU self-report, so it goes into the pool of investigations that, as we've said previously, is shared across our compliance and enforcement teams across branches.

Senator FARUQI: So the six teams?

Ms Carey: Yes.

Senator FARUQI: Are you able to estimate at all the proportion of the office resources or the amount of staff time that is dedicated to these investigations?

Ms Carey: We don't record time in that way. It would be very difficult to provide an accurate assessment of that. The way the investigations go, there are busier times when there is receipt of information and obviously other work that is being done, so I don't think we could give you an amount.

Senator FARUQI: But there is no estimation over a period of time as to what kind of resources are being dedicated? Obviously people have their work and their workload and can report on that. So there is no way to estimate?

Ms Carey: There is a way to estimate, I guess, generalised across the time.

Senator FARUQI: Generalised is okay. Take it on notice.

Ms Carey: I would have to take on notice whether we can and what information we can provide.

Senator FARUQI: I would be very grateful for that. The last question from me is, again, about October estimates. I recall that you seemed to agree with me at that time that to address wage theft in a systemic way, the Fair Work Ombudsman cannot keep relying on self-reporting from universities and that the ombudsman should be better resourced to do proactive audits into universities. I wonder if you have asked the responsible minister for more resourcing to be able to do those proactive audits.

Ms Booth: We haven't asked the minister or the department for additional funds in relation to universities in particular. What we have done, though, is asked the university community to contribute. I don't mean dollars. I mean to contribute to improving the culture of compliance and the practices. We are in the process of setting up a reference group with the NTEU and other relevant unions and the Australian Higher Education Industrial Association. We will be talking about the kind of systemic interventions that collaboratively can be undertaken between the Fair Work Ombudsman and the university employer and employee community.

Senator FARUQI: But that won't allow you to do audits, though. Whatever arrangements you are trying to set up, will that allow you to do proactive audits, though, with the current resources?

Ms Booth: If proactive audits were called for, we would not be inhibited from doing them. Our interventions when non-compliance is suspected are tailored to the particular circumstance. Certainly in other sectors, of course, we do that. I think the nature of the university sector and the degree of self-reporting creates a different kind of impetus to us. For myself, I am really keen to hear from the unions and the employer organisations about the additional interventions that the Fair Work Ombudsman could undertake that would support a culture of compliance in this sector and could see us end the occurrence of underpayments in this sector. It is a finite group

of institutions. We ought, with goodwill and intelligence, be able to really see a way through this to not have these kind of self-reports coming out for years in the future.

Senator FARUQI: Thanks very much.

Senator ROBERTS: Thank you for being here again, Ms Booth and Mr Scully.

Ms Booth: A great pleasure, Senator Roberts.

Senator ROBERTS: I refer to the Fair Work Ombudsman website and the black coal mining industry award that asks 'Pay and entitlements less than the award?' The Fair Work Ombudsman's answer is, and I quote, Employees must be paid at least award pay rates and entitlements.

There's another instruction or invitation:

If your pay rates are less than the award, go to Help resolving workplace issues to follow our step by step guide on how you can fix it.

Does the Fair Work Ombudsman have a standard process or template it uses to assess whether an employee is being paid less than the award?

Ms Booth: The Fair Work Ombudsman has a pay calculator that allows anyone—an employee or an employer—to provide information as requested. It calculates the correct award rate. That is the case for all sectors.

Senator ROBERTS: So it doesn't have a template, but an individual can step his or her way through it?

Ms Booth: I think the pay calculator could be described as a template. But it's interactive. It's a series of smart forms that you complete and then you get a response at the end which tells you what the award rate is. For further information on the pay calculator, I could turn to my supporters here. Mr Scully, would you like to talk more about the pay calculator for Senator Roberts?

Mr Scully: We call it PACT, which is pay and conditions tool. It is an online calculator that has hundreds and thousands of pay combinations and calculations that can be provided and is tailored to the particular award and classification and the like that the user keys in. It is a very popular tool. I think last financial year, something like 6.4 million people used it. There were something like 7.1 million pay calculations provided, I think, for the year, so it's widely used by the community.

Senator ROBERTS: So there's a template that an individual can attempt to check?

Mr Scully: Correct.

Senator ROBERTS: Is that tailored to cover pay rates subject to the coverage of the black coal mining industry award and the rosters that are used in Central Queensland and Hunter Valley?

Mr Scully: It covers all awards, Senator.

Senator ROBERTS: I know it is a very complex situation involving the 12-hour rosters in the Hunter Valley and Central Queensland.

Mr Scully: I would need to check that. I don't know that it would go to the rosters. It is more awards and classifications. It goes to weekday rates and weekends and shift penalties and the like.

Senator ROBERTS: It's a very complex roster. People have difficulty. Would the Fair Work Ombudsman agree to undertake an assessment with regard to the application of coal enterprise agreements and provide the outcomes to me?

Ms Booth: The Fair Work Ombudsman certainly will respond to any employee who has a question. We will provide information.

Senator ROBERTS: Is that current employees or can they be past employees?

Ms Booth: I will ask Mr Scully to answer that question on the basis that the info line is available to anyone. We don't ask people to verify their employment status. I'm going to say that anyone can ring the info line and ask a question. Would that be right, Mr Scully? You would not have to be an employee to ring the info line and ask a question? We don't seek to verify people's employment status?

Mr Scully: That is correct.

Senator ROBERTS: I wasn't thinking about calling up myself. I was thinking about past people who have left the industry but have been underpaid dramatically.

Ms Booth: So when a call comes, information is given. If that information doesn't satisfy the caller and the caller still has a dispute that they regard as unresolved, we call it a request for assistance. We identify that and we move it through to an assessment team. That assessment team will speak directly with the employer and the

employee and attempt to resolve the matter. I think you also know that it will go forward beyond that through inspector support to our investigator and inspectors to conduct investigations should it not be resolved by the assessment team. That is the pathway.

Senator ROBERTS: Thank you. By the way, a team of workplace lawyers, consultants and coalminers reviewed and analysed five significant labour hire coal mining enterprise agreements and the work roster that are operating in Queensland and the Hunter Valley. The CFMEU and the Mining and Energy Union were involved in, or were a party to or signed off on, all five agreements. The Fair Work Commission approved all five agreements. The enterprise agreements all underpay the award. The core staff agreement, for example, 2018 enterprise agreement yearly underpayment is estimated at \$22,600. The FES agreement 2018 yearly underpayment is estimated at \$27,500. The WorkPac agreement 2019 yearly underpayment is estimated at \$33,500. The Chandler Macleod agreement 2020 yearly underpayment of casuals is estimated at \$39,341. The TESA Group agreement 2022 yearly underpayment was estimated at over \$40,000. But let's come back. Between 2012 and the present day, could you please provide the number of requests for assistance made regarding underpayments by the Chandler Macleod group relating specifically to the black coal mining industry award and associated enterprise agreements?

Ms Booth: I think we'd have to take a question like that on notice. We collect information at the info line on a range of demographics. I wouldn't be sure whether we could go to that degree of disaggregation. I think it is important to reinforce that the Fair Work Ombudsman enforces the law as it exists. As you know, a fair work instrument includes an enterprise agreement that has been approved by the Fair Work Commission. We don't play a role in interrogating the approvability or otherwise of such an instrument. Once it is in existence, we must take it on its face value.

Senator ROBERTS: Thank you. You can take it on notice. Again, in relation to Chandler Macleod and the black coal mining industry award, how many requests for assistance were closed with the following general determinations—under the award, you can be casual; the 2007 workplace agreement covered your employment; or the insertion of section 15A into the Fair Work Act determines you are a casual? You can take that on notice, too, please.

Ms Booth: It would certainly be a degree of detail that I do not have at my fingertips. Is there anything, Mr Scully, you can say about that?

Mr Scully: I can only advise that from July 2019 to 31 December 2023, we resolved 30 disputes that relate to the coal mining industry. I haven't got any further details about that. There are 30 over the last 4½ years.

Senator ROBERTS: Thank you, Mr Scully, that's in coal. This is specifically Chandler Macleod and the black coal mining industry award. You will have to take this on notice too. How many proceeded to the investigation stage? Have any of them not been formally closed? If so, which ones? Thank you, Mr Scully. Thank you, Ms Booth. Thank you, Chair.

Senator BROCKMAN: I'll try to whizz through these as quickly as possible. They are relatively straightforward, I think. In questioning earlier, the department confirmed that the review into the review is still with you. When do you expect the review into the review to be reviewed?

Ms Booth: I take it that you're referring to the review of the Fair Work Ombudsman undertaken by KPMG at the request of the department. That document was provided to the Fair Work Ombudsman, to me, actually, by the minister in mid-January. The review contains a worthwhile analysis of our organisation. Since we're in the process of preparing our corporate plan for 2024-25 and doing so in a highly consultative way, where we don't only work with our senior leadership but take into account feedback that we receive from our staff and from their representative organisations, such as the agency consultative forum and the CPSU, we're embarking on that process. We started it on 30 January and we intend it to finish it by 31 March. We want to respond to the KPMG report in the context of the corporate plan, so taking a whole-of-agency view. We would like the opportunity to have the report considered by our people over that period of time. Because we will report back to the minister and the department will decide on the publication, we are anticipating and welcome the publication of the report as well as our response to it and the kind of objectives, activities, performance measures, structure and resourcing that we will need for the coming year and, indeed, the years ahead.

Senator BROCKMAN: So a report commissioned by the department that came direct to you or went to you and the department?

Ms Booth: I might just ask some advice on that. I'm assuming it went to the department. Would that be correct? Mr Campbell will address that in more detail.

Senator BROCKMAN: Does it need a detailed answer, Mr Campbell?

Mr Campbell: It depends. You asked a question about the department providing a report to us?

Senator BROCKMAN: Yes. Did the department get the review? It has been handed to the FWO.

Mr Campbell: In evidence from the department before, it came from the minister to us. We had obviously seen earlier versions of the report as part of the development of the content. Ultimately, it's the department's report to provide to the minister and for us to consider and respond.

Senator BROCKMAN: Is it the department's report that you have given to the FWO?

Mr Campbell: That has been given to us to act and respond on.

Senator BROCKMAN: Okay. Is this the final version?

Ms Booth: Yes.

Senator BROCKMAN: Has this been provided to stakeholders for feedback at this point?

Ms Booth: Not at this point, no.

Senator BROCKMAN: Is that going to happen before 31 March?

Ms Booth: It certainly would be my intention to largely develop our response internally and to consult stakeholders about our objectives and our activities but not to provide them with the actual KPMG report. That would become available to them when it becomes available to the public.

Senator BROCKMAN: You're not planning to give the report to stakeholders for their input, but you're planning to talk—

Ms Booth: That's not my plan at the present time, no.

Senator BROCKMAN: But you're planning to talk about your potential response to the report?

Ms Booth: Yes. We're taking the content of the KPMG report into consideration as we develop our own strategic objectives and as we design the activities that we will carry out to meet those strategic objectives. A lot of those activities may well be activities we already carry out. Because we had a statement of expectations and a statement of intent was returned to the minister in December, it may be—I can't say for sure because we're still in the process—that there's some new activities that we want to undertake. Part of our commitment is to work in a collegial and collaborative way with stakeholders. I would envisage taking the objectives and activities for discussion with stakeholders. I wouldn't envisage giving them the KPMG report and saying: 'Here's a report. Here are activities that you can compare.' It's more the overarching direction and really the investments that the Fair Work Ombudsman will make in new areas that I think they will be interested in.

Senator BROCKMAN: Ms Booth, can you confirm whether the report proposes significant cuts to your operations?

Ms Booth: There are what I would consider three major areas in the report. There are more than three, but these are the ones that probably take into account the sort of functions of the organisation. KPMG have observed aspects of our structure, of the way in which we organise ourselves and where we invest. They've nominated some areas of duplication that we might consider aggregating. They've talked about things such as spans of supervision, which is also, of course, something that's on the mind of the Australian Public Service Commission. That's one area. That's obviously something that any sensible organisation doesn't actually deal with until after you've looked at what kind of objectives and activities are you going to undertake.

Another area is our office footprint. I guess you might call it low-hanging fruit in the sense that we have our offices and the world changes all the time in terms of office usage. They have suggested to us that we have a good look at that. We were always going to do that anyway. They have also talked about our shared services that we have with mainly the other Commonwealth entities and whether or not there's some savings that we might make there. They've also made some very helpful comments about the value of collaboration. Pleasingly to me, they have picked up the direction and thrust of our statement of intent. They've drawn to our attention opportunities, in fact, as they're described for collaboration with organisations such as the Fair Work Commission and the workplace participants. Senator, I recall that you were with us in October. You'll remember my opening statement went to both those areas for collaboration. So they are very welcome recommendations. There are some more, but we want to look at it all.

Senator BROCKMAN: In the interests of trying to get through this, as I said to the chair I would do by dinner, has the report recommended an expansion of the Employer Advisory Service?

Ms Booth: I honestly can't recall whether they did. I don't believe so.

Senator BROCKMAN: I'm happy for you to take it on notice if you need to.

Ms Booth: I don't think we need to. We are pretty sure they didn't go to that level of detail. By the way, we love the Employer Advisory Service very much.

Senator O'SULLIVAN: They certainly have been provided funds to continue.

Ms Booth: Well, unrelated to the KPMG report, obviously we're aware that the government announced in a media release its intention to support us to continue the Employer Advisory Service, which you'll recall was a terminating measure. We do need funding to continue it. Whether that funding will allow us to expand I think remains to be seen. But we believe it's a very worthwhile intervention in building a culture of compliance in the regulated community.

Senator BROCKMAN: In responding to the report, when you go back to the minister, has the minister indicated anything about the response he wants, or is that completely up to you?

Ms Booth: No. Completely up to us. His letter to me simply said, 'Please tell me when you're going to respond.' We've done that.

Senator BROCKMAN: That's the end of March?

Ms Booth: That's the end of it for the time being. We're in an interim situation.

Senator BROCKMAN: Noting that you have taken over significant sections of workplace relations regulation with the abolition of the ABCC, do you have any concerns that additional cuts will impact access to your service?

Ms Booth: In fact, the savings that the report pertains to have already been made. I might ask Mr Campbell to elaborate on that. If you do have any further questions about the ABCC, I would look to Ms Carey to commence that response.

Mr Campbell: Senator, the budget measure looked to apply a 2.5 per cent adjustment to our budget for the 2023-24 year and forward years, so it has effectively been accounted for already. We have our appropriation in which to design and execute our operations going forward.

Senator BROCKMAN: You may need the other officer at the table. Have you finished filling roles involved in investigations of the construction industry that you were provided as part of the abolition of the ABCC?

Ms Booth: I don't believe we have. For detail, I'll turn to Ms Carey to comment on that.

Ms Carey: Obviously, as we've explained before, we regulate all sectors of the economy. We don't have a specific team dedicated to the building and construction industry. But with the resources provided in the transfer after the abolition of the ABCC, we've allocated resources into our inspectorate and other supporting functions. At this stage, I think when we were last here, 17 additional staff had been recruited. That increased to 22 staff as at December 2023.

Senator BROCKMAN: Out of approximately how many?

Ms Carey: That's 22 into the industrial compliance branch and additional inspectors who work also across all industries into Mr Scully's branch.

Senator BROCKMAN: What was your expectation of that number? If you were at maximum capacity, would that number be 30, would that number be 25, would that number be 40? You must have recruitment targets.

Ms Carey: We don't have recruitment targets. We funded ASL associated with the transfer.

Senator BROCKMAN: You've got 22. What are your funded ASLs?

Ms Carey: I'll clarify. That is 22 in the industrial compliance branch. There have been additional inspector resources allocated into the compliance and enforcement branch and other additional staff recruited into our legal and other supporting teams as part of the 80 ASL over the forwards. It was allocated to the Fair Work Ombudsman at the abolition of the ABCC.

Mr Scully: From my perspective, in the compliance and enforcement group, there are ons and offs. It goes into a big pool. I can't tell you how many we recruited specifically as a result of the ABCC funding coming in. I would have to take that on notice if you want to go down that pathway. As I said, there are ons and offs all the time in our funding. As Ms Carey has correctly indicated, we manage to our labour budgets and our ASL allocations, which is a mix and match of measures coming in and out.

Senator BROCKMAN: How widely has the report been distributed within your organisation? On that basis, how have staff expressed concerns over the report's recommendation?

