

COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

Senate

Education and Employment Legislation Committee

Estimates

(Public)

Wednesday, 24 October 2018

Canberra

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Senate

Education and Employment Legislation Committee

Wednesday, 24 October 2018

**Members in attendance:** Senators Brockman, Cameron, Lines, Marshall, Molan, Paterson, Siewert, Urquhart.

JOBS AND SMALL BUSINESS PORTFOLIO

**In attendance**

Senator Reynolds, Assistant Minister for Home Affairs

Senator Cash, Minister for Small and Family Business, Skills and Vocational Education

Senator Ruston, Assistant Minister for International Development and the Pacific

**Department of Jobs and Small Business Executive**

Ms Kerri Hartland, Secretary

Dr Jill Charker, Deputy Secretary, Corporate

Mr Martin Hehir, Deputy Secretary, Employment

Ms Debbie Mitchell, Acting Deputy Secretary, Workplaces and Small Business

**Cross Portfolio**

Mr Glen Casson, Group Manager and Chief Financial Officer, Finance, Legal and Governance Group

Mr Simon Cooke, Acting Branch Manager and Agency Security Adviser, Finance, Legal and Governance Group

Mr Luke de Jong, Branch Manager, Finance, Legal and Governance Group

Mr Shayne Howard, Branch Manager, Finance, Legal and Governance Group

Ms Moya Drayton, Group Manager, People and Communication Group

Ms Heike Phillips, Acting Branch Manager, People and Communication Group

Ms Nadine Handford, Acting Branch Manager, People and Communication Group

Mr Stuart Watson, Branch Manager, People and Communication Group

Mr Shane Wilson, Director, People and Communication Group

Mr Scott Wallace, Group Manager and Chief Technology Officer, Technology and Services Group

**Outcome 1 – Employment**

Ms Janine Pitt, Group Manager, Activation and Work for the Dole Group

Ms Stephanie Bennett, Branch Manager, Activation and Work for the Dole Group

Mr Ty Emerson, Branch Manager, Activation and Work for the Dole Group

Ms Melinda Hatton, Branch Manager, Activation and Work for the Dole Group

Ms Helen Willoughby, Group Manager, Delivery and Engagement Group

Ms Kerryn Kovacevic, Group Manager, Employment Systems Group

Mr Steve Lloyd, Acting Branch Manager, Employment Systems Group

Ms Benedikte Jensen, Group Manager, Labour Market Strategy Group

Mr Nicholas Dowie, Branch Manager, Labour Market Strategy Group

Mr Malcolm Greening, Branch Manager, Labour Market Strategy Group

Mr Ivan Neville, Branch Manager, Labour Market Strategy Group

Ms Carmel O'Regan, Acting Branch Manager, Labour Market Strategy Group

Ms Marsha Milliken, Group Manager, Quality, Integrity and Evidence Group

Mr Kraig Lowes, Acting Branch Manager, Quality, Integrity and Evidence Group

Ms Fiona MacDonald, Branch Manager, Quality, Integrity and Evidence Group

Ms Robyn Shannon, Branch Manager, Quality, Integrity and Evidence Group

Mr Derek Stiller, Branch Manager, Quality, Integrity and Evidence Group

Mr Greg Manning, Group Manager, Youth and Programs Group

Ms Kellie Hippit, Branch Manager, Youth and Programs Group

Ms Angela Hope, Branch Manager, Youth and Programs Group

Mr Ali Jalayer, Branch Manager, Youth and Programs Group

Ms Jodie Wearne, Branch Manager, Youth and Programs Group

**Outcome 2 – Workplaces and Small Business**

Mr Peter Cully, Group Manager, Small Business and Economic Strategy Group

Mr Bruce Cunningham, Branch Manager, Small Business and Economic Strategy Group

Ms Helen Innes, Branch Manager, Small Business and Economic Strategy Group

Ms Rose Verspaandonk, Branch Manager, Small Business and Economic Strategy Group

Ms Jody Anderson, Group Manager, Work Health and Safety Policy Group

Mr Adrian Breen, Branch Manager, Work Health and Safety Policy Group

Mr David Cains, Branch Manager, Work Health and Safety Policy Group

Ms Jane Heffernan, Acting Branch Manager and Federal Safety Commissioner, Work Health and Safety Policy Group

Ms Janey Kuzma, Group Manager and Chief Counsel, Workplace Relations Legal Group

Ms Kelly Hoffmeister, Senior Executive Lawyer, Workplace Relations Legal Group

Ms Helga Mossop, Senior Executive Lawyer, Workplace Relations Legal Group

Ms Rachel Volzke, Senior Executive Lawyer, Workplace Relations Legal Group

Ms Alison Durbin, Group Manager, Workplace Relations Policy Group

Ms Sharon Huender, Branch Manager, Workplace Relations Policy Group

Mr David Denney, Branch Manager, Workplace Relations Policy Group

Ms Lace Wang, Branch Manager, Workplace Relations Policy Group

Ms Sue Saunders, Acting Group Manager, Workplace Relations Programs Group

Mr Henry Carr, Branch Manager, Workplace Relations Programs Group

Ms Helen McCormack, Branch Manager, Workplace Relations Programs Group

Mr Mike Burns, Acting Branch Manager, Workplace Relations Programs Group

Mr Peter Krizmanits, Director, Workplace Relations Programmes Group

**Asbestos Safety and Eradication Agency**

Ms Justine Ross, Chief Executive Officer

Mr Nick Miller, Director and Chief Financial Officer

**Australian Building and Construction Commission**

Mr Stephen McBurney, Commissioner

Mr Cliff Pettit, Deputy Commissioner

Ms Janine Drennan, National Manager, Building Code

Mr Murray Gregor, Executive Director, Operations

**Australian Small Business and Family Enterprise Ombudsman**

Ms Kate Carnell, Ombudsman

Dr Craig Latham, Deputy Ombudsman

Ms Anne Scott, Principal Adviser

**Comcare**

Ms Jennifer Taylor, Chief Executive Officer

Mr Tony Middlebrook, General Manager, Insurance

Mr Aaron Hughes, General Manager, Scheme Management

Mr Matthew Swainson, General Manager, Legal

Ms Lynette MacLean, General Manager, Corporate Management

Mr Justin Napier, General Manager, Regulatory Operations

Ms Natalie Bekis, General Manager, Strategic Research and Innovation

Mr James McKenzie, Acting General Manager, Claims Management

**Fair Work Commission**

Ms Bernadette O'Neill, General Manager

Ms Ailsa Carruthers, Executive Director, Corporate Services

Mr Murray Furlong, Executive Director, Tribunal Services

**Fair Work Ombudsman**

Ms Sandra Parker, Fair Work Ombudsman

Mr Michael Campbell, Deputy Fair Work Ombudsman, Operations

Mr Mark Scully, Deputy Fair Work Ombudsman, Corporate

Ms Kristen Hannah, Deputy Fair Work Ombudsman, Strategic Engagement and Communications

Ms Lynda McAlary-Smith, Executive Director, Compliance and Enforcement

Ms Nicky Chaffer, Executive Director, Proactive Compliance and Education

Mr Anthony Fogarty, Executive Director, Policy, Analysis and Reporting

Mr Tom O’Shea, Executive Director, Strategic Engagement and Stakeholder Relations

Ms Janine Webster, Chief Counsel

Mr Russell Thackeray, Chief Financial Officer

**Registered Organisations Commission**

Mr Mark Bielecki, Commissioner

Mr Chris Enright, Executive Director

Mrs Joanne Fenwick, Financial Reporting Specialist

**Safe Work Australia**

Ms Michelle Baxter, Chief Executive Officer

Ms Amanda Johnston, Acting Deputy Chief Executive Officer

Mr Kris Arnold, Chief Financial Officer

Ms Sarah Costelloe, Branch Manager, Hazards

Ms Angela Wallbank, Branch Manager, Review

Ms Anthea Raven, Acting Branch Manager, Strategic Policy

**Committee met at 09:02**

CHAIR (Senator Brockman): I declare open this meeting of the Education and Employment Legislation Committee on Wednesday, 24 October 2018. The Senate has referred to the committee the particulars of proposed expenditure for 2018-19 and certain other documents for the Education and Training portfolio and the Jobs and Innovation portfolio. The committee may also examine the annual reports of departments and agencies appearing before it.

I just want to acknowledge the improved timeliness of the tabling of annual reports by the department and/or portfolio agencies. I understand this has been a little bit of an issue in this committee in the past, and I do congratulate all departments and agencies for achieving best practice, in that annual reports were available before the commencement of supplementary budget estimates.

The committee has decided that answers to questions on notice will be required to be returned by close of business on Thursday, 6 December. The committee has resolved that written questions on notice should be received from senators by close of business on Friday, 2 November.

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 to a committee.

The Senate by resolution in 1999 endorsed the following test of relevance of questions at estimates hearings. Any question going to the operation or financial position of the departments and agencies which are seeking funds in the 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 resolved also that an officer of a department of the Commonwealth shall 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 prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. I particularly draw the attention of witnesses to an order of the Senate of 13 May 2009 specifying the process by which a claim of public interest immunity should be raised.

*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: Witnesses are specifically reminded that a statement that information or a document is confidential or consists of advice to government is not a statement that meets the requirements of the 2009 order. Instead, witnesses are required to provide some specific indication of the harm to the public interest that could result from the disclosure of the information or the document.

Witnesses are asked to keep opening statements brief and incorporate longer statements into *Hansard*.

Department of Jobs and Small Business

[09:05]

CHAIR: I welcome the Minister representing the Minister for Jobs and Industrial Relations, Senator the Hon. Linda Reynolds, and officers from the Department of Jobs and Small Business. Minister Reynolds, do you wish to make an opening statement?

Senator Reynolds: Chair, I do not, but thank you.

CHAIR: Thank you. Ms Hartland, do you wish make an opening statement?

Ms Hartland: No, thank you, Senator.

CHAIR: Excellent. Then we will move on to cross-portfolio. Just before we begin, I remind all senators that this is cross-portfolio. If we delve into areas that are not cross-portfolio or corporate in nature, then we will move straight on to outcome 1.

Senator CAMERON: I'm not sure—is that a ruling you're making? If we ask something outside the portfolio, you're moving on?

CHAIR: I think you know exactly what I mean, Senator Cameron.

Senator CAMERON: Thanks, Chair—and, by the way, that's not how it works. Good morning, everyone.

Senator Reynolds: Good morning.

Senator CAMERON: Could I just go to Ms Hartland. Ms Hartland, you answer to two ministers, Ministers Cash and O'Dwyer. Who is the senior minister, Minister Cash or Minister O'Dwyer?

Ms Hartland: Senator, that's correct; I report to two ministers, Minister O'Dwyer and Minister Cash. Minister O'Dwyer has the bulk of the responsibility across the department, so for employment services and for workplace relations, and Senator Cash has responsibility for small business and deregulation, so a smaller part of the department, plus obviously responsibilities in the Education and Training portfolio. So, in terms of departmental business, Senator O'Dwyer has the lead.

Senator CAMERON: She's the senior minister, yes?

Ms Hartland: Yes, correct.

Senator CAMERON: Is it the case that there is no longer an assistant minister for jobs since the resignation of Senator Seselja as part of his involvement in the coup against former Prime Minister Turnbull?

Ms Hartland: There is no junior minister or assistant minister. As you reflected in your question, I have two ministers, who have responsibility across the portfolio.

Senator CAMERON: So Minister Cash is basically doing the junior portfolio work that Senator Seselja had undertaken in the past?

Ms Hartland: Senator, I think it's a totally different arrangement that is in place now, because, while Minister Cash has, as I said, small business and deregulation within the Department of Jobs and Small Business, she has a role, as you know, in terms of vocational education, training and skills in the Education and Training portfolio. So it's not a like-for-like comparison.

Senator CAMERON: It's not? Very diplomatic.

Senator Reynolds: Senator Cameron, perhaps I might be able to just assist with the clarification of the difference. I think it might reflect the difference in our party philosophies, but small business and deregulation are vitally important to this government, and that's why it has received the cabinet level support—because we know that that is one of the most important portfolios for us. It might not be for the Labor Party, but it certainly is for us.

Senator CAMERON: You're not starting off very well, Minister. I'm just asking questions. If you want to make it—

Senator Reynolds: No, I'm just clarifying for you, Senator Cameron. You wanted to know the differences, and I'm just saying that both are equally important to this government.

Senator CAMERON: Are there any other parts of the department where the responsible minister is Minister Cash?

Ms Hartland: Sorry, say that again, Senator?

Senator CAMERON: The organisational chart shows that there's one branch within the Small Business and Economic Strategy Group called Deregulation and Small Business.

Ms Hartland: Yes.

Senator CAMERON: Are there any other parts of the department where the responsible minister is Minister Cash?

Ms Hartland: No, Senator.

Senator CAMERON: That's all her responsibility?

Ms Hartland: That's correct, yes.

Senator CAMERON: What changes have been made to the departmental organisational structure since the change of Prime Minister and the resignation of Minister Laundy?

Ms Hartland: There are no machinery-of-government changes that have been made post August, when those changes occurred, so basically the structure has remained the same. I think a few minor changes that were nothing to do with ministerial changes have probably happened over the year, but, yes, there were no machinery-of-government changes as a result of the changes of ministers.

Senator CAMERON: How many departmental employees are currently on secondment to Minister Cash's office?

Ms Hartland: There are no departmental officers on secondment there now, Senator.

Senator CAMERON: What about Minister O'Dwyer's office?

Dr Charker: There are currently two people from the department who are providing staffing relief to Minister O'Dwyer's office at this current point in time. One is for reception duties, and the other is as the acting Deputy Chief of Staff to Minister O'Dwyer.

Senator CAMERON: How long have they been there?

Ms Drayton: The acting Deputy Chief of Staff has been there for two days, and we have somebody who is providing relief on reception at the moment too. It's been this week.

Senator CAMERON: Minister, you've got no direct responsibility in this portfolio area, have you?

Senator Reynolds: Not directly, no.

Senator CAMERON: No, Minister Cash is the minister responsible for aspects of this. Why isn't the minister at the hearing today?

Senator Reynolds: Well, Senator Cameron, you do have the pleasure of my company here. How could I possibly have knocked back the opportunity to spend several hours today here with you and Senator Marshall?

Senator CAMERON: Yes, you're very lucky.

Senator Reynolds: However, the good news is that, over the course of the next two days, you will have the pleasure of me, Minister Cash, Minister Ruston and also possibly, tomorrow, another minister. So you'll probably have three or four of us, Senator Cameron.

Senator PATERSON: Lucky you!

Senator Reynolds: Yes. Minister McKenzie actually—

Senator MARSHALL: Except that you're not allowed to represent a minister in the Senate.

Senator Reynolds: I'm not. I'm representing Minister O'Dwyer, as you've just gone through. As I said, you'll have the pleasure of four of us over the course of the next two days, because, as you well know, Senator Cameron, we do help each other out and share across the estimates over the course of these four days.

Senator CAMERON: Why is Minister Cash still in hiding?

Senator Reynolds: Senator Cameron, I've just said you will have the pleasure of Minister Cash's company in this committee here today. You've just got me first.

Senator CAMERON: Okay.

CHAIR: And we're very lucky to have you.

Senator Reynolds: Thank you. I'm not sure Senator Cameron is quite so chirpy about having me here this morning.

Senator CAMERON: I don't know about that. I was with you yesterday.

Senator Reynolds: And, in fact—

Senator CAMERON: I think you might be treated a bit better by the chair today than you were yesterday, hopefully.

Senator Reynolds: Don't you worry about how I was treated. If I'm not worried, Senator Cameron, you shouldn't be. I think the only thing I was concerned about last night was being called a racist by one of your colleagues. However, just to be very clear, Minister Payne, Marise Payne, represents Minister O'Dwyer in the Senate. As you know, she has her own estimates on today, so there are a number of her ministerial colleagues in the Senate who are assisting in that over the next two days. So it is entirely appropriate, Senator Cameron.

Senator CAMERON: Well, I still think she's in hiding, but that's okay.

Senator Reynolds: As I said, you'll have the pleasure of her company this afternoon here at estimates.

Senator CAMERON: Very good. So, Secretary, Mr Campbell, the Deputy Fair Work Ombudsman, wrote to industry groups asking for assistance, and I quote, 'in reminding your members of their rights and obligations under the Fair Work Act in respect of industrial action'. Did the department know that the Fair Work Ombudsman was going to write to employer groups regarding ACTU political rallies, characterising them as industrial action, before the 10 October 2018 letter was sent by Deputy Ombudsman Campbell to the AMMA?

Ms Hartland: I'll have to take that on notice, Senator. It's probably an issue that best comes up under outcome 2, when we'll have relevant officials here, but I'll take it on notice.

Senator CAMERON: Okay. What involvement did the department have in the decision of the Fair Work Ombudsman to send the letter?

CHAIR: I suspect that's going to fall into the same category, Senator Cameron. This is why we ask questions in outcomes under portfolios.

Ms Hartland: I expect, Senator, that the department didn't have any involvement at all, but, as the chair has said, that's a question that we can put under outcome 2. But, given the Fair Work Ombudsman is an independent authority, I don't expect the department would have had any role in that.

Senator CAMERON: Can you assure me the department didn't have any role in drafting the content of the letter?

Ms Hartland: I'll take it on notice and check. I'm very happy to take it under outcome 2, or perhaps I can find people here to provide the information now. I expect that we had no involvement.

CHAIR: Let's take it under outcome 2, please.

Ms Hartland: Thank you.

Senator CAMERON: When were you made aware that the Fair Work Ombudsman intended to send the letter?

Ms Hartland: Similarly, Senator, I'll have to take it on notice.

Senator CAMERON: Okay. You can take it on notice and come back today?

Ms Hartland: Yes.

CHAIR: That will be in outcome 2, Senator.

Ms Hartland: The officers will be here for outcome 2.

Senator CAMERON: Has the department provided any advice to the minister or the Fair Work Ombudsman about whether the content of the Fair Work Ombudsman's letter is correct?

Ms Hartland: I'm not aware that we have provided any advice on that. But, again, I'd like to be able to answer it under outcome 2, when I've got the officers here, so that they can confirm.

Senator CAMERON: Yes, but you're the secretary of the department.

Ms Hartland: Correct, and I'm not—

Senator CAMERON: You've got ultimate responsibility.

Ms Hartland: Yes. Not that I am aware of, Senator. I can't recall anything, but I will take advice from my officers and, if there is anything, I'll correct it.

Senator CAMERON: Have you seen the letter?

Ms Hartland: I have seen the letter. Yes, I have seen the letter.

Senator CAMERON: On what basis was that brought to your attention?

Ms Hartland: Certainly it was after it had been provided. I received an email with a copy of the letter. I'd have to go back and see who had actually provided that to me and whether it had come through the department or through the flow—how that had come to me.

Senator CAMERON: We can come back to that.

Ms Hartland: Yes, I'll check. But I certainly saw it after it had been sent.

Senator CAMERON: Are you aware of the ABCC e-alert that went out? Did you know that they were going to issue the 17 October e-alert before it was issued?

Ms Hartland: No, Senator, I was not aware—no.

Senator CAMERON: When was the minister or her office made aware of the ABCC e-alert?

Ms Hartland: I don't know, Senator. That would be a question probably best for the ABCC.

Senator CAMERON: No, I'm asking you.

Ms Hartland: I don't know.

Senator CAMERON: You can come back to me on that. Has the department provided any advice to the minister or the ABCC about the content of the e-alert?

Ms Hartland: Again, not that I'm aware of. I'd really prefer if I had that—

Senator CAMERON: Can you check?

Ms Hartland: Yes, I'd like to check. I don't want to—

Senator CAMERON: All right. We'll come back to these in outcome 2.

Ms Hartland: Yes, outcome 2. That would be great.

Senator CAMERON: Minister Laundy previously had responsibility for security of payments and the Murray review—is that correct?

Ms Hartland: Yes, Senator, that's correct.

Senator CAMERON: Following the coup against former Prime Minister Turnbull, and Minister Laundy resigning from the ministry, who has responsibility in the Morrison government for pursuing reforms to security of payments?

Ms Hartland: I am informed that it is actually under Karen Andrews's department, the industry department.

Senator CAMERON: That's been moved—that's been a change. You said it was only minor.

Ms Hartland: I will just get the officer to come to the table.

Senator CAMERON: I thought you indicated there were only minor changes. This is a significant change of responsibilities.

Ms Anderson: The security of payments work has in recent times sat with the industry department, so Karen Andrews is the minister responsible.

Senator CAMERON: When was it moved from this department?

Ms Anderson: I don't have the exact date. I will take the exact date on notice.

CHAIR: It would have been under the machinery of government changes—

Senator CAMERON: Are you guessing, Chair, or is that the government's position?

CHAIR: No—

Ms Hartland: It wasn't under a machinery of government change.

CHAIR: It wasn't. Okay.

Ms Hartland: It might have coincided with that timing, but it wasn't part of a machinery of government change. We will check and get you the exact dates.

Senator CAMERON: Can you provide details of any correspondence in relation to that move?

Ms Hartland: Sure.

Senator CAMERON: And when the move took place and the reason for moving it out of your department?

Ms Hartland: Sure.

Senator CAMERON: I am not aware, Ms Hartland—

Ms Hartland: As you would hope and expect, there is a lot of coordination and collaboration that happens between departments. When we had the changes that were made on 20 December last year, we had a combined arrangement, as you would remember, with the industry department. A number of things were being worked with across departments. Certainly, we have had involvement and we have worked very closely with Industry. We will check on the timing. I remember there being discussions on it, but I just don't remember the timing.

Ms Anderson: Security of payments was sitting with the Building Ministers' Forum and the Building Ministers' Forum sits with the industry minister, and therefore the industry department supports that forum.

Senator CAMERON: Minister Laundy attended the Building Ministers' Forum in August, didn't he?

Ms Anderson: The minister used to chair the Building Ministers' Forum. That's right.

Senator CAMERON: He was the workplace relations minister at the time, wasn't he?

Ms Anderson: Yes, but he retained also the function of the Building Ministers' Forum.

Senator CAMERON: So he retained it then, but it is gone now?

Senator Reynolds: We are just seeking further clarification for you on these matters. We'll take them on notice and we will come back to you shortly with the details you are seeking.

Senator CAMERON: Did the department provide a brief to Minister Laundy for the Building Ministers' Forum in August?

Ms Hartland: I assume we would have provided a brief, with the industry department. It would have been a coordinated effort with Industry. At that time we were working across two departments and two ministers—Ministers Cash and Laundy—and we had in place arrangements for joint briefings. We combined our briefings and more often than not representatives from both departments were involved in the briefings. So, I expect it was a joint briefing at that stage. But, again, we can have a look.

CHAIR: Do you have any idea how long it will take to get this information, because I think this is genuinely cross-portfolio. Do we know how long it may take to get the information? Do we need to come back to this later in the day?

Ms Anderson: I can probably confirm that in terms of the August meeting it would have been led by the industry department. But we can confirm exact dates in terms of when it transferred—

Senator CAMERON: So, they were leading, but your then minister was chairing?

Ms Anderson: As the minister responsible for the building industry, yes.

Senator CAMERON: It's very confusing, isn't it?

Ms Hartland: The arrangements were joint arrangements. As we said, there were two departments working to shared ministers.

Senator Reynolds: I understand the information you are seeking. We will get back to you before the break this morning with further details in response to your question, Chair.

Senator CAMERON: So, there is no-one in the department doing anything to progress the recommendations of the Murray review? Is that correct?

Ms Anderson: The responsibility sits with the industry department to progress those through the building—

Senator CAMERON: [inaudible] had some responsibility. Is that correct?

Ms Anderson: Former Minister Laundy was the chair of the Building Ministers' Forum. He had responsibility for the building industry, including the national code, which sat within his responsibilities. That all now sits with Minister Andrews.

Senator CAMERON: Was the department given any reason as to why that was being moved to Minister Andrews and the industry department?

Senator Reynolds: I now have further information on that for you. Minister O'Dwyer has responsibility for the Security of Payments Working Group and the ABCC—working hard to help subbies. However, the Building Ministers' Forum, which is part of the industry and innovation portfolio, is currently considering recent reports into the security of payments. That is the division there.

Senator CAMERON: What is the reasoning for the division? Why did this department lose responsibility? Is that because Senator Cash was demoted?

Senator Reynolds: No. Again, we have taken this on notice and as I get information for you over the course of this session I will get it to you.

Senator CAMERON: Is it the department's understanding that it is the industry department that is progressing recommendations from the Murray review?

Ms Hartland: That is right. I have information here stating that the Department of Industry, Innovation and Science provides secretariat support for the BMF. It is the lead agency for the review's response. They are progressing responses to the review.

Senator CAMERON: The Murray review report was provided to the government on 22 December 2017. Is that correct?

Senator Reynolds: In line with the chair's ruling, this is more outcome 2. It would be more appropriate to raise that line of questioning when we have the appropriate officials here for outcome 2.

Senator CAMERON: I am asking the department about their involvement. It is cross-portfolio, clear and simple.

CHAIR: I think it is a legitimate line of questioning. However, Ms Hartland, as you have before, if you believe that other officers can correctly answer it later on I am happy for you to phrase your response in that way.

Ms Hartland: I don't have the timing for when the report was provided. I know that Mr Murray's report was published on the industry department's website on 21 May this year. We don't have any other information. We will have to take it on notice.

CHAIR: We can add to this in outcome 2. Correct?

Ms Hartland: Yes.

Senator CAMERON: So, we know that in May it was still at least partly the responsibility of the department and that up to just prior to the previous minister resigning it was still the responsibility of the department?

Ms Anderson: As we said, we will take the exact date on notice. But the responsibility for progressing the Murray review moved to the industry department a couple months prior to the change of ministry.

Senator CAMERON: Ms Anderson, were you responsible for this for some period under previous Minister Laundy?

Ms Anderson: Not in the department, no.

Senator CAMERON: Who was?

Ms Hartland: Those officers aren't here yet. They will be in outcome 2.

Senator CAMERON: Given the officers aren't here, what progress was made within the department to deal with the Murray review while you had at least part responsibility?

Ms Hartland: I'll have to take it on board for—if we can answer it in outcome 2, we'll have all the officers at the table to be able to do that. I do recall that when the new arrangements came into play with the department—that shared arrangement—we sat down and worked through where the various responsibilities were and where the lead would sit with those. And I think that was one of those at that time. We'll just check on that.

Ms Anderson: Certainly the responsibility of the department of jobs was to support Murray in undertaking the review. Once the review was finalised, progressing the recommendations of the review certainly then moved to the department of industry. So there was that distinction between progressing the review to its completion, which the department of jobs were engaged with, and then, after the review was finalised, the department of industry.

Senator CAMERON: If that's the case, what was the logic of Mr Laundy chairing?

Ms Anderson: From my understanding, under the administrative arrangements, Minister Laundy had responsibility for the Building Ministers Forum and, certainly, the national code. And I guess it's the government's view that it best sat with Minister Laundy in that capacity.

Senator CAMERON: That's as clear as mud. Has the department done anything to implement any of the Murray review recommendations, while you had Minister—

Ms Hartland: Sorry, Senator. I was just going to say that, as Ms Anderson has said and as my notes record here, the responsibility is with the Department of Industry, Innovation and Science. That doesn't mean that other areas of government, including ourselves, aren't having input into that, and I'll seek some further guidance on that.

Senator CAMERON: So we could come back to that in outcome 2?

Ms Hartland: We can come back to it. These all sit in outcome 2.

Senator CAMERON: Given that Mr Laundy was still chairing the Building Ministers Forum on 10 August, did he undertake any work to pursue any of the Murray review recommendations?

Ms Anderson: From my understanding, yes, at that meeting of August Minister Laundy at the time sought agreement from the states and territories to progress the recommendations from the Murray review. Obviously, a lot of the recommendations in that report sit within the responsibility of state and territory jurisdictions; therefore Minister Laundy was seeking cooperation from the states and territories at that meeting to progress the recommendations. I understand there's also a working group that sits under the Building Ministers Forum, which the department attends, the ABCC attends and others attend from the Commonwealth, to progress any recommendations that sit within the Commonwealth's area of responsibilities. But a lot of the recommendations do sit with the states and territories.

Senator CAMERON: So did the—

CHAIR: Can I just interrupt there for a second. Senator Cameron, I suspect you'll still have the call, but you have had half an hour—

CHAIR: Senator Paterson, do you have questions?

Senator CAMERON: I can wind this up. I have one more question then we can come back to it. Does the department have a list of stakeholders that were consulted in relation to this issue while the department had partial responsibility and Minister Laundy had some kind of responsibility?

Ms Anderson: I don't have that with me but I can certainly undertake to get that for you.

Senator CAMERON: Can we come back to that again in outcome 2?

Ms Hartland: Yes. We'll collect all the information we can today, and anything we can't we'll provide to you on notice.

Senator CAMERON: Good. Thanks.

CHAIR: Do you have any cross-portfolio questions, Senator Paterson?

Senator PATERSON: I'd prefer to wait for outcome 1 myself.

CHAIR: Senator Cameron, are we moving on to outcome 1 or do you still have cross-portfolio questions?

Senator CAMERON: I have just got one last set of questions. How much has been expended by the department to date on Minister Cash's legal representation in the AWU Federal Court case? That's the court case where the ROC had authorised a raid and the Federal Police undertook a raid on the AWU. How much has been expended so far?

Ms Hartland: The department hasn't expended money. It's really a question for the Attorney-General's Department. I think we've discussed that on other occasions.

Senator CAMERON: So the Attorney-General has been funding the minister's legal representation?

Ms Hartland: You'd have to put the question to them, but it's not from us, Senator.

Senator CAMERON: Okay. Thanks.

[09:35]

CHAIR: We will move on to outcome 1: foster a productive and competitive labour market. Senator Paterson, did you want the call?

Senator PATERSON: Yes, thank you, Chair, I would be very happy to take the call. I just want to get a handle on employment figures to start with. How many jobs have been created in the last 12 months?

Mr Hehir: From the last update from the ABS, I think it was in the order of 300,000 jobs that had been created over the 12 months leading up to that period.

Senator PATERSON: You don't have exact figures?

Ms Jensen: Employment has risen by 280,900, or 2.3 per cent, over the year. That's above the decade annual average rate of 1.6 per cent.

Senator PATERSON: Within that 280,000, what's the breakdown between full-time and part-time jobs?

Ms Jensen: Full-time employment has risen by 217,500, or 2.6 per cent above the level recorded a year ago. So the vast majority of that employment increase has been in full-time jobs.

Senator PATERSON: The remaining 60,000 or so is part-time, I assume?

Ms Jensen: That sounds about right.

Mr Neville: Over the period Ms Jensen is talking about—the 12 months to September 2018—part-time employment has increased by 63,400, or 1.6 per cent.

Senator PATERSON: What's the current rate of unemployment?

Mr Neville: In the September figures released by the ABS recently, the unemployment rate was five per cent.

Senator PATERSON: Do you have historical data for employment figures, say, for the year to September 2013?

Ms Jensen: Yes, we do. Employment compared to September 2013 is now 10 per cent higher. So that's an increase of 1,149,600 jobs since that date.

Senator PATERSON: How many jobs were created in the 12 months leading up to September 2013?

Ms Jensen: I'm not sure if we have that figure. I'll just see if my colleague here has it.

Mr Neville: My recollection—but I can find out fairly easily—is that it was around 89,000 over the 12 months to September 2013.

Senator PATERSON: Could you, on notice, express that in percentage terms as well so that we can compare it to this period of 12 months? What's the total number of people employed in Australia in the most recent jobs figures data?

Ms Jensen: In September 2018, the total number employed is 12,636,300, which is a record high.

Senator PATERSON: What was the previous record high and when was that hit?

Mr Neville: It would have been the month before.

Senator PATERSON: Right, and presumably the month before that and the month before that?

Mr Neville: The numbers do jump around a little bit from month to month, but total employment increased by 5,600 in September, so the previous record high would have been the previous month.

Senator PATERSON: So a series of record highs.

Mr Neville: Well, there have been a number of record highs over recently months but, as I said, the numbers do jump around a little bit from month to month.

Senator PATERSON: That's very good news. In terms of women's participation in the workforce, can you take me through those figures in the most recent jobs figures?

Ms Jensen: I'm just going to pull out another sheet for women. Essentially, the broad trend over some time is that women's participation has been growing. For example, over recent decades the women's participation rate has risen from 50.1 per cent in September 1988 to stand now at 60.3 per cent in September 2018.

Senator PATERSON: Do you have some more recent figures? That's over a long period of time; that's 30 years. What about more recent data?

Ms Jensen: I can give you a comparison between September 2008 and September 2018. In September 2008 the female participation was 58.5 per cent and it is now 60.3 per cent.

Mr Neville: I can give you a little bit of information as well. Currently, it's 60.3 per cent. Twelve months ago, in September 2017, the participation rate for females was 60.1 per cent. In September 2016 it was 59.1 per cent. In September 2015 it was 59.2 per cent.

Senator PATERSON: Would it be fair to say it has been steadily rising in recent years?

Mr Neville: Yes. It's certainly higher than it was a couple of years ago, and over the last 12 months—again, the numbers do jump around a little bit—there has been a fairly consistent increase in the female participation rate.

Senator PATERSON: Is the current female participation rate a record rate of female participation?

Mr Neville: No. It's a near record, but, again, the numbers do jump around a little bit.

Senator PATERSON: When was the record recorded?

Mr Neville: It's currently 60.3. It was 60.6 in June, in February, in January. I think we can say it's close to a record high.

Senator PATERSON: So this year it has been a record. I want to ask about casual employment. Currently, what is the proportion of employees who are casually employed?

Ms Jensen: We need to get someone else up to the table for that.

Senator PATERSON: Please do.

Ms Jensen: I'm not sure we have them, because it tends to be in outcome 2.

Senator PATERSON: I am not sure why—

Ms Jensen: I know that, in trend terms, casual employment has been fairly stable for some time. Bruce can provide the details on that.

Mr Neville: My understanding is that the casualisation rate is around about 25 per cent and has been consistently at that level for at least the last decade.

Senator PATERSON: I appreciate your very good memory, Mr Neville, but I'd rather have the actual figures, if we've got someone who has them.

Ms Jensen: They're coming.

Senator PATERSON: Thank you.

CHAIR: That is within this outcome, is it not? I do admit that I'm new to this committee.

Ms Hartland: It is, but it's just handled in a slightly differently area, so we're just getting the right people.

CHAIR: I would have thought it would have been in this outcome.

Ms Hartland: It tends to flow into other issues in outcome 2 as well.

Senator PATERSON: There are certainly some policy issues.

Ms Hartland: Yes.

Senator PATERSON: But surely the data itself is in outcome 1.

Ms Hartland: We'll get that for you.

Senator PATERSON: Thank you.

Mr Hehir: Could I just check the question?

Senator PATERSON: What proportion of employees are casually employed?

Mr Hehir: Senator, 24.6 per cent of employees were casuals in August 2018, which is below the peak of 25.5 per cent in August 2004. But, as Mr Neville said, it has been hovering around the 25 per cent for, I am told, almost 10 years. But it's been relatively flat for quite some time.

CHAIR: Is there any trend?

Mr Hehir: No.

CHAIR: It's stable?

Mr Hehir: It tends to float just above 25 per cent and just below 25 per cent.

Senator PATERSON: So about a quarter of the workforce is casually employed. I think there are sometimes assumptions in public debate that it is an inferior form of employment—that is a less desirable form of employment. What does the evidence show about people who are casually employed? Do they choose to be casually employed? Is it that an option that they seek?

Mr Cunningham: There's a range of evidence around whether people choose or are satisfied with casual employment. For example, the HILDA survey looks at whether people are satisfied with casual employment and compares that to other employment and usually finds fairly similar levels of satisfaction with their job. There is other evidence in that space but—

Senator PATERSON: What sort of evidence?

Mr Cunningham: This is where, I think, it is probably best to come back to this in outcome 2, to some degree.

Senator PATERSON: Could you perhaps take it on notice instead rather than revisiting—

Ms Jensen: There's casual employment and then there is part-time employment. I would note that ABS data shows that a significant majority, 71.8 per cent in February 2018, of part-time workers preferred not to work more hours. That kind of reflects the fact that many people working part-time do so because it enables them to balance work with child-care responsibility, it helps older people to stay in work and transition into retirement and, of course, enables students to have a part-time job whilst studying full-time.

Senator PATERSON: Yes, people have made a deliberate choice in fact. What legal protections do casual employees have?

Ms Hartland: This is where it starts to stray, I'm sorry, Senator, into outcome 2.

Senator PATERSON: Fair enough. We'll come back to that one in outcome 2. I'll make a note to revisit that. My next questions are more in outcome 2, so I will revisit them in outcome 2.

Senator CAMERON: The government has repeatedly claimed that jobactive has achieved one million job placements. But there are still more than 700,000 people unemployed. Can you confirm that you do not mean that one million Australians have found employment through jobactive since 2015?

Mr Hehir: The labour market is quite fluid in its operation. Through any year, there will be four to five million movements into and out of employment. It's actually a very, very fluid market in a sense. Jobactive is working at this point in time with about 480,000 active jobseekers. There are 650,000 on the case load but about 180,000 are suspended from active participation at this point, so it's currently working with in the order of about 480,000 active job seekers. Yes, there have been over 1.1 million placements of people from jobactive into work. The fact that the labour market continues to move and that there continues to be a group of people unemployed is reflective of the fact that it is a highly fluid market, not that jobactive isn't doing its job.

Senator CAMERON: Where can we find the details of these placements by jobactive?

Mr Hehir: They're reported in the annual report. The overall placement figures are reported in the annual report.

Senator CAMERON: Can you confirm that 'job placements' includes participation in the PaTH program, Work for the Dole, wage subsidy schemes or other mandatory programs in which many people participate but don't actually get a job from?

Mr Hehir: No, Senator, that's not correct. A Work for the Dole placement isn't counted as a job placement. An internship arrangement isn't counted as a job placement until it transfers into a job. The activity that is recorded is into paid employment.

CHAIR: That is the only activity that's reported?

Ms Milliken: In terms of jobs placement data, yes, it's placement into paid employment.

CHAIR: Great, thank you.

Senator CAMERON: Back in May estimates, Senator Cash, in response to Senator Marshall when he was asking about the one million job placements, said:

I think you're actually referring to jobactive placements, as opposed to a million jobs being created.

What's the difference?

Mr Hehir: At that time there had been an increase of a million jobs between September 2013 and the date of that estimates. Minister Cash had been referring at various points to that million-job-creation figure. At the same time, we had done one million placements into paid employment through jobactive. The confusion came about because they were both one million and they occurred at the same time. There is no direct correlation between them.

Senator Reynolds: But both are rollicking good news.

Ms Jensen: Chair, I have a response to Senator Paterson's question about the comparison of jobs growth in the 12 months to September 2015.

CHAIR: Do you mind holding it until he comes back in case he has any follow-up questions.

Ms Jensen: Okay.

Senator CAMERON: How many participants have received more than one placement? How many have received more than two placements? How many have received more than three placements? Do they all count towards the one million placements?

Mr Hehir: Yes. Over the three-plus years of the contract, a jobseeker may have been placed once. They may have achieved six or 12 weeks of paid employment. They may have come back and been placed again, and that would have been counted as a second placement.

Senator CAMERON: So it is not as simple as saying there have been one million jobs placed?

Mr Hehir: The figure that we record is placements into paid employment. We start recording that figure at four weeks.

CHAIR: But that paid employment might be a three-month contract, and then that person might need another job placement.

Mr Hehir: That's correct, Chair. There are some roles that are shorter term in nature. There are some times where the placement doesn't stick. There are other times when it goes through to the full 26-week outcome, which is an outcome where they're fully off benefit and have been in paid employment for 26 weeks.

CHAIR: Ms Jensen, did you want to just give that information to Senator Paterson?

Ms Jensen: Certainly. Senator Paterson, this is in response to your question about what the comparison is of jobs growth in the 12 months from 2013 to 2018. In the 12 months to September 2013, there were 89,600 jobs created. That's an increase of 0.8 per cent. In 12 months to September 2018, there were 280,900 jobs created. That's an increase of 2.3 per cent.

Senator PATERSON: Thank you.

Senator CAMERON: Can I get back onto my questions?

CHAIR: Yes, go ahead, Senator Cameron.

Ms Hartland: Senator Cameron, we have some answers to your placement question. It came up as a question on notice at the last hearing, but we have updated figures from there that we can give you.

Mr Hehir: From between 1 July 2015 and 30 September 2018, there were 441,849 jobseekers who had been placed once, 156,240 jobseekers who had had two placements, 60,906 jobseekers who had had three placements, 25,280 who had had four job placements, 11,091 who had had five job placements, 5,081 who had had six job placements, and just over 5,000 who had had more than six job placements.

Senator CAMERON: Does that all add up?

Mr Hehir: That adds up to 705,619.

Senator CAMERON: So where do you get the million?

Mr Hehir: As I said, we count the job placements.

Senator CAMERON: So they're not jobs; they're job placements?

Mr Hehir: We count job placements. Where someone has been placed into paid employment—

Ms Hartland: Into a job.

Mr Hehir: Into a job—we count that.

Senator CAMERON: How many visa workers have been part of the 1.1 million since 2013?

Mr Hehir: I will just get my team to check to see whether we have that data here.

Senator CAMERON: I would hope you have because this has been quite an issue.

Mr Hehir: Sorry. We'll just check. I have data on culturally and linguistically diverse and refugees with me. I don't necessarily have visa type.

CHAIR: I think it is a legitimate question. Can we get that information?

Senator CAMERON: Who handles the visa numbers?

Ms Hartland: Yes, we'll try to get—

Senator CAMERON: You have an army of people behind you. Surely someone—

Mr Hehir: Not all visa holders are eligible for support. We can find out classes and whether we have data on the visa holders. They might just be classified broadly in our system. We will just need to check whether we have them classified under a visa or more broadly as refugees within our system.

Ms Hartland: Can we come back to you—

Senator CAMERON: You're seriously telling me that the department conflates refugees and visa workers? Is that what you're putting to me?

Mr Hehir: What I'm saying to you is that a significant number of visa holders aren't eligible for our service. My recollection is that the visa holders who are eligible for our service type tend to be refugees, but I will check that.

CHAIR: Just to be clear, because I think it is a legitimate question: if a visa holder is eligible for your service, you don't differentiate between different categories of visa holder—is that what you're saying?

Mr Hehir: Yes, that's correct. If they're eligible for our service, then they're eligible for our service. We don't tend to distinguish between what their service type is. It doesn't define their job type. So, if they're eligible for our service then they're eligible for our service, and that's how we operate—and we record them.

Senator CAMERON: So, how do you determine someone who's not eligible for your service?

Mr Hehir: As I said, I can get the rules checked but we do have eligibility requirements. Some visa holders are eligible; some aren't. We know which ones—

Senator CAMERON: So, what visa workers aren't eligible?

Mr Hehir: Can I take that on notice; I'll ask my team members to find that for you, Senator.

Senator CAMERON: So, in stream A—that's a self-service stream, is that correct?

Mr Hehir: Not quite, Senator. Stream A has different service modes at different times. I'll ask—

Ms Milliken: Stream A, for the first six months is, generally, self-service and job activation. Then, depending on the age of the individual and circumstances, they would move into case management followed by the activation phase at 12 months. They would then alternate between the activation phase and the case management phase while they remained unemployed and in jobactive.

Senator CAMERON: Can I just come back to the 1.1 million new jobs. In those 1.1 million new jobs—that's the general position that's been put; not jobactive, but in that 1.1 million—how many are visa workers?

Mr Neville: We don't have information on visa holders, but we do have information on migrants.

Senator CAMERON: But migrants are different from visa workers.

Mr Neville: We don't have information on the 1.1 million jobs that have been created according to ABS data by visa; only by year of arrival.

Senator CAMERON: So, this argument that all these Australians are getting jobs—these could be non-Australian workers getting jobs in that 1.1 million, is that right?

Mr Neville: What we do know from ABS data is, if we look at the increase in employment of 1.1 million over that five-year period, that 540,000 of those people were born in Australia and very, very few of the 1.1 million are recent arrivals. So, the increase in employment for those who arrived within the last five years is 56,000. If we look at those who weren't born overseas, the main categories, where there's been a strong increase in employment are people who arrived 10 to 14 years ago, and 15 to 19 years ago.

Senator CAMERON: That doesn't help me in answering the question. This is the department who is supposed to monitor these things. You can't tell me how many of the 1.1 million are visa holders?

Mr Neville: The 1.1 million increase in employment is collected by the ABS. We are reliant on the information that they make available and they collect. They do collect information on elapsed years of arrival since arriving in Australia, but to the best of my knowledge they do not collect information on visa holders.

Ms Hartland: I might be able to help you here, Senator. As I understand it, the eligibility comes via their eligibility for Newstart that comes through from DSS.

Senator CAMERON: I'm just talking about the 1.1 million.

Ms Hartland: No, I understand.

Senator CAMERON: Because I'm not talking about Job Network—I'm not talking about that. The argument is that the 1.1 million workers—to paraphrase—are Australians, basically. However, that's not the case: it's not 1.1 million Australian residents who have got jobs. I'm simply asking the jobs department: how many of that 1.1 million are visa holders—temporary visas?

Senator Reynolds: Sorry, Senator Cameron, I have had a chat to the secretary about this—and they are getting some more information—because it is a very good question. I think the secretary, before you cut her off, was explaining the circumstances around this and who is actually responsible. The issue of eligibility is critically important, because it is another department, DSS, that works out eligibility. If you just allow the secretary to continue, they will come with further information in terms of what you're looking for.

Senator CAMERON: I'm happy to let the secretary continue, but I just want to be clear that this argument—that 1.1 million Australians have the jobs—is not correct.

Senator Reynolds: That's more of a political issue.

Senator CAMERON: No, it's an issue of fact.

Senator Reynolds: Senator Cameron, as I have said—

Senator CAMERON: It's about facts—

Senator Reynolds: But it's also—

Senator CAMERON: It's not about politics; it's facts.

CHAIR: Senator Cameron, let the minister talk.

Senator Reynolds: What I'm saying is it's not quite as simple as that sort of simple political statement, because it does come down to eligibility and who works out who is eligible, and for the department it is actually in terms of who is eligible. It also comes down to a determination in relation to visas and what type of work conditions come with visas. As you've just heard from the official here, it is also in relation to how long someone has been here and what you or I might interpret to be Australian. Whether you're talking about citizenship, whether you're talking residencies or whether you're talking about different categories of visas, that is also relevant to this. If you would allow the secretary to continue, I think the information she's providing does provide the context, and we will come back with some additional information a bit later.

CHAIR: Senator Cameron, let's hear from Ms Hartland and then keep going.

Ms Hartland: I'll throw back to the officials to see if they have any further information. But I think we're talking about two different things here. You're seeking from that job creation aspect the number of visa holders within that. I think Ms Jensen might have some further information she can give you now.

Ms Jensen: The just over one million jobs is based on the ABS's labour force statistics. That is a survey where those surveyed have to be usually resident in Australia. That means you can be confident that there are very few visa holders in those statistics. The nature of the survey means that you have to be usually resident, and that will exclude the vast majority of visa holders.

Senator CAMERON: But a visa holder is a resident. They're resident here, aren't they? When they're working here, they're not going back to China—

Ms Jensen: Generally not, in terms of the definition.

Senator CAMERON: to sleep at night. They're resident here.

Mr Neville: But, again, if we look at the ABS data of the 1.1 million—540,000 are due to people born in Australia and around about 500,000 are due to people who arrived in Australia at least 10 years ago. A very small contribution to that 1.1 million has been made by people who arrived in Australia within the last five years.

Senator CAMERON: Well, you're going to come back to me with details.

CHAIR: Just to be clear: when we're talking 1.1 million, we're talking about jobs growth across the entire economy.

Mr Neville: That's correct.

CHAIR: In a sense you're not talking about actual individuals.

Mr Neville: The total change in employment over that five-year period of 1.1 million.

CHAIR: Yes.

Senator Reynolds: Senator Cameron, just on that: I'm getting the figures on refugees, because the department for jobactive has the number for refugees. Again, I think it comes down to the fact that we're discussing two separate lots of million-dollar job figures.

Senator CAMERON: I'm not asking about any millions of dollars.

Senator Reynolds: Coming directly to your point of Australian jobs, I've just asked the department to provide you with the figures for refugees. Your definition of 'Australian'—they might not be Australian citizens yet, but they're on a pathway to Australian citizenship, so I think we should be considering them as Australians. They certainly consider themselves as Australians.

Senator CAMERON: Anyway, you can take that on notice.

Senator Reynolds: We've actually got the figures here, so I think—

Ms Milliken: In respect of the job placements in jobactive, of those placements—

Senator CAMERON: That's not what was asked.

Ms Milliken: 48,223 have been for people who are refugees up to 31 August.

Senator CAMERON: That wasn't what I was asking. After that total confusion—

Senator Reynolds: I don't think it is very confusing at all. We've got 48,000 refugees on jobactive and a number of those will undoubtedly will reflect in the ABS figures. So I think it's totally relevant, Senator Cameron.

CHAIR: 1.1 million jobs created. That's good news, too.

Mr Hehir: Senator, as Ivan and Benedikte have indicated, our figures come from the ABS. The ABS don't actually distinguish between long-term and temporary migrants, nor do they distinguish between migrants who have moved to Australia for humanitarian or family or as skilled workers. So we're constrained in our information by what the ABS actually collects and, therefore, we can only answer with the information that they hold.

Senator CAMERON: So you can't tell me with any definitive—

Mr Hehir: We can answer as Mr Neville has. I think the totality was one million and 40,000, if I include people who have been resident here for 10 years—

Senator CAMERON: I think you guys are a bit confused. You're certainly confusing me. You can probably take that on notice. I want to move on. Maybe you can get your act together in relation to that position and come back with some definitive answers.

Senator Reynolds: Senator Cameron, I think that's an unnecessary slur on the professionalism of the officials here, because I think they were very clear in talking about both figures of over a million. While they are related, they are two separate figures. I think the officials have been very clear on that. In relation to your last point that they said they couldn't answer, I heard a very clear answer, and that was that, what the ABS can definitively show is that, over a million, in fact probably over 95 per cent, if I just get my rough calculations out, are definitively Australians. The way they do their figures, there's a small number there that's not clear, but you can clearly see from the jobactive figures that there are many people who don't yet have Australian citizenship but who are seen as Australians by Australians and on a pathway to citizenship. There are nearly 50,000 of those as refugees alone. So I think that is very clear, Senator Cameron.

Senator CAMERON: Senator Reynolds, forgive me if I won't place any reliance on a Liberal Party minister being able to count.

CHAIR: Let's minimise the commentary, Senator Cameron.

Senator Reynolds: Senator Cameron, I think if you go back and have a look at the *Hansard* transcript, while we might not have got down to some points, I think we were very clear and the officials were very clear on this.

Senator CAMERON: Stream A—

CHAIR: Senator Cameron, you have 10 more minutes in this block.

Senator CAMERON: Job seeker classification stream A is often referred to as the self-service stream and the participants in that stream are considered job ready. According to Australia's peak body for employment services—that's NESA—40 per cent of these participants are long-term unemployed and, of those, 25 per cent are very long-term unemployed. Furthermore, these participants also have complex issues, including homelessness, mental health, refugee status or have recently been in prison. Why are they in stream A?

Mr Hehir: The instrument the department uses to classify jobseekers classifies them into two streams. Then we use a further instrument to identify stream C; it's an instrument we call ESAt. The jobseeker classification tool or index provides us with a means for streaming the most job ready from the less job ready. The tool uses a regression analysis to identify those with the highest probability of getting employment within the next 12 months, and it classifies that on a point score. The way we do it is that before a particular point you're in stream A. Post a particular point score, you're in stream B. If there are further assessments required, you can potentially be placed into stream C. It's quite common for jobseekers to have a level of disadvantage even if they are classified as more job ready than others.

Senator CAMERON: In stream A, according to NESA, 40 per cent are long-term unemployed and 25 per cent are very long-term unemployed, and they're saying that these people have complex issues. Some are homeless, some have mental health issues, some are refugees and some have recently been in prison. So they're all ready to go, are they?

Mr Hehir: They are classified as more job ready than other jobseekers. Can I make a distinction here, please.

Senator CAMERON: So who would be less ready than them?

CHAIR: Let the official answer.

Mr Hehir: If you have multiple barriers—you might be homeless and have a justice background. You may have year 10 only. There could be a number of factors. In stream B they tend to be more multifactorial, but there are still people in stream A who may have one or two barriers. Stream B is definitely more complex than stream A.

Can I just also make a point here about the way that the figures have been put forward by NESA. That's based on what we call current jobseekers or stock—so those who are currently in service. As I said earlier, we currently have about 480,000 active jobseekers within our system. Within a year, we will have between 1.1 million and 1.2 million jobseekers go through our system. The larger portion of people are classified as stream A as they first enter. So the figure that you have there is a group of people, some of whom in the 40 per cent have been stuck there for more than a year. That doesn't mean their assessment was incorrect. It's also important to remember that our assessment is based on what they tell us. We can only base our information on what they tell us.

Senator CAMERON: So have you had discussions with the peak body for employment services, NESA? Have they raised this issue with you?

Mr Hehir: Yes.

Senator CAMERON: So are they wrong?

Mr Hehir: No, they're correct in terms of the current stock, but they're not correct in terms of the number of jobseekers who flow through the service every year.

Senator CAMERON: In terms of the current stock, it doesn't matter whether they're flowing through or not. There's an issue there, isn't there?

Mr Hehir: It's always an issue if someone is long-term unemployed. It's our preference that people don't become long-term unemployed, so it's clearly an issue there. The fact that there's a proportion of people who are initially classified as stream A who don't get employment within 12 months can reflect many factors, not just their job readiness. It might be about their local labour market. It might be about them not having disclosed issues. It might be about the fact that they have part-time work—because, of course, in our service you can still be required to look for jobs or you can be suspended if you're in part-time work. Those figures, I understand, include the people who are suspended, of which a significant portion are suspended because they have sufficient part-time work. So a large portion of that—I think in the order of about 30 per cent of the caseload—actually is in work.

CHAIR: Senator Cameron, if that's a natural breaking point, you've had another block of time, and Senator Molan has asked for the call.

Senator MOLAN: Most of the questions that I have are for outcome 2.

CHAIR: Do you have outcome 1 questions? If not, we'll go back to Senator Cameron.

Senator MOLAN: Just one if I may. As you may have observed, I was—and I apologise for it—absent for a period of time. I just want to confirm, please: is it a fair statement that 1.1 million jobs have been created over five years? Is that not the case?

Mr Hehir: Yes, Senator, you're correct. We did deal with that while you were out of the room. The job creation figure since September 2013 is in the order of 1.1 million.

Senator MOLAN: Being a multicultural nation, it's fair that 95 per cent of them may have been, or are definitely, Australian, and five per cent are recent arrivals.

Mr Hehir: Where ever people have work rights, they're entitled to work in Australia. That's what the work right does for those who are able to access it. As we said before, from the ABS survey we can look at those who've been here for more than 10 years or who were born here, reflecting that it's impossible to determine, for those who've been here for more than 10 years, whether they're long-term residents or have citizenship—they've certainly been here for extended periods. I just want to draw this out: it's actually additionality rather than the 1.1 million. As I said before, the labour market is very fluid, so we tend to use the additionality rather than trying to pick out which were the 1.1 million jobs. It's a net figure.

Mr Neville: As we have discussed before, the ABS does not provide separate information on visa categories but by whether people are born in Australia and, if not, the year of arrival. If we look at the 1.1 million, 1 million of that 1.1 million were due to people either born in Australia or who arrived in Australia at least 10 years ago.

Senator MOLAN: That's good. That gives me the point. That's a tremendous achievement. Thanks very much. I'll wait for outcome 2.

Senator CAMERON: So some participants in stream A have been unemployed for two years. Why are they in stream A?

Mr Hehir: They remain in stream A unless their circumstances are indicated to have changed. There's a certain amount of people who do move from stream A to stream B, through the passing of time. It's not an automatic, 'If you've been in 12 months you become stream B.' You might have a birthday which puts you into a category which is a higher level of disadvantage. You might become 50, for which, we know statistically, that it takes longer to find employment, so that can actually move you into stream B. Unless there's a reassessment or a reclassification undertaken, they tend to stay where they were placed.

Senator CAMERON: Are NESA and the department working together to try to fix some of these issues?

Mr Hehir: The regression analysis is reviewed regularly. We do look at the probability in terms of what the factors are and the combination of factors on the combination points that are likely to lead to it. With any regression analysis it's not 100 per cent accurate. Typically, we'd expect somewhere between 60 and 70 per cent or—

Senator CAMERON: Can I just draw you back to the question? Are you working with NESA to try and deal with this? That's all I asked.

Mr Hehir: We continue to work with NESA on a range of matters, including working with them on an online trial. We're doing the work, but we're keeping them informed of that work. It's an online JSCI trial to see whether we can improve the disclosure of barriers by jobseekers.

Senator CAMERON: That's the disclosure of barriers. Are you working with them, say, on the questionnaire? Are there any changes to the questionnaire to make this more reasonable?

Mr Hehir: As part of the online trial, we have done some changing to the questionnaire to try and find a better way.

Senator CAMERON: So you are working with NESA to try to deal with this problem. If we come back to estimates before an election, we'll work through how we can deal with that.

Mr Hehir: The online trial will be undergoing an evaluation, and I'm not sure of the timing of the results for that, but, yes.

CHAIR: Sorry, is the online trial underway now or is that coming up.

Mr Hehir: It's underway, but it will need to be evaluated.

Ms Hartland: It commenced 1 July this year.

Senator CAMERON: Do you have details of how many participants are in each stream?