Ms Booth: The staff have been provided it through a weekly newsletter that I author called *Snapshot*. Every member of the Fair Work Ombudsman staff has had access to the report. I can't tell you that they necessarily have

actually read it. But we have also received quite a lot of feedback about it. Pleasingly, it is a very active degree of engagement about it. It has all been very constructive. It has been a mix of feedback. Staff members agree with certain aspects of it and they like the direction the report has taken. They make suggestions to me about how our corporate plan should incorporate some of those directions. Some express concern about specific issues, such as their particular office in their particular city not having enough desks, so they say, 'Please stay away from our office if you're going to reduce the office footprint.' It's a range of comments. I don't detect—and genuinely I am sensitive to staff concern—any anxiety. Since I have been at the Fair Work Ombudsman I have been at pains to assure the staff that whilst change is ever present in our lives, they will not be surprised. We will engage with them in a range of ways so that there will be no surprises about the things we do. Their views will be reflected in the decisions we make. I would like to think that in part that has resulted in concrete, positive contributions rather than any fear that is apparent.

Senator BROCKMAN: Mr Scully, this might be for you. Since the functions of the ABCC have been transferred, how many site visits have been undertaken?

Ms Booth: It's actually a question for Ms Carey.

Senator BROCKMAN: Sorry, Ms Carey.

Ms Carey: It might be a question for both of us. The industrial compliance branch focuses on all sectors of the economy. In relation to industrial matters and workplace protections, 17 inspections have been undertaken in the building and construction industry. A further three site inspections in other sectors have occurred. We've also worked with Mr Scully's team in some proactive site inspections in relation to wage underpayments.

Senator BROCKMAN: Do you have anything to add, Mr Scully?

Mr Scully: If I can find the page, I can give you the total number of site inspections that have been conducted this financial year. It's 492 in total. That includes the work that Ms Carey's team has done.

Senator BROCKMAN: Thank you very much. I have some questions on your meetings with industry and employee and employer associations, Ms Booth, but I might put them on notice for the benefit of time. Since October 2022, how many times has the Fair Work Ombudsman been invited to intervene in right of entry permit applications by the Fair Work Commission?

Ms Carey: I might be able to assist. It was six. Since the last time we were here, there have been an additional three requests or opportunities.

Senator BROCKMAN: Is that publicly available information? Can you give us any details on those?

Ms Carey: On the applications?

Senator BROCKMAN: On those three?

Ms Carey: I would have to take that on notice, unless Ms Volzke has the list.

Senator BROCKMAN: I'm happy for you to take that on notice, please.

Ms Carey: We can take that on notice.

Senator BROCKMAN: Since you took up the appointment, how many times has the FWO been asked to intervene in right of entry permit applications?

Ms Booth: I don't know whether the three are from 1 September. I suspect that six were prior to 1 September. Would that be right, Ms Carey? It would be three additional occasions in the last four months of the year?

Ms Carey: Since last October.

Ms Booth: That would be three.

Ms Carey: It isn't a request to intervene, it's an opportunity to provide information or make submissions to assist the commission in informing its decisions.

Senator BROCKMAN: How many times have you provided it? Do you always provide a submission?

Ms Booth: No.

Senator BROCKMAN: How many times have you provided a submission out of those nine?

Ms Booth: We haven't provided any submissions.

Senator BROCKMAN: Is there any reason why you haven't provided any submissions?

Ms Booth: Yes, there is a good reason. The good reason is that we only provide submissions when we can provide the Fair Work Commission with information that they would otherwise not be able to obtain. We've not

been in a situation like that. If we had, for example, compliance history information about a particular applicant, we would definitely provide that to the commission. But if we don't, there's nothing to provide.

Senator BROCKMAN: It seems a bit odd that the Fair Work Commission comes to you, effectively, and asks you about these right of entry permit applications and you have never provided a submission.

Ms Booth: They're not asking us for our opinion about the person. They're asking us whether we have any factual material that would shed light for them on the person. If we don't, we don't.

Senator BROCKMAN: And you've never had any factual material? Right.

Ms Booth: I might get Ms Volzke just to bolster that in case I have said anything incorrect.

Ms Volzke: No, it was all correct. In addition, it's information where we would be uniquely placed to provide that, which is usually compliance history, so where there have been contraventions of any workplace laws. That's the sort of information that we'd be able to provide to the commission to make sure. It's the Fair Work Commission who is tasked, obviously, under the Fair Work Act to make that determination about whether or not someone is a fit or proper person to hold a permit.

Senator BROCKMAN: In relation to active cases taken over from the ABCC, how many would that be?

Ms Booth: Ms Volzke is going to respond to the ABCC questions.

Mr Scully: I can start. There are two components to this. One is the time and wage investigations that were on hand with the ABCC at the time of the change. There were 31 matters that transferred to the FWO. Of those, 29 have been closed. There was \$85,000 recovered under those matters.

Senator BROCKMAN: Is closed different to discontinued?

Mr Scully: Yes.

Senator BROCKMAN: So many have been discontinued?

Mr Scully: Closed means finalised.

Senator BROCKMAN: Closed means actively finalised?

Mr Scully: Yes. None of those matters have been discontinued.

Senator BROCKMAN: So the other two are still afoot?

Mr Scully: They're afoot, yes.

Senator BROCKMAN: And none have been discontinued?

Mr Scully: That's right. That's for the time and wage matters.

Senator BROCKMAN: And the second category?

Ms Volzke: In relation to the active ABCC litigations that came across on abolition, there were 41 of them. As of today's date, 29 of them have been finalised and 12 remain ongoing.

Senator BROCKMAN: Again, that's finalised as in successful resolution, from your perspective?

Ms Volzke: Yes. There have been a number of discontinuances as well.

Senator BROCKMAN: On notice, can you give me the discontinued ones, the ones not continued with by the FWO?

Ms Volzke: Certainly. There was a previous—

Senator BROCKMAN: Or you can just tell me, if this is publicly available?

Ms Volzke: Yes. It absolutely is. We have all of that information in our FWO news.

Senator BROCKMAN: Is it easily publicly available?

Ms Volzke: It's absolutely publicly available. It's on our website. I have the nine names there if you would like them.

Senator BROCKMAN: If you can get them to us on notice, that would be great.

Ms Volzke: Sure.

Senator BROCKMAN: Thank you very much.

Senator BARBARA POCOCK: Thanks for being here. Congratulations on your appointment, Ms Booth. I'm sure you'll make a real contribution.

Ms Booth: And of yours, Senator.

Senator BARBARA POCOCK: Thank you. I want to ask a question about workers with low power in our society. I'm referring particularly to a report out of the Grattan Institute in 2023 in relation to migrant workers in particular. It showed that they were twice as likely to be underpaid as people who have not had an immigrant experience. Sixteen per cent of them were paid less than the minimum wage. That's a big challenge in our workforce. Too few underpaying employers, it seems to me, are getting caught. How are you thinking about shaping your structure and processes in response to this documented need?

Ms Booth: The circumstances that you are outlining are exactly the reason why migrant workers, particularly temporary migrants, are one of our enduring priorities at the Fair Work Ombudsman. Temporary migrants make up around seven per cent of the Australian workforce but they account for 22 per cent of all the litigations that the Fair Work Ombudsman commences. That is for the current financial year—so it is only six months—to December 2023, so it is a big number. Seven commenced. They were 43 per cent of all court ordered penalties. An amount of \$1,322,052 has been recovered in penalties. Interestingly, they also make up 24 per cent of all anonymous reports received, and 1,983 of those are in the language of the person who is making the report. You asked me how we are looking to shape the organisation. Definitely one of the key objectives of our organisation is and, I believe, will be—it may be reframed as we do our corporate plan—to continue to focus on migrant workers. It's very much part of the duality of the organisation, which is to focus on providing information, education and advice on the one hand and to do that in language and to reach out to community based organisations and to be present in the community in a non-threatening way. Our compliance and enforcement activity is to focus on those sectors. One of the indicia for us to choose a priority sector to conduct, for example, proactive audits, as we do in the fast food, restaurants and cafe sector and the agriculture sector, is the high proportion of migrant workers, particularly temporary migrants. I'd say that we'll continue to shape the activities of the Fair Work Ombudsman in recognition of the vulnerability of those workers.

Senator BARBARA POCOCK: Great. It's great to hear you doing all those measures, which will be a clear report card on how effectively your reshaping addresses that problem. I want to go to the question of penalties. This is my second question—I have a KPI myself to get it all done in three minutes! Total penalties have fallen in recent years, I understand. Do I have that correct? There was \$4 million collected in penalties on employers in 2021-22 and \$6 million going back to 2019-20. Is that the trend—that the penalties collected have fallen? Have you been able to reverse that trend more recently? How is that tracking?

Ms Booth: I'm going to ask my team here to look for that data in terms of the trend. I think it's important to point out that whilst penalties are one indicia of action, there's a whole pipeline of activity.

Senator BARBARA POCOCK: Absolutely.

Ms Booth: It goes without saying that Pollyanna is sitting here in front of you. Our greatest objective is to have voluntary compliance. When that doesn't occur, it's our objective to point out to employers where they have erred and to support them in resolving that. Whilst it's probably true to say that the large area of self-reporting that we get probably isn't concentrated in the area of work that we're talking about, there are still migrant workers whose employers self-report and we recover underpayments for them. Probably one of the best figures we could proffer would be underpayments. Sitting here right now, I can't tell you whether we disaggregate that as between all workers in general—

Senator BARBARA POCOCK: I was asking about migrant underpayments, actually.

Ms Booth: And migrants. You were asking me about penalties.

Senator BARBARA POCOCK: And recoveries.

Ms Booth: Ms Volzke, I'm just going to ask if the penalties we've achieved in court reduced over the period, as the senator suggested?

Ms Volzke: Yes, Senator Pocock, it has. But there is a variety of reasons for that. Obviously, the penalties are determined by the court. The court will take into account the particular facts and circumstances of that case, including the conduct, obviously, and the circumstances and nature of the respondent as well. Another component is, obviously, the increase in the compliance notice litigations that we've undertaken, which I think Ms Booth referred to as well. They're often only for one contravention, so they're more likely to have a lesser penalty amount attributed to them as well.

Senator BARBARA POCOCK: If you could provide on notice how that is tracking and that explanation or any breakdown, I would appreciate it. Thanks for your answers.

Ms Volzke: Senator Sheldon, I was wondering if I might return. I have an additional piece of information for Senator Brockman.

CHAIR: If you could, that would be wonderful, thank you.

Ms Volzke: I can confirm that we have in one of those right of entry permit matters actually provided some additional compliance history to assist in the Fair Work Commission's deliberation in relation to that one matter.

Senator BROCKMAN: Thanks. Insofar as you can—and I suspect that there may be some confidentiality involved—can you outline the kind of material you provided?

Ms Volzke: It will be relevant as in whether there has been a compliance history event—so a finding of a contravention of a workplace law.

Senator BROCKMAN: If you can provide that on notice.

Ms Volzke: On notice.

Senator BROCKMAN: Consider whether you can provide that on notice. If you can, please provide it on notice.

Ms Volzke: Sure.

CHAIR: Thank you very much to the Fair Work Ombudsman. I now call the representatives from the Fair Work Commission.

Fair Work Commission

[19:03]

CHAIR: Welcome, Mr Furlong. I am sorry that we're running a bit late. Would you like to make a short opening statement?

Mr Furlong: Good evening, Chair. No, thank you.

CHAIR: You already have a tick.

Senator ROBERTS: Thank you all for being here. Good to see you again, Mr Furlong. When the Fair Work Commission assesses the application of the better off overall test, the BOOT, to a proposed enterprise agreement, would it be a normal expectation that the pay rate under the enterprise agreement should be clearly equal to or above that of the relevant award?

Mr Furlong: As you are aware, and as we have discussed in previous estimates, the agreement making process involves a statutory decision-holder, a member of the commission, looking at the facts of the matter and then applying a legal test, the better off overall test. There are some other elements that they are required to satisfy. On the basis of that, they make a determination about whether or not the agreement is to be approved or not.

Senator ROBERTS: Would it be a normal expectation that the pay rate under the enterprise agreement should be clearly equal to or above? That is a normal expectation?

Mr Furlong: Yes. The better off overall test—

Senator ROBERTS: Thank you. Are there circumstances in which, when considering the better off overall test, the BOOT, for an enterprise agreement, the Fair Work Commission would not do a comparison against the relevant award?

Mr Furlong: The answer to that question is that there would be an award that they will refer to in terms of the application of the better off overall test. Through that process, they will determine whether or not that agreement as made is better off overall than the underpinning agreement.

Senator ROBERTS: So they would do a comparison against the award?

Mr Furlong: Yes.

Senator ROBERTS: Thank you. If the enterprise agreement pay rate were not equal to or above the relevant award, and instead paid substantially less than the award, what would be the criteria used to justify that the enterprise agreement still passed the better off overall test, the BOOT?

Mr Furlong: It's not a line-by-line comparison.

Senator ROBERTS: No. What would be the criteria? Broad criteria? Line by line? Whatever you want?

Mr Furlong: It is the better off overall test. The Fair Work Act prescribes what the member must take into consideration in determining whether or not that agreement meets the requirements that have been approved.

Senator ROBERTS: Are pay rates prescribed in there?

Mr Furlong: They will be. The decisions of the members—the independent tribunal members—will outline the reasons for the approval of those agreements, including whether or not they satisfy the better off overall test.

Senator ROBERTS: That is a wonderful point. Thank you so much. Even if the award excluded certain classes of employees from its provisions, would that exclusion create the legal circumstances to pay such excluded classes of employee less under an enterprise agreement than what they would or could earn under the award if the class of employees were not award excluded? Just to be clear, I'm not posing a theoretical question here. I refer to the black coal mining industry award exclusion of casuals as an example. Casuals are not specifically referred to in the black coal mining industry award.

Mr Furlong: I understand that. As we have discussed in previous estimates, the fact that there are no casual coalminers under the black coal mining award doesn't preclude an enterprise agreement being made.

Senator ROBERTS: I understand that. I am talking about the pay. If an award excluded certain classes of employees in the coal industry—casuals—from its provisions, would that exclusion create the legal circumstances to pay such excluded classes of employee less under an enterprise agreement than what they would or could earn under the award if the class of employees were included in the award?

Mr Furlong: Senator, I have tried as hard as I can to be helpful in terms of the second part—

Senator ROBERTS: You are being helpful.

Mr Furlong: that we have provided. My role as the general manager is to provide administrative support to the president on the efficient running of the tribunal, in essence. The matters that you are going to now traverse instances or occurrences that may end up before tribunal members for their determination. I can't answer that question.

Senator ROBERTS: Okay. That's fine. Thank you. Minister, what would be the attitude of the government where workers working under enterprise agreements were paid less than the award even though the workers were doing exactly the same job they would under the award?

Senator Watt: Well, I would want to know more about the circumstances there. In general, the idea behind enterprise bargaining is for people to obtain pay and conditions above the award level.

Senator ROBERTS: Why is Minister Burke shirking his responsibilities and refusing to provide justice for thousands of workers caught in the permanent casual rot that is the result of enterprise agreements agreed between the CFMEU, now known as the Mining and Energy Union, with some labour hire firms, all with the Fair Work Commission's approval? When will Minister Burke address this, the largest wage theft in Australian history?

Senator Watt: Well, as we've discussed many times, Senator Roberts, Minister Burke is not avoiding that. In fact, Minister Burke has led the government's efforts to address and fix the permanent casual rot, including through the legislation that we passed only last week. I actually don't remember how you voted in that legislation.

Senator ROBERTS: I voted against it because it would not address the issue that I am talking about right here. It buries the issue and buries the culpability of the unions.

Senator Watt: I thought you probably voted against that legislation last week, because One Nation has pretty consistently voted against the legislation that has been designed for workers.

Senator ROBERTS: We vote against it, as I explained, because it doesn't address the issue. It buries the issue.

Senator Watt: Just as you voted against the closing loopholes bill last year, which is all about trying to put labour hire workers on an even footing with other workers.

Senator ROBERTS: Not true, Minister.

Senator Watt: Well, One Nation has consistently voted against these things.

Senator ROBERTS: You are consistently avoiding the issue of thousands of casual coalminers in the Hunter Valley and Central Queensland, our own state. I want that addressed.