Ms Pitt: Yes. Approximately 55 per cent of jobseekers would be in stream A, 28 in stream B and 17 per cent in stream C. Just in terms of the Job Seeker Classification Instrument, it's a relative measure of disadvantage, and it's really looking—

Senator CAMERON: I didn't ask you that. How many participants are homeless?

Ms Pitt: I'll see if I've got that data.

Ms Jensen: Homeless represent 9.8 per cent of the total case load.

Senator CAMERON: How many have got complex mental health issues?

Ms Jensen: People with complex mental health would fall within the category of with disability, and that category represents 27.4 per cent of the total caseload.

Senator CAMERON: And how many are refugees?

Ms Jensen: 5.3 per cent.

Senator CAMERON: And how many are long-term unemployed?

Ms Jensen: It depends on the definition, but 64.9 per cent of participants are long-term unemployed.

Mr Hehir: Can I raise a distinction here? They're long-term on our caseload. They won't necessarily be long-term unemployed according to the ABS definition. As I said before, many of our jobseekers have part-time employment and therefore technically they're not unemployed but they're still on our caseload. So the figures are caseload figures, not necessarily unemployment figures.

Senator CAMERON: Do you have any figures on long-term unemployed as distinct from caseload?

Ms Jensen: Yes. In terms of the ABS definition of long-term unemployment, through the labour force survey, in August 2018 the instances of long-term unemployed amongst total unemployed is 24.1 per cent.

CHAIR: Can I get this straight. Again, I'm fairly new to this portfolio area. You've got your caseload, who you consider to be long-term unemployed but who are people who might actually be in work for ABS purposes.

Mr Hehir: That's correct. The ABS says if you have worked one hour then you've been in employment, and to become long-term unemployed you need to be 12 months away from having worked at least one hour.

Mr Neville: And actively have looked for work during that entire period and be available for work during that period.

Mr Hehir: They have a very strict definition of long-term unemployed. We work with jobseekers who are on benefit in the main, and they have mutual obligations to look for work. So even if they are in part-time employment, if it's not sufficient or doesn't meet their mutual obligation requirements, they are still on our caseload and we still seek to support them to find further work. You can also, as we discussed earlier, have been in a job placement for four weeks or six weeks and then come back to our caseload. You may well not meet the definition of long-term unemployed for ABS purposes but you may still be on our caseload for a year or more.

CHAIR: That person will still remain, from your perspective, as a long-term unemployed. We will go to break but will return with outcome 1, and Senator Cameron will have the call.

**Proceedings suspended from 10:29 to 10:****46**

CHAIR: We continue in outcome 1.

Senator CAMERON: An initiative announced by Mr Morrison was reported in *The Daily Telegraph*:

The federal government is preparing to penalise layabouts who turn down short-term harvest work and will step up penalties for those who have no excuse for doing so. While we're tackling the labour shortage this also ensures job seekers on taxpayer support have no excuse to refuse opportunities.

This National Harvest Labour Information Service has been in place for some time, hasn't it?

Mr Hehir: Yes, it has.

Senator CAMERON: Can you clarify what's new about this initiative?

Mr Hehir: The Harvest Labour Information Service has traditionally been confined to the 11 harvest labour regions. It's part of this initiative whereby the Harvest Labour Information Service is taking information from outside of those areas and has agreed that they'll work actively with the department and the providers in those regions to try to support jobseekers into those harvest labour opportunities.

Senator CAMERON: Was there any funding attached to the announcement?

Mr Hehir: No. It's being done within resources.

Senator CAMERON: Departmental resources?

Mr Hehir: As you said, the Harvest Labour Information Service is a longstanding service. They've agreed to work with us in this extended fashion under the existing contract.

Senator CAMERON: So, where's the extra money going to come from?

Mr Hehir: It will be from within the jobactive appropriation centre.

Senator CAMERON: Have you made any assessments as to the cost?

Mr Hehir: We had an initial assessment, but part of that will depend on the level of activity that we see.

Senator CAMERON: What's your initial assessment?

Mr Hehir: I think our initial assessment was that at a high level of activity it could cost up to $300,000, but that was a very rough estimate.

Senator CAMERON: Per annum?

Mr Hehir: Yes, I believe so.

Senator CAMERON: How will that money be spent?

Mr Hehir: The money will be spent if there is a significant amount of work required to support jobactive providers in non-harvest-labour regions.

Senator CAMERON: And that will be from within the department?

Mr Hehir: That'll be from within the jobactive appropriation.

Senator CAMERON: Yes—the department.

Mr Hehir: The jobactive appropriation isn't departmental; it's the administered funding.

Senator CAMERON: Was there any input from stakeholders in the lead-up to this announcement?

Mr Hehir: I can't answer that. Except for the stakeholders, we did engage with the Harvest Labour Information Service Provider in the lead-up.

Senator CAMERON: Has the department briefed the Prime Minister or PM&C on the proposal? Have you had briefings with PM&C on this?

Ms Hartland: I don't think so. We were asked what mechanisms were in place. And because the service, as we've just described, was in place, we then looked at what more it could do and what could be done under the existing contract and, as Mr Hehir said, spoke to the provider there. So I don't think there were any specific discussions.

Senator CAMERON: When were you asked, and by whom?

Ms Hartland: I might have to take that on notice. I don't have dates or by whom here. The discussions that we had were via the minister's office. I don't believe we had any direct discussions with PM&C?

Mr Hehir: We did have a routine catch-up with PM&C.

Senator CAMERON: When was that?

Mr Hehir: I'd need to check.

Senator CAMERON: Was it before 13 October?

Mr Hehir: It was in the days leading up to the announcement, yes. It was a routine catch-up where we discussed this as one of the issues.

Senator CAMERON: So, you didn't go to that routine catch-up expecting this to be an issue you had to deal with?

Mr Hehir: Yes. It was a prescheduled—

Senator CAMERON: And was this on the agenda?

Mr Hehir: I can't remember whether it was done under 'other business'. I'd need to check.

Senator CAMERON: How would you go there expecting it to be asked if it was in 'other business'?

Mr Hehir: As I said, it was a routine meeting. The agenda had been set some time before. We'd been contacted by the minister's office relatively recently, in between the agenda being set—at least the first agenda that I was conscious of. And then I went to the meeting recognising that they'd probably want to discuss this matter.

Senator CAMERON: How did you recognise that?

Mr Hehir: Because we'd had contact from the minister's office.

Senator CAMERON: On what date did you recognise that you had to deal with this?

Mr Hehir: The date we were contacted by the minister's office.

Senator CAMERON: And that was just in the days before 13 October; it wasn't a long lead time?

Mr Hehir: No.

Ms Hartland: It wasn't a long lead time, so it was in the days before the announcement. But it would be good if we could, just for accuracy, take it on notice—

Senator CAMERON: Fine.

Ms Hartland: and we could give you exact times.

Senator CAMERON: Yes. Have you had any discussions with the National Farmers' Federation in relation to this, given that they said:

Today's announcement by the Prime Minister asking farmers to report their employment needs is a shallow attempt at solving a deep problem. Of course we want Australians to fill jobs on Aussie farms. Farmers have been trying to do that for years. But the reality is this latest attempt is unlikely to bear fruit (or get much picked for that matter).

So, have you discussed with the Farmers' Federation how you're going to make this work when they simply say it's 'shallow' and that it won't work?

Mr Hehir: I haven't had any discussions with the National Farmers' Federation. We'd point out that the Harvest Labour Service, in addition to the Harvest Labour Information Service, is a longstanding service. It typically fills the majority of its requests for workers, for placements.

Senator CAMERON: But you've done no systematic analysis, leading up to this announcement, as to how this would work?

Ms Hartland: I was just going to say: the announcement by the Prime Minister—we were asked to be able to provide, and I think the Prime Minister used words around getting labour information, evidence, and that's what the purpose of this activity is. It was on the basis that we didn't have good data ourselves and that this service was in place and we could use that to provide better data.

Senator CAMERON: So this was all done within a couple of days?

Ms Hartland: Yes.

Senator CAMERON: Is that correct?

Ms Hartland: Yes, it is.

Mr Hehir: I would just like to qualify that in part. The only data we have is where we've had a request for a placement and whether that placement has been filled. In terms of whether there are other methods that farmers have been using, we have no visibility of that and this is an attempt—is my understanding—of trying to get full visibility of the market rather than just those who use harvest labour services.

Senator CAMERON: So does the department accept this is a deep problem?

Mr Hehir: The majority of harvest labour placements are filled.

Senator CAMERON: That's not what I'm asking you. I'm asking you about the comment that the Farmers' Federation president made that 'this was a deep problem'. Is it a deep problem?

Mr Hehir: We'll know better once we see whether there's additional requests for harvest labour placements, over and above what we usually get.

Senator CAMERON: So you don't know?

Mr Hehir: That's for the purposes of collecting that information.

Ms Hartland: That's right. We were seeking that broader information because we didn't have that so we can't really comment on whether it's right or wrong until we do this work, and then we'll be in a better position to inform government.

Senator Reynolds: On that, there is clearly a policy aspect to your questions. To provide some policy around this particular initiative, the government was very clear, as was the Prime Minister, that this was a short-term solution, as the secretary has said, to gain more information but also to use the existing service, the National Harvest Labour Information Service, more effectively because it was very clear to government that there wasn't a lot of awareness of that service. So this was a very specific measure not only to gain data but also to help farmers, which I think everybody here would think is a good thing, find more local labour to help them with the upcoming picking season and to make that gap clearer so we can better target and use the three existing visa categories—the Pacific and backpackers, et cetera. Then there is a third aspect.

The government doesn't have any opposition to having a look at the agricultural visa but that's obviously a longer term consideration and there will be more deliberation and debate. This is not a one-off, a fix-all; it is just a very sensible attempt to make better use of the services that already exist for this fruit-picking season.

Once we can make better use of local agricultural workers, people to support them, we can also look at whether we can have more portability—Australians first then the various categories of visa. We can then have a look at a longer-term solution such as the agricultural visa but there are a lot of implications for that and that is not a short-term fix. It is not one and nothing else. This is just, I think, a very sensible measure along the journey of employing more Australians.

Senator CAMERON: But if you take an initiative, there's normally work done leading up to that initiative. There's been no work done by the department.

Senator Reynolds: That might be the Labor approach to just about everything—reviewing everything for decades before you do it. However—

Senator CAMERON: Minister, if you just let me finish. I was asking the secretary a question, if you don't mind. Don't behave like Senator Macdonald.

Senator Reynolds: Senator Cameron, I think there is no chance that anyone would confuse Senator Macdonald for me.

CHAIR: I think that's not a risk.

Senator Reynolds: However—you did ask—there is a significant policy aspect to this. Again, I am just clarifying that this is a very specific narrow-scoped initiative. It doesn't involve additional appropriations. It is something to better use existing services for Australian fruit growers and horticulturists this season as we consider longer term policies.

Senator CAMERON: So are you saying this is a significant policy initiative and Fiona Simson, the president of the NFF is saying it is a shallow attempt?

Senator Reynolds: Senator Macdonald—sorry, Senator—now you have got me talking about Senator Macdonald! Senator Cameron, now I am confusing you with Senator Macdonald.

Senator CAMERON: Please don't do that! For all my weaknesses, I don't behave like Senator Macdonald!

Senator Reynolds: I'm sure he'll be very glad, if he's watching, to know that we have such great respect for him! But, on a serious note, this is a measure that doesn't require additional appropriations, as the department have said. It is a very specific measure to help two things. One is Australians finding jobs locally. The other is to help horticulturalists pick our fruit, in particular in this fruit-picking season. But, again, it's not the only policy option; it is just a very specific, narrow policy and action while we consider all of the other issues. In this case, it was a decision that could be and was taken by the Prime Minister and the minister, because it didn't need appropriations and it didn't need tortuous, Labor-esque, endless reviews and processes to implement this very sensible solution.

Senator CAMERON: I come back to the department. Have you briefed the Prime Minister on issues arising from this policy announcement?

Ms Hartland: We haven't directly briefed, no. The briefing that was have done was with Minister O'Dwyer.

Senator CAMERON: When did you brief Minister O'Dwyer on this?

Ms Hartland: Again, I'd have to take it on notice, but certainly there would have been briefings in the lead-up in days prior to the Prime Minister's announcement. We are having regular discussions with her post that in terms of outcomes that we're seeing today.

Senator CAMERON: Did Minister O'Dwyer ask you to do work on this?

Ms Hartland: She's my minister, yes.

Senator CAMERON: Did she ask you to do specific work on this policy announcement?

Ms Hartland: The discussion we had was, as Senator Reynolds has said, in terms of the mechanisms that we had to be able to provide more labour market information: what could we do and what were the programs that were in place?

Senator CAMERON: So this was a couple of days before the 13th.

Ms Hartland: Yes. It was obviously prior to the announcement. So we had those discussions—

Senator CAMERON: What information did you provide to Minister O'Dwyer?

Ms Hartland: As per the initiative that came out, we certainly spoke about how this labour information service was in place.

Senator CAMERON: You 'spoke about'; did you provide any detailed documentation to the minister prior to this announcement?

Ms Hartland: I'll have to take on notice what we provided. Certainly there was a lot of discussion and a lot of briefing.

Senator CAMERON: There was a lot done in two days, was there?

Ms Hartland: We're quite agile.

Senator CAMERON: How many meetings did you have with the minister's office in those two days?

Senator Reynolds: The secretary has taken that process on notice.

Senator CAMERON: No, I'm asking a specific question.

Senator Reynolds: I understand she's taken that process on notice, because it does also involve cabinet processes.

Senator CAMERON: It doesn't matter. I'm asking the questions. How many meetings did you have with the minister in the minister's office in relation to this proposal?

Ms Hartland: I'll have to take it on notice because there was ongoing discussion.

Senator CAMERON: Okay. I'm happy for you to do that. What documentation was provided to the minister?

Ms Hartland: As Senator Reynolds has said, this then formed part of a cabinet process, so the normal briefings and cabinet process documentation was prepared and considered by government.

Senator CAMERON: How was it a cabinet process when this was simply a briefing to the minister? The minister rang you, did she?

Ms Hartland: No, I didn't say that. I just need to take on notice—certainly there were discussions. Certainly there were oral briefings, and then there was a process that was in place. I just need to have a look at those dates and times.

Senator CAMERON: I don't want to know what advice you provided. I simply want to know how many oral briefings you gave, whether you provided any documentation—

CHAIR: That has been taken on notice.

Senator CAMERON: Any documentation.

Ms Hartland: Sure.

Senator CAMERON: If there are any file notes in relation to this on times, if they can be provided. But this was all done within a 48-hour period before the announcement—correct?

Senator Reynolds: Senator Cameron, isn't it great you've got such an agile minister that long processes are not required—that the government can respond very quickly to find Australian employers for Australian farmers?

Senator CAMERON: I've heard descriptions other than agile, Minister.

Senator Reynolds: As you're saying, two days. I would have thought that the Labor Party would have loved the opportunity for Australian employers to get more Australian workers.

Senator CAMERON: Has the department—

CHAIR: Senator Cameron, how many more questions have you got in this area?

Senator CAMERON: I've got a few.

CHAIR: I've got some questions in this area as well. Your time's almost up.

Senator CAMERON: I'll ask the last one on this. Has the department consulted with other departments on the proposal? Was modelling undertaken to see how the workforce shortages could be filled?

Mr Hehir: Senator, the first piece of work that we're doing is to try to identify whether there is, and, if there is, to what extent there is a workforce shortage. That's the whole purpose of the information collection. In terms of discussions with other departments, we're in routine discussion with other departments around the seasonal worker program—

Senator CAMERON: I'm asking specifically about this announcement.

Mr Hehir: In terms of your specific question about whether we have consulted on how we fill workforce needs, the first thing that we've been talking about is identifying what the workforce needs are.

Senator CAMERON: You were unaware of what the workforce needs were when the Prime Minister made the announcement—is that correct?

Mr Hehir: It's quite clear that the announcement is about trying to identify what the level of workforce need is, among other things. So, where there is a workforce need identified, it should be filled by Australian jobseekers where possible. It's quite clear that the announcement is about getting the information so that we can actually respond to it.

CHAIR: We'll need to leave that there unless you wanted to add something, Minister?

Senator Reynolds: No, I think it has been asked and answered several times. I think we've clearly covered that off.

CHAIR: There have been some questions taken on notice.

Senator SIEWERT: I'll let you know that I'll be putting a whole lot of questions on notice. I'm crossing between aged care and here. I apologise if I'm going to do this in a really rushed manner, but I've got a whole lot of stats that I'd like that I'll put on notice. I want to go to TCF, the targeted compliance framework. I know that you have dealt with it a bit this morning.

Ms Hartland: No.

Senator SIEWERT: Okay. I would like to know how it started. I would like to know how people are going through the process and where the number of people that have got to five have progressed through, if they have been through the penalty process?

Ms Pitt: The new targeted compliance framework started on 1 July. I think the implementation has gone, from our perspective and working with our employment service providers, reasonably smoothly. We do have people progressing through the system now, and we can provide some information if you'd like.

Senator SIEWERT: Okay. When they get to point 3 and they do the review with the provider—

Ms Pitt: The capability interview.

Senator SIEWERT: The capability interview. Do you get notified of that?

Ms Pitt: We have data on how many capability interviews are undertaken.

Senator SIEWERT: That's what I'd like to know. Also, do you get reports on the outcomes of that?

Ms Pitt: We do have data on that as well.

Senator SIEWERT: Could you give me that?

Ms Pitt: Yes. To 30 September, the total number for jobactive of capability interviews is 6,435. The outcomes from those are that 47 per cent, 5,598, were—

Senator SIEWERT: That doesn't add up. Sorry.

Mr Hehir: It's 47 per cent of a different figure.

Senator SIEWERT: My brain was quickly going, 'That ain't 47 per cent!'

Ms Pitt: Sorry. The total number of completed capability interviews is 12,033.

Senator SIEWERT: That's completed interviews?

Ms Pitt: That's right. The 6,435 are those where the outcome of that capability interview was that the job plan was correct, and there was no other information disclosed.

Senator SIEWERT: That's where the 47 per cent comes in?

Ms Pitt: That's the 53.

Senator SIEWERT: That's 53 per cent. Fifty-three per cent with no job plan change?

Ms Pitt: That's it.

Senator SIEWERT: And the 47 per cent?

Ms Pitt: Of the 47 per cent, we have found 1,557, 28 per cent, where the jobseeker has disclosed new information. We've got 68, 1 per cent, where a change in eligibility or stream was required.

Senator SIEWERT: Okay. I want to come back to stream, but can I just go back to the disclosed? Twenty-eight per cent disclosed new information, which is not unexpected, in that people don't always declare straightaway?

Ms Pitt: That's right.

Senator SIEWERT: And those have gone on to a new plan?

Ms Pitt: That's right. For those people who would have had three demerits, they've had their capability interview. At that interview, they've disclosed new information which would then indicate that the original job plan may not have been appropriate for them. Those people then go right back to the start.

Senator SIEWERT: Where they've got a new job plan?

Ms Pitt: Yes.

Senator SIEWERT: But the others don't; they continue on, don't they?

Ms Pitt: That's right, yes.

Senator SIEWERT: For the one per cent with new eligibility, does that mean they should have been eligible for another payment?

Ms Pitt: That's right. For those people, they may have been referred for an ESAt to get some kind of assessment.

Senator SIEWERT: Thank you. I'm aware of the time, so I'll keep going. Let's go on to once we get to five.

Ms Pitt: Then there's the capability assessment undertaken by Department of Human Services. There have been 1,074 capability assessments completed. Of those, 882, 82 per cent, have been found to be capable. Then we have 192, 18 per cent, who then have either disclosed new information or had a change in their stream or eligibility.

Senator SIEWERT: Okay. Let's get to six, seven and eight.

Ms Pitt: In terms of jobactive, the number of people who've had a financial penalty, like a one-week financial penalty—

Senator SIEWERT: Yes, which is when you get to the sixth point.

Ms Pitt: That's right. That is 149 jobseekers. The second penalty, which is two weeks, is 87 jobseekers. The third penalty is 16 jobseekers.

Senator SIEWERT: I'm trying to work out the timing. We've had 16 who, in three months, have got to the eight points pretty quickly?

Ms Pitt: Yes, but they have gone through a capability interview and a capability assessment in that.

Senator SIEWERT: I'm presuming that that has all been done correctly. I wasn't implying anything. What I'm saying is that those 16 people have got through there pretty quick. Are you able to tell me how many have done their four weeks and then reapplied? Have any?

Mr Emerson: Is that the number of jobseekers that have had a third penalty apply and come back on?

Senator SIEWERT: Yes. My understanding of the process is that you have to reapply after that four weeks.

Mr Emerson: Yes, that's correct.

Senator SIEWERT: That process changed with the new reforms. Are there any that have got to their eight points, done their four-week penalty and reapplied?

Mr Emerson: Yes, there are six.

Senator SIEWERT: They got there extremely quickly, didn't they?

Mr Emerson: They would have come through a number of demerit point conversations as well as the—

Senator SIEWERT: I understand the process, but they have got there pretty quick, and now they're at the point where they're reapplying.

Mr Hehir: Absolutely. If their mutual obligations had them doing activities regularly and they failed to attend those activities regularly, it's entirely possible that people could come through quite quickly.

Senator SIEWERT: I'll ask this on notice: do you have the breakdown in terms of streams?

Ms Pitt: Yes, we do. We can give you that now.

Senator SIEWERT: Just so that I get an understanding of where the bulk of those are, could you give me that now and then I'll ask for more detail on notice.

Ms Pitt: In terms of streams and financial penalties, of the 149 that have had at least one penalty, 24 were in stream A, 81 were in stream B and 44 were in stream C.

Mr Emerson: I would just add to Ms Pitt's answer by saying that they would be jobseekers who are in the penalty zone and have had one penalty apply.

Senator SIEWERT: Yes, that's point 6.

Mr Emerson: Yes.

Senator SIEWERT: Could you give me seven and eight as well.

Ms Pitt: Yes. In terms of seven—stream A is 11; stream B is 53; and stream C is 23.

Senator SIEWERT: Stream B at the moment are the ones that are standing out as the bulk.

Ms Pitt: Yes, they are. And for the four-week penalty—stream A is two; stream B is eight; and stream C is six.

Senator SIEWERT: It seems to me, just on these figures, that stream B are really standing out as the group that are being picked up in the penalty zone. Could I ask you to take on notice—because I'm conscious of the time—what the figures are through the interview assessment process. Are Bs standing out in those areas as well?

Ms Pitt: In terms of the total number of capability interviews completed, I've got those figure, so I can give them to you now.

Senator SIEWERT: Okay, let's go there.

Ms Pitt: For stream A it's 3,087 completed; stream B is 5,926; and stream C is 3,020.

Senator SIEWERT: So, again, it's stream B. What about for the capability assessment?

Ms Pitt: The total number of capability assessments for stream A is 274; stream B is 515; and stream C is 285.

Senator SIEWERT: Again, in both of those stream B are standing out.

Ms Pitt: Yes.

Senator SIEWERT: Can you remind me: of our overall jobactive population, what's the proportion for A, B and C currently?

Ms Pitt: It's around 20 or 22 per cent. I'll just get that for you.

Senator SIEWERT: Could you give me the proportion of jobactive for stream A, B and C.

Ms Pitt: Yes. Stream A is 55 per cent; stream B is 28 per cent; and stream C is 17 per cent.

Senator SIEWERT: So we clearly have a disproportionate number of stream B that are hitting these points.

Ms Pitt: Yes.

Senator SIEWERT: Have you looked at that yet? I know it's very early.

Ms Pitt: It is early days.

Senator SIEWERT: But it could be the canary in the coalmine in terms of what's happening here.

Ms Pitt: Yes. In terms of what we're doing with the evaluation, we're working really closely with our employment service providers. We've got a working group that involves the National Employment Services Association and Jobs Australia as our key stakeholders together with a number of providers, large and small, regional and others.

Senator SIEWERT: What about the people who are actually being impacted—in other words, jobseekers?

Senator Reynolds: Senator Siewert, I've just had a look at the tables that you're getting this information from, and I know you're—

Senator SIEWERT: Are you able to table the tables?

Senator Reynolds: I was just about to say that it might be easier. The officials are doing a great job of explaining it, but I don't think there's any reason that we couldn't provide you with the data, because I know it's of great interest of you and I think this would be particularly helpful for you.

Senator SIEWERT: It would be extremely useful if you could table the table.

Senator Reynolds: There's no reason that we can't. If the committee's happy for us to table this, Chair—

CHAIR: Absolutely.

Senator SIEWERT: That would be great and very much appreciated. Thank you.

Mr Hehir: Can I just clarify something, Senator. The proportions that Ms Pitt gave you were—sorry, we had a discussion earlier and at the risk of opening it up again—are flow. So we'll have 1.1 to 1.2 million people go through jobactive in a year, so we call that flow. In flow, we have a higher proportion of stream A because they tend to come out and get jobs. In terms of those who are currently on the case load, the figures are different. So stream A is 38 per cent of the current case load. Stream B is 42, or nearly 43, per cent of the case load and stream C is 16 per cent of the case load. Because the figures quoted were flow, that's slightly different. But because you've got more of the stock—so those people who will be longer are the people on that—

Senator SIEWERT: I take your point.

Mr Hehir: It's still disproportionate, I agree.

Senator SIEWERT: It is still disproportionate but maybe not quite as much, but I think the trend would still be there.

Mr Hehir: It's certainly something that we'll continue to evaluate and look at. So we are working with our providers still in terms of how they're going, how the interviews are, are they doing the proper assessment at the time, was the jobactive plan valid or not. They're all important things, and, in fact, that's probably one of the most important points: was the plan appropriate for the circumstances of the individual?

Senator SIEWERT: Does that table show, in terms of streams A, B and C, for how many the plan was or was not appropriate?

Mr Hehir: Yes.

Senator SIEWERT: And that's on the table?

Mr Hehir: Yes.

Senator SIEWERT: So I don't need to keep asking? Fantastic. Thank you. I'll probably have some more questions on notice once I've looked at the table. Going back to the working group, in terms of who is on there, you said employment services and Jobs Australia and some of the providers. Are there a couple of people who are actually users of the system?

Ms Pitt: We've done other work in terms of developing the TCF. We did a whole range of social research work with focus groups and with jobseekers in terms of the development of the program.

Senator SIEWERT: You've got the working group which I think is a good idea, but are there people who are users of the system on that working group as well?

Ms Pitt: Not on that working group.

Senator SIEWERT: Why is that? This is a new system, and I would have thought it would be a good idea to get users' experience.

Ms Pitt: We established the working group fairly early in terms of the rollout of the targeted compliance framework in terms of the delivery and the transition of the new arrangements. So we were working really closely to get feedback about providers' readiness, their questions, what kind of products they needed to support their frontline staff in delivering the compliance arrangements. So we've been meeting with them reasonably regularly to work through that transition and implementation phase.

Mr Hehir: And, Senator, I think the nation working group probably doesn't best suit the sort of work that you're talking about. I think that would be better off placed doing that through a user centred focus group. Testing the issue rather than trying to put them on to a technical working group. Looking at how people are doing it—the providers' side—is really what that working group is trying to focus on: are the practice and the providers good? It's hard for a couple of reps on that to respond and be seen to be able to engage in the same fashion, because they'll have much less information. I would have thought the better way of engaging with jobseekers in that context is in a focus group to look at that, which is how we did the work in terms of the preparation.

Senator SIEWERT: We may slightly disagree on the users' role and involvement.

Senator Reynolds: Just on that point, I'd just like to take a moment. We don't normally give shout-outs to the departmental staff when things go well. In these committees, we generally focus on things that haven't gone so well. But, as you've heard, and as I've been briefed, the TCF program has been rolled out in a very efficient way. It was stood up on 1 July. They did extensive change management preparations and, as you've heard, focus groups, and it has rolled out remarkably well. So, while we don't do it very often in here, I would actually like to give a shout-out to the Activation and Work for the Dole Group for this work. As I said we normally focus on things that go wrong, but this has gone right. Not only has it been implemented professionally and very effectively, it's also meeting the government's intent. You heard from the figures that we are deterring deliberate and wilful noncompliance while at the same time providing better protections to those who need them the most. Senator Siewert, I know you're very engaged in this and, while we might have a difference of policy opinion, I know you'll appreciate the work that's gone into this by the staff.

Senator SIEWERT: I understand the level of work that's gone into it.

CHAIR: This will need to be the last question, Senator Siewert.

Senator SIEWERT: Actually, I'm done because I'll look at this table. If I get a chance, I might come back from in there, if you don't finish beforehand.

CHAIR: I suspect you won't, having been in there in the past, but feel free to come back if you have time. I've got a few questions around the Regional Employment Trials. Is this the right outcome?

Ms Hartland: You're absolutely correct, yes. We don't try to confuse you.

CHAIR: The Regional Employment Trials started pretty recently; is that correct?

Mr Hehir: That's correct.

Ms Jensen: They started at the beginning of October.

CHAIR: Can you talk me through the program—what it consists of, where it's operating and how it operates?