Senator Watt: I'm not. We're not. We've gone over this ad nauseam.

Senator ROBERTS: To make a point here concerning the validity of an enterprise agreement that removes the minimum statutory protections of any award, I quote the following paragraph from the full bench Federal Court decision in *One Key Workforce Pty Limited v Construction, Forestry, Mining and Energy Union*, decided in 2018. I go to paragraph 227. This is from the court decision:

It is uncontroversial that, where a statute requires an administrative decision-maker to reach a state of satisfaction about a matter, the opinion as to the state of satisfaction must be reached by a rational, reasonable and logical process.

I will go to paragraph 204. I quote:

It is an error of law to fail to have regard to relevant material in a way that affects the exercise of power. An administrative decision-maker who makes such an error exceeds his or her authority and acts without jurisdiction.

I'm going to read—

CHAIR: If we keep to the time line, I am giving you a heads-up.

Senator ROBERTS: I'm nearly done. I have two questions and I will read some material. We had a team of workplace lawyers—I emphasise the plural—consultants and coalminers review and analyse five significant labour hire coal mining enterprise agreements and their work roster, which is complicated. The CFMEU, now the Mining and Energy Union, was involved in, was a party to or signed off on all five agreements. The Fair Work Commission approved all five agreements. The enterprise agreements all underpay the award dramatically. Specifically, in the core staff enterprise agreement 2018, the yearly underpayment for casuals working under that award is estimated at \$22,623. It is wage theft. The FES agreement in 2018 has yearly underpayment estimated at \$27,563 of wage theft for casual workers. The WorkPac agreement in 2019 showed yearly underpayment for casuals estimated at \$33,555. Wage theft. The Chandler Macleod agreement 2020 has yearly underpayment estimated at \$39,341. Wage theft. The Tesla group agreement 2022 yearly underpayment is estimated at \$40,645. Wage theft. The Fair Work Commission has ruled that at least five black coal mining industry enterprise agreements exceeded their authority. Minister, what avenues will Minister Burke and your government take to restore basic entitlements lost under agreements that the CFMEU, the Mining and Energy Union, signed with various employers and that the Fair Work Commission approved?

Senator Watt: Well, Senator Roberts, I have personally sat through probably at least half a dozen estimates committee hearings where you have raised these issues repeatedly. Various officials have answered these questions repeatedly. The matters have been investigated, as I understand it, and dealt with. I understand that you are not satisfied with those answers, but I can't add to what we've said about these things before.

Senator ROBERTS: Does it bother you that I have explained that the Fair Work Ombudsman has used a fraudulent document that has been deemed fraudulent by the Australian Taxation Office as evidenced against five others? It is solid evidence, including a court hearing.

Senator Watt: If that were true, of course I would be bothered by it.

Senator ROBERTS: You would be. Okay.

Senator Watt: But I'm not sure that is true.

Senator ROBERTS: Okay. This is my last question. Why has the process that the Fair Work Commission has adopted since 2010 in approving coal industry enterprise agreements that remove the minimum statutory protections of the black coal mining industry award clearly devoid of any form of rationality, reasonableness or logic?

Senator Watt: What was the beginning of that question?

Senator ROBERTS: Why is the process that the Fair Work Commission has adopted since 2010 in approving coal industry enterprise agreements that remove the minimum statutory protections of the black coal mining industry award—its entitlements, pay rates, the wage theft that I've just illustrated—clearly devoid of any form of rationality, reasonableness or logic, as the Federal Court requires?

Senator Watt: That is obviously your opinion, Senator Roberts. I know that it is a strongly held opinion. I don't think that opinion is shared more broadly.

Senator ROBERTS: Thank you, Chair.

Senator BARBARA POCOCK: Thank you all for being here. It's great to see you here. As you are well aware, the Greens secured an amendment to the government's closing loopholes bill No. 2 to introduce a new very reasonable and modest right for workers to say no to unreasonable repetitive contact from their employer. Our amendment entails additional work for the Fair Work Commission by assigning it responsibility for creating guidelines on how the right to disconnect will work, which will involve consultation with employers and employees. It includes the following: the right to disconnect across awards; tailoring the right to the variable nature of work in different awards and agreements in industries; and the possibility down the track, after a long pipe of discussion in the workplace and lots of talk where it's judged that the behaviour continues unreasonably, of the opportunity to issue stop orders for breaching and resolving disputes. Does the Fair Work Commission have the staffing and other resources you need to carry out these new responsibilities and tasks? I recognise that they won't come into operation until six months and 18 months in the case of small business. Small business covers 41 per cent of the labour force. There is a pipeline and a gradual enactment of the right and implications for you.

Mr Furlong: In terms of the resources, we receive significant and additional resources associated with the loopholes reforms. Whilst it was an overall measure, it didn't go to the specifics of elements by virtue of the fact that this amendment was after that review and that consultation process of the department to determine what resources were required. The answer to that question is that it's too early to say. We are, by way of parallel, obviously consulting and developing model terms for modern awards. It's something that we have done a significant amount on, particularly over recent years. We have also turned our mind to the case management model that we may implement in this jurisdiction. It will ensure, consistent with our anti-bullying jurisdiction as well, that there's active case management upfront to ensure that the parties to those proceedings are aware of their rights and obligations. The anti-bullying jurisdiction was independently subjected to a post implementation review. The comments around it were complimentary. It will be the same sort of process. With regard to timeliness, by way of example, we are processing our anti-bullying applications within one day of the application being made at the moment. So I have full confidence that the Fair Work Commission is in a strong position to implement this jurisdiction.

Senator BARBARA POCOCK: Thanks for raising the anti-bullying model, because it is a real parallel, isn't it? There's no criminal penalty. Clearly, there was no intention by anyone that it should be a criminal penalty in relation to the right to disconnect. The government is going to correct that shortly, as I understand it. Can you tell us a little about whether there have been any civil fines in the bullying area?

Mr Furlong: I might ask Ms Scarlett to assist with this. In terms of the process, it wouldn't be the Fair Work Commission that would initiate or investigate those. It would be a relevant authority. The Fair Work Ombudsman may look at compliance or non-compliance with an order made by a member of the commission.

Ms Scarlett: There's probably not a lot that I can add to the general manager's commentary. We're not aware of any civil remedy proceedings in relation to non-compliance with a stop bullying order. In the ordinary course, the commission wouldn't necessarily be involved in such proceedings.

Senator BARBARA POCOCK: So I'm asking the question in the wrong spot, which I apologise for. If you are able to provide anything on notice in relation to that, I would appreciate it. Similarly, sexual harassment is in that same list of places where civil penalties can flow. Do you have a similar answer in relation to that?

Ms Scarlett: That's correct, Senator.

Senator BARBARA POCOCK: So no civil penalties, to your knowledge?

Ms Scarlett: No.

Senator BARBARA POCOCK: So we're not expecting a lot of legal consequences for the right to disconnect. Would you agree, based on your experience, that there has been a shift in employer and employee understanding of bullying and sexual harassment and a climate change as a consequence of making laws in relation in the Fair Work Act?

Mr Furlong: I'm not too sure if we're particularly well placed to answer that question, Senator. We can obviously provide you with information about the timeliness, workload and resources that the commission has. I can't discuss those matters of policy or the intention, efficiency or effectiveness of them.

Senator BARBARA POCOCK: Thank you. I want to go to the question of the casual loading. Do you do any analysis of the casual workforce—that is, employees without leave entitlements; let's define it that way—receiving the casual loading? In 2012, an ABS survey showed that only 49 per cent of casual workers were reported to be receiving the loading. Thirty-four per cent said that they did not receive a loading, and 17 per cent said they didn't know. That was the last time the ABS collected that data. Do you have more recent data on that? Do you monitor that at all?

Mr Furlong: It's not something we monitor on an ongoing basis. It may have been discussed in a proceeding that is brought before the commission at some point. Do you mind if I take that question on notice?

Senator BARBARA POCOCK: Take it on notice. That would be great. Under what circumstances is it legal not to pay a casual employee the casual loading? Are there any?

Mr Furlong: In general terms, if it is prescribed by an enterprise agreement and a modern award, they would be required to be provided with that loading.

Senator BARBARA POCOCK: So it shouldn't be happening. Casual workers sacrifice many basic job protections when taking on insecure work. It is not just that they don't have predictability but obviously enough paid leave, annual leave and sick leave. They are often subject to inconsistent and last-minute rostering. We know this from the work of the select committee on work and care. It was a really surprisingly strong theme to me. The insecurity of casual work was particularly apparent, of course, during the pandemic, when casuals were eight

times more likely to lose their jobs than permanents. Do you believe the casual loading adequately compensates for all that package, where many casual workers are faced with the loss of all those entitlements, not just their leave but their security and access to training and promotion and so much more? Have you got any research underway in relation to casuals?

Mr Furlong: There is no research underway at the commission in relation to that. Once again, it's moving to areas of policy. I apologise, but I am unable to answer that.

Senator BARBARA POCOCK: Where should I direct that question to?

Ms Leggett: I would add, Senator, that with the modern awards review in 2023-24 that is currently underway, a series of staff discussion papers has been released, including on job security. It has included relevant data in relation to casuals. It explores questions in relation to matters of job security. There may be some data that we have within those papers that is relevant to that question.

Senator BARBARA POCOCK: Thank you. I want to come to those reviews. Thank you very much for that pointer. In the annual wage review in 2023, the commission acknowledged that female workers were overrepresented in the pool of workers receiving modern award rates and the minimum wage. This, of course, is one of the drivers of the gender pay gap. In the review the Fair Work Commission stated:

A further body of research and evidence must be undertaken to enable the Commission to address this issue.

What kind of research do you anticipate in meeting what you say you want to do in that quote?

Ms Leggett: Certainly. So far, we released in November some research into gender based occupational segregation. It was confirmed by the president in his 2 February statement in relation to the annual wage review that this research is relevant to the forthcoming annual wage review. It explored the patterns of segregation in Australia using a data driven approach. It analysed data from the ABS 2021 census and the 2021 survey of employee earnings and hours and looked in-depth at segregation awards, where the occupations that were highly segregated are more likely to cover those occupations. It was also flagged that, additionally, a second stage of research would be undertaken by commission staff. It will be released in April. It will be a further examination of the indicia and the wage setting circumstances that led to the creation of the 12 modern awards that were identified as being relevant to occupations that are highly segregated by gender, with a high representation of women.

Senator BARBARA POCOCK: Does that include, in what you have just described as analysis, the comparative returns or wages to, for example, care occupations relative to others? Is that included in what you've just described?

Ms Leggett: In terms of the second stage of research, it's really examining the wage setting histories involved in how the wages were arrived at.

Senator BARBARA POCOCK: In those 12 awards?

Ms Leggett: Yes, in those 12 awards.

Senator BARBARA POCOCK: Do you have any analysis or work underway in relation to roster predictability and the predictability of working time, which emerged in the work and care report as a major challenge?

Ms Leggett: I would have to take that on notice, Senator. We do have some additional research that is underway to inform the work and care segment of the modern awards review. It will be a literature review. It will seek to examine some relevant matters raised in the committee. I might come back to that.

Senator BARBARA POCOCK: I appreciate any update or information you can provide on that. This is my final question. The Select Committee on Work and Care made a recommendation to undertake a trial on the four-day working week. Is the Fair Work Commission collecting any data on the growing number of businesses that are making operational a four-day working week and doing any research on the benefits and challenges of this move?

Ms Leggett: I can't think of any specific research in relation to the four-day working week. In the discussion paper for work and care, I believe we did pose questions to submitters in relation to a four-day working week and the extent to which modern awards facilitate those arrangements.

Senator BARBARA POCOCK: As you respond to what you hear, we may hear more about what you are hearing?

Ms Leggett: Yes. As I understand it, I think submissions close in March.

Mr Furlong: In addition, we are aware that enterprise agreements are being approved that have a four-day working week. The department of workplace relations maintains the workplace agreements database. They may be able to assist as well. They can provide some information about workplace agreements.

Senator BARBARA POCOCK: Thanks very much. I'll make sure I watch that.

Senator O'SULLIVAN: Thank you all for appearing before us today. Mr Furlong, on 21 December last year, as the general manager of the Fair Work Commission, you and the Australian Workers Union released a joint statement in relation to the AWU's 27,140 contraventions of the Fair Work (Registered Organisations) Act 2009. I have a copy of the statement here, which I will table. No doubt you are familiar with it. I want to confirm. Are you aware of whether this has ever occurred previously, where there has been a joint statement?

Mr Furlong: Not that I am aware, Senator.

Senator O'SULLIVAN: Are you aware of whether the Registered Organisations Commissioner, previously the Fair Work Australia general manager, released a joint statement?

Mr Furlong: Not that I am aware.

Senator O'SULLIVAN: Is this the largest group of contraventions by a registered organisation that has ever occurred, certainly in the last 20 years?

Mr Furlong: As you would be aware, the secure jobs, better pay act abolished the Registered Organisations Commission. The functions of the Registered Organisations Commission were transferred to me, as the general manager, on 6 March last year. To my knowledge of the period while I have been responsible for regulating registered organisations, there has only been one proceeding where it has been concluded accordingly and it's this month.

Senator O'SULLIVAN: But in terms of these contraventions being grouped together as what I would describe as a job lot—you might have a different description—you are not aware of there being any other grouping of contraventions that might be at that sort of scale?

Mr Furlong: I would have to take that on notice.

Senator O'SULLIVAN: The penalty in the statement was \$290,000 in total. Is that correct?

Mr Furlong: That's right. That's correct.

Senator O'SULLIVAN: In relation to these contraventions, I have done a calculation. I am hoping you can check my maths. My back-of-the-envelope calculation seems to indicate that is \$10 per contravention. In your statement, you reached an agreed position. Can you take us through your reasons why you agreed to essentially a \$10 contravention penalty with this organisation?

Mr Furlong: I will ask Mr Enright to come to the table and assist here. In essence, \$290,000 is a very significant penalty for any registered organisation. It is the commitment of the members' resources to ensuring the compliance. In terms of the number of contraventions, they were individual instances of non-compliance. The non-compliance, which commenced prior to the commencement of the Registered Organisations Commission—it went through—

Senator O'SULLIVAN: Yes, the transfer.

Mr Furlong: a process—identified a series of contraventions, all civil penalty provisions, and a statement of agreed facts. Working through our legal representatives, I determined that \$290,000 was an appropriate deterrent or penalty for the contraventions. And it was obviously—

Senator O'SULLIVAN: For 27,140 contraventions? If it was one or even a small handful, I could appreciate that \$290,000 would be a big penalty to pay.

Mr Furlong: We made submissions to the court. Following that, it was ultimately a matter for the judge to determine whether His Honour thought it was an appropriate penalty. While it's not essentially my penalty—I didn't hand down the penalty—

Senator O'SULLIVAN: I appreciate that.

Mr Furlong: it was a judge of the Federal Court.

Mr Enright: I can assist the general manager. Just briefly, that number you are quoting was a total amount. There were a range of different provisions of the act that it related to. There were some provisions where membership had not been removed or purged from the register. There were others where records weren't kept. We provided advice to the general manager about those. The general manager made his assessment on the basis of the advice we provided about the appropriate penalty.

Senator O'SULLIVAN: Thank you. I will go to that. I realise that there are different scales of severity of a number of penalty units. These following questions go to individual breaches of the RO act and their penalty units. Mr Furlong, for section 172 of the Fair Work Act, what is the civil penalty unit?

Mr Furlong: Are you referring to the registered organisations act?

Senator O'SULLIVAN: The registered organisations act.

Mr Furlong: I don't have a copy of the act in front of me, Senator. I can take that on notice.

Senator O'SULLIVAN: You can take it on notice. I believe it's 60 units. Is that correct?

Mr Furlong: As I say, I don't have the act in front of me.

Senator O'SULLIVAN: Would you know, then, for section 230(1)(a), 230(2)(b), 230(1)(a)?

Mr Enright: A penalty unit is the same. A penalty unit is a penalty unit. But there are numbers of penalties and numbers of breaches. In the section you're referring to, section 172, there were 13,950 individual breaches of that particular provision. As the general manager referred to, there is a penalty unit that is a certain amount. He has taken that on notice.

Senator O'SULLIVAN: Okay. There were breaches that could attract 60 penalty units, as I understand it. You will take it on notice. You will come back to me. Section 230(1)(a), 230(2)(b), 230(1)(a) each have 60 penalty units. That's my understanding. Section 254 has 100 penalty units. Is that right?