Mr Greening: The program is over 10 regions, primarily non-metropolitan. Its premise is to test the capacity for regional and local approaches to support employment related projects and to have a focus on helping the unemployed to prepare for and find a job in those regions.

CHAIR: And is the point here to try multiple but different things in each of those locations? Is that what we mean when we say 'trial'?

Mr Greening: Definitely, Senator. The premise is that we're wanting to engage with local stakeholders and for local stakeholders to propose solutions to the challenges as they identify them.

CHAIR: Can you list the ten regions?

Ms Jensen: I've got them here, Senator. The 10 trial regions are: in New South Wales—Northern Inland and Far South Coast; in Victoria—Melbourne, which spans Western Melbourne and North Western Melbourne employment regions, and Gippsland; in Queensland—Townsville and North West is one area, and the other is Wide Bay Burnett; in South Australia—Murraylands and Riverland, and Yorke and Mid North; in Western Australia—Peel; and in Tasmania—North and North West Tasmanian employment regions.

CHAIR: Pardon me for being parochial, but let's take Peel as the example. What kinds of things are currently underway in Peel to deliver jobs for that area? The trial started on 1 October. Does that mean that people on the ground are just starting to ramp up? Have you already been in discussions with potential employment pathways?

Ms Jensen: More broadly, there are many, many things happening around jobs in Peel but, with respect to this particular Regional Employment Trials program, given that it did start in October, the early steps are for the employment facilitator who's recently been appointed in Peel to work with the Regional Development Advisory Committee and other stakeholders to explain the purpose of the program and to encourage stakeholders to come forward with proposals that can then be funded through the fund that's available, in order to be a catalyst for innovative approaches to creating more employment particularly for disadvantaged jobseekers.

CHAIR: Obviously, younger jobseekers are a particular problem in a lot of regional areas—Peel, I think, would be in that category. So what sort of projects are you envisaging coming forward? In your initial discussions, do we have a flavour yet of what kinds of projects may come forward?

Ms Jensen: Our expectations are influenced a bit by some of the grassroots knowledge from right around the country in terms of initiatives that have been taken by, say, local councils. So, for example, in the Hunter Valley with regard to young people, there has in the past been an initiative where the local council has worked with local employers to get young people employment in the local hospitality area. They get that experience and then, through the networks of the council, get direct routes into jobs. That's an example of the benefits of a locally driven initiative because they more aware of what the job opportunities are, what training's required to get young people trained up to be ready for those opportunities and they have the networks into the local employers. So, I'm hearing that that type of approach might be of interest down on the south coast with the regional employment trials, but it really will depend on the particular circumstances in that region—what the opportunities are and what the local community believes will work for their young people.

CHAIR: So, how creative can people get? For example, in Western Australia at the moment we have Kalgoorlie, where we're told there's a surplus of jobs. Could the Peel project try to link people in Peel to jobs in Kalgoorlie in some way—is that out of scope?

Mr Greening: That's definitely not out of scope, Senator, and we'd be encouraging innovative and creative thinking to the furthest extent possible. There are some areas where we have directed that projects cannot occur—they're quite obvious ones like illegal operations, unlawful conduct et cetera. But, apart from some of those more obvious projects that can't be taken forward, we really are encouraging innovation.

CHAIR: And when would we expect to see projects on the ground actually getting people into employment, into training, into whatever?

Mr Greening: We'd be hopeful certainly by the end of the year.

CHAIR: And that has to go through some sort of application process?

Mr Greening: There is an application process with the implementation. The department has partnered with AusIndustry and, in particular, their Business Grants Hub to administer a grants program for the regions. There's $1 million available in each of the regions to support local employment projects. Those local employment projects can be proposed literally by any local stakeholder in the region, including employment providers and RDA committees. The projects that are put forward are expected to be developed in consultation with the RDA committee and with the employment facilitator that the department has on the ground in those regions. Once that consultation and development has taken place, it is then submitted to AusIndustry and they conduct an assessment process.

CHAIR: Just finally on this topic—from me anyway: is the department actively trying to ensure that we don't just see 10 similar trials in the 10 areas? There are obviously a lot of similarities—and a lot of differences—between regional areas. Is the department going to actively monitor the 10 sites to make sure we actually get a meaningful trial so that different things are tried in different regions and we get some learning from this?

Mr Greening: We are certainly very keen to extract as much learning from the trial as we can. That said, if there is one particular project that is very successful in one region then we wouldn't discourage it happening in another region.

CHAIR: Fair enough.

Ms Jensen: Might I add: given your question about, for example, if people in Peel wanted to encourage people to take up opportunities in Kalgoorlie, part of the trial is actually examining how earlier access to the relocation assistance program might encourage jobseekers to move to where the jobs are. So that's actually an explicit component of the trial—to look at how earlier access might help with that very important mobility.

CHAIR: Outcome 1, Senator Molan or Senator Paterson—no? Senator Cameron.

Senator CAMERON: I think I was on the National Harvest Labour Information Service. Has the department consulted with other departments on this proposal?

Ms Jensen: Yes, we have.

Senator CAMERON: What consultations have been undertaken?

Ms Jensen: Again, it might be best if I take that on notice because, with any process, we've got a number of staff holding them. Often it's by phone. So, in terms of getting the precise details, I think it's best that we take that on notice. But I can tell you that we have consulted.

Senator CAMERON: Has there been any written correspondence on this?

Ms Jensen: Again, there has been, yes.

Senator CAMERON: Could you provide details of file notes and any consultations—

Ms Jensen: We can take that on notice.

Senator CAMERON: between departments in relation to this program?

Ms Hartland: I took your question before as being quite broad on that, so we can give you information on which departments and the meetings and the like; I'll do that. I know you were asking around ministers, but I thought I'd taken it also on notice around departments, so I will do that.

Senator CAMERON: I also want any file notes—

Ms Hartland: Sorry?

Senator CAMERON: I also want any file notes and correspondence as well.

Ms Hartland: Yes. We'll take it on notice.

Senator CAMERON: Was any modelling undertaken to see how the workforce shortages could be filled?

Mr Hehir: I think this is the same answer we have given before. We'd need to establish what the workforce shortage is first. That's the reason that we are using the Harvest Labour Information Service—to try and understand where the vacancies are and where harvest labour is required, recognising, of course, that the harvest labour service does cover the majority of the harvest labour areas in Australia already, be it in those 11 regions. So this is really looking at any requirements that are not reported to the Harvest Labour Information Service and the small number of harvest areas outside of the harvest labour service arrangements.

Senator CAMERON: Before I move on to the next round, could I just ask you, Minister: you're representing Minister O'Dwyer; have you been asked to provide advice on policy concessions or spending commitments that could be made to members of the House crossbench?

Senator Reynolds: No, I'm not, so I'll have to take that on notice for you.

Senator CAMERON: Secretary, have you been asked to provide advice on policy concessions or spending commitments that could be made to members of the House crossbench?

Senator Reynolds: Sorry, Senator Cameron, can I just clarify the question I've just taken on notice—

Senator CAMERON: I'm asking the department now.

Senator Reynolds: No, no—you're asking the same question, and I just want to clarify: are you talking about in relation to this particular program?

Senator CAMERON: All programs, all areas, across the portfolio.

Senator Reynolds: That's why I wanted to clarify, because I understood we were talking about this particular program—

Senator CAMERON: No, I'm talking about more generally.

Senator Reynolds: Thank you. I'm glad I sought that clarification, then. We'll definitely have to take that on notice, Senator Cameron.

Ms Hartland: Likewise, Senator; I will have to take it on notice.

Senator CAMERON: Okay, thanks. Could I move to the Time to Work program, the in-prison program. Why has the department taken so long to classify participants of this program into a stream?

Mr Jalayer: Participants in the Time to Work program are serviced whilst they're in prison; they're not streamed as part of that servicing arrangement.

Senator CAMERON: So they don't stream into the general—

Mr Jalayer: No, because they're serviced in prison and, as such, they're not part of jobactive. They don't get streamed until they are released and assessed.

Senator CAMERON: That's fine. What's being done to make sure that prisoners have time to complete the program prior to their release?

Mr Jalayer: People become eligible to be serviced in the program three months from their earliest possible release date. That usually means three months before they're due for parole. Their servicing is usually three interviews on a monthly basis prior to that release date. Where prisoners don't complete the program, it usually is as a result of their transfer to another prison, or they seek not to complete their servicing. It's entirely voluntary.

Senator CAMERON: How many prisoners have completed the program?

Mr Jalayer: As of the end of August, 46 participants had entered the service. At that stage, nine participants had exited from the service. Six were in New South Wales, three were in South Australia. They were the only ones that completed the program.

Senator CAMERON: When you say they exited, are you saying they completed the program before exiting, or have they exited without completing the program?

Mr Jalayer: I just need to clarify that.

Senator CAMERON: There's only nine of them. It shouldn't be too hard.

Mr Jalayer: At the stage of this data, I think only one or two had actually completed the program, in that they'd had the three interviews and had been transitioned to an external provider. This data is now two months old. It's been a slow start, mostly because a number of the states have yet to sign on to the program.

Senator CAMERON: Have these one or two completed their plan and completed their handover with the receiving provider?

Mr Jalayer: Yes.

Senator CAMERON: Two people?

Mr Jalayer: It would have been about two.

Senator CAMERON: This program was announced January 2018.

Mr Jalayer: That's correct, yes.

Senator CAMERON: It's going well, eh? Were there any arrangements made with state and territory correction departments prior to implementation to make sure the program would work?

Mr Jalayer: This program was originally a decision that came out of COAG. All of the states and territories agreed to the implementation of this program. There was consultation with all states and territories prior to the implementation of the program. Since that time, there have been negotiations with each correction service, including their respective departments of health, in signing their MoUs and getting access to each prison. This is a lengthy process, as each prison has its own arrangements.

Senator CAMERON: Many prisons don't allow computers to be taken inside; is that correct?

Mr Jalayer: Most prisons would not allow phones to be taken in. I believe you can take computers in, but not—

Senator CAMERON: But some don't?

Mr Jalayer: It varies—some do, some don't.

Senator CAMERON: Do you need a computer to participate in the program?

Mr Jalayer: It's preferable but, as I said, not all prisons allow it. We've had to, in those cases, deliver the services on a paper based—

Senator CAMERON: Some prisons don't allow contact details to be released; is that correct?

Mr Jalayer: Contact details of whom?

Senator CAMERON: Of the prisoner.

Mr Jalayer: No. As I said, it's a voluntary program. They allow the provider to come and promote the program, and those prisoners that are eligible can sign up and be serviced.

Senator CAMERON: There were, as I understand it, 13 specialist providers to service 70 non-remote prisons; is that correct?

Mr Jalayer: That's correct—69.

Senator CAMERON: Sixty-nine?

Mr Jalayer: Yes.

Senator CAMERON: Have there been contracts signed with the 13 specialist providers?

Mr Jalayer: Only in the states where the MoUs have been completed.

Senator CAMERON: How many specialist providers have signed contracts?

Mr Jalayer: Again, as of 31 August there are five providers delivering in nine prisons. One provider in the ACT—

Senator CAMERON: How much has been expended on this program?

Mr Jalayer: For—

Senator CAMERON: From when it was announced on 1 January to now.

Mr Jalayer: $1.469 million.

Senator CAMERON: So $1.469 million has been expended and you've got one or two people coming out of the program? You're kidding me!

Mr Jalayer: Most of these payments are payments to providers to establish themselves. Without the forward advance payment, they wouldn't open their doors.

Senator CAMERON: I'm gobsmacked. When did payments start to flow to these providers?

Mr Jalayer: On the signing of their contracts.

Senator CAMERON: When did they sign?

Mr Jalayer: As I said, it depends on which state. There's been one provider in the ACT, one in South Australia and three in New South Wales.

Senator CAMERON: That's not what I asked you. Could you answer my question.

Mr Jalayer: I'll take that on notice. I don't have the exact dates on which the MoUs were signed and when the contracts were signed.

Senator CAMERON: Is there anyone here today who can tell me that we've spent over—how much?

Mr Jalayer: $1.469 million.

Senator CAMERON: So $1½ has been expended and two people have come out of this program.

Senator Reynolds: I can provide some of that information for you, because your questions go to a policy issue. As you know, this has arisen from the *Closing the gap* report. As the officials have said, it is a COAG initiative. Like everything in our federation and under COAG arrangements, it is incredibly complex. While the federal government is providing the funding and also contracting the providers—which, as I understand it, your number is correct; there are 13 providers—the complexity has come into it because the federal government doesn't run a prison. It's the state and territory systems that run the prisons themselves. It's even more complex than that, because there are 69 correctional facilities involved, and all the Commonwealth can do under this arrangement—which is what it's doing, I think, very effectively—is have these 13 providers go out into these 69 correctional facilities and provide advice about what services are required. It's then up to the state correctional departments and each of the 69 individual correctional facilities to decide to take up this program.

In terms of the numbers, I'm advised that, while 55 people have gone through the program, there are currently 46 in the program—33 men and 11 women. While the numbers are small, there are still 46 running through the program, and the Commonwealth is living up to its end of the bargain in providing the funding—

Senator CAMERON: Yes!

Senator Reynolds: and the money. But as you know, Senator Cameron, you can lead a horse to water but you cannot make 69 independently run correctional facilities take up the program. So that's where it's up to.

CHAIR: So, Minister, have I got this right?

Senator CAMERON: So, basically, are these providers—

CHAIR: Sorry, Senator Cameron, can I just ask for clarification? Have I got this right? We've provided, effectively, the infrastructure funding to set up these services, but it's up to the state correctional facilities to buy in?

Senator Reynolds: Absolutely. Under Closing the Gap—this was a Closing the Gap initiative which was negotiated between the federal government and the states and territory governments as part of Closing the Gap—this is specifically aimed at Aboriginal and Torres Strait Islander men and women who are incarcerated. It is a program designed to provide them with assistance when they leave that facility. But, as I said, the federal government doesn't run a single jail, so it does require the cooperation of the state and territory governments, under that Closing the Gap agreement, to facilitate and support the programs in their 69 correctional facilities.

Senator CAMERON: So why have you expended nearly $1½ million without that cooperation being in place?

Senator Reynolds: I didn't say the cooperation wasn't in place. It just runs very slowly in the states and territories.

Mr Hehir: The process has been that, as is our normal practice, we do normally provide some amount of funding up-front to actually enable the services to get up and running. I'd also add to the minister's answer that not only do we have the 69 individual correction facilities; also, as Ali has said before, it's a voluntary program, so actually—

Senator CAMERON: I'm not arguing about whether it's voluntary or not. I'm asking the question: why have you spent $1.469 million to have one—and you can't even tell me whether it's one or two people who have actually accessed the program and completed the program.

Mr Hehir: I'll ask Mr Manning—

Senator CAMERON: So it's either $1.6 million each or it's $800,000 each.

Mr Hehir: As the minister said, as at 31 August there had been 55 prisoners who had volunteered to participate in the service. So the fact that people are being serviced now is absolutely part of it. We don't completely pay at the end of these arrangements. But I'll ask Mr Manning to talk you through it.

Senator CAMERON: But you've expended $1.469 million.

Senator Reynolds: Yes, that money has been expended. But, again, it was the Commonwealth commitment to set up this process to get the providers in place. So we've opened the door—whatever analogy you want. The Commonwealth has done what it said it would do, and states and territories, in a very patchwork way, and particularly in these correctional facilities, are somewhat slow to take it up. But the Commonwealth is spending money, and, in fact, if any state or territory government is listening to this, what we'd do is encourage them. In fact, we've got the ministerial council on Friday, and I think that would be a good opportunity, again, as a result of this, to remind state and territory governments that this facility is here. It is working for those 55 people—in fact, for the 46 who are currently in the program. So, in terms of providing that opportunity for Aboriginal and Torres Strait Islanders who are currently incarcerated, I think it is a very sound investment, Senator Cameron, and I'm very surprised that you think that supporting Aboriginal and Torres Strait Islanders in prison is now a waste of government money. That really surprises me.

Senator CAMERON: No, Minister, you should not put words into my mouth.

Senator Reynolds: Perhaps you might need to explain, because those officials—

Senator CAMERON: I'm simply asking why this government, this chaotic government, has spent $1.469 million since 1 January—

CHAIR: And I think the minister has answered that very well.

Senator CAMERON: You can't even tell me whether it's one or two people that have come out of the program.

CHAIR: The minister has answered that very well.

Senator Reynolds: Sorry, Chair, if you would allow me—

CHAIR: Sorry, Minister, go ahead.

Senator CAMERON: What a joke!

Senator Reynolds: I don't know how much more simply I can put the figures.

Senator CAMERON: Talk about incompetence!

Senator Reynolds: When you say we don't know the figures, I've been very clear. Fifty-five people so far—46 still in the program—33 blokes and 11 women, are currently going through the program across the country. That is a voluntary take-up. Now, we will clearly have to agree to disagree, because the government and I 100 per cent support it. This is a great program; it's a Closing the Gap program. If you can't see that that is a good investment of taxpayers' money then I don't think there's anything more the officials can explain here really.

Senator CAMERON: You should not put that on me. You are in government. You're too busy carving each other up. You're too busy getting rid of prime ministers—

CHAIR: That doesn't sound like a question, Senator Cameron. It sounds a little like commentary.

Senator CAMERON: and you've got $1.469 million expended—

Senator Reynolds: It's a lot like commentary, Senator Brockman.

Senator CAMERON: on a program that has delivered two people.

CHAIR: I will just point out—

Senator CAMERON: Is it one or is it two? Have we managed to even find that out, Mr Jalayer? Have we managed to find out? Is it one or is it two?

Senator Reynolds: As I've now said, I think, for the fourth time, it's 55 who've gone through and 46 who are currently on the program.

Mr Jalayer: I haven't confirmed an exact number.

Senator CAMERON: Okay. I can hear the minister in the background desperately trying to justify this.

CHAIR: The minister can chime in whenever she wants to.

Senator CAMERON: So 46 are in the program; is that what you're saying?

Mr Jalayer: That was at the end of August.

Senator CAMERON: Yes, at the end of August. How many of them do you expect to complete the program?

Senator Reynolds: I think that's now well and truly in the grounds a hypothetical question. By its very nature, if they're still in the program and the program hasn't finished, it's a hypothetical question.

CHAIR: And it's a voluntary program.

Senator CAMERON: I'm asking: do you expect—

Senator MOLAN: It's 46.

Senator CAMERON: So you're the expert now? I'm glad somebody's an expert on this, because nobody out there seems to be.

Senator MOLAN: It's 46, Doug.

Senator Reynolds: Senator Cameron, if you like, I can ask the official here to rub his tummy and have a good guess, but it's clearly a hypothetical question.

CHAIR: It's clearly a hypothetical question.

Senator CAMERON: Was there a business plan for this program?

Mr Jalayer: There is one.

Senator CAMERON: What was the—

Mr Jalayer: Basically—

Senator CAMERON: Yes, you've answered my question—there is a business plan. What were the business plan numbers, up to the current date, that were supposed to come out of this program?

Mr Jalayer: When the program was announced, at the time, there were roughly 7,600 eligible participants. That was based on data we received from the states. On the basis of a pilot which we did in an in-prison program previously, roughly one in two volunteered for the program. We had assumed we would get somewhere around 3,780. That was the number we had anticipated.

Senator CAMERON: In the first 12 months?

Mr Jalayer: No, that was to be across the full 2½ years.

Senator CAMERON: Okay. What were the figures in the business plan for the first 12 months?

Mr Manning: While Mr Jalayer looks for that number, I might add something. As Mr Jalayer indicated, based on information provided by states and territories, a total potential pool was determined. Then an assumption was made, given its voluntary nature, that up to 50 per cent might wish to participate, and so money was set aside for that to occur. But, of course—

Senator CAMERON: And that's the $1.469 million, is it? Has that money been set aside, or have there been contracts signed and money paid to the companies?

Mr Manning: With the contracts, the assumption was that an amount of $550 per prisoner would be the service fee, and a certain percentage of that was paid up-front, with the rest to be paid upon completion of it.

Senator CAMERON: So how much—

Mr Manning: Sorry, Senator; I'll just finish this point very quickly. The exact amount paid up-front differed from provider to provider depending on the size of the provider, in the sense that there was a greater amount paid up-front for smaller providers than there was for larger providers.

Senator CAMERON: Do you have details of how much has been paid up-front to each provider?

Mr Manning: We don't have it with us. We can take it on notice and provide it.

Senator CAMERON: Okay. So I assume some of those providers have not delivered anything?

Mr Manning: There have been some delays in terms of getting into prison, but I'll quickly—

Senator CAMERON: So what's happened to this money? Is it just sitting in these providers' bank accounts?

Mr Manning: No. They are working to establish the service in the prison. I'll give you one practical example. One of the providers, in rural New South Wales, took on a staffing level to enable them to provide the service at a couple of prisons. And this gets back to the point that, in addition to the state agreeing, 'Yes, you can offer the service,' each prison determines how the service will be offered in that prison. By coincidence, all the prisons in that region said that you can only come at a certain time, and it was the same time. So that provider had to go back and keep negotiating with prisons or face having to hire extra staff in order to be able to provide the service. There are issues; for example, you touched on laptops before. There are some different approaches to laptops. There are different approaches to taking other material in and, indeed, bringing other material out. So providers are having to negotiate all of these matters in order to stand the service up, which has led to some delays.

Senator CAMERON: You've spent about a million-and-a-half dollars of taxpayers' money—

Mr Manning: So far.

Senator CAMERON: and some of the providers can't even get access to the prisons.

Mr Manning: They're getting access to the prisons. It's taking a little longer than it was hoped in order to put all of the arrangements in place. It is an important point, Senator, if I could clarify. Of the 69, no prison has said, 'This service can't operate in the prison.'

Senator Reynolds: Senator Cameron, just further to what Mr Manning said, I think there is also a bigger threshold issue which feeds into what Mr Manning is saying, and that is, as I said, this is a COAG agreement. There are MOUs in place between the federal government and each of the state and territory governments. However, three states and a territory with the largest Indigenous populations incarcerated—Western Australia, Queensland and the Northern Territory—have not yet signed an MOU with the federal government. Therefore, no matter what work the federal government does to provide these services in good faith under Closing the Gap, your Labor state and territory counterparts are sitting on their hands and not signing an MOU. If you really want to deal with this, I would get on the phone to your Labor colleagues in those states and territories and tell them to get off their backside and implement this program.

Senator CAMERON: I know that you're not behaving like a government, but we are not the government. You are the government, even though you don't behave like it.

CHAIR: State Labor governments—

Senator Reynolds: Senator Cameron, I think you have clearly misunderstood. The federal government does not run a single jail—

Senator CAMERON: I understand that.

Senator Reynolds: and in those three states who haven't signed the MOU, it is the state government and the territory government.

Senator CAMERON: You've handed out nearly a million-and-a-half dollars. Have you handed out any contracts to any companies in the states where the MOU has not been signed?

Mr Manning: No.

Senator CAMERON: So even where the MOUs have been signed, you're still not delivering. You've got one or maybe two people maximum—

Senator Reynolds: Forty-six, in fact.

Senator CAMERON: who have completed the program.

Mr Hehir: I don't think it's fair to ignore where we are delivering services to people who are currently within—

Senator Reynolds: Sorry, Senator Cameron—

Senator CAMERON: It's pretty typical of you lot.

Senator Reynolds: These numbers are not very complex. Again you said, too, as I've said and the officials have said, there are 46 in the states that have signed an MOU. In the prisons that have signed up and made access to this program, it is 46 in those states.

Senator CAMERON: Minister, Mr Jalayer said one or two have completed the program, and he couldn't even tell me whether it was one or two. That's the issue.

Senator Reynolds: Senator Cameron, that is because, if you've got 46 current participants as of August, they are still undertaking the program and, by their very definition, have not yet completed it. So, when they're still going through the process, it's hardly surprising that you have got a small number of completions. It's not actual rocket science, Senator Cameron.

Senator CAMERON: I'm glad it's not rocket science, if you can only get one and two when it's an easy thing to do.

CHAIR: Would it be fair to say that this is a very hard cadre of people to get involved in the program?

Mr Manning: It is probably a point worth adding to the discussion about the process so far, Chair. There is the COAG agreement and then negotiation of an MOU for each state and territory. That negotiation takes place amongst officials. Getting back to the point of the three states, they have been settled with officials, so it's just a matter of those states going through their processes to formally sign the MOU. Then we enter into agreements with the providers and then the providers are able to start dealing with the individual prisons. Once all of those arrangements are put in place, then raising the profile of the program within the prison might occur. That could be by the prisons having, for example, agreed to disseminate information about it or by the providers agreeing to meet with potential prisoners. That all takes some time.

CHAIR: Sadly, we don't have particularly a good track record of transitioning particularly Indigenous Australians out of prison back into the workforce.

Mr Manning: That's the aim of the service; hence, this program.

CHAIR: Spending a bit of money up-front to try to get that working in a better way would be a good outcome.

Mr Manning: Clearly the—

Senator CAMERON: Can I get the call? I was asking questions about this. I would really like the call, if you don't mind.

CHAIR: As chair I can interpose a question here and there, Senator Cameron.

Senator CAMERON: Very good. So can I get the call?

CHAIR: They were just answering my question, and then we'll go back to you, Senator Cameron.

Mr Manning: I was just going to conclude by agreeing with the point you put forward—and, clearly, over time, the expectation is that the cost per completed prisoner would lessen and that people would get that warm transfer to a jobactive provider, having already thought about what they want to do to overcome the barriers to employment, with the aim of then getting employment and hopefully cutting down recidivism as well.

CHAIR: You have a couple of minutes left in this time block, Senator Cameron.

Senator CAMERON: A bit more than that, because you've been talking most of the time. So who are the contractors by state?

Mr Manning: The providers who will be contracted by state?

Senator CAMERON: They're called providers, are they?

Mr Manning: Yes.

Senator CAMERON: Who are they?

Mr Manning: They're contracted service providers, yes.

Senator CAMERON: That have actually received funding.

Mr Manning: If we go through the jurisdictions for which they have MOUs—

Senator CAMERON: I don't want to go through the jurisdictions.

Mr Manning: but it excludes Queensland—

Senator CAMERON: I want to know who you have paid money to. That's all I want to know, Mr Manning.

Mr Hehir: Senator, the five providers have begun—

Senator CAMERON: Somebody's found it. Mr Hehir?

Mr Hehir: There's one provider in the Australian Capital Territory

Senator CAMERON: Who is that?

Mr Hehir: PeoplePlus.

Senator CAMERON: Right. Who else have we got?

Mr Hehir: We've got one provider in South Australia, which is WISE Employment—

Senator CAMERON: WISE Employment?

Mr Hehir: yes—and three providers in New South Wales: JobFind Centre, Global Skills and Marist Youth Care.

Senator CAMERON: How much has each one of these providers received in terms of Commonwealth funding?

Mr Jalayer: We can take that on notice.

Senator CAMERON: I think somebody knows the answer up here, because they're pointing at figures.

Ms Hartland: We're just seeing whether we've got them. I just don't know whether we've got the breakdown.

Mr Hehir: I don't have the breakdown figure with me.

Senator CAMERON: You'll take that on notice. Can you also tell me when they received the funding; how much funding they received up-front and how much they have received; and what payments have been made over the period since 1 January?

Ms Hartland: Yes, we can do that. I'd also say it's not unusual in programs to have set-up fees sort of up-front for these sort of things. And, Chair, as you said, it's a particularly complex sort of arrangement. So it's not an unusual situation.

Senator CAMERON: Who was the minister who proposed this program at COAG?

Mr Hehir: I'm not sure who proposed it to COAG. Certainly, it was discussed in the COAG process.

Senator CAMERON: Was it Minister Scullion?

Mr Jalayer: It would have been driven primarily by Minister Scullion.

Senator CAMERON: So it's another Scullion initiative?

CHAIR: Senator Scullion, please.

Mr Manning: If you like, we can take it on notice and confirm.

Ms Hartland: It would've gone through a cabinet process, so we'll check.

Senator CAMERON: Very good. Can I now move to the issue of insurance for jobseeker activities?

CHAIR: Just hold there momentarily, Senator Cameron. I will check with my colleagues to see if they have anything more in outcome 1.

Senator PATERSON: Thank you, Chair. No, I'm looking forward to outcome 2 personally, in due course.

Senator MOLAN: I look forward to outcome 2 as well.

CHAIR: Okay. Senator Cameron, you have the call.

Senator CAMERON: Thanks. A company called DUAL, D-U-A-L—you're aware of them?

Mr Hehir: Yes.

Senator CAMERON: They're the insurer for jobseeker activities; is that correct?

Mr Hehir: That's correct.

Senator CAMERON: Part of the contract allows for DUAL to share data with overseas entities. Is that correct?

Ms Pitt: The issue in terms of our arrangements with DUAL is that they have a liability threshold, and, once a claim goes over that threshold, they get advice from their overseas company.

Senator CAMERON: Can you explain that to me? I'm not sure what you're talking about? What's the liability threshold? What's that?

Mr Hehir: My understanding of the arrangements is the—

Ms Hartland: Can I just say that we're just looking about a bit here because the expert in this area has had to go and see a nurse here and go home ill. We'll give you all the advice that we can, but we might have to take a bit more on notice.

Senator CAMERON: I hope the officer is okay.

Ms Hartland: Yes, thank you, Senator.

Mr Hehir: My understanding of the process is that up to a certain limit they can approve here in Australia with no issue, but above a certain limit they contact their underwriter to talk about what the payment will look like.

Senator CAMERON: I understand that the contract with DUAL provides that they take all reasonable steps to ensure that our service providers comply with the Privacy Act. Is that correct?

Mr Hehir: That's correct.

Senator CAMERON: Other jobseeker providers must absolutely comply with Australian privacy principles. Why is this different?

Mr Hehir: I'm not sure that it doesn't comply with the Australian privacy principles.

Senator CAMERON: Jobseeker providers have to 'absolutely' comply. DUAL have to 'take reasonable steps'. Why is there a difference?

Mr Hehir: I'd need to take that on notice.

Senator Reynolds: Senator Cameron, are you able to provide some more information? There are a few furrowed brows here, in terms of exactly what you're referring to. If you are able to provide some more information, or if you have a document there, I think that would help the officials track down the information that you're referring to.

Senator CAMERON: They're not my documents; they're the department's documents.

Senator Reynolds: Yes, I understand that.

Senator CAMERON: The department signs agreements, not the opposition, Minister, so I don't need to supply you with anything. I'm asking about your documents, so would you just deal with it.

CHAIR: Senator Cameron, the minister's trying to be helpful.

Senator Reynolds: Senator Cameron, I am trying to be helpful, and I've just had a discussion—

Senator CAMERON: I hadn't noticed, sorry.

Senator Reynolds: Senator Cameron, I am trying to be helpful. I've just discussed this with the secretary, and we're a little unclear as to the exact documents you're referring to in relation to the program you're talking about. If you could provide a little more specificity, that would help the secretary's officials find the information for you.

Senator CAMERON: These are incident report documents. You're aware of them?

Mr Hehir: Yes.

Senator CAMERON: That allow for the jobseeker data to be shared overseas. You're aware of that?

Mr Hehir: I'd need to take the detail of that on notice.

Senator CAMERON: It's pretty simple. Some of your requirements for providers—

Mr Hehir: I need to check and see whether that's with the jobseeker's agreement or not. If there is agreement then it still complies with the principles. That's my understanding, but I would need to clarify that.

Senator CAMERON: Why then isn't everyone just allowed to take all reasonable steps? Why are some supposed to absolutely comply?

Mr Hehir: That's one I said I'll take on notice. I want to talk to the team about why the wording is different.

Senator CAMERON: Does the department see this as a potential risk—privacy issues?

Mr Hehir: Again, as I said, my understanding is it's done with the jobseeker's agreement, so I'll need to check. If it's done with the jobseeker's agreement, then no, we don't.

Senator CAMERON: So jobseekers can agree that their private information is sent to overseas corporations. Is that what you're saying? Why don't you put steps in to stop that happening?

Mr Hehir: In order for a payment to be made, if it's a significant payment and the arrangements are that they seek to provide some information to the underwriter, then the limitation that we would expect to be put on that is that the information is provided to the underwriter and only to the underwriter for the purpose of making the payment. As I said, I need to take the detail of that on notice.

Senator CAMERON: How does that comply with the limits on the disclosure in the Australian privacy principles?

Mr Hehir: I'd need to take that on notice as well.

Senator CAMERON: Okay. Is DUAL the insurer for all jobactive activities?

Mr Hehir: Yes.

Senator CAMERON: I now want to turn to Work for the Dole. As I understand it, your reporting requirements on Work for the Dole are supposedly very stringent and require a high degree in terms of incident reports. Is that correct?

Mr Hehir: Yes.

Senator CAMERON: Why doesn't the department know when someone is taken to hospital while participating in the Work for the Dole program?

Mr Hehir: Where a report is provided—and there is a requirement that they provide a report within 24 hours—that information should be included in the report. What we won't necessarily know is if they have attended post. I think we made that clear.

Ms Pitt: That's right. We have instances, for example, where, if somebody sprains their ankle at a Work for the Dole activity on the Friday, they might not necessarily go straight to the doctor or straight to hospital. If it's still not great on Monday, they might go, but that won't necessarily be captured in the incident report.

Senator CAMERON: Why not?

Ms Pitt: Because we require the incident report to be completed within 24 hours of the incident taking place. So if the person hasn't actually gone to the hospital or sought medical advice that won't be captured in that time.

Senator CAMERON: Isn't that a weakness in your reporting procedures? Somebody could fall off a ladder and end up with a traumatic injury to their brain, Sometimes these things don't become clear for at least 48 hours. People have died. I know it's a hypothetical, but it's a real issue. That sometimes happens with workplace injuries.

Ms Pitt: When somebody is injured in a Work for the Dole activity, the host organisation, who is hosting that activity, and the Work for the Dole provider, who is responsible for managing that activity, both provide services and support. So they would be following up with individual jobseekers.

Ms Hartland: I take your point. I understand exactly what you're asking, Senator. I'm just checking whether there's a timing issue there—that, at a point in time, we would know.

Mr Hehir: That's correct. I just had to clarify that with the officers. We do follow up on the incident. We do ask for further information. Again, if that person has reported to the provider that they have been to the hospital, we can capture that. What we can't capture is if they have gone and then not reported it.

Senator CAMERON: But you told estimates previously that you don't always get notified whether or not people go to hospital—sometimes we do and sometimes we don't.

Ms Hartland: I think that's a point in time question. But I understand what you're saying.

Mr Hehir: And we do follow up.

Ms Hartland: Yes, we do have that follow-up. As Mr Hehir said, obviously, if we're not told and it's post the event, we won't capture that. But we might just have a look at when those incident reports come in and what those time delays and follow-ups are.

Senator CAMERON: How do you capture and act upon the incident reports? What's the process?

Ms Pitt: Providers are required to report to us within 24 hours of an incident. We have a pro forma that's utilised, and that would go through to the account manager in the state offices. Once we have that information, obviously the employment service providers would be following up that information. If we're aware of any particular issues, our staff would be following up as well.

Senator CAMERON: If an organisation is found to be unsafe as a result of an incident report, what are the consequences for that organisation?

Ms Pitt: In terms of an organisation being identified as unsafe, what we require under Work for the Dole is that every activity must have a risk assessment completed prior to it taking place. Then, on top of that, every individual participating in that Work for the Dole activity needs to have a separate risk assessment taken. So there's a whole range. We would look at each activity individually, look at the risk assessment that's been undertaken and then look at whether there has been an incident and what action is required—whether the risk can be mitigated or whether the activity needs to cease immediately. Depending on what the issue is, we would take appropriate action.

Senator CAMERON: Maybe you can come back to me on that, because this is a serious issue. I don't think 24 hours is the appropriate time frame, and that can cause problems. So if you can come back to us on that—

Mr Hehir: Senator, I want to clarify. We do follow up. We do require the report within 24 hours, but we do follow up the incident and seek further information post that 24 hours. The team has advised me that, if the provider knows of a hospital treatment and tells us at that point in the follow-up, we have that information.

Senator CAMERON: How much notifications have you had of Work for the Dole participants ending up in hospital?

Mr Hehir: We answered this in a question on notice. I think at that point the answer was 10. My understanding is that this year we've had an additional four.

Senator CAMERON: So 14.

Senator Reynolds: Out of 211,000 participants—is that right?

Mr Hehir: Yes.

Senator CAMERON: That doesn't help the 14 that end up in hospital. I want to move to the death of Josh Park-Fing, a Work for the Dole fatality. When will the report be released, or when will the government explain what it's doing to improve safety practices in the program?

Ms Hartland: Senator, are you referring to the department's report? I think that the previous minister has said that, once the court proceedings are complete, we would be releasing that report.

Senator CAMERON: That was Senator Cash, was it?

Ms Hartland: That was Senator Cash, and I can say that I spoke to Minister O'Dwyer on this as well, and she reaffirmed that we said that that was the intent and that is what we would do.

Senator CAMERON: I assume you've made improvements to the process. Why can't the internal improvements be released to the public?

Mr Hehir: We've provided that on a number of occasions on notice and in response to parliamentary questions.

Ms Hartland: We are happy to retable it.

Senator CAMERON: So you've provided all the details of the internal report?

Mr Hehir: No, Senator, we've provided the improvements, as you asked.

Senator CAMERON: Why won't you release the internal report?

Mr Hehir: The internal report, as we've said before, was provided by Workplace Health and Safety Queensland as part of their investigation. Because the matter is still before the courts, we're treating it as sub judice.

Senator CAMERON: So are you claiming public interest immunity on that?

Mr Hehir: I think we've said that we're treating it as sub judice.

Senator CAMERON: No, you've got to claim public interest immunity. You can't just claim sub judice. You know that. You've been around a long time. You just can't claim sub judice.

Mr Hehir: I can't claim sub judice—public interest immunity. Sorry.

Senator CAMERON: Sorry?

Senator Reynolds: Senator Cameron, may I interrupt.

Senator CAMERON: Just let me hear what Mr Hehir said, please.

Mr Hehir: I can't claim public interest immunity.

Senator CAMERON: The Minister has to claim it.

Senator Reynolds: Yes, that's what I was going to say. What I will do is take that on notice, seek further information about the grounds that may be applicable to this and get back to the committee.

Senator CAMERON: You do recognise, Minister, this is two years?

Senator Reynolds: I do, but, as the secretary has said, it is currently before the Magistrates Court in Queensland. You raised these issues. The department have indicated they have concerns about publicising some of these details at this point in time. As I've said, I will take it on notice, consult the minister and get back to the committee.

Senator CAMERON: There are a number of government departments, such as the ACCC, that have released reports while litigation has been going on. You must claim public interest immunity on this. I don't know whether we have pressed this before, but I'm pressing it now. Unless there's a public interest immunity claim made, I want that report released.

Senator Reynolds: Senator Cameron, I just conferring with the secretary. Perhaps you could confirm exactly the documents you're looking for. The department has advised that some of the documents you are seeking have already been tabled.

Senator CAMERON: No—I asked about the report.

Senator Reynolds: Senator Cameron, please let me finish. Given that you weren't aware that some of these documents had already been tabled in the Senate as a result of questions on notice, perhaps you could provide further clarification to the department on the additional documents you are seeking to the already tabled documents. That will actually assist our inquiries in terms of what more may be able to be released.

Senator CAMERON: I thought we already had this, because Mr Hehir said 'the report', and the report would not be released. I'm asking for the report.

CHAIR: And the minister has taken that on notice.

Senator Reynolds: I've taken that on notice. But clearly, as you weren't aware—

Senator CAMERON: But she didn't ask to clarify what was after, and I'm saying it's the report. Do I need to clarify any further? There is an internal report, isn't there?

Mr Hehir: Yes, Senator.

Ms Hartland: Yes.

Senator CAMERON: And you've refused to release that report.

Ms Hartland: I think it's important that we don't prejudice the court cases and the relevant parties by releasing that report before the proceedings have been finalised. That's consistently been—

Senator CAMERON: Have you got any idea when the inquiry is going to be finalised?

Ms Hartland: I understand proceedings are happening as we sit here.

Mr Hehir: That's right. Workplace Health and Safety Queensland have initiated charges. They've had one set of charges dismissed already and we're waiting. In the next six or eight weeks is the next set of court dates.

Senator CAMERON: So there have actually been dates set for further litigation in Queensland?

Ms Hartland: Yes. I understood there were some hearings today, but they've been shifted, sorry.

Senator Reynolds: As I said, Senator Cameron, I've taken that on notice and we'll go back and check the status of the court proceedings in the Magistrates Court in Toowoomba, in Queensland, and we'll check that against what's already been tabled that you have not yet seen, and we can provide further information on where you can locate those documents. Then we'll see if there's any other information that we could provide at that moment or if there is the need at all for a PII claim. I will come back to you on that.

Senator CAMERON: The documents that have been released form part of the report?

Mr Hehir: No, Senator. The question that was asked and answered was: what were the improvements that have been made? That's the information we provided: what are the changes and improvements?

Senator CAMERON: Okay. But the report is a completely different thing.

Mr Hehir: The report is a different thing, Senator.

Senator CAMERON: Yes, and that's what I'm saying. Unless you make a formal request for public interest immunity, I want that report tabled. Two years.

CHAIR: And the minister has taken that on notice. That seems like a fairly natural place to break. I will point out for my colleagues that we are running about 45 minutes behind schedule. Senator Cameron, do you have a rough idea of how long you might keep going in outcome 1?

Senator CAMERON: I will be able to advise you when I return.

CHAIR: Great. Thank you much.

**Proceedings suspended from 12:28 to 13:35**

CHAIR: We will resume.

Senator CAMERON: Before we move off outcome 1, there were some issues that said you may come back to, and I am not sure if the minister has a response on the claim for public interest immunity.

Senator Reynolds: I have raised it with the minister and I am still waiting for further advice, because the issues are quite complex.

Senator CAMERON: Are there any questions I asked that the department was coming back to?

Mr Hehir: We are still seeking some clarity on information around the visa types. I can give you some further information. As I said before, our system doesn't record by visa type, if they are within our system. If they are eligible to look for work in Australia under their visa, they can volunteer and we record them as a volunteer. We or the providers check their visa at the time. There are some classes of visa where they are eligible for Newstart or youth allowance other. If they are eligible for that and are meant to be looking for work, having a mutual obligation, then they are in our system and we just record them as a refugee in the main, because refugee classes are coming in through Newstart and youth allowance other. We have that broader catch-all because people can volunteer into the service. It is hard to break down, but if they have work rights, they are able to volunteer.

Senator Reynolds: I have just had further advice. The information for me on the public interest immunity claim is not that far away. so I will definitely have it back to you this afternoon, Senator Cameron.

Senator CAMERON: Depending what happens with that position, I may want to come back to that issue on that death. If public interest immunity has not been claimed, I want to come back to it, even though we'll move on for now. Is that okay?

CHAIR: After we release outcome 1, we can keep those people for that particular issue. We are not releasing outcome 1 yet, but once we do—

Senator CAMERON: Apart from that issue I am finished with outcome 1.

Senator SIEWERT: The table you gave me was very much appreciated, so thank you.

Senator Reynolds: Did you get the magnifying glass out?

Senator SIEWERT: Fortunately with my glasses I can read it. I would like a quick explanation about some of the classes, so I understand it properly. On the table where it says 'Green Zone all, No. J/S and percentage CL'—could you just explain what those areas mean?

Ms Pitt: The green zone means people that have had no compliance.

Senator SIEWERT: Yes, so that is one to three.

Mr Hehir: No, that's zero.

Ms Pitt: That is before somebody hits one.

Senator SIEWERT: Sorry, I'm confused.

Ms Pitt: People are in the green zone until they have a demerit applied, then they move into the warning zone.

Senator SIEWERT: Which is one to five.

Ms Pitt: That's it.

Senator SIEWERT: And then red zone is?

Ms Pitt: Financial penalties. Red zone is the penalty zone. Someone would have a capability assessment by DHS. If they had another demerit applied following that capability assessment then they would move to a financial penalty.

Mr Hehir: I might just clarify that in terms of the sheet. We do say people are in the red zone if their next demerit earns them a penalty. Once there've been through—

Senator SIEWERT: Once they've have been five.

Mr Hehir: Yes. So, once they've been five and been through the assessment with DHS, and DHS has said, 'No, you're capable,' they move into the red zone at that point.

Senator SIEWERT: Fantastic. So, when we've got J-S?

Ms Pitt: No, that's the number of jobseekers.

Senator SIEWERT: Number of jobseekers—and then we've got the percentage.

Ms Pitt: That's it.

Senator SIEWERT: Okay. Fantastic. Thank you very much for that. I am aware that Senator Cameron has asked a lot of questions on Work for the Dole. My officer has been monitoring what has been asked, so I'll try not to repeat those questions. But I wanted to go to a specific issue around jobactive providers that are providing services to people with disability who aren't accessing DSP—that is, the special disability providers, those that are providing services and supports to people who are assessed as having a certain work capability. Is there a requirement that all jobactive premises are accessible?

Mr Hehir: I expect so, but I'll need to check.

CHAIR: Sorry, Senator Siewert, I didn't quite hear that.

Senator SIEWERT: Is there a requirement that all jobactive premises are accessible?

CHAIR: Okay. Got it.

Senator SIEWERT: In other words, if I'm in a wheelchair, can I get in.

CHAIR: Yes, yes.

Ms Milliken: According to their deed, the providers must meet all relevant legislation. So, if there's legislation applicable in their jurisdiction about accessibility, then they should be satisfying that.

Senator SIEWERT: Only if it is in their jurisdiction?

Ms Milliken: There's not a separate provision about disability access beyond meeting the regulations and requirements where they're operating.

Senator SIEWERT: Why is that? Why wouldn't you have the same requirements stretching across Australia for any jobactive provider?

Mr Hehir: My recollection is that all jurisdictions have access requirements. I'd need to check that, though. We often require them to comply with particular laws, so, in relation to working with vulnerable people checks, that applies in some jurisdictions. Working with children checks apply in some other jurisdictions. We tend to say, 'You've got to comply with the laws where you're operating.' So we don't say, 'You've got to do vulnerable people checks,' if their state legislation doesn't require it and instead requires working with children checks. We tend to say, 'You need to comply with your law.' Just as we do with work health and safety, we say, 'You need to comply with the law within your jurisdiction.'

Ms Milliken: I might expand on my previous answer. As well as meeting all of the requirements under the law, the deed is specific that providers must ensure that any location from which they provide services are accessible to people with disabilities.

Senator SIEWERT: Okay. So, in situations where they are in multistorey locations and they're inaccessible, and a provider says, 'We'll meet you downstairs,' is that acceptable? Is that classed as accessible?

Ms Milliken: I'm not aware of any particular guidance for providers on that point, so I think I'd have to take it on notice.

Senator SIEWERT: Could you take that on notice? Given that you've clarified the requirements, could you take that on notice?

Ms Milliken: Absolutely.

Senator SIEWERT: Thank you. What level of training is required or provided to the service providers to make sure that they're in a situation where they clearly understand and are cognisant of disability in terms of the way people with disability are actually treated?

Ms Milliken: I will need to take the specifics on notice. We do have material that we provide on our learn hub, which is accessible to provider staff, about the services and delivery of services. We also expect that the providers would ensure that their staff have the capacity to deliver the program. In addition, our quality assurance framework provides that providers must ensure that their staff are properly trained and understand the range of characteristics and capabilities of their case load. All of the providers have been certified under the framework.

Senator SIEWERT: They are required to make sure they are certified?

Ms Milliken: All of the providers are certified and are required to maintain their certification under the quality assurance framework. As part of that, they must have systems in place to make sure their staff are training.

Senator SIEWERT: That was where I was trying to go. Are they required to demonstrate to you under that that their staff have had that training?

Ms Milliken: Under that they demonstrate that they have the systems in place. When they're audited through that process for their certification or continued certification, the auditor does sampling, looks at their policies and internal practices and also interviews a sample of their staff.

Senator SIEWERT: When they're doing that auditing?

Ms Milliken: When they're doing that auditing. We've recently completed certification or recertification on all of the Jobactive providers.

Senator SIEWERT: And they all passed?

Ms Milliken: I don't have any information on that in front of me. They were all certified or recertified. Where there are minor elements, they have a time frame in which to complete those.

Senator SIEWERT: Is that publicly available? Instead of asking my next question, I'll go and look it up on the website.

Ms Milliken: The quality assurance framework is publically available.

Senator SIEWERT: The actual audit results.

Ms Milliken: The actual audit, no. But the quality assurance framework and what they're audited against is publicly available.

Senator SIEWERT: Can you either table the audit or can I ask a series of questions about how many passed straightaway and how many had—

Ms Milliken: I can give you the results. I can take on notice the results of the audit.

Senator SIEWERT: Yes. Could you do that?

Ms Milliken: I can do that.

Senator SIEWERT: Yes. That will save me time. That'd be great. Can I ask a specific question about people with disability. I'm particularly interested in people with poor mental health or anxiety. Other than reassessing somebody into stream A, B or C, are providers required to take into account somebody's ability to meet a certain workload? For example, I've got a constituent who is a student and has been told they're not doing enough study. They have to work. They've got a disability. They are studying and they've been told they don't meet their hours and they have to do further work, yet they are struggling to meet their study requirements, as I understand it. It's a lot of effort to make their study requirements, let alone then take on looking for work or working further.

Mr Hehir: Can I just check: do they already have a reduced set of hours? If they've come in as having a disability, they may have been identified as having less work hours or mutual obligation hours already. Do you know whether they've already been assessed against that?

Senator SIEWERT: I'm not sure on that one.

Mr Hehir: Just while we still have the detail: they would normally have had an ESAt. If they haven't had an ESAt, they should certainly talk to their provider—

Senator SIEWERT: Ask for an ESAt, yes.

Mr Hehir: about whether they need the assessment undertaken, because that will often give you the hours as part of that process, or whether they should be streamed differently or into a different service.

Senator SIEWERT: But that's the only tool—hence my question around them maybe being in the wrong stream—that a provider could take into account.

Ms Pitt: What we are looking for through jobactive is to have an individually tailored service. Depending on a person's capacity, providers do have flexibility in setting requirements to some extent—sometimes that might need to be adjusted for people for different circumstances over different times. Sometimes that's related to some kind of assessment that somebody's had, or it might be a more short-term thing. In answer to your question: is there some flexibility to adjust things based on somebody's capacity? Yes, there is.

Senator SIEWERT: And they just need to trigger that with their jobactive provider?

Ms Pitt: Yes.

Senator SIEWERT: Can I just double-check—I will have more questions around that on notice. Senator Cameron, did you ask for numbers of people who are currently in Work for the Dole and Job Outcomes?

Senator CAMERON: No.

Senator SIEWERT: Do you have a table with that handily already prepared?

Mr Hehir: I can't hand over my computer—we need to go old school!

Senator SIEWERT: Instead of me saying, 'How many in this', do you have that that could be—

Ms Hartland: We can certainly provide that.

Senator SIEWERT: Could you provide that—I'm being very cheeky—not on notice but today? Is that possible?

Ms Pitt: Yes. If you let me know specifically what you're looking for, we will get that.

Senator SIEWERT: I'm looking for the number of people that are in Work for the Dole at the moment and employment outcomes both full-time, part-time—the 26-week and 52-week outcomes.

Mr Hehir: We don't do 52 weeks; we do 26.

Senator SIEWERT: I forget that every time, don't I?

Mr Hehir: It's 4, 12 and 26.

Senator SIEWERT: Can I have it against those outcomes then, please, for the last 12 months—the financial year and for the last quarter, if that has been done yet.

Mr Hehir: Yes.

Senator SIEWERT: Do you want me to go and find them somewhere else?

Mr Hehir: No, we can do this. When we do the 26-week outcome—we'll have to use two different data sources is the point I am making. So, our post-program monitoring survey is where we get the information around full time versus part time. For our admin data, as long as you're off benefit, we pay a 26-week outcome. Four and 12-week outcomes are paid as long as you're 60 per cent reduction off benefit, but you don't need to be in full-time employment not to be on benefit. You can be in part-time employment and still not be on benefit. It's just a qualifier, but we should be able to pull that information together.

Senator SIEWERT: That'd be much appreciated; thank you. Is this the right question—and I will be really quick because I know patience will run out. ParentsNext—the rollout has commenced?

Mr Hehir: Yes.

Senator SIEWERT: Is the rollout completed?

Mr Hehir: No, I might just get Mr Manning and Mr Jalayer up to the table. My recollection is that we anticipated that for the full case load to come on stream was going to take about six months—I think that's correct? Greg, could you correct me if I am wrong?

Mr Manning: That's correct. It was anticipated the full case load would be met by December of this year, and we're still on track to do that.

Senator SIEWERT: That's in targeted and intensive?

Mr Manning: That's in the entire program, yes.

Senator SIEWERT: Are you able to tell me how many are on board already?

Mr Jalayer: As at the end of September, the total case load was 42,825, of which 27,220 had commenced, 10,724 were pending and 4,881 had been suspended.

Senator SIEWERT: So 4,881 had been suspended?

Mr Jalayer: Correct. Basically, they had been referred and assessed by the provider as having a suitable reason to suspend their participation.

Mr Hehir: So not necessarily payments suspended.

Mr Jalayer: Suspended from the program, not—

Senator SIEWERT: Yes. On what basis were they—

Mr Jalayer: It could be due to health reasons or other circumstances in their lives, such as domestic violence, financial crisis, separation or large families. If you have a large family of four children or more, that's sufficient reason to be suspended.

Senator SIEWERT: Thank you. Did I hear right? Was it 42,000?

Mr Jalayer: That is the number who have been referred to the program.

Senator SIEWERT: So the figures you've given me are where the various processing—

Mr Jalayer: That's correct.

Senator SIEWERT: So there are essentially around 38,000 or so that are still to come on board. Okay. Are you able to break that down into the different programs?

Mr Jalayer: Yes. For the intensive it's 23,475. For targeted it's 21,891.

Senator SIEWERT: Thank you. Instead of testing patience any longer, can I ask on notice about this: under the elements of the targeted program, there are different requirements. Do you know what I am asking?

Mr Manning: There are specific eligibility criteria, which we will take on notice.

Senator SIEWERT: Could you take it on notice against each of those.

Mr Manning: Just to clarify, is that for both streams?

Senator SIEWERT: For both streams.

Mr Manning: Certainly.

Senator SIEWERT: That would be appreciated—and if possible, if it's not identifying too closely, how many in each region in the intensive stream. Does that make sense?

Mr Manning: How many, by eligibility criteria, in each of the regions.

Senator SIEWERT: Yes.

Mr Manning: Certainly.

Senator SIEWERT: Thank you. That would be appreciated. Thank you very much.

[13:57]

CHAIR: Unless there are any final calls, I believe we can move on from outcome 1 except insofar as we have already discussed. So we will move on to outcome 2, Facilitate jobs and small business growth.

Senator CAMERON: Thank you. There was a report in the *Sunshine Coast Daily* on 18 August that, after the Building Ministers' Forum, Mr Williams from the Subcontractors Alliance made a public call for the then minister, Mr Laundy, to commit to delivering the Murray report. Did Mr Williams also write to Minister Laundy or the department in similar terms?

Ms Hartland: We don't know. We'll have to take it on notice.

Senator CAMERON: What about the minister?

Senator Reynolds: No, I can't shed any further light on that. As the secretary said, she will take that on notice.

Senator CAMERON: If the answer is yes, did Minister Laundy respond to Mr Williams' public call or the letter?

Ms Hartland: We don't know that there was a letter written, Senator. We will find that out and then we will be able to tell you whether there was any response. We are not aware of a letter.

Senator CAMERON: What specific steps has the government taken, apart from attending the Building Ministers' Forum in August, to implement the recommendations of the Murray report?

Ms Hartland: Again, Senator, we probably have to refer that to the department of industry, as the responsible department.

Senator Reynolds: Fortuitously, Senator Cameron, the economics committee hearings are on at the moment, so you have the opportunity to ask that—

Senator CAMERON: Should I go?

Senator Reynolds: Well, far be it from me to suggest that, Senator Cameron!

Senator CAMERON: Can I then move to the issue of the Fair Work Amendment (Protecting Vulnerable Workers) Act.

CHAIR: Welcome, Minister Cash. How are you?

Senator Cash: Very well, thank you.

CHAIR: Just before we go back to the questions, did you have any opening remarks?

Senator Cash: No.

CHAIR: All good. Senator Cameron, you have the call.

Senator CAMERON: I might not go that now Minister Cash has arrived. Minister Cash, how much has been expended on your defence in the Registered Organisations Commission case and the AWU case?

Senator Cash: Just to clarify, Senator Cameron, this is the case by the AWU because they don't want to produce the documents in relation to moneys that Mr Shorten expended on GetUp! and his own campaign?

Senator CAMERON: I'm asking you how much has been expended on your behalf—

Senator Cash: And I'm just asking you—

Senator CAMERON: in relation to the AWU.

Senator Cash: I'm just seeking clarification. Is this the AWU case that they're challenging the production of the documents to show that Mr Shorten validly authorised, when he led the AWU, the $100,000 to GetUp! and the $25,000 to his own campaign?

Senator CAMERON: Are you aware of any other case?

Senator Cash: I'm seeking clarification from you.

Senator CAMERON: Are you aware of another case that I might not know about?

Senator Cash: I'm seeking clarification from you.

Senator CAMERON: It's the AWU case that's in the court at the moment. You know the case.

Senator Cash: So it is the case whereby the AWU are challenging the proceedings to produce the documentation to show that Mr Shorten validly authorised the giving of $100,000 to GetUp! and $25,000 to his own campaign.

Senator CAMERON: I don't think that response is going to rehabilitate your reputation, quite frankly. I think it's only going to make it worse.

CHAIR: That sounds like commentary, Senator Cameron. Let's ask the questions.