Mr Enright: I couldn't tell you the number of penalty units. Section 254 is a single type of provision that relates to inaccurate member numbers. The organisations are required to report their membership numbers. They are required to report them accurately. That is what section 254 relates to—the accuracy of membership reporting.

Senator O'SULLIVAN: Okay. Again, with my calculations, back-of-the-envelope admittedly, very simply, at the current rate of penalty units, it seems that each contravention in relation to the 60 penalty units—the maximum penalty is 16,500 for 60 penalty units. For section 254, it is 27,500. While I appreciate that it would be extraordinary for a full penalty to be applied to each of those breaches, an average of \$10 per contravention seems quite extraordinary to me. Can you take us through the reasoning it was agreed to be appropriate for have this average of \$10 per contravention?

Mr Enright: Before the general manager answers, I can assist you briefly, Senator. I am not sure, with respect, that it's all that helpful to focus on a particular amount. These contraventions occurred over a period of nine or 10 years. The penalty ranges changed very significantly in that time. So the penalty for a convention of any of these provisions in 2012, for example, was radically different. Penalties increased in, I think, 2016 or 2017 and have increased at different times. So to select a particular penalty and apply it over these 21,000 contraventions over a 10-year period is not as helpful as it initially might sound.

Senator O'SULLIVAN: Okay. Again, it is back-of-the-envelope. I am trying to create an average here. It does seem rather extraordinary that there would be 27,140 contraventions and only a \$290,000 penalty.

Senator BROCKMAN: A bulk discount.

Senator O'SULLIVAN: Exactly, Senator Brockman. It does seem that some sort of bulk discount was applied here.

Mr Furlong: I think that our reasonable minds may come to different conclusions about what is appropriate given the circumstances. Irrespective of what people's views are in relation to this, a justice of the Federal Court determined that it was appropriate—I don't have a copy of the decision in front of me; I wish I did—in the circumstances for the sum of those contraventions.

Mr Enright: I will assist the general manager by telling you that the recommendations and advice we provided to the general manager were based on the compliance and enforcement policy both previously in the Registered Organisations Commission and the general manager's compliance and enforcement policy. Part of that involves him taking into consideration a range of factors, including, for example, the cooperation of the party being investigated, the extent to which they have remediated and the extent to which they've communicated and admitted liability—a whole range of factors. So there's a very significant difference for an organisation that goes back and says, 'No. We're not going to cooperate. We're not going to tell you anything. We're not going to cooperate in any way. We're not going to tell our members anything.' That was not the case in these circumstances. The advice we provided to the general manager was that very significant changes had been made by the AWU.

Senator O'SULLIVAN: Sorry, Mr Enright. I don't mean to cut you off. It's a very significant number, 27,000. If someone were to explain to me that there were a large number—to the points you are raising—it still leaves

significant contraventions that would otherwise have been previously dealt with. Deterrent penalties are attached to them that would impact on the behaviour of organisations.

Mr Enright: Can I assist you as well, Senator? It doesn't stand on its own. Previous proceedings were issued in the Federal Court for contraventions of similar provisions—membership provisions—by another federally registered union. I can't remember the penalty, but it was brought by the Registered Organisations Commission. I think it was actually brought by the Fair Work Commission and related to the Transport Workers' Union. The penalty was taken into account. Part of our thinking in relation to that was what other penalties have been issued in civil proceedings in relation to contraventions of the act. Our advice to the general manager was it was not out of the ordinary for the penalty that he ultimately agreed to.

Senator O'SULLIVAN: Mr Furlong, did you propose a higher amount per contravention?

Mr Furlong: No. I didn't.

Senator O'SULLIVAN: So the \$290,000 was your proposal?

Mr Furlong: The \$290,000 was negotiated to that point. I believed that it was an appropriate and proportionate penalty specific to the circumstances. But in terms of the general deterrence, my approach to regulating and regulation in general is that it is a co-production. There are shared responsibilities between the regulator and, in this case, the registered organisations. There is a shared interest in ensuring compliance on an ongoing basis. The AWU expressed contrition. Agreeing to publish the joint statement was an acknowledgement of the contraventions and the importance of the compliance. It was published on their website. It was published, I think, on their Facebook site as well. I want to work with registered organisations to lift compliance and work positively with them for the benefit of the members of those organisations, employer and employee alike. On the basis of that, and my approach to regulation, I believed in the circumstances that we submitted a shared position on a proposed penalty. The justice of the Federal Court who determined this matter thought it was sufficient or reasonable in the circumstances.

Senator O'SULLIVAN: On your website, back in 2016, you referred to a case against the Musicians' Union of Australia, which saw eight penalties at that time totalling \$236,865. The federal secretary was ordered to pay a civil penalty totalling \$52,635. So with eight penalty units, there is an almost similar amount to the \$290,000 for 27,000 breaches.

Senator BROCKMAN: Clearly the musicians weren't contrite enough.

Mr Furlong: They didn't have a lot of breaches.

Senator O'SULLIVAN: I am trying to understand the comparison and how we have arrived at this position where there is such a discount applied. In the last financial year, the AWU had received a total of more than \$15.5 million. I don't imagine the musicians—

Senator BROCKMAN: A small, poor organisation.

Senator O'SULLIVAN: Have those sort of resources available to them. Can you explain why there's such a disparity?

Mr Furlong: Mr Enright may be able to assist in terms of that musicians investigation and the resulting civil penalty proceedings that occurred subsequent to identifying those contraventions. As you would probably be aware, Senator, with the secure jobs, better pay act, as the regulator, I received additional enforcement powers around enforceable undertakings and infringement notices that weren't available at the time of the musicians' contraventions that occurred. What I am saying to you is that the regimes that applied then and now in terms of the compliance instruments and the tools available to the regulator, have shifted.

Mr Enright: Firstly, the penalty ranges have changed. I am referring to my note. It is from \$11,000 to \$63,000 over that period of time. The maximum penalty for contravention changed. The penalty for a single contravention changed from \$11,000 to \$63,000 over that period of time. Secondly, in relation to the musicians union, one of the most important things that registered organisations do is report financially. The breaches of the act that were committed by the musicians union related to the failure to report their financial position over an extended period of time—quite a number of years. They are probably among the most serious contraventions that can occur in relation to registered organisations because organisation members need to know how their money is being spent. So there's a qualitative approach, as you would well accept, Senator, between crossing the street against a red light and doing something more serious. In terms of seriousness, the financial reporting was, again, back in 2013. There has been only one or two proceedings. So all of this was entirely new, these proceedings, to courts and regulators. The qualitative aspect of the musicians issue is entirely different to this.

Senator O'SULLIVAN: Are you saying that the 27,000 contraventions were all trivial or all non-serious?

Mr Enright: I'm not saying that they were trivial at all. They are important contraventions. All registered organisations are required to report a range of things. They have mandatory reporting obligations.

Senator O'SULLIVAN: So it was only a small handful that were serious enough to attract big penalties? The rest were just small?

Mr Enright: I can tell you that there were 13,000 failures to report financials. There were 6,000 failures to resign members. There were different qualitative aspects to those contraventions throughout that 27,000. I don't use the word 'trivial' at all, Senator.

Senator O'SULLIVAN: No. That was my word. Fair enough.

CHAIR: I would like to wind you up.

Senator O'SULLIVAN: The chair wants me to wind up.

CHAIR: I am not going to wind you up. I indicate that we are now past our tea break.

Senator O'SULLIVAN: Well over. I appreciate that. Finally, given that the receipts received by the AWU totalled \$15.1 million in the last financial year, \$290,000 is less than two per cent. Will it really deter them from committing future contraventions?

Mr Furlong: I honestly can't speak on behalf of the AWU. What I will say to you is that in instances where we investigate matters and I find there is egregious non-compliance, particularly as it relates to finances or the proper use of union and employee association resources, or member resources, you will see a very decisive and well-resourced response from the regulator. In this case, it was the decision of a justice of the Federal Court that the \$290,000 was appropriate in the circumstances.

Senator O'SULLIVAN: Finally, has the AWU paid the fine?

Mr Furlong: Yes.

Senator O'SULLIVAN: It has been paid?

Mr Furlong: It has been paid.

CHAIR: Thank you very much. We will now suspend until 8.45 pm.

Senator Watt: Thanks, all. I will be passing the baton to Senator Chisholm.

CHAIR: Thank you. You are now relieved as well, Fair Work Commission representatives, from the hearing.

Proceedings suspended from 19:47 to 20:45

Department of Employment and Workplace Relations

CHAIR: I now call officers from the department in relation to outcome 2, Skills and training (including Jobs and Skills Australia). I welcome Senator the Hon. Anthony Chisholm, Assistant Minister for Education and Assistant Minister for Regional Development, representing the Minister for Skills and Training. Would you like to make an opening statement?

Senator Chisholm: Good evening, Chair. No, thanks.

CHAIR: Senator O'Sullivan?

Senator O'SULLIVAN: Could we go to apprenticeship and traineeship numbers please. Can you confirm whether there are fewer or more apprentices and trainees in training today than there were in May 2022?

Ms Faithfull: I think, when we reflect on the numbers for this year relative to 2022, we need to put that in the context of the response to the global, once-in-a-generation pandemic. In response to that pandemic, a range of programs were put in place.

Senator O'SULLIVAN: I don't want to start us off in the wrong way, but it was a very simple question: are there more or fewer?

Ms Faithfull: I'll ask Belinda to answer the question, but once you—

Senator O'SULLIVAN: I'll give you a chance to give us some context about the time, but could I have just a simple answer to that question?

Ms Campbell: In June 2022 there were 429,150 apprentices in training, and that's compared to June 2023, when there were 377,715.

Senator O'SULLIVAN: Okay. I'm happy for you to provide some context to what you were saying.

Ms Faithfull: What we had in place were a set of mechanisms that were responding to the global pandemic. If we compare the numbers to a more normal comparative year, like 2019, what we can actually see is that we've got an additional 101,720 people in training. If we compare June 2023 to June 2019, there are actually an

additional 101,720 people in training. It's really important that we think about impact of those COVID measures and what they mean in terms of the four-year period, and then also how we're tracking next to a non-COVID normal year.

Senator O'SULLIVAN: When you say measures, you mean the investment into apprenticeships and traineeships—the support that was provided to employers to source and retain—

Senator Chisholm: I think the point is that they were COVID measures that you put in place at the time.

Senator O'SULLIVAN: So it was COVID that created the opportunities—

Senator Chisholm: No, no. I'm saying—

Senator O'SULLIVAN: or was there an investment into—

Senator Chisholm: that policies you put in place were in response to COVID. Until that, your apprenticeship numbers had been down—until you put those measures in place in response to COVID.

Senator O'SULLIVAN: Just to clarify your evidence: from 30 June 2022 to 30 June 2023, did apprentices and trainees in training increase or decrease, and by what percentage?

Ms Campbell: The apprentices did decrease between June 2022 and June 2023, and—

Senator O'SULLIVAN: By what percentage?

Ms Campbell: By 49.7 per cent overall. But, in terms of the change in the numbers, which was around 50,000 difference, 80 per cent of that change was in non-trade occupations.

Senator O'SULLIVAN: Just explain that.

Ms Campbell: Within the apprenticeship system, they're often described—and that's how NCVER reports the data—separating the apprentices into trade and non-trade occupations. So, when you think of a trade occupation, that's generally your more traditional four-year apprenticeship, whereas non-trade covers a range of occupations including child care, hospitality and retail.

Senator O'SULLIVAN: In the 12 months ending 30 June 2023, compared with the 12 months ending 30 June 2022, did female commencements increase or decrease, and by what percentage?

Ms Campbell: Commencements for female apprentices did decline when you compare June 2023 to June 2024, but we have seen a change in the proportion of women commencing trade occupations. In the June 2023 quarter, 16.3 per cent of women commenced in a trade occupation, compared to 14.7 per cent in the June 2022 quarter. This reflects the change in the incentive system, which is encouraging people to take up priority occupations.

Senator O'SULLIVAN: Again, just clarifying your evidence again, from 30 June 2022 to 30 June 2023, did trade apprentice completions increase or decrease?

Ms Campbell: As reported in the official NCVER figures, trade completions did decline in the June quarter when compared to June 2023, but the important thing is to think about when those trade apprentices started. Four years prior to that was in the height of COVID. In the June 2020 quarter, we had the lowest trade commencements on records.

Senator O'SULLIVAN: Can you confirm that, since the change in government, we've seen new starts in apprenticeships and traineeships halved? You said 49 per cent. Is that right?

Ms Campbell: Sorry, could you repeat that?

Senator O'SULLIVAN: We've seen commencements of apprenticeships and traineeships halved—or 49 per cent? Is that the right figure?

Ms Campbell: In terms of commencements, in June 2023 we had 38,945 commencements, which was compared to June 2022 with 77,425 commencements. Importantly, the largest decline again was in that non-trade occupation. In June 2022, there were 48,475 commencements. This compares to 21,170 in June 2023.

Ms Faithfull: I want to pick up on Ms Campbell's point around what we're seeing in the non-trade—the reduction. We can draw that correlation too. As I prefaced at the outset, we had a response to COVID. It was a broad-based emergency response. It was time limited. It had a set of built-in stepdowns. Those stepdowns were built into the budget in March 2022, and then a new incentive system commenced as planned in the stepdown from those COVID responses on 1 July 2022. So what we're seeing is the flow-on impact of that through the system. If we compare apples with apples and we're looking at 2019 numbers, we're actually seeing a level of growth.

All that being said, obviously, keeping the pipeline of apprentices is really important in the context of national skills gaps. When we look at the work that we're doing at the moment in terms of both new apprenticeships services support offering, which provides holistic wraparound care for apprentices with a focus on priority cohorts, we think about things like the Australian Skills Guarantee which will require big infrastructure—both physical infrastructure and IT—to have a percentage of apprenticeships as part of the labour hours, and even investments that we're making around supporting women in VET. The last piece too that I would focus in on is that, under the National Skills Agreement, we've got dedicated funding to reforms, particularly around completions in VET and apprenticeships. That's \$250 million from the Commonwealth to be matched by states and territories. So there is a huge amount of effort that's being invested into the system that will seek to continue to ensure that there is a pipeline of apprenticeships, particularly with a focus on those priority areas and priority cohorts.

Senator O'SULLIVAN: Minister O'Connor said the reason numbers are falling is that the coalition invested too much into apprenticeships and traineeships. Is that correct?

Senator Chisholm: I'm not aware of seeing that.

Senator O'SULLIVAN: Is that the reason? Are we seeing a decline because the coalition invested so much, and now there's not as much investment?

Senator Chisholm: If you want to look at the whole picture, Senator O'Sullivan, the reality is that, in the last period of the Liberal government, almost 10,000 fewer trade apprentices completed their apprenticeships in 2013, so you don't have a good record prior to COVID hitting. You obviously put in place some measures during COVID, and in your last budget you started to unwind them. We came to an election with a bold agenda around apprenticeships and restoring the TAFE system. That's what we've gone about doing in government. We think it's really important. We obviously inherited a skills crisis as well. We're really delivering on our promises, and I think it is a good record that I know Minister O'Connor is really proud of.

Senator O'SULLIVAN: Can the department provide a full breakdown of all funding in place for apprenticeship and traineeship supports, including arrangements for after 1 July, as it currently stands?

Ms Faithfull: Perhaps we can take that one on notice, but I'm assuming you're talking about service supports as well as trade support loans?

Senator O'SULLIVAN: Say again.

Ms Faithfull: Maybe I need to clarify the question. When you say 'a breakdown of funding supports for apprenticeships'—

Senator O'SULLIVAN: And traineeships—

Ms Faithfull: And traineeships—you're referring to—

Senator O'SULLIVAN: The supports.

Ms Faithfull: just the incentive supports—

Senator O'SULLIVAN: Correct.

Ms Faithfull: or also other kinds of supports that we run alongside?

Senator O'SULLIVAN: That might be helpful. I will ask for both, but I'm specifically asking for the supports for the employers—the incentives, which could include the support that might go to the apprentice and trainee as well.

Ms Faithfull: Certainly.

Senator O'SULLIVAN: Can I get a breakdown of the total spending on skills and training for the financial year from 2019 to July 2024? I'm happy for you to provide that on notice if it's easier to provide it as a table. I'm happy to share the call now, Chair.

CHAIR: On the same subject and the Boosting Apprenticeships Commencement Program, I understand that the program had subsidies of 50 per cent. Is that correct?

Ms Campbell: That is correct—up to 50 per cent.

CHAIR: I also understand that one of the most significant subsidies went to Grill'd hamburger chain. Many people certainly in the cities and major regional towns would be aware of Grill'd. Their stores are quite prolific. Is it correct that they received \$30 million to subsidise their trainee program—and the program was dubbed 'Hamburger University'—even as profits surged 700 per cent above the last year before the pandemic? Is that figure of approximately \$30 million in subsidies to the trainee program for 'Hamburger University' subsidies at Grill'd correct?

Ms Campbell: I can confirm that, under the Boosting Apprenticeship Commencements Program, Grill'd did receive funding of \$29.07 million, but I would like also to be clear that they were paid based on all of those apprentices and trainees completing a training contract that was signed up with the apprentice and the employer, and our apprenticeship support network, as part of their normal role, confirmed that it was a genuine apprenticeship, so they were eligible to make a claim for these wage subsidies under our incentives program.

CHAIR: I'm not suggesting that the department didn't appropriately apply what the government policy was. My suggestion goes to this question of the 'Hamburger University'. I understand that, at the same time that the handouts helped boost the national burger chain's pretax profit to \$15.8 million in 2020-21, the same year the chief executive Simon Crowe lobbied the then government to expand access because his profits were being decimated. Are you aware of those comments from Mr Crowe at the time?

Ms Campbell: I was not aware of those comments.

CHAIR: Are you aware of the article in the *Australian Financial Review* by Ronald Mizen on 17 October? He said in his article:

Previously secret details of the \$16.6 million in taxpayer funds paid to Grill'd to subsidise the wages of nearly 2800 trainees show almost one in two have dropped out of their training course.

Are those figures correct as of 17 October 2022?

Ms Campbell: I can't confirm the actual dollars that were paid to Grill'd at that point in time, but I can confirm that, in line with the program, we did have a very close eye on working with employers that had large numbers of apprentices and worked through our apprenticeship support network to ensure that they were genuine apprenticeships and both the employer and the apprentice understood what they were signing and agreeing to. The payments that were made to Grill'd were part of the Boosting Apprenticeship Commencements subsidy, which was a broad-based wage subsidy to support apprentices and trainees during COVID, and it was introduced in response—

CHAIR: I'm just going to Grill'd, really, rather than the general area. As I've mentioned, this article states that, in relation to the previously secret details of the \$16.6 million in taxpayer funds paid to Grill'd, there were nearly 50 per cent rate of withdrawals or cancellations, which is double the rate across the BAC program; is that right?

Ms Campbell: I would need to look up the specifics of cancellation rates, but—

CHAIR: I appreciate you'd want to give us the detailed response. By all means, if you haven't got it at hand, you can take it on notice. There were substantially higher withdrawal rates at the Grill'd 'Hamburger University' than other programs; is that correct?

Ms Campbell: I would need to look at the specifics—

CHAIR: Ms Faithfull, can you—

Ms Faithfull: We can take that on notice and come back with that.

CHAIR: So you're not aware that Grill'd was actually at a higher rate of failure than the BAC scheme generally?

Ms Campbell: At this point I can't specifically say that they were significantly higher, but I would say that the nature of those apprenticeships, particularly in hospitality and the shorter trainee type apprenticeships, do tend to have a higher attrition rate. There are a number of factors that lead to that, but I don't have the specifics of Grill'd with me.

CHAIR: Are you aware that hospitality and retail certificate III qualifications were the third and fourth most claimed subsidy, with Grill'd of course being the most substantial one—they made a claim that their profits were being decimated while actually having a pretax profit increase and a profit surge of 700 per cent over the last full year—and that almost 40 per cent of trainees who commenced certificate III in hospitality dropped out, while for retail the rate was about 30 per cent? Does that sound accurate?

Ms Campbell: That sounds reasonably accurate. The one additional piece of information that I will provide is that the wage subsidy was only paid to the employer while the apprentice was still in employment. It was paid on actuals and it was paid in arrears.

CHAIR: I understand that the department followed the policy set by the then government. But we've got a scheme that had a high attrition rate, we've got a company that was receiving tens of millions of dollars to participate in a 'hamburger university', which had a dropout rate substantially higher than others using the apprenticeship commencements scheme, and there's been some suggestions in the media that, despite the line of questioning we're having tonight, these sorts of schemes should continue in place and that we should have more universities in hamburger joints.

Senator O'SULLIVAN: We certainly support hospitality. We don't make a distinction—

CHAIR: Money is going to hamburger-joint and hospitality-joint universities—

Senator O'SULLIVAN: We wouldn't suggest that hospitality is in any way inferior to any other industry—

CHAIR: But when you turn around and give one of your mates a 700 per cent increase in profit surge—

Senator O'SULLIVAN: and the opportunity that's available. It's a stepping stone for someone to get a really positive career and job. You can start flipping burgers—

CHAIR: When you give a 700 per cent profit surge to one of your mates, that raises some serious questions, doesn't it? I will raise them here. There have been serious questions raised about the fact that there was a 700 per cent increase in profit surge and a high dropout rate for a company that has a reputation for wage theft. That's a disturbing factor for that sort of scheme. While the department appropriately applied the policy set by the previous government, any suggestion that it should be continued is disturbing. This line of questioning we're having tonight is another example of that. Minister, do you have any observations on the BAC scheme and the Grill'd 'hamburger university'?

Senator Chisholm: I'm a little bit conflicted, because my kids love Grill'd—

CHAIR: Whatever your answer is I'm sure they can still eat a burger!

Senator Chisholm: On a serious note, there is a clear contrast between the focus of this government when it comes to skills and training and that of our predecessors and what they discovered during the COVID period. I certainly believe that the investments that we're putting into TAFE and training, our reaching agreement with the states, which our predecessors couldn't do, and the focus we've put on new energy in the Australian Skills Guarantee are setting a solid platform for not only dealing with the skills challenges that we inherited but also giving people long-term opportunities no matter what industry or job they want to pursue.

CHAIR: I may have to come back to the subject. I'm ready to pass along to my colleagues. Matt?

Senator O'SULLIVAN: I just have a follow-up on Senator Sheldon's line of questions. How many apprentices were saved from being laid off, particularly during that period, because of the BAC?

Ms Faithfull: I don't think we can fully extrapolate what the intentions of employers were in 2019-20 in terms of intentions to employ or lay off. As Ms Campbell reflected, 2020 certainly had an impact. In one quarter there were 9,000 commencements, which was one of the lowest we've seen. So we can certainly reflect that the global pandemic did impact decisions around hiring of apprentices.

Senator O'SULLIVAN: I recall that when we looked at the global financial crisis it was discovered that the most vulnerable jobs were the lower skilled jobs and that they were the first ones that went. Trainees and apprentices were very vulnerable and many lost their jobs as a result. My understanding of the purpose of this was to make sure that those jobs were protected during a financial climate that was outside the control of the employer.

Ms Faithfull: It had a very broad based remit. Although we'll see the impact of the COVID measures flow through the system for a little while, we're now obviously in a non-COVID environment. To reflect on the discussion around investment relative to impact, one of the things that the government did announce in MYEFO was a review of the incentives system. That review will be headed by an eminent person to reflect on, in a fiscally strained environment where you're trying to get the greatest value for your investment, where to apply that additional support, whether it be to the apprentice or the employer, to achieve particular outcomes, which in this context are key national priorities, including net zero transition, supporting the care economy, supporting digital growth, supporting sovereign manufacturing and meeting defence ambition and defence needs. We're now not in a COVID environment and we need to be thinking within a fiscally constrained environment where to best put that investment to achieve those outcomes.

Senator BROCKMAN: I am just going to move on—

CHAIR: I've got something else to ask about this Grill'd thing before we go to the next subject—

Senator BROCKMAN: I suspected you would!

CHAIR: I just want to clarify a couple of things. What is the effect on apprenticeship numbers in trade occupations versus non-trade occupations as a result of the cessation of the BAC?

Ms Faithfull: What we are seeing is an increase in trade occupations, but I'll ask Ms Campbell to reflect on the exact numbers.

Ms Campbell: Between the end of the Boosting Apprenticeship Commencements and the new incentives system there has been a shift in the focus and the profile of apprentices, which is particularly reflected in the

commencements. We are seeing relatively more trade occupations in our commencement numbers. As I highlighted before, the main difference in commencements for the last 12 months has been a decline in the non-trade occupations. Eighty per cent of the difference in numbers between the end of Boosting Apprenticeship Commencements and June 2023 was in non-trade occupations.

CHAIR: Back to the BAC question, bearing in mind that Grill'd was one of the major recipients, it certainly turned the company around in receiving that \$37,000 to profit and 700 per cent surge. Did any of the trainees receive any of the subsidy, or did it all go to the employer?

Ms Campbell: Under the Boosting Apprenticeship Commencements measure, a 50 per cent wage subsidy was paid to the employer. There were no accompanying payments to apprentices.

CHAIR: Thank you. Senator Brockman?

Senator BROCKMAN: Thanks, Chair. I want to go to the state and territory interim skills agreement reporting schedule as part of the agreement to get funding through fee-free TAFE. I garbled that a bit, so I'll start again. There is a requirement for states and territories to provide interim skills agreement reporting as part of the agreement to get funding through fee-free TAFE. Under the interim national skills agreement, states and territories are required to put quarterly reporting schedules to the Commonwealth. Why have they not been published?

Ms Faithfull: At this stage, we don't have the agreement of states and territories to publish. It's certainly something I can—

Senator BROCKMAN: But isn't there a reporting schedule in the agreement? Isn't that a part of the agreement?

Ms Faithfull: There is.

Senator BROCKMAN: How can you have an agreement with a reporting schedule but no agreement to publish?

Ms Faithfull: There is an agreement—

Senator BROCKMAN: So they're obliged to report to you, but you're obliged to keep it secret?

Ms Faithfull: No, there's an agreement to report to the Commonwealth, but there isn't agreement to publish that information publicly.

Senator BROCKMAN: Why wasn't the agreement to publish that information? Why is that information being kept secret?

Ms Faithfull: I think I would reflect on how, under the Federal Financial Relations, there isn't a consistent practice of requiring publication of reporting from states and territories to the Commonwealth. I would like to take that on notice and just double-check, because there are agreements upcoming, but under the Federal Financial Relations there hasn't been a practice of providing that detailed reporting that comes from states and territories to the Commonwealth into the public domain.

Senator BROCKMAN: Do you have those schedules? Do you have that reporting? Has it been provided to you?

Ms Faithfull: We have reporting requirements under the fee-free TAFE national program, and we can talk you through what is provided to us in relation to the reporting provided by states and territories under the fee-free TAFE agreement. In terms of the National Skills Agreement, we've got basically the umbrella agreement. We're working with states and territories on their individual plans, our plan as the Commonwealth and then the national plan, and that will set essentially a framework for targets and outcomes as well as detail any specific reporting under either the broad-based funding or, as I talked about before, the streams of innovation funding that are incorporated into the National Skills Agreement.

Senator BROCKMAN: Have the states met their reporting obligations?

Ms Faithfull: Under the fee-free TAFE agreements, yes, they have.

Senator BROCKMAN: So you have the information that the states are required to provide under the agreement?

Ms Faithfull: We do, yes.

Senator BROCKMAN: Will you provide those schedules to this committee?

Ms James: I think we'd like to take that one on notice, noting that there are agreements with state governments in relation to this and the information has come from them.

Senator BROCKMAN: Why is that? What's the nature of the information that makes you reluctant to provide it?

Ms Faithfull: I think, for fee-free TAFE, we are able to share that and discuss that in this forum. As I said, for the reporting that will occur under the National Skills Agreement, we haven't got that level of detail yet to then require a set of reporting back from states and territories. Certainly we can, as part of those conversations, have that discussion around their comfort with having that publicly available.

Senator BROCKMAN: So you can share on the fee-free TAFE reporting. Is that what you just said?

Ms Campbell: I can provide a breakdown by each state on the enrolment figures for reporting to 30 September 2023.

Senator BROCKMAN: I have no idea—is that going to be a massive list of numbers? Is that going to be half a dozen numbers?

Ms Campbell: One number per state is what I can run through.

Senator BROCKMAN: So it's just a raw number per state?

Ms Campbell: Yes. I can give you their reported enrolments if you'd like me to, or we can provide that on notice if that's easier.

Senator BROCKMAN: If it's just one number per state, let's go.

Ms Campbell: For New South Wales to 30 September 2023 under fee-free TAFE, they've had 153,379 enrolments; for Victoria, 44,517; for Queensland, 58,493; for WA, 19,709; for South Australia, 13,255; for Tasmania, 2,944; for the Northern Territory, 1,304; and for the ACT, 2,506.

Senator BROCKMAN: What are the completion figures for each state?

Ms Campbell: I note that the vast majority of the occupations that are being undertaken through fee-free TAFE are certificate III and above. We do have some preliminary completion numbers, but they're very small because most people are still in training.

Senator BROCKMAN: Understood.

Senator O'SULLIVAN: These are just the figures under this agreement. Is that right?

Ms Campbell: Yes. Under the fee-free TAFE agreement there are two tranches, and these are the figures under that agreement.

Senator BROCKMAN: Can we quickly run through completions in the same order?

Ms Campbell: Completions are 23,286. I do have that breakdown by state if that's helpful.

Senator BROCKMAN: Oh, that was the total. Could you start with New South Wales but and give the numbers in the same order?

Ms Campbell: New South Wales has 14,547. This is also data to 30 September 2023.

Senator BROCKMAN: Victoria?

Ms Campbell: For Victoria I don't have reported data against Victoria.

Senator BROCKMAN: Is there a reason why Victoria has not reported?

Ms Campbell: I will have to take that on notice and find out why I don't have that data.

Senator BROCKMAN: Can we have the reason and, if they are behind in their reporting, why? What about Queensland?

Ms Campbell: Queensland has 3,412. WA has 3,444. South Australia has 699. Tasmania has 825. The Northern Territory has 126. The ACT has 233.

Senator BROCKMAN: Thank you for that. Could you provide that on notice? Is that publicly available? Is that on a website somewhere?

Ms Campbell: No.

Senator BROCKMAN: Seemingly not? In case I've transcribed them wrongly, could we grab that on notice as well?

Ms Campbell: Yes, we can provide that.

Senator BROCKMAN: In FOI LEX 643, you did redact the data. Do you know the FOI I'm talking about?

Ms Faithfull: No. I would be grateful if I could get that table.

Senator BROCKMAN: It is LEX 643. I do have it here, but it might have notes on it.

Ms James: We carry a lot of material with us, but we don't carry all of our freedom of information requests with us.

Senator BROCKMAN: I've got it here. It basically says what you said earlier, which is that you are not releasing the information, because of damaged relations between—

Ms James: What was the date on that? That might be relevant.

Senator BROCKMAN: I am looking at the document. Where is the date?

Ms James: We might need to take it on notice.

Senator BROCKMAN: No, no. Is the information you redacted not the information you just gave me? If so, why was it redacted?

Ms James: We will find out and come back to you. It may be that, for some reason, at that time it fell under an exemption that might have been relevant there. It might be something to do with the scope of the request itself.

Senator BROCKMAN: Is it planned that the provision of—

CHAIR: We're getting close to time. We may have to put some questions on notice.

Ms James: We will take that on notice because I suspect it is in the context of state and territory data and information. Let me take that on notice, and I will come back to you.

Senator BROCKMAN: This might be one for the minister, though I'm happy for the department to answer if it can. Is it the policy that the information, when you do come to a final agreement, will be released publicly?

Senator Chisholm: I don't know if we've got a decision on that.

Senator BROCKMAN: This is something you trumpet as an important policy, Minister. Surely you want the information out there.

Senator Chisholm: I'm unsure what agreements we have reached with the states on that.

Ms Faithfull: As I said, we have the umbrella agreement. We're going through that detail to articulate the plans at both state and Commonwealth levels. As part of that, I will certainly have discussions with my minister and, I'm sure, with his colleagues that he meets with regularly about what can be publicly reported. I know that there is a very sincere and real commitment across all of those ministers to work closely with the whole skills and training sector. In that context, it is important people have an understanding of what the plans are and how we're going to report on them.