Senator CAMERON: How much has now been expended on your behalf?

Senator Cash: Senator Cameron, those costs have been tabled, I understand, by the Attorney-General. That is actually a question for the Attorney-General's Department, and I can take it on notice for you.

Senator CAMERON: Okay. When do you intend to fully provide the public the reasons why your staff member resigned in relation to that issue?

Senator Cash: Which staff member are you referring to?

Senator CAMERON: Your staff member who you threw under the bus after your misled the Senate on five occasions.

Senator Cash: Senator Cameron, I'm not going to go through again with you the dance that you now want to do. But, Chair, as you would be aware, I have fully articulated the evidence in many hours of questioning, and particularly last year, and I have nothing further to add to that evidence.

Senator CAMERON: The AFP indicated in estimates the day before yesterday that they had completed their investigation. The Commonwealth Director of Public Prosecutions indicated that they had provided some advice to the AFP. Arising from that advice, have you been questioned by the AFP?

Senator Cash: Senator Cameron, as you know, this is not an investigation into me or my office, no matter how many times you try and say it is. You would also know—

Senator CAMERON: That's your claim.

Senator Cash: that a public interest immunity claim has been made in relation to this matter, and it was accepted last year by the committee.

Senator CAMERON: In the context of this ongoing inquiry, there was a media report that one of your colleagues had briefed the press about you refusing to cooperate with the Federal Police. Do you remember that report?

CHAIR: Could we have a copy of that report, please, Senator Cameron?

Senator Cash: Yes, I would need to see a copy of it.

CHAIR: If you're going to quote from something, you should really provide a copy to the committee so we can look at it.

Senator CAMERON: I don't have to provide a copy. There's no standing order that I have to provide a copy.

CHAIR: I didn't say there was, Senator Cameron. It's helpful for your colleagues; that's all.

Senator CAMERON: Well, you said I had to. I don't. You're aware of the report, Minister, aren't you?

Senator Cash: Well, Senator Cameron, it would be of assistance if you were able to provide a copy of that report.

Senator CAMERON: I don't have one with me, but you know the report.

Senator Cash: I'm sure that you can find one if you'd like to ask questions about it.

Senator CAMERON: I might come back to that then. I'll get a copy of it, and I'll be happy to ask questions about it. Maybe one of my staff can grab me that and bring the report up.

Minister, before you were demoted, you gave a commitment in the Senate on 4 September 2017. You gave a commitment to Senator Xenophon that the government would undertake a review within 12 months in relation to the Fair Work Amendment (Protecting Vulnerable Workers) Act. Where is that up to?

Senator Cash: Senator Cameron, you'd have to actually show me what the commitment was and what you're referring to.

Senator CAMERON: You made the statement in the Senate, and I'll read it to you. Senator Xenophon said:

… I would like to get some indication from the minister, further to discussions that have occurred in the chamber in the course of this debate, that there will be an independent review of these clauses and the sorts of issues, in terms of reverse onus, as to the effectiveness—

of—

the bill. The minister has said that the coercive powers don't go far enough and that they should be all-encompassing. For that issue and for all the issues that have been fairly raised in the bill, can the minister indicate that there will be an independent review once this bill has been in operation for 12 months so that we can then have a thorough, comprehensive independent review? Will she undertake to consult with the opposition and the crossbenches as to the scope of that review so that we can have some idea that it will be something that is robust and well-regarded?

You responded:

I thank Senator Xenophon for his comments and for not supporting the opposition's amendment. Yes, the government had always intended to undertake a review. I'm more than happy to commit to you that we will undertake a review within 12 months in relation to this. Consultation is always an important part of any review process.

So I'm asking you: in accordance with the commitment that you gave to the Senate on 4 September, has a process been undertaken on an independent review of the measures contained in the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017?

Senator Cash: Senator Cameron, given that I am not the minister for this particular part of the portfolio, I would need to ask the secretary to address that question.

Ms Hartland: Senator, as you know—

Senator CAMERON: Just before we do that: until you were demoted recently, you were the minister—

CHAIR: You can ignore the commentary.

Senator CAMERON: so can you answer in terms of when you were the minister, before you were dumped from the position.

Senator Cash: Senator Cameron, again, I'm not going to indulge you, but what I would say to the millions and millions of small and family businesses around this country is that I actually believe it is probably one of the greatest privileges that I have ever been given to sit around the cabinet table and to represent what I truly believe—and what Senator Brockman, Senator Paterson and Senator Molan fundamentally believe—are the backbone of the Australian economy. You may say, Senator Cameron, that sitting around the cabinet table representing small and family businesses, mums and dads in Australia who have a go, so they deserve a fair go, is a demotion. I see it as probably one of the greatest privileges I have ever been given, and I'll be delighted to share your *Hansard* with them.

Senator CAMERON: Well, you were dumped from your position and you were demoted. You're now junior to the—

CHAIR: That sounds like commentary to me, Senator Cameron. Ms Hartland, did you have an answer to Senator Cameron's actual question?

Senator CAMERON: There's a bit of commentary going on there as well. There is a bit of dissembling going on.

CHAIR: Ms Hartland, do you have an answer to the senator's question?

Ms Hartland: I was just going to make a couple of points, and then Ms Durbin might add some further points. The Fair Work amendment act amendments to protect vulnerable workers came into force in September last year. We know that, on 4 October this year, the Fair Work Ombudsman commenced the first proceedings under those amendments, so the Fair Work Ombudsman would be probably in a better position to be able to advise in broad terms about how those changes have affected their operational activities. I can't comment specifically on that. Ms Durbin, is there anything else you want to add?

Ms Durbin: No, the secretary has primarily covered it, but really the provisions have not been in for a significant length of time. As she said, the Fair Work Ombudsman has commenced action in regard to the utilisation of some the new powers that were conferred on it through that bill and will be able to provide comment on any specifics.

Senator CAMERON: The bill was passed back on 4 September 2017?

Senator Cash: That's correct.

Senator CAMERON: The then minister, Senator Cash, gave a commitment that a review would be undertaken within 12 months. That wasn't carried out, was it? The commitment that Senator Cash gave to Senator Xenophon wasn't delivered on, was it?

Ms Hartland: We're just having a look at when the actual provisions commenced, which is a different date, obviously, from the passage.

Senator CAMERON: It would be handy if you could let me know that.

Senator Cash: Chair, the department can take it on notice and revert back to Senator Cameron.

CHAIR: I am happy if you want to take it on notice. Take it on notice. If you can get back to us, that's great.

Senator CAMERON: They partly can take it on notice, or they can answer my question.

Ms Hartland: We'll find the answer, and I guess what we've said is that those amendments have only recently been applied, if you like.

CHAIR: There's no point reviewing something if there's nothing to review.

Senator CAMERON: Well, that might be your view. There was a commitment given that hasn't been undertaken.

Ms Hartland: Ms Mitchell might be able to add more.

Ms Mitchell: I can just add, Senator Cameron, while we're looking for the assent date, that most of the provisions came into force on 15 September 2017, and the new responsibilities for franchisors applied from 27 October 2017.

Senator CAMERON: Yes, almost 12 months ago. So provisions have been there for 12 months. There was a commitment given by the government—by Senator Cash on behalf of the government—to Senator Xenophon for a review. Nothing has been done, has it?

Ms Hartland: As I said, I think it would be preferable, given that these first legal proceedings have only gone through in the last couple of days, to be able to test it out. It would be preferable if we actually had some outcomes there.

Senator CAMERON: The legal proceedings are not the trigger for when the act comes into place, are they?

Ms Hartland: I'm just making the point about the application.

Senator Cash: But the department can take it on notice and provide you with any further information in relation to what may have occurred under Minister Laundy.

Senator CAMERON: Before I get interrupted by Senator Cash, did the—

CHAIR: The minister is allowed to answer questions, Senator Cameron. Please continue.

Senator CAMERON: I haven't finished my question.

CHAIR: Haven't you?

Senator CAMERON: No.

CHAIR: Oh! Goodness gracious!

Senator CAMERON: Did Minister Laundy do anything to further Minister Cash's commitment?

Ms Hartland: I might have to take that on notice.

Senator CAMERON: Has Minister O'Dwyer done anything to further Minister Cash's commitment?

Ms Hartland: Again, I'll take it on notice.

Senator CAMERON: Okay. So much for commitments from Senator Cash! Can I now move to the Migrant Workers Taskforce.

CHAIR: Ask the question and the appropriate person will answer it.

Ms Hartland: Yes, we're at the table.

Senator CAMERON: Since the Migrant Workers Taskforce was extended in April 2018, how many meetings of the task force have taken place?

Mr Cully: I might need to take that on notice. I don't know that I have a complete list of the meetings since then. Ms Innes may be able to assist.

Ms Innes: In total the task force has met 14 times.

Senator CAMERON: So what issues has the task force dealt with on these 14 occasions?

Mr Cully: It's dealt with a wide array of issues reflecting the broad terms of reference for the inquiry. It's looked at issues across the spectrum going to issues of workplace relations laws but more broadly reflecting the scope of the task force. The task force also includes representatives from the Department of Education and Training; the Department of Agriculture and Water Resources; the Department of Home Affairs as well as the Australian Border Force; and regulators in this space such as the Fair Work Ombudsman, the ATO, ASIC and the ACCC.

Ms Hartland: I can probably add a little bit on that in terms of the range of issues that the task force has looked at. It's looked at options to do with unscrupulous labour hire operators; exploitation of international students and working holiday-makers, including provision and availability of suitable accommodation; access to justice for vulnerable workers and wage recovery of underpayments; improved communication with migrant workers; and, as Mr Cully said, better coordination of government services and compliance activities. So that's the scope of it.

Senator CAMERON: I will come back just to be more specific. How many times has the task force met? I don't know want to know how many times it's met in total but since the extension—since April 2018.

Ms Mitchell: We don't have that information with us, but we can get that, hopefully.

Mr Cully: We think it's probably in the order of six meetings, but we can confirm that and get back to you.

Senator CAMERON: Okay. Has the task force consulted with state and territory governments on draft or final recommendations?

Mr Cully: No.

Senator CAMERON: It hasn't?

Mr Cully: No.

Senator CAMERON: Why not?

Mr Cully: The final report is still in the process of being drafted, and it's a report of the federal government and federal government agencies.

Senator CAMERON: So you don't intend to consult with the state and territory governments on draft or final recommendations?

Mr Cully: No.

Senator CAMERON: Has the task force consulted with community and migrant organisations on draft recommendations?

Mr Cully: No, not on draft recommendations. But those groups have been consulted during the process of the Migrant Workers' Taskforce.

Senator CAMERON: When will Professor Fels provide the final report to government?

Mr Cully: I think, as Professor Fels said in a separate inquiry by this committee—and I think I gave evidence to the same effect to that inquiry—it's intended that the report be provided next month, in November.

Senator CAMERON: In November?

Mr Cully: That's correct.

Senator CAMERON: Is it still on track for reporting in November?

Mr Cully: Yes, it is.

Senator CAMERON: Thank you. Can I now go to the Federal Court decision regarding the definition of 'casual', in WorkPac v Skene.

Senator CAMERON: How many times did former Minister Laundy meet with WorkPac following the Federal Court's Skene decision?

Ms Hartland: Sorry, I don't know the answer to that question. I don't know whether or not there were meetings. I'll have to take it on notice.

Senator CAMERON: Does the former minister know?

Senator Cash: The former minister, Minister Laundy?

Senator CAMERON: Your former minister.

Senator Cash: You'd need to be more specific. Are you referring to Minister Laundy?

Senator CAMERON: I'm referring to whether you know how many times Minister Laundy has met with WorkPac.

Senator Cash: No, I don't.

Senator CAMERON: Okay. Do we know how many times Minister O'Dwyer has met with WorkPac or their agents?

Ms Hartland: No, we don't know the answer to that.

Senator CAMERON: Can you take that on notice?

Ms Hartland: Sure.

Senator CAMERON: That's both questions—about Minister Laundy and Minister O'Dwyer meeting with WorkPac or their agents.

Ms Hartland: Yes, certainly, we'll take it on notice.

Senator CAMERON: It was reported in *The Australian* on 7 October that the minister was 'considering introducing legislation or regulation in response' to the WorkPac v Skene decision. Has the department provided the minister with any advice about possible legislative responses to that decision?

Ms Hartland: The minister is on the record as having asked for advice from the department concerning the implications of the WorkPac v Skene decision. So the answer is the department has provided advice.

Senator CAMERON: Yes. When did you provide that advice?

Ms Hartland: I think there would have been ongoing advice, from the date of the decision, which I think was 16 August.

Senator CAMERON: 16 August, yes.

Ms Hartland: There would have been a series of advice, as you would expect, between the government and the minister, but, in terms of specifics, I'd have to take that on notice.

Senator CAMERON: Has a decision been made about whether to introduce a bill in response to the decision?

Ms Mitchell: No.

Ms Hartland: No, there's no decision taken.

Senator CAMERON: It was also reported, in the same article:

WorkPac … has engaged the SAS Group to lobby politicians, including the Senate crossbench, to back changes to the Fair Work Act it says are needed to mitigate the impact of the ruling.

The article went on to say that *The Australian* had seen a letter to the Senate crossbench from the chairman of the SAS group, acting as lobbyists for WorkPac, saying:

… the government has asked us to meet with the crossbench senators during the parliamentary break given the significance and urgency of this matter.

When did the minister make this request of WorkPac and/or the SAS Group?

Ms Hartland: We have no visibility or knowledge of that letter. I've just asked my colleagues. We have not seen that. So I probably can't answer any further on that.

Senator CAMERON: Is the minister aware of the letter?

Senator Cash: No, I'm not.

Senator CAMERON: Are you aware that it may have been another government minister who made the request? Are you aware of any government minister making that request?

Ms Hartland: No, we're not aware of that.

Senator CAMERON: So what was the proposed legislative response?

Ms Hartland: Sorry, Senator. Are you talking about in response to the letter or are you talking about—

Senator CAMERON: In response to the WorkPac decision.

Ms Hartland: We'll have to take it on notice.

Senator CAMERON: Was there a report back to the department or the minister about the outcome of WorkPac/SAS's lobbying?

Ms Hartland: No.

Senator CAMERON: Are you talking on behalf of the department and the minister?

Ms Hartland: Sorry, I thought you were asking whether there was a report back from the minister to the department.

Senator CAMERON: To the department or the minister. Did WorkPac or SAS provide any response to the department or the minister that you're aware of?

Ms Hartland: No, not that we're aware of. So there's nothing that we're aware of that has come through to the department, and we're not aware of any of that correspondence to the minister either.

Senator CAMERON: So you can't definitively say there was no response?

Ms Hartland: No, I can't, but we're not aware of the letter and we're not aware of any response, and nothing has come through to the department.

Senator CAMERON: Okay. Last week, the minister intervened in a new Federal Court so-called test case commenced by WorkPac. When was the decision made to intervene?

Ms Kuzma: The minister intervened on 18 October in that matter.

Senator CAMERON: Yes, the minister intervened on 18 October. When was the decision made to intervene?

Ms Kuzma: I will have to take that on notice.

CHAIR: Senator Cameron, I will be throwing the call around in a couple of minutes.

Senator CAMERON: I've only got a couple of more on this.

CHAIR: Well, you finish up. We've just got some media in the room, so I just want to make sure everyone is comfortable with that.

Senator CAMERON: Yes, I'm okay.

CHAIR: I just remind you not to film papers on desks and not to film phones. I'm sure you know the rules. There have been incidents in the past.

Senator CAMERON: What meetings were there between WorkPac or representatives of WorkPac in the minister's office and/or the department in the lead-up to the minister intervening?

Ms Hartland: There were no meetings between WorkPac and the department. I'd have to take on notice, as we already have, any meetings that might have happened with the minister. But we weren't involved.

Senator CAMERON: Has the government taken the decision to intervene in the Federal Court case instead of introducing legislation into the parliament?

Ms Hartland: I'm not sure that we can answer the question around the decision-making of the government in terms of the direction that the minister has taken.

Senator CAMERON: Have you prepared legislation to deal with the WorkPac decision.

Ms Mitchell: We'd have to take that on notice.

Senator CAMERON: That would be a bill. Have you prepared a bill?

Ms Mitchell: No, we have not.

Senator CAMERON: So are you placing a different position on legislation in the bill? You said you'd have to take one on notice, and you've been definitive in relation to the bill.

Ms Mitchell: Because Ms Kuzma has just whispered in my ear and given me the correct answer.

Senator CAMERON: So what did you whisper in her ear?

Ms Kuzma: We haven't prepared a bill.

Senator CAMERON: You've not prepared a bill. Have you been asked to look at the issue of preparing a bill?

Ms Hartland: We're being careful about the content of any discussion or information that may have been discussed with the minister, given that we're in a situation where there's a case before the Federal Court. So I think we have to be a little bit careful.

Senator CAMERON: Whether a bill's been prepared or not has nothing to do with the Federal Court.

Ms Hartland: I think we've answered that question now—that there's not a bill that's been prepared.

Senator CAMERON: Have you prepared any drafting instructions?

CHAIR: Senator Cameron, I'm happy to come back to you. Do you have many more questions?

Senator CAMERON: Yes.

CHAIR: Do you want to come back? If you've got just one or two, I'm happy for you to keep the call.

Senator CAMERON: Yes, just one last one.

CHAIR: Okay. Go ahead.

Senator CAMERON: Minister, has the government taken soundings with the crossbench in relation to their support to have a bill put in place to deny workers their legal entitlements?

Senator Cash: That would be a matter for the relevant minister, so I'd need to take that on notice.

Senator CAMERON: Thank you, Chair.

CHAIR: I assume you're not done with outcome 2?

Senator CAMERON: Certainly not.

CHAIR: Senator Paterson—

Senator CAMERON: I'm quite happy to go on. I thought you were taking the call from me.

CHAIR: I am taking the call.

Senator PATERSON: Thank you, Chair. I wanted to ask some questions about the Fair Entitlements Guarantee issue—the strengthening protections for employee's entitlements bill. Could you outline the key aims of the amendment from the bill.

Ms Hartland: I'm sure Ms Mitchell will be able to answer many of these questions. It's her area of expertise.

Senator PATERSON: Excellent. Thank you.

Ms Mitchell: The bill is really seeking to address corporate misuse of the Fair Entitlements Guarantee. As has been stated in the second reading speech, over the last couple of days, the cost of the FEG scheme has more than tripled in four years from 30 June 2009 to the four years to 30 June 2018.

Senator PATERSON: What were those figures?

Ms Mitchell: It's gone from $70.7 million, in the four years to 30 June 2009, to $235.3 million in the four years to 30 June 2018.

Senator PATERSON: So you're saying it had tripled?

Ms Mitchell: It has tripled.

Senator PATERSON: Right. Sorry, please continue.

Ms Mitchell: I'm happy to talk about aspects of the bill, but basically there's been lots of evidence about corporations using sharp corporate practices to avoid paying employee entitlements where the business—

Senator PATERSON: For the layman—the term 'sharp practices' gets thrown around a bit. Do you want to clarify what 'sharp practices' means?

Ms Saunders: 'Sharp corporate practices' are a range of methods and approaches adopted by company representatives, company owners, or other parties involved in corporate restructures and insolvencies that seek to prevent, avoid or reduce the payment of obligations to creditors, including employees for their employee entitlements. Some examples of that are using a company structure or a corporate group structure in ways that the employees and their liabilities are held in one entity while assets that should normally be available to meet those liabilities are held in another entity, and when the company that is liquidated is the employing entity it has no access to the assets to pay the entitlements because the assets are in a separate entity. Other sharp corporate practice examples include using illegal phoenix arrangements or otherwise seeking to unfairly manage an insolvency to the detriment of creditors.

Senator PATERSON: What were the key changes in the bill?

Ms Mitchell: The key changes were about extending the fault element necessary to contravene the existing criminal offence in part 5.8A of the act to include recklessness—so it's a new bar; increasing the penalties applicable to contraventions of criminal offences; increasing penalty units for individuals and penalty units for body corporates; introducing a new civil penalty for entering into a transaction that's likely to avoid, prevent or significantly reduce recoverable employee entitlements based on an objective test; and expanding the parties who can commence civil compensation proceedings to include the Australian tax office, the Fair Work Ombudsman and the Department of Jobs and Small Business. Part 2 of the bill amends the act to enable the court to make a contribution order against an entity in a corporate group or closely connected economic relationship with an insolvent company, which requires them to contribute to employer entitlements to the insolvent entity where the insolvent entity has unpaid employee entitlements, the other entity has unfairly benefited from the work done by the insolvent entity's employees or where it would be just inequitable for the court to make that order. Part 3 of the bill amends the act to strengthen the ability of the Australian Securities and Investments Commission to disqualify company directors and other directors where they have a track record of corporate contraventions and inappropriately using the FEG scheme to pay outstanding employee entitlements.

Senator PATERSON: I think you mentioned offences in that summary. What are the changes that have been made to the penalties?

Ms Saunders: For example, the penalties for contraventions of the criminal offences are increasing from 1,000 penalty units to 4,500 penalty units for individuals, or from 5,000 penalty units to 45,000 penalty units for body corporates.

Senator PATERSON: That's a very substantial increase. I'm going to put you on the spot: do you know what a penalty unit is at the moment?

Ms Saunders: Yes, it's about $210—$210.

Senator PATERSON: Well done. Are there any other changes to offences or penalties?

Ms Saunders: There are new civil penalty provisions, which are a new regime of civil penalty provisions, and the changing of the threshold in order to contravene the criminal penalty or the criminal offence provisions.

Senator PATERSON: That's enough for me for the moment, Chair, but I might have some more later.

CHAIR: Senator Molan?

Senator MOLAN: I would like to go to cybersecurity and the Australian Small Business and Family Enterprise Ombudsman.

Senator Cash: They're on after this outcome. They are not here.

Senator MOLAN: I don't have any more on outcome 2.

Ms Hartland: Chair, can I just correct the record. We have discovered that there was a meeting that involved some departmental people with WorkPac on 11 December—

Senator CAMERON: Oh, was there!

Ms Hartland: with the then legal counsel. I don't know if there are others who can—

Senator CAMERON: You said there wasn't and you've now said there was a meeting?

Ms Hartland: I've just been informed there was a meeting on 11 September.

Senator CAMERON: This seems to be a problem in this area, where we keep getting told things and then we've had to get it changed.

Ms Hartland: I corrected the record as soon as the departmental officer told me.

Senator CAMERON: When was that meeting?

Ms Hartland: I am told it was 11 September.

Senator CAMERON: Who requested the meeting?

Ms Hartland: I don't have any other detail on it. I can try and get some other detail for you.

Senator CAMERON: Who requested the meeting? Are there any file notes or correspondence in relation to the meeting?

Ms Hartland: I'll have to find out. As I said, I've just been told that there was a meeting, so I'll find out.

Senator CAMERON: So you'll take that on notice?

Ms Hartland: I will, yes.

Senator CAMERON: Where SAS involved in that meeting?

Ms Hartland: I'll take all that on notice.

Senator CAMERON: Were there any agreements made with WorkPac about what the federal government or the department would do arising for that meeting?

Ms Hartland: Again, I'll take it on notice.

Senator CAMERON: And have those commitments, if they were made, been carried out by the department or the government?

Ms Hartland: I'll take that on notice.

Senator CAMERON: I want to know when the request was made.

Ms Hartland: The request for the meeting?

Senator CAMERON: For the meeting.

Ms Hartland: Yes, sure.

Senator CAMERON: If it was by WorkPac, who from WorkPac made the request? If it was from someone within the department, who was it? Did the department seek a meeting at the request of Minister O'Dwyer?

Ms Hartland: I'll take all of that on notice.

Senator CAMERON: Thanks. Senator Cash asked for a copy of the report. This is a *Financial Review* article by Phil Coorey. Minister, former Prime Minister Turnbull has given you a fair amount of support, in relation to the difficulties you found yourself in with your staff and your office and maybe your own actions. Why didn't you provide him the same support when you knifed him?

Senator PATERSON: Point of order, Chair.

CHAIR: Senator Cameron!

Senator CAMERON: Why didn't you provide him that support?

Senator PATERSON: That's nothing to do with operations—

Senator CAMERON: Yes, it has.

CHAIR: I think you can safely ignore that question, Minister.

Senator PATERSON: Nothing whatsoever.

CHAIR: I uphold that point of order. You can ignore that question, Minister.

Senator Cash: Thank you, Chair.

Senator CAMERON: He did give you a fair bit of support, and then you knifed him. Why did you do that, Minister?

CHAIR: That's not—Senator Cameron! Again.

Senator PATERSON: Chair, I can ask policy questions, if you'd like them.

Senator CAMERON: I'm asking questions. I've got the call.

Senator PATERSON: They're not policy questions. You've got the call to ask policy questions.

Senator CAMERON: You don't have to ask policy questions. If you'd been around long enough, you'd know that.

Senator PATERSON: If you had—

Senator CAMERON: In this article, it says, Minister, that a senior Liberal source familiar with the situation said that when the police came investigating Senator Cash was asked to cooperate and she didn't. Why would one of your senior Liberal colleagues say that?

Senator Cash: I'm not going to speculate on an unnamed source in a media article. I do recall now that you have asked me a question on this particular article in question time, and I would refer you to my answer.

Senator CAMERON: Phil Coorey's a fairly well-respected journalist, isn't he?

CHAIR: Again, I don't think it relates to estimates. You can ignore that one, Minister.

Senator CAMERON: So the coalition cover-up's on again!

CHAIR: I don't think we want to list journalists. If you want to create a ranking of journalists, Senator Cameron, you can go and create one online. I think we know the ones you'd have at the top.

Senator CAMERON: Why didn't you cooperate with the Federal Police?

Senator Cash: Senator Cameron, it's probably best if you don't verbal me. As I've already stated, I'm not going to speculate on unnamed sources in articles that appear in the media. But you have also asked me questions on this particular article in question time and, again, I refer you to my answer.

Senator CAMERON: Why can't you just be honest with the Australian public and outline your involvement in that raid?

Senator Cash: Again, I'm not going to do this dance to you, as much as you seem to like to write it onto my dance card. I'm almost flattered. I have given extensive evidence at a previous estimates hearing. I stand by that evidence.

CHAIR: I think there have been a few questions in the Senate as well, Minister.

Senator Cash: Just a few, Senator Brockman, just a few.

Senator CAMERON: Minister, why did you instruct your lawyers—paid for by the public—to fight the AWU's subpoena, if you've got nothing to hide?

Senator PATERSON: If the AWU's got nothing to hide, why are they objecting to the process?

Senator Cash: Why don't they produce the documents, one may also ask, if the documents are there that show the authorisation of the $100,000 to GetUp! and the $25,000 to Mr Shorten's campaign? That is a very good point to make, Senator Paterson.

Senator CAMERON: Just address my question, if you don't mind.

Senator Cash: As I said, Senator Cameron, I am not going to provide a running commentary on legal proceedings.

Senator CAMERON: I'm just asking you why you instructed your lot—basically lawyers paid for by the Australian public—to fight that subpoena.

Senator Cash: I refer to my previous answer.

Senator CAMERON: What are you hiding, Minister?

CHAIR: That's not a question, Senator Cameron.

Senator CAMERON: Yes, it is. Of course it's a question!

CHAIR: It's not a question the minister needs to answer. Senator Molan, you have the call.

Senator MOLAN: Thank you. If I may, I'd like to talk about outcome 2, small business. I wonder if someone can take me, please, through the publication *Australian government pay on-time survey performance report 2017*. There's been a survey in relation to this.

Ms Hartland: We'll get someone to come to the table.

Ms Verspaandonk: Every year my branch surveys other departments, including our own, to find out how quickly they pay contracts, and then we collate that and publish it.

Senator MOLAN: What is the point of that? How important is it to small business that they actually get their bills paid on time?

Ms Verspaandonk: It's obviously hugely important for cashflow that they're paid in a timely way. The government's policy is currently to pay within 30 days, but it's going to be more ambitious and pay within 20 days. It's important for transparency, then, that departments show how quickly they have been paying.

Senator MOLAN: And that's an annual survey?

Ms Verspaandonk: Yes.

Senator MOLAN: Do you have to go out and get it, or is there a requirement that the information be provided to you and it's then tabulated and published?

Ms Verspaandonk: We approach other departments. We're in the field at the moment, asking them for that information.

Senator MOLAN: You set the standard of 30 days, hoping to get it back to 20 days. What were the main findings of the survey?

Ms Verspaandonk: I'm sorry; I don't think I have the findings from last year's survey with me. We could get those.

Senator MOLAN: When are we due for it?

Ms Verspaandonk: You mean the one we're in the field for now?

Senator MOLAN: Yes, the current one.

Ms Verspaandonk: We're just getting results in, but there will probably be a few stragglers. So that might still be a few weeks off.

Senator MOLAN: When would you anticipate that this year's, this period, would be published?

Ms Verspaandonk: I'll find out for you.

Senator MOLAN: If you could, please, take that on notice or just provide me with a copy of the survey, that would be good.

Ms Verspaandonk: From last year?

Senator MOLAN: From last year, yes.

Ms Verspaandonk: Yes.

Senator MOLAN: Can you take me through the main features of the government's pay-on-time policy? You've mentioned some of them. What are the others, while we wait for more information to come?

Ms Verspaandonk: The chief one is that it moves to paying within 20 days from, I think, July next year.

Senator MOLAN: That's it? There's nothing else?

Ms Verspaandonk: That's the main one. I'm sorry—there might be more parts of it, but I don't know.

Senator MOLAN: How do they define the businesses that this should apply to?

Ms Verspaandonk: It's actually done by the value of the contract. I think that's for contracts of up to $1 million.

Senator MOLAN: Is the government proactively out there? What are you doing apart from just tabulating the results that will cause the government to be more proactive in relation to paying within 30 or possibly 20 days?

Ms Verspaandonk: Do you mean for government departments?

Senator MOLAN: Correct.

Ms Verspaandonk: I suppose that transparency means there will be a lot of pressure on departments to be obviously meeting and even exceeding that target.

Senator MOLAN: Where is this report published?

Ms Verspaandonk: Probably on our website.

Mr Cully: We anticipate it will be published on our website.

Senator MOLAN: Can you measure how often it is seen, the hit rate on it, et cetera?

Mr Cully: We would be able to do that when it's on our website, yes.

Senator MOLAN: Can you give me an indication from last year how often that was looked at?

Mr Cully: We'll take that on notice. That may be a little tricky. The small business policy function transferred from the Treasury to this department in December last year. I don't know if we would have the metrics on hand, but we can take it on notice and talk to Treasury and get you an answer.

Senator MOLAN: If the main aspect of the government pay on time policy is transparency, it would be interesting to know who is reading the report and how often it's read.

Mr Cully: That's true. Obviously, the government takes this issue very, very seriously, so ministers will be looking to each of their departments to make sure that they meet this important commitment.

Senator MOLAN: So you are proactively looking out there to make sure they meet it?

Mr Cully: That's the purpose of this survey.

Senator Cash: For example, Senator Molan—the secretary might be able to articulate it further—this department is looking at setting its own target of 14 days.

Ms Hartland: Various departments are looking at exceeding that—well, there was 30 days, and then 20 days, and then exceeding that.

Senator Cash: For certain contracts.

Senator MOLAN: Good. We will know relatively soon—certainly before Christmas—whether in fact you have met that 14 days aim that you have set for yourself?

Ms Hartland: Yes, from a departmental point of view, we can certainly provide that information as well. Then, as the officers have taken on board, we will look at the others as well.

Senator MOLAN: That would be good, thanks. Surely technology nowadays assists us to do this. What's the aspect of technology that does it?

Senator Cash: It's actually e-invoicing. We may be able to talk to the body of work that has been done in relation to invoicing. It is actually sitting with another department, but an officer at the table might be able to bring you up to speed as to what it is, where it's going and the capabilities that it has.

Mr Cully: There is some work that is being done across government in relation to e-invoicing. With e-invoicing, rather than the more traditional method of paper invoices, mailing and so on, it can improve the speed. I am just trying to find—we do have figures on it. It is much cheaper and quicker.

Ms Hartland: While the officers are finding that, the other issue is obviously it's one thing for government to be able to put in place e-invoicing, but it's then for small businesses to be able to accept and have that compatibility in terms of invoicing. That's an area that we certainly are looking at.

Senator MOLAN: The compatibility?

Ms Hartland: The compatibility of systems. Obviously it requires small business to be able to provide invoices for us to be able to pay back in an e-form, in an electronic form. So that's an area that we certainly are looking at.

Senator MOLAN: Is that different than just attaching a file to an email?

Ms Hartland: At its ultimate end, it is, yes.

Senator MOLAN: It's done directly on the web?

Mr Cully: Yes. It's quite sophisticated and it allows a movement of payments through. So it is a step beyond emailing an invoice. Unfortunately, I am aware we do have a figure for the benefits from e-invoicing, but I don't have it with my papers now. We will take it on notice and provide it.

Senator MOLAN: Can you express that in financial terms? Is that a financial benefit? Can you say you are saving X amount of money by e-invoicing?

Ms Verspaandonk: It's per bill.

Mr Cully: Per bill, yes.

Senator Cash: It's also obviously going back to the basic principle that cash flow is king for small business in particular, so there are multiple benefits not just on this side of the table but obviously to the person who is actually issuing the invoice.

Senator MOLAN: You must have an approved payer scheme, I assume. Do businesses come into government—certainly when I was invoicing government, I had to be an approved payee.

Mr Cully: We are starting to move into some of the design of the program, and some of that is still being developed.

Senator Cash: This body of work is actually with Treasury, so we can seek further information for you on it.

Senator MOLAN: Thank you. That would be good. What departments are covered by it?

Mr Cully: The proposal is in relation to e-invoicing more broadly, so it is not just for government departments; it's for businesses to businesses. Once it is further established, it would be a question of how it is adopted across the government.

Senator MOLAN: The survey covers everyone?

Mr Cully: The survey covers everyone, yes.

Senator MOLAN: All federal government funds?

Mr Cully: Yes.

Senator MOLAN: Good. And I can only assume that that's all the contracts within that?

Mr Cully: It's all contracts up to $1 million using that as a proxy for small business for smaller contracts.

Senator MOLAN: How many small businesses do business with government? Can you express that in some clever way?

Ms Verspaandonk: The closest we could get is 95 per cent of contracts entered into by the Commonwealth are under that million-dollar mark, but that's a rough sort of proxy.

Senator MOLAN: So $1 million or roughly $1 million?

Ms Verspaandonk: Yes.

Senator MOLAN: Okay. Will there be any sanctions? Would you envisage that, in the future, once you have done your survey, you understand the system fully and e-invoices are working, there will be sanctions for organisations which don't pay?

Senator Cash: You are talking about organisations. The BCA at this present point in time has a code of conduct in relation to payments that it encourages, in particular, the big businesses to actually sign up to. Certainly we can get you some more information in relation to that as well. They already published the list of businesses that have signed up to the code and pay small business within 30 days. With government leading by example, my understanding—and the officials will correct me if it's not right—is that 96 per cent of Commonwealth invoices are paid within 30 days; hence the move to contracts up to $1 million as of July next year being paid within 20 days. Also, as the secretary explained, different departments will then set themselves and even more efficient target, but that is ultimately what technology will allow you to do.

Senator MOLAN: What's the advantage of a government department wanting to pay not 20 days but 14 days? Cash flow for government departments? Is that different from a cash flow for a small business?

Ms Hartland: I think probably the benefit is more for the small business than it is for the department. I think for us it's about setting the example—as the minister said, being good corporate citizens in that way. I'd have to ask our CFO whether there are benefits in terms of the department balance sheet. It is much more efficient, obviously, and records or the budget are going to be accurate at a point in time, rather than waiting on payments to be made.

Senator MOLAN: My memory was that Defence, certainly for the money that it holds before it pays, earns interest. Does that apply? I don't know. It's certainly in large purchases.

Ms Hartland: Interest payments if there were late payments?

Senator MOLAN: No, interest payments for money that is not spent.

Ms Hartland: I don't know the answer to that.

Senator Cash: We would need to take that on notice.

Senator CASH: Thank you.

Ms Hartland: That sounds like a Defence issue.

Senator MOLAN: It may be. You mentioned the BCA before, Minister. Do you see them actually being enthusiastic act this? They've obviously got their own system for doing it. If the government can do it well, is that likely to go across into other areas of commercial business?

Senator Cash: Certainly the indications that I've had from the BCA is that they are actually conducting a review of the code at the moment. I understand that the outcome of the review will be released in December. But certainly Kate Carnell, the small business ombudsman, will be able to give you more detailed information in terms of the feedback that she got when she comes on.

Senator MOLAN: Where did the idea start? How long has this been running for?

Ms Verspaandonk: The survey?

Senator MOLAN: To change the attitude of federal government departments to rapid paying of invoices?

Ms Verspaandonk: The small business ombudsman did run an inquiry into this issue, and I guess that just heightened awareness about the importance for small business, the impact on cash flow and the flow-on impact on employment.

Senator MOLAN: Thank you. That's all.

CHAIR: Well timed. Senator Cameron.

Senator CAMERON: Minister, award-winning journalist Alice Workman from BuzzFeed reported yesterday that the AWU has had to hire a private investigator to track down your former employee Ben Davis. Are you aware of that?

Senator Cash: I think the word 'former'—

CHAIR: I think you're straying outside estimates.

Senator Cash: indicated—my understanding is, Chair, that there is a convention in this place that you do not discuss former employees who are private citizens.

Senator CAMERON: Is that right?

CHAIR: I think that's a very important convention.

Senator CAMERON: I don't know about that; I haven't heard that. We can ask any questions we want.

Senator PATERSON: It's that staff members, current or former are not unnecessarily named.

Senator CAMERON: This is necessary.

Senator PATERSON: No, I don't think it is.

Senator CAMERON: This is necessary.

CHAIR: I'm not sure that the minister can comment on media speculation anyway.

Senator CAMERON: That's not speculation; that's a fact. The AWU have had to hire a private investigator to try and track down witnesses—

Senator PATERSON: The AWU has chosen to—

Senator CAMERON: in relation to—if you could just let me finish, if you don't mind. They have had to hire a private investigator—

Senator MOLAN: To investigate Bill Shorten.

Senator CAMERON: Sorry? You're at it again, are you? Let me just finish. So, they've had to hire a private investigator. Minister, are you aware of where your former employee Ben Davis is and where he can be located? Have you had any engagement with him since he left your office?

CHAIR: Minister, I'm not going to instruct you not to answer the question, but I feel it's in your right—

Senator Cash: I'm assuming you're doing the bidding of the AWU and I think that is quite frankly disgraceful, but I will uphold the precedent in relation to former staff members are private citizens. Their names should not be raised in Senate estimates.

Senator CAMERON: These things that you say shouldn't happen—what shouldn't have happened is that you should have not put the Federal Police into a dangerous situation by having a leak from your office—

CHAIR: Senator Cameron, it sounds like commentary.

Senator CAMERON: and that's the Federal Police—

CHAIR: I think we need to try and get back to questions, Senator Cameron.

Senator CAMERON: that have said that happened. So why can't you just be honest? Why can't you just be open? Why can't you just be truthful with the Senate, Minister Cash?

CHAIR: Feel free to ignore the commentary.

Senator Cash: Thank you, Senator Brockman.

Senator CAMERON: What did you say?

CHAIR: I said feel free to ignore the commentary. It wasn't a question—it certainly wasn't a relevant question for estimates.

Senator CAMERON: It certainly is a question for estimates.

CHAIR: I'm sure my colleagues have more policy questions and you don't have any.

Senator CAMERON: It's the behaviour of this minister and the behaviour of her employees to try and argue that this minister knew nothing—

CHAIR: Senator Cameron, let's try and keep the commentary to a minimum.

Senator CAMERON: about what was happening is just a joke.

CHAIR: Senator Cameron, I know it's very hard.

Senator CAMERON: It's an absolute joke. A senior minister—

CHAIR: That is commentary, Senator Cameron.

Senator CAMERON: knows exactly what their staff are doing—

CHAIR: Senator Cameron, return to questions or I'm going to go to another senator.

Senator CAMERON: and I'm sure this minister knew exactly what that was going on. Alright, I'll move on. Ms Hartland, can you provide the number of businesses that have a turnover of up to $50 million.

Ms Hartland: I might just ask the small business team to come back to the table with the figures.

Mr Cully: Sorry, Senator, we don't have the figure for under $50 million; we have it for under $10 million, if that assists.

Senator CAMERON: Why would you have the figure for under $10 million? Is that because they are seen as a small business?

Mr Cully: That's right. That's one of the definitions of small business that is used.

Senator CAMERON: What's the definition of 'up to $50 million'?

Mr Cully: I'm not sure if there is a definition that links to $50 million.

Senator CAMERON: But they're not a small business?

Ms Verspaandonk: I think it's one of the small business definitions that the tax code might use, so there are different ones for each purpose, and sometimes it's $10 million and sometimes it's $50 million.

Ms Hartland: Sometimes it's around number of employees as well.

Mr Cully: I do apologise. I actually do have figures for numbers of businesses and people employed by businesses with turnover less than $50 million. I've just located it in my fact sheet here. Unfortunately, the most recent figures are for 2015-16. There are around 3.3 million businesses with a turnover below $50 million: 940,000 companies and 2,360,000 unincorporated entities.

Senator CAMERON: Can you provide a breakdown of this number by state and territory?

Mr Cully: I don't have it on me, but I'll take that on notice.

Senator CAMERON: Thank you. How many unincorporated businesses are eligible for the unincorporated small business tax discount?

Mr Cully: I'd have to take that on notice. We'd have to consult—it's a matter for Treasury.

Senator CAMERON: Can you provide a breakdown of this number by state and territory once you have done that?

Mr Cully: We'll take that on notice and ask Treasury.

Senator CAMERON: How many businesses are eligible to access the government's instant asset write-off?

Mr Cully: Again, I think we would need to check with Treasury and take that on notice.

Senator CAMERON: Over the last three financial years, can you provide numbers on the estimated number of businesses that were anticipated to access the government's instant asset write-off?

CHAIR: These are really questions for—

Ms Hartland: They are questions for Treasury.

Senator Cash: We can take them and refer them to Treasury. Treasury does run that policy.

Senator CAMERON: But they are issues where the government claims that this is small business, and I would have thought Jobs and Small Business would have had a look at this.

Senator PATERSON: Didn't you vote for the acceleration of tax cuts for businesses up to $50 million?

Senator CAMERON: You don't ask me questions; I ask the questions.

Senator Cash: Chair, the officials can take it on notice and bring back the information.

Senator CAMERON: Maybe over the last three financial years, if you can provide the estimated number of businesses that were anticipated to access the instant asset write-off, the actual number of businesses that accessed the government's instant asset write-off, the average value of assets that were written off under the government's policy—these are about small businesses.

CHAIR: These are clearly questions for Treasury.

Senator Cash: They're all questions for Treasury, but we'll take them on notice.

Senator CAMERON: I'm asking questions about small business. If you've got to go to Treasury, that's fine. But I'm saying these are legitimate questions to ask about small business. Senator Cash said she was the minister for small business after she got demoted. So—

Senator Cash: Against, Senator Cameron, it is an honour and it is a privilege. In fact, Chair, I was actually with small businesses, Senator Molan, in Queanbeyan this morning, talking about the instant asset write-off.

Senator MOLAN: [indistinct]

Senator Cash: Absolutely.

CHAIR: Part of the Australian economy.

Senator Cash: Half the Australian economy—they employ more than half of Australia's workers.

Senator Cash: Yes. You still got demoted; it doesn't matter.

Senator PATERSON: Only the Labor Party would think like that.

Senator Cash: Quite astounding, Senator Paterson.

Senator CAMERON: Can you provide a breakdown of what types of assets were written off under the government's policy for small business?

Mr Cully: We'll take that on notice.

Senator CAMERON: All this is related to small business. Can you provide a breakdown by state and territory of the number of businesses that access the government's instant asset write-off, if you've got details of that.

Mr Cully: We'll take that on notice.

Senator CAMERON: Are you aware of the story by Phil Coorey in the *Financial Review* of 5 September 2018 titled 'Prime Minister Scott Morrison's $3.6b small business tax cut plan', which, among other things, says:

… the government is contemplating an expansion of the accelerated depreciation scheme …

Are you aware of that?

Ms Hartland: I think that's a decision for government. I'm not personally aware of the story that you're referring to, but—

Senator CAMERON: Is the minister aware of that?

Senator Cash: I'm not aware of that particular article that you're referring to. But, in any event, it is a decision for government.

Senator CAMERON: The article says:

The government is considering expanding the $20,000 write-off cap or lifting the threshold above $10 million.

Is either the department or the minister aware of that?

Senator Cash: We're always looking at ways to back small business every step of the way, but ultimately what we do is a decision for government.

Senator CAMERON: I'm sure it's a decision for government, but I'm asking you whether you are aware of this—

Senator Cash: This is actually a matter that sits within Treasury, and you should put the question to the appropriate department.

CHAIR: Is the question whether the minister's aware of the article?

Senator CAMERON: No, aware of the report in the article that the government's considering increasing the threshold from $10 million and expanding the $20,000 write-off.

Senator Cash: Again, I'm not going to comment on media speculation. The government has policy discussions all the time, as we should. I am delighted that small and family business is in cabinet so that we can have those discussions around the cabinet table. Any decisions that we make in relation to the instant asset write-off are a matter for government.

Senator CAMERON: I'm glad to hear you're actually doing some work and not just carving each other up—that's good.

CHAIR: Great policy, Minister—small businesses will love it!

Senator Cash: Small businesses absolutely utilise it.

Senator CAMERON: Has the department done any work or analysis on this?

Ms Hartland: It's a Treasury issue, Senator.

Senator CAMERON: Has the department provided any briefing to the minister or the government in relation to options to modify the scheme? You're Small Business, and small business operates with money.

Ms Hartland: Correct. One of the issues, as you would appreciate, with small business is basically every department has a role to play. We certainly play very much a coordinating and a facilitating role for government there, but we don't hold all the levers and we're not doing everything there. It would be unworkable if we had every bit of every department that's dealing with small business.

Senator CAMERON: Sure. That's why departments consult and cooperate.

Ms Hartland: Correct.

Senator CAMERON: So I'm asking: have you been consulted on this or have you consulted with any other departments on it?

Ms Hartland: I think, as the minister said, there are always a host of issues under consideration by government, so I'd defer to the minister.

Senator CAMERON: I'm asking you specifically on this issue. I'm not asking whether there's always things being done. I don't know when this government gets time to do anything, but that's fine. I'm entitled to ask you that question.

Ms Hartland: Look, we don't think so, but we'll take it on notice.

Senator CAMERON: Thanks. Have you discussed changes to the scheme with Treasury?

Mr Cully: Not in a formal sense, no.

Senator CAMERON: In what sense have you then?

Mr Cully: In any kind of discussion about what various options there might be for small business, this is obviously one that might come up from time to time in conversation. But, no formal—

Senator CAMERON: So have you dealt with this issue, formally or informally?

Ms Hartland: I think what Mr Cully is saying is that that whole swathe of issues is always on the table about what the impacts are, what could be looked at by government, but that doesn't mean that it's actually formally being looked at, but worked up as a principle—

Senator CAMERON: It's a matter your department could be consulted on.

Ms Hartland: Yes, correct.

Senator CAMERON: So instead of all the arguments I have had from other senators and the minister, it's a legitimate question to ask you.

Ms Hartland: Yes, correct. We're just saying that we look across that whole range of issues as the department that has that central responsibility for small business. Those conversations are being had, but you're asking specifically whether we were involved in a briefing, in a specific proposal, and I think the officers have said that we—

Senator CAMERON: Mr Cully said there may have been informal discussions. So can you provide the dates when you had the informal discussions on this?

Mr Cully: We'll take it on notice if we have anything, and we'll provide details if there are any.

Senator CAMERON: Can you provide details of how many jobs have been created and lost in small businesses with a turnover of up to $10 million since the coalition took office in 2013?

Ms Hartland: I'm not sure that we would have—it would be ABS data, I'm thinking. We might have to seek ABS data on that. I'm just seeing if anyone—

Senator CAMERON: It might be ABS data, but I have to keep reminding you: you're the Department of Jobs and Small Business.

Ms Hartland: And we may well have it somewhere, it's just I don't have it to hand right now.

Senator CAMERON: But you're not arguing it's ABS and go and ask ABS, are you?

Ms Hartland: No, I'm just saying that if we don't have it there, we'll be going to ABS for it.

Senator CAMERON: And it's a legitimate issue for this department to be aware of—correct?

Ms Hartland: Yes, correct.

Senator CAMERON: So can you provide details of how much small businesses have contributed to economic growth?

Mr Cully: We'll take that on notice, Senator.

Senator CAMERON: Can you look at this specifically from the latest National Accounts data, which show a 0.9 increase in the quarter and a 3.4 per cent increase in the year? How much of this can be directly attributed to small business?

Ms Hartland: I might not have all of the detail here, but I can say to you that my figures from the ABS data are showing that we have more than two million small businesses contributing around one-third of Australia's economic output, employing over 4.7 million people, or around four in every 10 private sector jobs. You asked for some greater specificity, and we will—

Senator CAMERON: I'm asking about economic growth.

Mr Cully: The economic output produced by Australian small business increased to more than $339 billion in 2016-17 and—

Senator CAMERON: Whose figures are these that you're quoting?

Mr Cully: These are ABS figures. Small business represent over one-third of the 1.1 trillion economic output produced by all Australian business in 2016-17. Again they're ABS figures.

Senator CAMERON: Yes, but how much have they contributed to economic growth? It's a different question.

Senator Cash: We can take that on notice, Senator Cameron, and get it for you.

Senator CAMERON: Thanks very much. Has the department done any work on the geographic distribution of the economic impact of small business?

Ms Hartland: So you're asking a follow-up question to your last question in terms of economic growth and they're regional overlay?

Senator CAMERON: I'm asking about the economic impact of small business. Have you got any details geographically of their economic impact?

Mr Cully: We would have details, but we don't have it on hand today.

Senator CAMERON: So you'll take that on notice?

Mr Cully: Yes.

CHAIR: It might help if we're slightly being more precise, because I'm not sure what you mean. Do you mean state by state? Do you mean regions? Do you just mean urban versus rural?

Senator CAMERON: Any of them. 'Geographic distribution' covers the lot.

CHAIR: Okay.

Senator CAMERON: So whatever you've got in geographic distribution.

Ms Hartland: So the lowest geographic area we've got—was that the question?

Senator Cash: I think the chair was asking what is Senator Cameron's definition of 'geographic': state by state, rural or regional et cetera?

CHAIR: Yes, that could be defined—

Senator CAMERON: Well, Minister, what do you have?

Senator Cash: The department will take that on notice.

Senator CAMERON: Do you know, Minister, what the department has? Have you asked them?

Ms Hartland: How about we look at what we have—

Senator Cash: The department has a lot of information, Senator Cameron. If you'd like to be more specific, they can actually then answer your question in a specific manner. I think that was the issue the chair was raising.

Senator CAMERON: I think it's quite clear: I'm asking about the geographic distribution of the economic impact of small business.

Senator Cash: And they have taken that on notice.

Senator CAMERON: Is the department still unclear, or is it only the minister?

Ms Hartland: No, it was only that I was asking how fine a detail did you want that in. Were you looking at a particular geographic area?

Senator CAMERON: What you have.

Ms Hartland: Whatever we've got? Okay. We'll come back to you.

Senator CAMERON: Is there any difference between the impacts of small businesses in regional New South Wales versus regional Western Australia?

Ms Hartland: That will come out, obviously, as a result of that data.

Senator CAMERON: Has anyone looked at that?

Ms Hartland: The difference between different areas?

Senator CAMERON: Yes.

Mr Cully: I can't say with absolute certainty, but there is a range of data out there and I'm sure there's material that would look at that that either we have at hand in the department or would be available across government. Obviously, in preparing for estimates, we bring the material that we think may have some questions, but given the amount of data that is out there, we haven't brought everything that is available.

Senator CAMERON: So given that you're about jobs and small business, it is reasonable that you should have a look at the different impacts in different regions—correct?

Ms Hartland: Yes, absolutely; and we'll come back to you with that information.

Senator CAMERON: Has the department been made aware or is it aware of any issues that small businesses are having with cash flow or access to finance?

Mr Cully: Yes. The Australian Small Business and Family Enterprise Ombudsman did a recent report on those issues.

Senator CAMERON: How detailed is the small business ombudsman's analysis? They're a very niche operation with not a lot of capacity, aren't they? They don't have a significant reach.

Senator Cash: The small business ombudsman is actually up next.

Senator CAMERON: Yes, but I'm asking the department.

Senator Cash: It's not really for the department to say.

Senator CAMERON: Yes, it is. Of course it is. I'm simply asking the department: what resources has the small business ombudsman got? You know what they've got, don't you?

Senator Cash: I think, Chair, that is more of a question for the small business ombudsman, who will come in here next. I'm sure she's got a brief out the back that says 'resources', and she can read it out. She's literally out the back, probably watching this right now and getting the brief ready.

Senator CAMERON: Minister, you're so helpful. So can I come back to Mr Cully? Do you have access to that type of information?

Mr Cully: Which type of information, Senator?

Senator CAMERON: That I've just outlined, the information gathering on cash flow issues and access to finance. Has the department looked at it?

Mr Cully: The department's certainly looked at the Australian Small Business and Family Enterprise Ombudsman report, and other reports that were in touch on that.

Senator CAMERON: So you've looked at the ombudsman report? Is that what you said? It's hard to hear you.

Mr Cully: Sorry, Senator; yes, we've obviously been considering the ombudsman's report.

Senator CAMERON: Okay. Have you done any separate analysis? Has the department looked at this issue, about cash flow and access to finance, or have you left that to the ombudsman?

Ms Verspaandonk: We do look at that issue.

Senator CAMERON: Terrific. Of course you look at it!

Ms Verspaandonk: We look at a range of issues that affect small business, including that. Although I would note that Treasury has primary policy responsibility for that issue. So we look very broadly at it.

Senator CAMERON: Yes, that's fine. You are the department of small business, and this is a small business issue. I'm simply asking have you done any work on it. You said you have.

Mr Cully: Yes.

Senator CAMERON: What have you done and what has it found?

Mr Cully: I took your question to be have we done independent research. We haven't, but we have drawn on the range of material that is out there—

Senator CAMERON: No, I didn't say 'independent'.

Mr Cully: including the fact that the ombudsman has conducted a report and inquiry into this matter.

Senator CAMERON: Mr Cully, I didn't ask had you done any independent—you would do analysis based on lots of information that's out there, but, as the department of small business, I thought you would be looking around to see what's there—

Mr Cully: We are, Senator.

Senator CAMERON: and reach some conclusions. So have you done anything on cash flow and access to finance, separate from the small business ombudsman?

Mr Cully: Yes, Senator; it's an issue that we continue to look at.

Senator CAMERON: What are small businesses experiencing in terms of these issues?

Mr Cully: As the public material demonstrates, they experience difficulty in accessing affordable finance. Some of them will particularly have to rely on things like credit cards and so on, rather than cheaper affordable finance. Cash flow, again, is obviously an issue that is critical to small business, and so that's part of the issue that we've already touched upon in terms of payment times and so on, about how critical it is for small business to receive payments in a timely manner.

Ms Verspaandonk: Small businesses often have to pay a higher interest rate to get a loan. The cost of that is an issue. There's a range of things they experience that are different from bigger businesses.

Senator CAMERON: Has the minister sought any advice as to how the department and the government should be dealing with the issue? Has Minister Cash asked—

Senator Cash: I don't think it will be a surprise to anybody listening to estimates, least of all any small businesses—who probably aren't listening because they're out working—that that is an issue for small business. I don't think that is a surprise to anyone. It is an issue. I'm looking at that issue and having extensive discussions with stakeholders in relation to that issue.

Senator CAMERON: What stakeholders are you having these discussions with?

Senator Cash: Small business stakeholders in particular.

Senator CAMERON: When did you start these discussions?

Senator Cash: Probably when I was in the employment portfolio. I constantly have discussions with businesses around issues that face them. When I came into the small business portfolio it was raised with me immediately.

Senator CAMERON: When it was raised with you, have you then sought any advice from the department in relation to this?

Senator Cash: Yes.

Senator CAMERON: So have you received advice?

Senator Cash: Yes.

Senator CAMERON: Have you acted on the advice?

Senator Cash: There are discussions occurring. They are cabinet level discussions so I will not be commenting on them.

Senator CAMERON: What about the specific recommendation on affordable capital for SME growth by the ombudsman—what are you doing about that?

Senator Cash: Again, that is a matter for Treasury. The policy levers sit within the Treasury.

Senator CAMERON: Is the small business ombudsman part of Treasury or Jobs and Small Business?

Ms Hartland: The small business ombudsman is part of the Jobs and Small Business portfolio.

Senator CAMERON: So the ombudsman would be reporting to you and would be raising these issues with you?

Ms Hartland: The ombudsman is a statutory officer, but I meet with her on a regular basis. I meet with her about every six weeks. But separately to that, the department works closely with the ombudsman's office, for example, teasing out the sorts of issues that are raised in reports and just on general issues as she's seeing them, as you would expect.

Senator CAMERON: What discussions has the department had in relation to the report that she provided?

Ms Hartland: Certainly she had informed us of the report coming out and as there were discussions in the lead-up to the reports, some of the stakeholder discussions that she had. So we had some broad ideas of what was coming out in that report. Other officers can comment more specifically. When the report came out, I certainly had a discussion with her around the recommendations. I was particularly interested in what was happening internationally to be able to feed that back in to briefing the minister, as the minister has said. I think it would have been similar things at various levels that were happening in the department with the ombudsman.

Senator CAMERON: Minister, when can we expect some initiatives out of this report?