Senator O'SULLIVAN: It would be good to explore this. If you've got some time, have a quick look. We will revisit it.

Ms Faithfull: Absolutely. I'll come back on that.

Senator O'SULLIVAN: I'm just curious as to why such big sections of that report were redacted.

CHAIR: Senator Grogan.

Senator GROGAN: I have a Jobs and Skills Australia question? Is Commissioner David Turvey here? I'm interested in understanding the article on 5 February in the *Australian* titled 'Special agricultural visa slated as a solution to homegrown workforce crisis'. There seems to be a disconnect between the headline and what's in the text of the article. I wanted to have you clarify some of that for us, particularly whether you advocated for a dedicated visa for agricultural workers.

Mr Turvey: I think the answer is, no, I didn't advocate for the creation of a special agricultural workforce visa. I think the substance of the interview and the article as written up but doesn't really reflect the headline that was attached to the article.

Senator GROGAN: That was my concern. Can you give us a sense of how that came about and maybe clear up some of that confusion? That would be really helpful.

Mr Turvey: Certainly. I was discussing with the journalist Jobs and Skills Australia's work plan for the current year and our priorities. In particular, I raised a project we were about to start on the food supply chain that will look at workforce demands and the supply of workers for the agricultural sector as well as post-farm-gate processing and transport. I also mentioned the work we will be doing to assist the government with the implementation of the new migration strategy. I think the journalist took two and two, put them together and started asking me about agricultural workers and whether or not they would be in scope for the essential workers tier of the new skills-in-demand visa, at which point I said that, if there are low-paid occupations in the agriculture sector, which there are, they could potentially fall in the scope of that tier of the visa program.

Senator GROGAN: And the role of JSA in advising on migration programs, can you step that out for us?

Mr Turvey: So far the government's migration strategy articulates a framework for temporary skilled migration which has three tiers. Jobs and Skills Australia has been asked to provide a role in providing advice across all three. They start with the higher income occupations, so above \$130,000 where there'll be no list of occupations, and the employers can sponsor workers with some general conditions and relatively rapid visa processing. Our role there will be to provide advice on how well that tier of the temporary skilled migration system is meeting market needs in the domestic economy.

Then there will be a second tier, and the visa is called the skills in demand. Core skills is the middle part where we're looking at occupations that earn roughly between \$70,000 and \$135,000. The government's asked us to develop a list of occupations that we think are most appropriate for temporary skilled migration. So we'll be conducting analysis looking at skills shortages and skills needs in the Australian economy and the demand for workers in that part of the labour market. We'll also be looking at how well migrant workers do when they come in, because migrant workers don't always do well in the Australian labour market. We need to make sure migration is a good pathway that will actually help fix those shortages. Then we'll supplement that with extensive engagement with industry and unions and all stakeholders and some rich qualitative research to understand why these shortages exist and how the migration system can help. We'll provide that advice to government, and government will then make determinations about the list that's applied to that visa category.

Senator GROGAN: You said three tiers.

Mr Turvey: That's the second tier. The third I think is called essential workers or essential skills—I can't remember the exact wording. For this one the government articulated the idea in the migration strategy but said that further work was needed to explain and work out how this tier would work. The general idea is to focus on occupations that are lower income, so earning below \$70,000 a year where you might think there's a higher risk of exploitation or issues around how migrants might settle into the market. The approach is very much an industry-driven approach. Unions and business would come together and agree a strategy for how they would deal with migration to help solve worker shortages. It was that element of the thing that the journalist was picking up on.

Senator GROGAN: So the role here in terms of the process is all industries?

Mr Turvey: Potentially, yes. I think the migration strategy specifically calls out the care and support sectors of the economy as an initial focus for that sort of examination, but, as I said, that tier of the strategy is the one that needs further development.

Senator GROGAN: What's your role particularly in agriculture as JSA?

Mr Turvey: We'll examine the entire labour market for the purposes of our advice on migration. On that essential workers tier, because there's still policy work to do on how that will work, Jobs and Skills Australia's role is a little bit unclear. It will definitely be around providing advice on the labour markets and how they're functioning, but precisely what our role is in that space is unclear. More generally, we examine the agricultural sector as we do every other sector of the economy, but, as I said, we are doing a specific study on the food supply chain. That's what we call a capacity study, which is a deep dive into a particular segment of the labour market, and that will kick-off shortly. That will be looking at agricultural production plus post-farmgate processing of food and transport and issues around those elements of the sector, and it'll look at the demand for labour—drivers of demand. It will look at the sources of supply, which includes the education training system—vocational education and higher education. It will look at the role of migration systems as well, but it'll also look at job design and attraction and career advice and all the things that you might think would factor into how well the labour market is working.

Senator GROGAN: What would be the timing on that study?

Mr Turvey: We're just scoping it out at the moment. We're hoping to publish the terms of reference for consultation to get engagement from industry in the next little while. That work is due to be done over the next six months or so.

Senator GROGAN: Thank you for clearing up the confusion about that article. The title really didn't match what was in the contents.

CHAIR: Coalition.

Senator BROCKMAN: I have a quick follow-up. I've just had another look at the redacted document. Clearly, there's a large amount of information you have there on things like age breakdown and gender breakdown. We'd like to see a breakdown quarter by quarter. Has that information been provided to the minister's office or to the minister?

Ms Faithfull: Sorry, Senator, are you referring to the conversation we were just having on the fee-free TAFE breakdowns?

Senator BROCKMAN: In this case, I was referring to the redacted document, the Interim Skills Agreement Reporting Schedule.

Ms Faithfull: I'd need to take that on notice to be accurate in confirming whether or not that has been provided to the minister.

Senator BROCKMAN: Okay. On notice, could you find out whether that has been provided to the minister or his office? Then also, as a formal request, I would like that information in full. I really can't see why that information couldn't be provided to this committee in full. And, if not, I'd like to know the grounds—

Senator O'SULLIVAN: And, if circumstances have changed, then just provide the latest data.

Ms Faithfull: Yes.

Senator BROCKMAN: And, if you can't provide it, I'd like an explanation for why an immunity claim.

Ms Faithfull: Yes.

Senator BROCKMAN: That's it for me.

Senator O'SULLIVAN: I have some questions about the appointment of the director of Jobs and Skills Australia. I note that over the weekend the government announced the appointment of Professor Barney Glover AO as the new director of Jobs and Skills Australia. Can you please take me through that process—the process of his appointment? Did you engage an executive firm? Did you take public applications? How exactly did the process work for this appointment?

Ms Faithfull: The recruitment of the Jobs and Skills Australia commissioner was conducted in accordance with the government's Merit and Transparency policy, and the *Cabinet Handbook*. This included undertaking a national recruitment process, incorporating the views of the Minister for Skills and Training, as per the Merit and Transparency policy, and the Secretary of the Department of Employment and Workplace Relations on the scope of advertising and the selection criteria. We convened an assessment panel, which comprised six members. The process commenced on 8 July 2023. The minister sought the Prime Minister's approval before making the appointment under section 18 of the Jobs and Skills Australia Act 2022, in line with *Cabinet Handbook* processes.

Professor Barney Glover AO was appointed by the minister via written instrument on 25 January 2024. This was announced by the minister on 10 February 2024. The incoming commissioner will commence in the role in April 2024.

Senator O'SULLIVAN: Thank you. What sorts of requirements did you weigh up? What sorts of criteria—what was the skill set required?

Ms James: The selection criteria were as per the government's Merit and Transparency policy, and there may have been, as the policy allows, a couple of specific criteria added that were relevant to the role, and so the candidates were assessed in line with those criteria. I'm not sure if we have the criteria to hand. Yes, here they are: the successful candidate was articulated as someone who had gravitas across the multiple stakeholders that Jobs and Skills Australia works with—they would be able to work across those tripartite partners; they would have experience or insight into the skills training and education sectors; and they would have, essentially, experience in running an organisation that has a national remit, supporting the Commonwealth and all state and territory governments and supporting the sector—as I said, skills training and education, but also the sectors across all of those industry types across the country. Mr Turvey was reflecting on, for instance, agriculture, but it goes across the care economy, clean energy capacity et cetera.

Senator O'SULLIVAN: Is the selection that you've just read out available publicly? Is that something you could either table for us or provide to us on notice?

Ms Angus: That's part of the candidate pack that was available at the time of the advertising, so it was published and available.

Senator O'SULLIVAN: Okay. How many applicants were then considered?

Ms James: I'd prefer not to go into the details of the process.

Senator O'SULLIVAN: I'm certainly not going to go to who the candidates were or anything like that.

Ms James: The roles were advertised and there were a number of candidates. I'm not sure if we have a—

Ms Faithfull: I'd like to take that on notice because there were a large number of candidates considered.

Senator O'SULLIVAN: So there was more than one; there were a large number.

Ms James: Absolutely. It was a competitive process. There was a panel put in place.

Senator O'SULLIVAN: You obviously went through a process with shortlisting, as you would with any other—

Ms James: A number of people were spoken to.

Senator O'SULLIVAN: Fair enough. How many were recommended to the minister, or did you narrow it down to just the one?

Ms James: I'm conscious that the appointment is the minister's recommendation to the Prime Minister and that forms the basis of a cabinet process. There was more than one suitable candidate recommended to the minister.

Senator O'SULLIVAN: Were there any conflicts of interest disclosed at any point as part of this selection process?

Ms Faithfull: The normal types of conflict of interest processes were undertaken in the context of appointments being considered by cabinet.

Senator O'SULLIVAN: You spoke about the very broad remit of Jobs and Skills Australia and, with that, the need to provide expert advice to the government over the workforce requirements of many sectors. That would include the defence sector. Is that correct?

Ms Faithfull: Potentially. If Defence were included in Jobs and Skills Australia's work plan, then that would require that the commissioner contemplate the skills and training and educational needs in the pipeline of workers for the defence industry.

Senator O'SULLIVAN: What role is Jobs and Skills Australia playing in respect to AUKUS and the nuclear submarine program?

Ms Faithfull: At this stage there isn't a formal role. We are in discussions with Defence and the South Australian government around the role that the JSA could play in the data-gathering and in understanding the labour workforce needs over the next decade, to support both AUKUS and the civilian defence industry. That's not yet on Jobs and Skills Australia's work plan, so it is a discussion at this stage.

Senator O'SULLIVAN: I can't recall the name of the specific initiative around AUKUS, in term of training and skills, and I think the universities have an education initiative there as well. Is there any role that JSA has in forming the scope of that? Is there any impact at all?

Ms Angus: Thank you for the question. There are a number of mechanisms and committees that are looking at AUKUS and how to deliver on it. They are looking at a whole range of data sources. As my colleague has just mentioned, there is the capacity for JSA to do some work at some point. They haven't been formally commissioned to undertake anything at this point in time. There's work being driven, focused on South Australia and the needs in relation to the establishment of the skills academy there, but also, more broadly, in relation to the defence industry workforce across the board.

Senator O'SULLIVAN: What sort of information is the department getting from Defence and from defence industry in order to make assessments, particularly when it comes to appointments?

Ms Angus: There's a formal clearance process that's required and that's because, obviously, various levels of security clearance are required to work across government and to have access to information. The Australian government has a protective security policy framework, and individuals who need to access security classified resources must hold a relevant security clearance. That includes access to classified information systems that hold classified information and classified assets. An individual may also be required to hold a security clearance if they occupy a position of trust that requires additional assurance. A security clearance is not required to access information that does not have a classification. That process is actually managed across government by AGSVA, which is the Australian Government Security Vetting Agency. It is the central agency that undertakes that work, and they do that for federal, state and territory agencies. Professor Glover will be required to undertake a clearance assessment in order to undertake his role as commissioner.

Senator O'SULLIVAN: Thank you. We need to go to a break, I believe.

CHAIR: Yes.

Senator O'SULLIVAN: I'll come back to this after the break.

Proceedings suspended from 21:45 to 22:00

CHAIR: Senator O'Sullivan.

Senator O'SULLIVAN: Just before we broke, you confirmed that the director of Jobs and Skills Australia will be required to undertake a security clearance.

Ms Angus: That's correct.

Senator O'SULLIVAN: Has that occurred already?

Ms Angus: It's quite a lengthy process, as you can imagine. It requires, some might say, copious amounts of paperwork and a lot of reflection to quite a degree of detail. It covers off things like past employment and travel that people might have done—a whole range of things—so it takes quite a long period of time.

Senator O'SULLIVAN: So is it a positive vetting?

Ms Angus: I beg your pardon?

Senator O'SULLIVAN: Is it positive vetting? What level of vetting is it?

Ms James: I think that will depend on what's required with respect to the information that the commissioner will have access to.

Ms Angus: It's unlikely to be positive vetting, I would suspect—

Senator O'SULLIVAN: Okay.

Ms Angus: but, again, that will be subject—

Senator BROCKMAN: Sorry—you don't know what level of information or vetting is required?

Ms James: I don't know off the top of my head. It can change, from time to time, in a role.

Senator O'SULLIVAN: We're asking about this specific role. You could provide it on notice.

Ms Angus: Sorry, it's neg vet 1.

Senator BROCKMAN: Thanks. Sorry, I'm just interested.

Senator O'SULLIVAN: I'm not overly familiar with the different levels, but I'll take that as high enough! In the process of the appointment—this one specifically, of course, and more generally—what sort of vetting is done from a security point of view? Is there anything? Or is it that the only vetting on a security clearance is done after the appointment?

Ms James: The actual vetting process is undertaken by AGSVA, as I was describing to you before. It's all done by them—they're the specialists in security assessments; we are not. They undertake that on behalf of us. When any applicant of this type takes up a role like this, you would have a personal interest disclosure, which I think we referred to previously as a conflict of interest disclosure—it's the same thing—but the formal security assessment is actually a very specialised skill, and we don't undertake that. We rely on AGSVA to provide us with advice.

Senator O'SULLIVAN: What would occur if someone failed their security vetting?

Ms Angus: I don't know that you would 'fail' an assessment, as such. You might not get the classification that you were seeking. It might be that there was some determination that that wasn't an appropriate level for you to be able to access. In relation to your previous question about being unfamiliar, it's very common for security agencies to look at what, in their view, you actually need to undertake your work.

Senator O'SULLIVAN: Okay.

Ms Angus: You can't just say, 'I'll have the top'—

Senator O'SULLIVAN: So it's their assessment.

Ms Angus: To an extent, it's their assessment. I can't go in, for example, and say, 'I'll have a positive vet clearance, thanks.' They will determine whether or not that's appropriate—

Senator BROCKMAN: No, it's usually tied to the position.

Ms Angus: It has got to be tied to the position.

Senator BROCKMAN: It's usually tied to the position and the sort of information a person in that position will receive.

Ms Angus: That's correct, and this position has been identified as requiring neg vet 1. If there were some concern about that, then we would manage that process at the time. Again, it's about who has access to what information, and that becomes the key issue—how you are able to manage that.

Senator O'SULLIVAN: Okay. I really want to go to process here. I don't know Professor Glover at all—I'm sure he's eminently qualified for the role. I am going to process, even though my questions will be a little bit more focused. Are you familiar with the Chinese billionaire Huang Xiangmo?

Ms Faithfull: No, I'm not.

CHAIR: He's a friend of Malcolm Turnbull's and Sam Dastyari's.

Senator O'SULLIVAN: To refresh everyone's memory, Mr Xiangmo is a Chinese billionaire who had his Australian visa cancelled in 2019 on advice from ASIO, over fears of foreign political interference—allegations which he has denied. The New South Wales Independent Commission Against Corruption heard evidence in 2019 that Mr Xiangmo had given an illegal \$100,000 donation to the New South Wales Labor Party, delivered in cash in an Aldi shopping bag to the party's general secretary. Quite infamously, Labor senator Sam Dastyari was forced to resign in the wake of revelations regarding his contact with Mr Xiangmo. Are you aware that Professor Glover began his term as vice-chancellor of Western Sydney University in January 2014?

Ms Angus: We certainly have his previous work history, yes.

Senator O'SULLIVAN: Are you aware that Mr Xiangmo donated \$3.5 million to Western Sydney University to establish the new Institute for Australian and Chinese Arts and Culture during Mr Glover's tenure as vice-chancellor?

Ms Faithfull: No, we were not aware. I suspect, as chancellor, donations are received if you're a chancellor of a major university, and I would like to reflect that Professor Glover has been the chancellor of not only Western Sydney University but also Newcastle university and Charles Sturt University, with really significant outcomes, particularly for priority cohorts—

Senator O'SULLIVAN: I want to be really clear: I'm not at all questioning—

Senator Chisholm: Well, you are. That's exactly what you're doing.

Senator O'SULLIVAN: Let me finish my questions, and you can certainly have a go at me if you think I've crossed that line. I'm not.

Senator GROGAN: You're certainly dancing around it.

Senator O'SULLIVAN: I'd preface it by saying I realise this could be sensitive. What I want to understand is the process that is gone through in checking things. The *Australian* newspaper reported that in 2019 Western Sydney University allowed Mr Xiangmo to sit on the board of the research centre, the Institute for Australian and Chinese Arts and Culture, even after the Australian government had revoked his permanent residency. Are these the sorts of things that are looked at?

Senator Chisholm: And there's the \$50,000 donation to the Liberal Party of Victoria, the \$20,000 donation to former senator Mathias Cormann, the \$20,000 donation to Liberal MP Andrew Nikolic—we can go on and on about donations. The reality is that Professor Glover has an outstanding record. We know that he's been the vice-chancellor at Western Sydney University. He's been at Charles Darwin University and the University of Newcastle. He was at one of the universities in Western Australia. We also know that the previous government appointed him to the University Foreign Interference Taskforce on the prevention of foreign interference; that was your government that appointed him to that position. He recently appointed former senator Marise Payne to a position at the university.

Senator BROCKMAN: It's a bit of a giveaway that you've got—

Senator Chisholm: He has an outstanding record and—

Senator BROCKMAN: this sheet in front of you with all this information.

Senator Chisholm: Excuse me; I haven't finished!

Senator BROCKMAN: It's a bit of a giveaway.

Senator Chisholm: I also have worked with Professor Glover over the last couple of months in regard to the Universities Accord process, and I've found him outstanding to deal with. But I would say this: just because the shadow minister suggests a smear campaign doesn't mean you have to go through with it, Senator O'Sullivan. That's my advice.

Senator O'SULLIVAN: I'm just trying to understand: are issues like what we've been discussing looked at?

Senator Chisholm: What you're trying to do is smear someone.

Senator O'SULLIVAN: No, I'm not at all besmirching Professor Glover. As I said, I don't know him.

Senator Chisholm: We know what the shadow minister has been up to.

Senator O'SULLIVAN: The point is—

Senator Chisholm: We know the stuff she's been putting around.

Senator O'SULLIVAN: is there—

Senator Chisholm: You don't actually have to follow through.

Senator Grogan interjecting.

Senator O'SULLIVAN: I'm trying to understand whether the government has considered and looked at the relationship between Mr Glover and Mr Xiangmo. There may be none. I'm trying to understand: has the department looked at this issue?

Senator BROCKMAN: Clearly the government is aware of it; he's got the sheet.

Ms Faithfull: The process was done in accordance with the government's merit and transparency policy and the *Cabinet Handbook*. Under that process, as I said, we conducted referee checks. We went through a process of personal declaration checks, a rigorous interview process and, obviously, an application process in the context of a very rigorous and expansive search for a pre-eminent person to take on this inaugural appointment of Jobs and Skills Australia.

Senator Chisholm: And your own government appointed him to the University Foreign Interference Taskforce, so you're obviously confident in his abilities.

Senator O'SULLIVAN: I'm happy to move on. Senator Brockman has some questions.

Senator BROCKMAN: I'll start with JSA and the new energy apprenticeships. Mr Turvey, you recently conducted a clean-energy workforce study. Can you talk to us about the skilled workers we're currently short of in that area?

Mr Turvey: Certainly, and I will ask Dr Damian Oliver to assist me with the answers to your questions. This was the first major study that we conducted as Jobs and Skills Australia, and it examined the workforce needs of the transition to net zero. It was an extensive study; it took nine months and it was about 250 pages long. First of all, it examined the occupations that we thought would be most critical to the transition to net zero. There's no clear definition of what the workforce is, so the first thing we did was identify the range of occupations that we thought were most critical to the transition. We then did analysis about the likely demand for those jobs, going forward, and identified a range of occupations where we thought there would be significant growth, particularly electricians but also construction workers and a range of trade workers, and engineering roles as well. The study then looked at the education and training pathways and the kinds of qualifications that will be required to produce the workers that we'll need for this transition. We also looked at the role of migration. It made a range of recommendations for industry, government, business and education and training providers about how we can make sure we've got the right workers in the right place to deliver this transition.

Senator BROCKMAN: Did it discuss the number of workers required over periods of time?

Mr Turvey: Yes. We have projections for our future employment growth to 2050.

Senator BROCKMAN: What are the key projections in terms of what's required?

Dr Oliver: As part of the report—and the figures are included in chapter 5 of the published report—we looked at a number of occupations critical to the clean energy workforce, given that, for looking at future supply pipelines, it's usually the occupations that are most useful to look at, given the training requirements, migration requirements and so on. As my colleague Mr Turvey said, we looked out to 2050, given the ambition to reach net zero by 2050, but we also focused on the next seven years and the pathway to 2030. As part of that, probably the most central occupation that we looked at was electricians, given their importance to electricity generation but also, across the construction and manufacturing industries, to electrification and other processes around energy efficiency. In that regard, under the essential scenario—we looked at a couple of different scenarios for how we might progress given various emissions pathways—we would need 32,000 more electricians. We looked at a range of other occupations as part of that, and they're summarised on page 165 of the report.

Senator BROCKMAN: I'll look at that myself. Sorry, we are short of time unfortunately so I'm going to have to skip through this a little bit faster than I would like. So that's 32,000 in the median scenario just for electricians? This question is to the department: the government committed to delivering \$100 million for 10,000, a third of that median scenario of new energy apprentices—that's right, isn't it? Was that the commitment?

Ms Faithfull: Yes.

Senator BROCKMAN: And where are we up to? How many apprentices are part of the program?

Ms Faithfull: The program commenced on 1 January 2023. As at 7 January 2024—

Senator O'SULLIVAN: Just over a year ago.

Ms Faithfull: Yes. We have 1,678 approved contracts and 1,755 sign-ups.

Senator BROCKMAN: What was the second category?

Ms Faithfull: The sign-ups.

Ms Campbell: The number of approved contracts that have actually been signed off by the relevant state or territory is 1,678. The 1,755 sign-ups are training contracts that are in the process of being finalised. The number for the program is 1,678.

Senator BROCKMAN: So around 16 per cent have currently been allocated. That's correct—simple maths.

Ms Campbell: Yes.

Senator BROCKMAN: Can you break those numbers down by geography or not? Is it best by city or a state?

Ms Campbell: I think I'll need someone to bring that data but—

Senator BROCKMAN: I'm happy to get that answer on notice. Is that possible? What's the best way of breaking it down—by state?

Ms Campbell: Sorry, I do have it in front of me. I can break it down by state and I can also provide the top five occupations.

Senator BROCKMAN: Let's get it by state. You can give me the occupations on notice. Also on notice can you give the individual companies, say the top 10 companies, that've been involved.

Ms Campbell: I don't have that in front of me. I have the top five industries but not details of individual employers.

Senator BROCKMAN: Can you provide individual companies or not?

Ms Campbell: We would be able to provide details of the apprenticeships.

Senator BROCKMAN: Alright. Could I quickly have the state by state breakdown?

Ms Campbell: The state by state breakdown is: Queensland, 363 apprenticeships; Victoria, 345; New South Wales, 323; WA, 279; South Australia, 259; Tasmania, 74; ACT, 31; and Northern Territory, four.

Senator BROCKMAN: Minister, is 16 per cent an acceptable take-up rate from your point of view?

Senator Chisholm: When we're looking at phase 1 of the program, I think it's encouraging. Obviously we think that there's enormous opportunity in the future. I know that there's ongoing work to try and engage more people in the program, and I believe there's also a phase 2 that will be rolled out at the same time. There's no doubt that there's enormous opportunity for people all across the country. I think those numbers would indicate that across the various states and territories.

Senator BROCKMAN: We heard from JSA that the requirements are extraordinary in terms of the potential needs. The minister, when he launched this program, said it was going to deliver an army of skilled workers. Is this an army, Minister?

Senator Chisholm: I think we're getting there, and that's what we need to do.

Senator BROCKMAN: You're at 16 per cent.

Senator Chisholm: We know that we've got a big challenge with renewable energy given the record of your government, which was disastrous when it came to building new energy infrastructure in this country—

Senator BROCKMAN: Again, 16 per cent after a year.

Senator Chisholm: We're getting on with that and we're getting on with ensuring we've got the workforce to deliver it as well.

Senator BROCKMAN: Has the Minister for Skills and Training or his office sought an update on this program recently?

Ms Faithfull: Yes, he has.

Senator BROCKMAN: Can you give us a date?

Ms Faithfull: I'd have to take that on notice.

Senator BROCKMAN: Are you aware of the story running in the *Australian*—'Short circuit in Labor's tradies' training plan'? Is there a problem with this program?

Ms Faithfull: What I would put forward is that we are very focused on running a skills and training system that is adaptive, so it's responding to the data and the insights of both pre-eminent organisations such as Jobs and Skills Australia that are informed by jobs and skills councils, getting that labour force data from the ground and from a combination of employers and unions and sector, and feeding that through and then being able to adapt the mechanisms we have in place at a Commonwealth level and with our colleagues in states and territories to

respond to what we're learning and how we adapt the mechanisms, the eligibility or the guidelines to ensure we're having the greatest impact.

In the context of the New Energy Apprenticeships program, subsequent to the release of the clean energy capacity report from Jobs and Skills Australia, what those insights did was help inform the way we defined the occupations under the program. What we're exploring is—picking up on the insights from JSA—what does an expanded set of occupations for green energy look like and how can we add that into the program? It is adaptive and it has to be adaptive because this is going to be a decade-long transition and there will be new insights about new occupations and new skills, and we need to be able to respond quickly to that.

Senator BROCKMAN: Are you already planning to change the parameters of the program?

Ms Faithfull: I'll ask Ms Campbell to reflect on that.

Ms Campbell: The clean energy capacity study was commissioned by Jobs and Skills Australia at the time this program was announced. One of the key tasks of the clean energy capacity study was to provide advice around eligibility for this program, in particular. There's no qualification that is called 'new energy', so it is drawing on a range of occupations. Through the implementation of the program, we have uncovered some of the challenges around eligibility and the rollout of the program. That goes to the current requirement for the employer to guarantee ongoing and consistent exposure to clean energy occupations.

In practical terms, if you're studying to be an electrician your employer might be installing solar panels, for example, on houses, so for a large part of your work you're working on solar panels, but in order to complete your qualification it is likely you're going to have to work for another employer to gain the skills you need to complete your qualification and obtain your licence. Some of the eligibility, where it has been quite strict in the first phase, we will be looking at how we adjust, taking into account the findings from the clean energy capacity study.

Senator BROCKMAN: With all due respect, we've been installing solar panels on roofs for 30, 40 years. If you're changing the program parameters already, then you're effectively admitting failure.

Ms Faithfull: No, not at all. What we're referring to is the mix of the requirements around the percentage of time you spend working on clean energy projects. What we're talking about is recognising that the experience on the ground might be that an apprentice spends 80 per cent of their time on a clean energy project and the other 20 per cent might be on another project that's not clean energy but is about completing the requirements in order to complete their apprenticeship and get their licence. We need to be adaptive and responsive to what we're hearing on the ground. We need to be responsive to new occupations coming in that can be classed as clean energy, and we need to be ensuring that, where we have got financial incentives, they're driven at the greatest impact.

Senator BROCKMAN: Did you set benchmarks or milestones for take-up when you established the program?

Ms Faithfull: We obviously have the government's commitment for 10,000 new energy apprentices to have completed their training by 2030-31. We have the insights from JSA in regard to 32,000 electricians. That will frame our activity, absolutely, and then we need to be working quite diligently on what that means over periods of time in terms of how we're working with states and territories, given the important role they play with the apprenticeship system. That's part of the work that we'll be doing under the National Skills Agreement in terms of agreeing plans around those national skills priorities, and the net zero transition is one of those.

Senator BROCKMAN: You've obviously got a year's worth of data now. As we're going into the budget cycle, will you be looking to roll over an underspend this year in this program?

Ms Faithfull: That is a matter for government.

Senator BROCKMAN: But you must know whether there's going to be an underspend.

Ms Faithfull: I don't think I'm in a position to reflect on what's currently being considered in the context of an upcoming year.

Senator BROCKMAN: Is there going to be an underspend in this program at the moment?

Ms Campbell: I would need to take that on notice. Based on the current funding profile, I expect there's likely to be an underspend.

Senator BROCKMAN: Of what quantum?

Ms Campbell: I would need to take that on notice.

Ms Faithfull: We can take that on notice.

Senator BROCKMAN: Alright. I'm happy to leave it there.

Senator O'SULLIVAN: I want to move on to the TAFE centres of excellence. I want to understand, in simple language, what these centres will do—and some data around those.

Ms Faithfull: Under the National Skills Agreement, the Australian government will partner with states and territories to establish nationally networked TAFE centres of excellence, which will help deliver a skilled workforce for strategically important industries to meet national challenges. The Australian government is investing up to \$325 million over five years to establish and operate TAFE centres of excellence, with states and territories making their matched contribution to that. The intent is that the centres of excellence will increase collaboration between TAFEs, through partnerships with industry and universities, and deliver the skills people need for good secure work and careers.

Separately, with the release of the employment white paper, the Commonwealth has announced up to six nationally networked TAFE centres of excellence to receive additional funding to fast track the priority areas of transition to net zero, essential care and support services, and building digital skills capability, with a focus on working towards higher apprenticeships and degree apprenticeships.

Senator O'SULLIVAN: In the media release on 25 September, it said there's \$31 million to 'turbocharge the new TAFE centres of excellence'. What does 'turbocharge' mean?

Ms Faithfull: This is the specific piece around the higher apprenticeships and degree apprenticeships. We've heard from industry that there is a real need for that additional classification within the Australian classification framework and for the ability, on the higher education side, for people to have access to on-the-job skilling. With that in mind, this is about a focused investment to bring together business, industry, unions and both TAFEs and higher education providers to work together to articulate what the types of occupations are and what the types of qualifications and skills are that would be required to think about that higher degree or degree apprenticeship and then about really working hard at developing, essentially, a pilot that then can be tested and implemented. At the same time, the department will be working with our state and territory colleagues on ensuring that, from a policy and framework legislative perspective, we are putting in place the right landscape to enable those higher degrees and degree apprenticeships and to enable the scale, because there are pilots out there at the moment but what hasn't been achieved is national scale.

Senator O'SULLIVAN: Is that word 'turbocharge' and that investment about getting these centres of excellence in place sooner, or is it more about the actual work of the centres of excellence?

Ms Faithfull: It's about turbocharging the higher apprenticeships and degree apprenticeships. It's really about ensuring that we're putting focused effort and drive behind that. You could imagine that, without that dedicated focus, dedicated funding and very targeted time frames, the process could take a lot longer. It is complex; it's not easy. It's about new qualifications. It's about articulating where the need is in different sectors and industries and then about how it will be taught and applied. This is funding to allow people the space and time to really push hard into that and focus in on it so that we can get them on the ground much sooner than, perhaps, if we took a business-as-usual approach.

Senator O'SULLIVAN: What's involved with these new centres? Are they new buildings, or will they operate within existing facilities?

Ms Faithfull: What each state and territory minister will be putting to the Minister for Skills and Training is their proposed centres of excellence. There's flexibility there in terms of whether it's a new piece of infrastructure or whether it's leveraging infrastructure that already exists. The key focuses are partnerships—working with industry, with business, with unions and with other parts of the community—and those key national priority areas, being net zero transition, the care economy and digital.

Senator O'SULLIVAN: When will the first centre open?

Ms Faithfull: Where we are at in the process is that state and territory ministers have been asked to provide their proposed centres of excellence by 1 March or sooner if available. Then the Minister for Skills and Training, with support from the department, will go through a process of consideration. It will really depend on the proposal being put by each state and territory as to when they'll hit the ground and commence.

CHAIR: Can we just pause for a moment. We're going to have a brief suspension.

Proceedings suspended from 22:33 to 22:34

CHAIR: ASQA can be released. Apologies for the late time. We thought we were going to get there, but we haven't. We'll give you the half hour we're not going to get, if that's okay. Back to Senator O'Sullivan.

Senator O'SULLIVAN: My apologies for keeping those people so late and then not bringing them on. We will put questions on notice. Wrapping up on centres of excellence: in relation to when the centres will open and where they're going to be located, I presume it will be every state and territory—is that right—or just the states?

Ms Faithfull: Just to clarify: when I talked about applications by 1 March or earlier, I was actually referring to the turbocharging component, which does require a centre of excellence. The process for the centres of excellence without the turbocharging has a bit more lead time.

Ms Wilkinson: Yes. In terms of the centres of excellence, there's money allocated under the NSA for every jurisdiction, and the requirement that the money is matched. In terms of when they will set up states, we are working with states at the moment. They're preparing implementation plans, and as they bring those forward for Commonwealth agreement the centres will flow as a result of that. In terms of the turbocharging aspect of this, that's a separate process but requires a centre of excellence to accompany it. The turbocharging applications are due by 1 March.

Senator O'SULLIVAN: Who's the delegate? Who signs off on it?

Ms Wilkinson: The minister will make the decision.

Senator O'SULLIVAN: Will the minister have discretion over where the centres will be located?

Ms Wilkinson: In terms of the centres of excellence, each state—

Senator O'SULLIVAN: They propose where it's going to be?

Ms Wilkinson: They will bring forward a proposal.

Senator O'SULLIVAN: Can the minister say, 'No, I want it to be in a neighbouring suburb'?

Ms Wilkinson: The minister will assess a proposal against a range of criteria, many of which are set out in the National Skills Agreement, which is publicly available. That assessment will be made based on the proposal brought forward by the states.

Senator O'SULLIVAN: On notice, can you provide a record of all expenditure on this program so far, including any contracts, consultants engaged and agreements with state governments, to the extent you can?

Ms Faithfull: Certainly.

Senator O'SULLIVAN: I want to go to the Skills Guarantee. I'm trying to move through this quickly. How many major federal government projects are compliant today with the Australian Skills Guarantee?

Ms Campbell: The Australian Skills Guarantee is not currently in place. It's due to commence from 1 July 2024.

Senator O'SULLIVAN: I think this was an election commitment, wasn't it, Minister?

Senator Chisholm: Yes.

Senator O'SULLIVAN: Almost two years has gone by. Your evidence means that there's no infrastructure project anywhere across the country that is covered by the Australian Skills Guarantee, given that it hasn't started.

Ms Campbell: That's correct. The department has been working over the last 12 months to finalise the Procurement Connected Policy guidelines, which will underpin the Australian Skills Guarantee. That has involved a range of consultation with stakeholders across the Commonwealth as well as with the states and territories to seek feedback into the policy guidelines.

Senator O'SULLIVAN: Given that, and that it hasn't started yet, there would be no apprentices on any major government project as a result of the Australian Skills Guarantee—that's obviously correct. Given there are none, again we have a situation where two years has gone by and we don't have a single apprentice on any major infrastructure project in Australia as a result of the election commitment for the Australian Skills Guarantee—is that correct?

Ms Campbell: Not as a direct result of the Australian Skills Guarantee.

Senator O'SULLIVAN: Thank you. How much money has the Commonwealth expended to date on this program? In the interests of time, I'm happy for you to take that on notice.

Ms Campbell: Thank you.

Senator O'SULLIVAN: I presume you spent something. You would have to expend—

Ms Faithfull: I would like to reflect that it is a significant shift in how construction companies and ICT companies will be tendering for work. In order to be able to support them to make that shift—in terms of thinking through the 10 per cent of the labour hours they will be having on projects and how they will be filling that 10 per cent not just with apprentices but also with female apprentices—we've really gone through a process of extensive

and detailed consultation to ensure that, for business and industry out there, they have the runway and feel prepared in terms of what's coming come 1 July in terms of their requirements to tender for Commonwealth projects and that the departments that are undertaking that tendering are also prepared to be able to support them. I wouldn't want to underestimate the significance of the shift, the profound impact that we hope it will have but also to ensure that those who are participating in it have had that preparatory runway to be able to prepare for that.

Senator O'SULLIVAN: You mentioned ICT. Is this project just focused on ICT?

Ms Faithfull: The Australian Skills Guarantee will apply to major construction projects. It will apply to major ICT projects with a total contract value of \$10 million or more.

Senator O'SULLIVAN: So major projects. It states on the website that targets will apply to tenders for Commonwealth projects from 1 July this year. Does this mean that existing projects will not be subject to the Australian Skills Guarantee?

Ms Faithfull: It does mean that existing projects won't be subject—

Senator O'SULLIVAN: So it's only new ones.

Ms Faithfull: Yes.

Senator O'SULLIVAN: Would a major project like the Western Sydney airport be subject to the Australian Skills Guarantee?

Ms Faithfull: If the tendering for that project in terms of the Commonwealth component were happening after 1 July then it would be subject to the guarantee.

Senator O'SULLIVAN: So it would only be future tenders that relate to that project, presuming it's above. Given that it's a big project already, if the individual tender is below that threshold would it then be included, or is it only if the actual value of the tender—

Ms Faithfull: Yes, the value of the tender being \$10 million or more.

Senator O'SULLIVAN: So each individual tender would need to be over that, not the aggregate across the project? Projects are chunked down into smaller sizes.

Mr Atkinson: Attached to each individual procurement over \$10 million.

Senator O'SULLIVAN: Will major defence procurements be subject to the Australian Skills Guarantee, or are they excluded?

Mr Atkinson: I'll take that on notice, if that's okay.

Senator O'SULLIVAN: If it's construction then I suppose it might be.

Mr Atkinson: If it were construction or ICT the threshold is \$10 million.

Senator O'SULLIVAN: I note the website also states that the government will also work with the state and territory governments—you've spoken about that here this evening already—to apply the Skills Guarantee to jointly fund major construction projects under the National Housing Accord, the 2032 Olympic and Paralympic Games, and the next national partnership on land transport infrastructure projects. Can I confirm the enforcement mechanisms, given that we have states involved in delivering these projects. What are the enforcement mechanisms if these projects don't meet the Australian Skills Guarantee?

Mr Atkinson: I think for those individual MPAs it will be a matter of the individual projects under those MPAs. Essentially, as they are MPAs run by the Department of Treasury—I think in the case of the housing one it's with Infrastructure—it would be up to those individual agencies to negotiate the application of the Australian Skills of Guarantee to the projects fitting under those.

Senator O'SULLIVAN: Secretary, is this something where you would play a role in coordinating across other departments and secretaries?

Ms James: Certainly, this project has involved liaison across government. Anything to do with procurement means that we're working very closely with the Department of Finance and other departments, and that is part of what we've been striving to get right before this is implemented.

Senator O'SULLIVAN: I appreciate Treasury or other departments might be running the negotiations with the states on the particular projects, but is it your understanding that it would be a requirement of those agreements that the Australian Skills Guarantee be there with those projects?

Mr Atkinson: We're working with those departments to adopt the same threshold, the Australian Skills Guarantee, as applies to major procurements across government.

Ms Faithfull: Just to answer your question on the consequence of non-compliance, where it is a major project that's the subject of a national intergovernmental agreement, we'll need to work that through, but, where it's a Commonwealth own-source project, the relevant entities will be required to undertake six-monthly assessments and a final and contract assessment and address non-compliance. There'll be a range of compliance actions for contracting agencies to undertake. These include a spectrum, from an educative approach for minor non-compliance through to rectification strategies and more extreme measures—for instance, potentially penalties applied in accordance with the Commonwealth procurement rules. So there will be a spectrum of responses for non-compliance, and we are working on what a very rigorous framework looks like in terms of reporting.

Senator O'SULLIVAN: Can I get a quick response to these final two questions, because we do need to move on. When does the department expect to achieve the government's promise to ensure that one in 10 workers on major federally funded government projects is an apprentice, trainee or paid cadet? When will we get to that one in 10?

Ms Faithfull: As we have said, the requirement kicks in from 1 July.

Senator O'SULLIVAN: It's going to take time to build up.

Ms Faithfull: Recognising that there is always a time for the process that tenders need to go through and to be finalised and then for construction to start on site—that will be dependent on each project—but we'd be hoping to see results by the end of—

Ms Campbell: It would be part of the project requirements that they would be reporting to us and demonstrating that 10 per cent of all labour hours spent on that project were being undertaken by apprentices and trainees.

Senator O'SULLIVAN: Sorry, I haven't got a date.

Ms Campbell: It would apply to projects that roll out from 1 July 2024.

Senator O'SULLIVAN: That's when it starts, but when, in terms of reaching that target? There's a commitment from government that one in 10—

Ms Campbell: It would be dependent on each project and when they are breaking ground, or, in the context of ICT, kicking off, but we would hope, noting that it is dependent on each project and their tender process, that we would really start to see this play out by the end of this calendar year.

Senator O'SULLIVAN: That's when they'll start. Can you come back on notice, please. When will we be in a situation where one in 10 employees on a major federally funded government project are an apprentice, trainee or paid cadet? That's not when we start to see a pipeline of people going into those jobs; when will we get to one in 10?

Ms Faithfull: We'll take that on notice.

Senator O'SULLIVAN: Thank you, Chair, and thank you, everyone in the department. I know we've kept you late.

Ms James: Chair, I'm sorry to prolong the proceedings.

CHAIR: We've got 10 minutes.

Senator GROGAN: Prolong away!

Ms James: We've just identified that the data we provided you in relation to the new energy apprenticeships is a little out of date, and we have updated data. Perhaps we can read the headlines, and Senator Brockman—

Senator BROCKMAN: Why don't you just table it? Have you got it there?

Senator Chisholm: I think it's good to get it on the record because it's obviously an important—

Ms James: It's been scribbled on too. It won't take a moment to read the headline data.

Ms Faithfull: As at 4 February 2024, there are 1,804 approved contracts. There are 1,943 sign-ups.

Senator BROCKMAN: That's 18 per cent, not 16 per cent. It's an army!

Ms James: It's the beginning of an army. An army has to start somewhere.

CHAIR: Thanks very much. That's the end of Outcome 2. It has been appreciated as always. It may not look like we're appreciating you up here, but we certainly are. We will now go to the National Centre for Vocational Education Research.

National Centre for Vocational Education Research

[22:51]

CHAIR: I now welcome representatives from the National Centre for Vocational Education Research, including its managing director, Mr Simon Walker, who's joining us via videoconference. Mr Walker, do you wish to make an opening statement?

Mr Walker: No, thank you, Chair.

CHAIR: Thanks for persevering. We'll go to Senator Brockman.

Senator O'SULLIVAN: You've got eight minutes of questions.

Senator BROCKMAN: I'll get through as much as I can. The latest data you have available is from June 2023. Is that correct?

Mr Walker: Is that for apprenticeships and traineeships?

Senator BROCKMAN: Yes.

Mr Walker: Yes. That's correct.

Senator BROCKMAN: Completions, by my reading, have increased by 13 per cent in the 12 months ending June 2023. Completions in non-trade occupations have increased 14.7 per cent. Trade completions increased by 12.1 per cent. Does that sound about right to you?

Mr Walker: Yes. I'd like to always confirm these on notice, because I'm doing this on the fly, but based on what I heard in the previous session and what you've just recited, they sound about right to me.

Senator BROCKMAN: I'm happy for you to correct the record if I've got any of that wrong. In a media release:

NCVER Managing Director Simon Walker said, "The increase in completions for the 12 months ending June 2023 is a result of increases in commencements in recent years."

Am I right in taking from that contribution that there is a link between increases in commencements over recent years and increases in completions that we have seen in the latest data?

Mr Walker: Yes. If I could just elaborate a bit: when you have a trend of increasing commencements, there is always a lag between the starting of an apprenticeship and the finishing of an apprenticeship. Over time any sustained increase will lead to an increase in completions, assuming the completion rate stays the same. Similarly, if there's a sustained decrease in commencements over time, you'll see a sustained decrease in completions—again, all other things being equal.

Senator BROCKMAN: So we have a direct link between the skills policies under the previous coalition government and the rise in completions?

Mr Walker: I think the phrase we would use is that there is a correlation between the policy interventions at that time and the increase in commencements at that time.

Senator BROCKMAN: You've made it pretty clear that there is a strong link between commencements and completions. What was the year-on-year drop in commencements across the apprenticeships and trainee cohort from June '22 to June '23?

Mr Walker: I will have a look at that now for you. You're talking about, if I've got the question right, the number of commencements in the 12 months ending June '23 compared to the commencements during the previous 12-month period ending 30 June 2022?

Senator BROCKMAN: Yes.

Mr Walker: There was a decline of around 111,000 commencements in those 12 months. I will give you the numbers I'm reading now—and, again, I would like to confirm these on notice because I'm doing this on the fly. In the 12 months ending 30 June 2022, the total number of commencements was 277,895. And in the 12 months after that, which is the 12 months ending 30 June 2023, total commencements were 166,375.

Senator BROCKMAN: I'm roughly trying to calculate that percentage drop in my head. Can you work that out as you're looking at it there?

Mr Walker: I'll do it on the phone while I'm talking to you.

Senator BROCKMAN: There you go! I like a person with a calculator in his hand.

Mr Walker: I'm going to round it up a bit. It's about a 40 per cent change.

Senator BROCKMAN: A 40 per cent decrease. Maybe in raw numbers rather than the percentage, is there a drop in women taking up apprenticeships or traineeships?

Mr Walker: I'll do that on the fly as well. I'll have a look at gender. Again, looking at those same two periods, I'll give you the absolute numbers. The total number of commencements for women in the 12 months ending 30 June 2022 was 110,000, rounding it down a bit. In the 12 months ending 30 June 2023, it was 61,000.

Senator BROCKMAN: So, a decline of around the 40 per cent mark again?

Mr Walker: Yes.

Senator BROCKMAN: Given what you said earlier, that there is a link between—

CHAIR: Senator Brockman, can you make this your last question? I need a couple of minutes as well.

Senator BROCKMAN: Given there's a link between commencements and completions under the previous government, and we're seeing a 40 per cent drop in commencements, what is that going to mean under this government? Are we going to see a commensurate drop in completions?

Mr Walker: I don't think I'm in a position to project or speculate on future government policy.

Senator BROCKMAN: I'm not asking you to speculate on future government policy. I'm asking you to extrapolate what you just said about trend lines, completions and commencements being linked, and the fact we've seen a 40 per cent decrease in commencements.

Senator GROGAN: That would be a hypothetical, given—

Mr Walker: It would be very difficult to project—

Senator GROGAN: there are so many different aspects in here that you need to unpack.

Senator BROCKMAN: He just said they were linked.

CHAIR: It is time to go to me, because we only have 1½ minutes. I gather you'll want to put that on notice, Senator Brockman. Mr Walker, is it correct that the data shows that commencements declined once the BAC scheme ended in June 2022 but appeared to be returning to pre-pandemic levels some nine months later?

Mr Walker: Yes. If we look at the recent quarter and compare that to a pre-COVID quarter—a similar question was asked in the previous session—it's actually an increase compared to the same comparable period pre-COVID. There has actually been a slight increase in commencements in the June quarter in '23 compared to June '19.

CHAIR: I think they say, 'Wham, bam, thank you very much.' So we have an increase compared with pre-COVID. Thank you for that evidence. We now thank you, Mr Walker, for confirming that we have got the pre-COVID figures.

Senator BROCKMAN: You're in a bit of a hurry to shut this down, Chair!

CHAIR: I'm certainly not in a hurry because we made the point about the fictitious arguments you were putting forward.

Senator O'Sullivan interjecting—

Senator GROGAN: No, you're trying to misrepresent the—

CHAIR: I could really spend another half-hour just saying how ridiculous that comment was, but I'll leave it to the last words. The data shows that commencements declined once the BAC scheme ended in June 2022 but appeared to be returning to pre-pandemic levels some nine months later. It's just been confirmed they're actually higher.

Thank you very much, Mr Walker. That concludes today's hearing. Thank you to all witnesses who appeared, and to Hansard and Broadcasting for their assistance—as always, very good. I remind senators that written questions on notice should be received from senators by close of business on Friday 23 February 2024. Answers to questions on notice will be required to be returned by close of business on Friday 5 April 2024. The committee stands adjourned.

Committee adjourned at 23:00