Senator Cash: That is a matter for government. I think Senator Molan took the department through a line of questioning in relation to cash flow. Cash flow does obviously equal access to finance. What the government is doing to ensure it pays its invoices in a timely fashion—the percentage that was put on the table was 96 per cent. We support the Business Council of Australia's payment code. I would encourage—I have said it in all the speeches I have given—if you have not already, as a business, signed up to the BCA's payment code, then I would absolutely actively encourage you to do that. More generally, obviously, we are always looking at varying options to ensure that small business has access to the finance that it needs. But they are cabinet level discussions, and I'm not going to discuss them here.

Senator CAMERON: I simply asked you, when can we expect some action from government in relation to the report?

Senator Cash: I think I answered that question.

CHAIR: You certainly did. We will suspend for a break and return on outcome 2.

Senator CAMERON: I am happy to move to the small business ombudsman.

**Proceedings suspended from 15:30 to 15:47**

Australian Small Business and Family Enterprise Ombudsman

CHAIR: Let's resume the hearing. I call representatives from the Australian Small Business and Family Enterprise Ombudsman. Ms Carnell, did you wish to make an opening statement?

Ms Carnell: I would like to make a very brief opening statement, just to give an overview of the work that my office has focused on over the last three months or so, or since the end of the financial year—since last time we appeared here, really. With me today I have Anne Scott, who is one of my SES officers—one of the two in my office.

We have two roles—one is advocacy and one is assistance under the legislation that sets up the Australian Small Business and Family Enterprise Ombudsman. In the advocacy space, the prime focus over the last three months—well, actually, over quite a long period of time now, but certainly over the last three months—has been issues surrounding the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. We had a meeting with the royal commission and we have indicated some of our concerns about the process that has been undertaken to the royal commission. We are in the process of finalising our submission to the interim report that was tabled by the royal commission not so long ago.

We are pleased with some of the issues that have been raised by Commissioner Hayne, particularly his view of the definition of small business or what a small business loan is, meaning loans less than $5 million rather than the less than $3 million which is in the Banking Code of Practice. We believe that isn't enough. There is a range of other issues that we are concerned with, particularly with the banking code. We believe there needs to be significant work in tightening that up.

We've been doing a lot of work with the fintech industry because, as finance has become much tighter for small businesses in the banking space, the need for access to finance has become more dramatic for small business operators. We believe that it's important for them to better understand what borrowing from fintechs really looks like, so we produced a paper, which we are happy to table, called *Borrowing from fintech lenders*. It's what you need to know, how interest rates work and what terminology looks like in the fintech space, because it isn't the same as small businesses would be used to in the banking space.

We've also have worked closely with the fintech industry itself on a code of conduct for the fintech industry. The level of regulation in the fintech industry is quite low, and they didn't have an industry code. We've worked with them to develop one, and six of the major fintech companies signed that a couple of months ago. And we are in the process of putting together a code compliance committee. This has to be independent to ensure that the code is actually implemented.

We have been doing work on the Personal Property Securities Register, which doesn't work well for small business operators. It's very complex and very expensive to use, so we've been doing work there. Payment times—I know that was raised previously. That's something where we believe a lot more work needs to be done. I'm one of the four independent panellists who are reviewing the Business Council Australian Supplier Payment Code at the moment. We're concerned with the code in its current form, I'd have to say. Although businesses sign it, they don't have to report on how well they're performing—they just sign it and say they will. We think there needs to be a bit more transparency in that space. I think that about 84 people or companies have signed the BCA Australian Supplier Payment Code, of which about 46 are BCA members. Taking into account that there are 130-something members of the BCA, there are a lot of their own members who haven't signed. We think that's a concern, and so the review will be looking at a range of things: why haven't they signed? Why do they have problems with reporting? All of that sort of thing.

CHAIR: Can I interpose a question there, Ms Carnell?

Ms Carnell: Sure.

CHAIR: How does the government—

Senator CAMERON: Could we let her finish her introductory statement?

Ms Carnell: I'll be through it really quickly.

CHAIR: Okay, no problem.

Ms Carnell: It's interesting that off the back of that and some of the stats that were talked about earlier, just recently there was the SME Growth Index, which is a Scottish Pacific finance publication that comes out regularly. They made the point that for SMEs, improved cashflow could have generated on average 17 per cent more revenue, or a $234.6 billion improvement, to the Australian economy. So we could actually get cashflow working for the SME sector. In other words, by getting people to pay on time the benefits for the economy are quite significant.

We've been doing a lot of work in the digital economy space. There were questions raised earlier about e-invoicing. I can give the committee some stats there. There are about 1.2 billion invoices exchanged in Australia every year. The potential benefit to the Australian economy of switching to e-invoicing is about $28 billion over 10 years. The reason for this is that research in this space has shown that it costs about $30.87 to process a paper invoice, $27.97 for a PDF invoice and only $9.18 for an e-invoice. If you can move a significant number of those into the e-invoicing space, the saving is twofold. It's not just from the small business. It's actually by the generating operator. Also, from a government perspective, moving to e-invoicing should significantly reduce costs to government, as well as costs to small businesses. The same research—I think it was Deloittes, Anne, wasn't it?

Ms Scott: Yes.

Ms Carnell: The same research showed that the reasons for this are that about 20 per cent of invoices today go to the wrong person in the company or in government and 30 per cent of them have some incorrect information, which slows them down. There are a whole range of reasons for that, but this is one of those things that is an absolute winner if we can actually deliver it.

We are also doing a piece of work on access to justice for small businesses. Some 1,600 Australian businesses have been surveyed. The survey is on access to justice generally. We believe that small businesses have almost no access to justice because the system is too expensive, but we're doing some work and we'll produce a paper on that in the very near future. This is on the data that we've collected. It will be next year when we produce our final paper looking at opportunities for improving the system. Over the last three months, we've made 31 submissions on various issues. We have had 1,053 contacts by phone, email and website, and 699 of those were via our information line. Eighty per cent were disputes. They're predominantly business-to-business disputes, and they're predominantly about payments, contracts and those sorts of issues. So it has been a busy time.

CHAIR: Excellent. A couple of things came to mind when you were giving your presentation. How does the BCA code match up with the government's commitment to currently pay invoices up to $1 million within—

Senator Cash: Twenty days commencing 1 July next year.

CHAIR: So it's currently 30 days?

Senator Cash: Correct.

CHAIR: Going to 20 days. Does the BCA code mirror that?

Ms Carnell: The BCA code requires the people who sign it to do a range of things, but the one that we care about most is to pay in 30 days or less.

CHAIR: So it does currently does mirror it. Do you know if the BCA has a plan to change it to continue to—

Ms Carnell: No. At this moment there's a review, and the review is being chaired by Graeme Samuel, Peter Strong from COSBOA, me and a representative of BCA. We are the four people involved in reviewing the code. Our concern with the code at the moment is not enough people have signed it and they aren't required to report. I just don't think that it passes the pub test any longer for a code to say, 'If you've signed it, we will just assume you've actually paid people in 30 days.' I think people require some evidence.

CHAIR: Do the businesses that have signed it use it in a positive sense to promote themselves to their small business suppliers? Has it gained such an amount of traction that a company will actually use it as a positive selling point?

Ms Carnell: No. Anne, will you comment?

Ms Scott: They have published all the names of the 47 members of the BCA that have signed up, and then there are another 37 nonmembers. So that's 47 out of 139 members. All their logos are up on their website. Definitely, some of those companies would be targeting the small business sector. NAB, for example, definitely signed up to the register. They do a lot of small-business banking.

Ms Carnell: Telstra has done a lot of work in this space, in terms of reducing their payment times and that's been quite public. So there are some companies that are using it quite proactively and others that may not be.

Ms Scott: And all four major banks have signed.

Senator CAMERON: I welcome Ms Carnell and Ms Scott. What's the government's record on payments within 28 days and 30 days?

Ms Carnell: I think the official figures from the government were about 96 per cent of invoices are paid within 30 days. The dilemma is solid data from the various departments in this space, because when we did our payment times inquiry and sought some of that data, we were told that it wasn't actually compulsory for departments and agencies to report.

Senator CAMERON: Really?

Ms Scott: The identification of a small business supplier, as the previous representatives from the department said, is a proxy of contracts less than $1 million. So it's assuming that those contracts for less than $1 million must be associated with a small business supplier.

Senator CAMERON: Four per cent of government departments not paying on time is still a significant amount of money, isn't it?

Ms Carnell: It is, and a lot of them are due to the stats I raised before about invoices not going to the right people, invoices not having a full stop in the right place—mistakes or problems with the invoice that make it not approved for payment. And it's not that the service or the product wasn't provided; it was that there was a problem in process.

Senator CAMERON: Too much red tape.

Ms Carnell: Thank you, Senator.

Senator CAMERON: Is that right?

Ms Carnell: That would be right, Senator.

Senator CAMERON: This government has been banging on about red tape for five years and still—

Senator Paterson interjecting—

Senator CAMERON: I don't know why you need to come in from the bleachers all the time.

Senator Paterson interjecting—

Senator CAMERON: If you can just let me finish and show a little bit of respect that you demand—

Senator PATERSON: I won't take lectures from you, Senator Cameron, on respect.

CHAIR: Order! Let's get back to questions.

Senator CAMERON: We've now had five years of this government banging on about red tape—

Senator Cash: It was a $6 billion reduction in red tape that we achieved.

CHAIR: I think you should tell us about it.

Senator CAMERON: Have you spoken to the minister about this?

Ms Carnell: Absolutely, and that's where e-invoicing comes in. We were really pleased to see Treasury out there looking for the actual implementation of e-invoicing because what e-invoicing does is takes out the red tape. The challenge for the government when this happens will be people like us saying, 'Now we've got e-invoicing in place, you can pay in five days because it's really quick,' and there should be no impediment to that. E-invoicing isn't a PDF attached to an email. E-invoicing is an integrated system where a standard has been agreed to across the sector by something called the Digital Business Council, which is chaired by Peter Strong and which has on it people from the ATO, Treasury—and Jobs, I'm sure, will be there now—software companies and so forth. All of the players that are in this space are on that. We've agreed to a standard for e-invoicing, which is fantastic. ATO is currently putting together something called the digital business locator, which is like the yellow pages for business, to make this thing work. As I said earlier, this could save the economy $28 billion over 10 years. It could save government and small business significant money, so there are really good things happening here.

Senator CAMERON: Do you still have this special relationship with Peter Strong and COSBOA where you provide basically an office for them in Canberra?

Ms Carnell: Peter uses our office when Peter's around and so do a whole range of other small business organisations. That's the point of the Small Business Hub: to give small business organisations an opportunity to work together and to have consistent policy direction. They're part of our policy group of associations—we had 27 last week, and we've probably got 28 this week—that predominantly represent small businesses that use our hub for board meetings, for time when they're in Canberra and those sorts of thing.

Senator CAMERON: Do you keep details of that?

Ms Carnell: Yes, absolutely.

Senator CAMERON: Can you provide details of who's been—

Ms Carnell: I can provide the organisations. I'm not going to provide every individual person because I might not be able to do that. But I can—

Senator CAMERON: I'm not asking for every individual. I asked about the organisations.

Ms Carnell: Absolutely. It's still early days for the hub. It wasn't all that long ago that it was launched, but it's starting to get traction.

Senator CAMERON: I'd be interested to see how it's going, so if you can provide me with the details, that would be good.

Ms Carnell: I'm happy to do that. I would hope that, certainly by next March, it will be significantly stronger than it is now.

Senator CAMERON: We're running a bit behind time, but I've got a few questions, and if you can try and—

Ms Carnell: Be brief?

Senator CAMERON: be as brief as you can. I know sometimes you can't because it's an important question. You've got a current inquiry underway which relates to access to justice?

Ms Carnell: Yes.

Senator CAMERON: Have you released a discussion paper on that?

Ms Carnell: A discussion paper is due now.

Ms Scott: We have conducted a survey of 1,600 businesses. That survey data has just been pulled together and the report on that is imminent.

Senator CAMERON: Are there any specific policies that you're looking at in the context of change on the access to justice issue?

Ms Carnell: The first phase of this inquiry was the actual collection of data and looking at what the issues were. The second phase will be looking at what's happening internationally. What we know from the data that we've got and from the work we do is that, for small businesses, the current system is incredibly expensive and is used by some big businesses in a way that inevitably makes the small business either go broke or pull out because the costs become pretty—

Senator CAMERON: A bit like what the government does when a union takes a claim.

Ms Carnell: Far be it from me—

Senator CAMERON: Senator Cash can tell you all about that.

Ms Carnell: We have already established the average cost. From the data we haven't quite published yet the average cost of a civil dispute was $130,173, which is huge for most small businesses. There will be a number of answers, but one answer is a better arbitration system in Australia that doesn't require lawyers at 20 paces—

Senator CAMERON: So you're looking for a conciliation and arbitration system?

Ms Carnell: Yes. There used to be one.

Senator CAMERON: Unions should be able to access that as well as small business—

Ms Carnell: We'll publish our final document next year, but we know that the current system, with lawyers at 20 paces and people with lots of money beating people with not a lot of money, doesn't work for small business.

Senator CAMERON: You did speak earlier in your submission about small business finance. One of your recommendations is about a business growth fund. How would that work?

Ms Scott: This is an initiative that has already occurred in the UK and more recently in Canada. It is an entirely commercial initiative where a separate company is created. In our model it would be existing banks or Australian deposit institutions, or possibly the Future Fund or super funds, all tipping money into this commercial entity and this will provide long-term patient capital of approximately 250K to $5 million for those high-growth SMEs in Australia that currently have difficulty accessing that quantum of money because of the way banks lend, which is about bricks and mortar, and they just don't have sufficient equity to lever up that much.

The government involvement is purely in terms of facilitating the players agreeing to set up such a fund. Because obviously while the return is 11 per cent to 12 per cent it is not the usual return that future and super funds and banks like to see, so there will be some element of social or community responsibility aligned with that. Obviously the government would have to look at the mandate of future and super funds in terms of their returns and shareholder requirements. There is also a requirement for APRA to look at its concessional risk weighting for a product such as this. The beauty of it is that it is independent of government and would be an entirely commercial venture that would partly solve the access to capital problem that we've got.

Senator CAMERON: It sounds a bit like the proposal we had, which the government picked up, in relation to a bond aggregator for housing. Is that the type of thing you're looking at?

Ms Carnell: It doesn't work exactly that way, but it is similar. It's not the same, but it's a method of continuing to use—I suppose CCFC actually is the government guarantee, so I should move away from that one—some government money. This one doesn't use government money. The British Business Bank is the one that's more like the CCFC. That's our recommendation 2. But we think recommendation 1, the growth fund, is the one to really focus on because we know that that group of small to medium businesses that have high-growth potential are where economic growth and jobs are actually coming from. It's not right across the small business sector; it's a group—probably about 10 per cent—that has real potential to grow if it has access to capital.

Senator CAMERON: You're not asking for any government underwriting or anything like it?

Ms Carnell: No.

Senator CAMERON: Where has such a fund been built and found to be effective?

Ms Scott: The UK has got the British Growth Fund and that's been in operation for about five years now. The Canadian Treasurer and minister for small business announced what I think is called the Canadian Business Fund. It's the same model. That was introduced in March 2017, so it's been going just over a year.

Senator CAMERON: Have you provided any information or material to government in relation to this?

Ms Scott: Yes, we published a report, which is this one.

Ms Carnell: We've got a couple of copies here.

Senator CAMERON: I wouldn't mind getting a copy of that. Has the government responded to any of the recommendations yet?

Ms Carnell: No.

Senator CAMERON: When do you expect a response? Minister, when is small business going to get a response on this?

Senator Cash: The government will provide a response, Senator Cameron, when it is ready to provide a response.

Senator CAMERON: Is that within this term of government, do you think?

Senator Cash: Senator Cameron, that will be a decision for government.

Ms Carnell: Senator Cameron, because we are an independent agency, we have briefed all sides of government on this—not just the government; all sides of parliament.

Senator CAMERON: But we can't do anything until we win an election. That's the problem!

Ms Carnell: But we have briefed very broadly on this—

Senator CAMERON: You know how it works.

Ms Carnell: Yes, I do.

Senator CAMERON: Minister, is the government doing any analysis of the report?

Senator Cash: The government is considering the report, as I said.

Senator CAMERON: You also talk about an Australian government guarantee. How would that work?

Ms Carnell: I made the comment before about things like the climate change financing court, the CCFC—those sorts of things. In British terms, it's the British Business Bank. The New South Wales government and a number of other governments internationally have funds that do various things. Sometimes they provide a small amount of capital that changes the business plan or the business case for the particular company. Sometimes they provide a level of underwriting. Anne, you've spoken to them in the UK.

Ms Scott: Yes. They've got an initiative that's under the banner of the British Business Bank and a number of other countries, including the United States, also have a model like this. But, obviously, the thing here is that the government has to underwrite the guarantee.

Senator CAMERON: Do you have any idea how much would be required for that guarantee?

Ms Scott: No, I'm afraid I don't.

Senator CAMERON: So the UK government provide the guarantee?

Ms Carnell: Yes.

Senator CAMERON: And the Canadians?

Ms Scott: A number of countries do. There's an appendix at the back of that report that will give you the breakdown of all the international initiatives.

Senator CAMERON: How does this align with other government policies, particularly around APRA's lending requirements?

Ms Carnell: It's one of our recommendations as well in that report, that we believe that APRA needs to have a very close look at its mandate and that we perceive that its mandate is obviously to have a robust banking system, but we think that it needs to also look at competition in the banking sector and access to finance for small businesses, in terms of the way they set their parameters. For the growth fund to go ahead, they would have to have a new—Anne, do you want to—

Ms Scott: They'd have to look at a concession on the risk waiting, but the Productivity Commission have also recently done a review, where they have made some commentary on the APRA regulations.

Senator CAMERON: Can you briefly outline the issues that have been identified that stifle business growth, employment and investment, and how many of these can be actioned by the federal government and how many of these have to be done at the financial sector level?

Ms Carnell: That's a very long question. We—

Senator CAMERON: Take it bit by bit. What's the stifling?

Ms Carnell: If you don't have access to capital, affordable capital, it's extraordinarily hard to grow. It's certainly true that if what you're looking for is, say, $50,000, maybe $100,000, you have a capacity to get the money from some of the banks but also from the fin-tech space. But once you need capital, say, for retooling, expanding new premises, any of those things, the capacity for small to medium businesses to get that capital is very low. That means you, obviously, can't grow.

Energy prices are something that come to us all the time. The complexity of a range of things, like the Fair Work Act, the ATO, those things, for small businesses, the time taken to deal with the various challenges of dealing with governments at all levels, is an eye off the ball. If you're doing work for government you can't be doing work in your business, so red-tape issues are real. The cost of employment is—and the complexity of the Fair Work Act is real. That's not just us saying that. Iain Ross has made that comment as has the Fair Work Ombudsman. It's very complex, and we have to make it simpler.

Senator CAMERON: So you're saying the issue is in the Fair Work or whether you want to—

Ms Carnell: Sorry?

Senator CAMERON: What are you looking for, there?

Ms Carnell: We have produced a paper on that, which I think we talked about, maybe, when we were here last. There are a range of recommendations, that don't require legislative change, that could make it significantly simpler for small businesses. That's having a platform, an IT platform, that will give small businesses the information that they need. So they put in, 'I'm a cafe. I've 12 employees. I work here.' It tells you what award, what's required, those sorts of things. There's a small business showcase that the Fair Work Ombudsman—

Senator CAMERON: Doesn't the Fair Work Ombudsman have that?

Ms Carnell: It's got a small business showcase, which is a step in the right direction but doesn't quite go to this level of putting together information for a specific business.

Ms Scott: That you can rely on.

Ms Carnell: And that was the bit: that you can rely on. Our view is that we should be willing to say that for small businesses who made best efforts, used the data, used the tool, and still got it wrong, they wouldn't be prosecuted. If they underpaid someone, they've still got to pay. It doesn't give you a free 'get out of jail card', but for small businesses who try to do the right thing, use the tool, the information, appropriately—in other words, don't try to game it—they should be able to be confident that they can run with that.

Senator CAMERON: I can imagine where that would lead to, because I hear this argument all the time. Workers have their wages stolen. And it's because companies don't understand the position. It's too complex. Workers end up getting ripped off. Isn't there a potential of that, if we start going down this path?

Ms Carnell: We already go down this path, to some extent. We've already got a system in place that does end up with some of the issues you've just raised. I think our challenge is to make it simple so that there are no excuses for not doing the right thing.

Senator CAMERON: Yes, good luck. So how many of these issues can be actioned, by the federal government, that you've raised in your report?

Ms Carnell: Most of them are about the actual Fair Work Commission, the Fair Work Ombudsman. But there are a range of them. We can take it on notice.

Ms Scott: We can take on notice the actual specific number.

Ms Carnell: And we will send you another copy of the paper.

Senator CAMERON: Certainly from my perspective, I just wouldn't be very keen to be giving any business, big or small, another get-out-of-jail card to rip workers off as too much of it goes on. When you see the Fair Work Ombudsman's report—small businesses ripping apprentices off, small businesses ripping particular group of migrants workers off—it's a big issue.

Ms Carnell: We absolutely agree that businesses that do the wrong thing are not just a problem for the employees, but they're a problem for other businesses that are doing the right thing.

Senator CAMERON: Yes.

Ms Carnell: So from our perspective, the great dilemma here is for the very large number of small to medium businesses in Australia. Those who are doing the right thing are being almost discriminated against by the people who aren't doing the right thing so we want those people caught; it is that simple.

Senator CAMERON: Yes, but when they're caught, the feather duster comes out, there's no reason why they shouldn't stop ripping people off because you're arguing, you know, they should simply, you know, not be prosecuted.

Ms Scott: If there's blatant non-compliance, yes, for sure. It's where they have had their best efforts to comply and something is still not procedurally correct.

Ms Carnell: The Fair Work Act has 960 sections, a quarter of a million words and we have 122 awards after we modernised them and lots got fewer awards.

Senator CAMERON: All you members don't work under every award.

Ms Carnell: No, but a cafe can have people under three different awards easily so it is complex. Again, that is not just us saying that. People like Ian Ross and the Fair Work Ombudsman and others are saying it is complex. Good public policy is having policy that makes it easy to comply with, and I'd have to say has good solid brick bats for people who don't. But you got to make it easy to start with and then have real penalties for the people who don't follow the system.

Senator CAMERON: Yes, I'm not sure you have to make it easy, but, you know, but you have to make it comprehensive.

Ms Carnell: We do have lots of stats in this space. But the vast percentage of small businesses in Australia have fewer than five employees, and 97 per cent have fewer than 20 employees so they don't have an HR consultant; they don't have somebody who understands this stuff; they have the boss who does the wages at 11.00 at night, hopefully, on their software, but sometimes on their spreadsheet or the grey book you buy from the newsagent. These people aren't experts in this space.

Senator CAMERON: But I hear these arguments all the time.

Ms Carnell: It's not an argument; it's the truth.

Senator CAMERON: These arguments get thrown up every time. The Fair Work Ombudsman uses this as an argument as to why it doesn't prosecute businesses that are stealing the wages of working people. It just really is at a level where, every time the Fair Work Ombudsman does a review or does an audit into an area, there's massive wage theft going on. It's just huge.

Ms Carnell: Fifty-eight per cent of small businesses in Australia have a taxable income of less than $50,000 a year. You're not talking about rich people here; you're talking about people who are actually probably—

Senator CAMERON: Is that right?

Ms Carnell: It's not an excuse. It's never an excuse not to do the right thing.

Senator CAMERON: What has that got to do of stealing a worker's wages?

CHAIR: Whilst this is a very interesting discussion, Senator Cameron, I'm conscious you probably have questions for later witnesses. I just feel—

Senator CAMERON: I just don't see how this is an argument as to why they should be allowed to rip people off.

CHAIR: I just feel we are straying beyond the bounds of estimates. I am happy for you to retain the call but I am conscious of time.

Senator CAMERON: I'll move on from that. Can I take you to your media release on 2 October regarding the royal commission into banks. You did indicate a few issues. Are there any other issues that you haven't covered that you want to get on the record here?

Ms Carnell: We have said one or two things about the royal commission.

Ms Scott: What we're writing in our submission is that we welcome the commission's view on the small business definition of a $5 million total loan facility. We welcome the review of the Code of Banking Practice to see if it's adequate in looking at—

Senator CAMERON: Is there anything not out there that you would want?

Ms Scott: Making sure the unfair contract terms legislation is broadly applied across the financial services sector. And obviously the ABA Code of Banking Practice, which is largely the focus of the interim report, doesn't apply to all financial services providers—it's just the ABA members. So what about everybody else that's not covered by that code?

Ms Carnell: There's a range of other issues that we've got a problem with.

Senator CAMERON: Could you on notice provide us those details, because we think it's important.

Ms Carnell: Yes.

Ms Scott: We can give you a copy of our submission as well.

Senator CAMERON: That would be helpful. Last week you did an article for Which-50. You said:

Digital connectivity is moving from a 'nice to have' to a 'need to have'.

What trends and stats over the last decade have driven you to this conclusion?

Ms Carnell: There is quite a large amount of statistics now in this space, some of it produced by Xero and AlphaBeta consulting, about three weeks ago now, which looked at digitalisation of small to medium businesses. Xero, because they have about 600,000 small businesses in their cloud based software system, can get some real-time data. They can see that businesses that are digitalised and businesses that are utilising broadband technology are significantly more likely to be growing and employing. The figures are things like a third more likely to be growing than people who aren't digitalised, and 50 per cent more likely to be employing. These are real statistics.

There's some work that Telstra has done in the space from their customers. We've got to a scenario now where we've got enough data to show that small businesses that aren't utilising the opportunities that a digital platform provides are actually miles behind the 8-ball. It's now cheap to get into the cloud. You don't have to have the server as I used to have out the back of my pharmacy, which used to go down all the time. You can do this as a small business. The Xero or AlphaBeta work also showed that small businesses that were using apps for things like HR, wages, rostering, those sorts of things, were likely to be saving a whole lot of money. I think in that article I might have talked about an ANZ piece of work that showed that businesses that were using this sort of technology could save 11 hours a week.

Senator CAMERON: I just want to run through this quickly. On notice can you provide us details of what industry sectors are handling that change well?

Ms Carnell: We can try.

Senator CAMERON: And what industry sectors need to do more to adapt? I assume you're saying small business.

Ms Carnell: Small business is the problem in this space. The littler the business, the worse. There are some interesting statistics in this space.

Senator CAMERON: You also said in that article:

ANZ research reveals digitally enabled businesses save an average of around 10 hours a week and subsequently increase annual revenue by almost a third.

What examples do you have? What evidence, in terms of your membership, do you have that supports that assertion?

Ms Carnell: We don't have members, but apart from that, we have small businesses.

Senator CAMERON: Small business people.

Ms Carnell: The data we use is data that comes from a range of places. There's the Telstra stuff, there's the Xero stuff, there's AlphaBeta. PwC did some work a couple of years ago. A lot of people have worked in this space and have come up with similar sorts of statistics. We can show you what we have used to write things like that article.

Senator CAMERON: If you can give us the evidence base of that, that would be good.

Ms Carnell: We can do that.

Senator CAMERON: In your view, is there significant economic disparity between small businesses that are accessing NBN and those without high-speed broadband?

Ms Carnell: Certainly the Xero/AlphaBeta data show that companies that had been on the NBN for a period of time—I think they might have used Tasmanian businesses, but they used a subset of businesses that had been involved in the NBN for a period of time—not a couple of months, but a couple of years. They looked at what had happened to them compared to a similar cohort. They found that the figures were really significant. They were about 30 per cent more likely to be growing. I must admit that I questioned those stats initially because there was such a big difference, but they explained their methodology on how they had done it and it was pretty solid.

Ms Scott: We can send you that.

Senator CAMERON: Send me that and I will have a look at it. There have been some proposals floated to help address the issue of cash flow and access to capital. Can you outline some of the proposals that you have received on this?

Ms Carnell: In the cash flow space, the payments time issue.

Senator CAMERON: Is that the big one?

Ms Carnell: Unfair contract terms. It needs to be expanded. We are really pleased that the government has announced they will do the November review of the unfair contract terms legislation. At the moment it has some issues with it. That can make a huge difference in terms of cash flow, fair contracts and requirements to pay. Let's be fair, we still have companies that have got 60, 90, 120 days in their contract as standard payment terms. That is just not okay under any circumstances. So the payment times and unfair contract terms are probably our two major areas of pressure.

Senator CAMERON: Has there been any economic data or policy announcements from government that have given you to think of other proposals that might be dealt with?

Ms Carnell: We talk to small business and small business associations a lot. What do they tell us are the problems? The issues I raised before—red tape, energy prices, payment times. There is range of those sorts of issues. We tend to focus on those outcomes that businesses are telling us they have got a problem with and looking at how we might be able to help with policy initiatives in that space, like payment times or energy. In terms of energy prices, we have been encouraging and we have put together easy-to-understand little papers that say what you should do as a small business to reduce your energy costs as much as you can. We use social media a lot to get that out—Facebook and that sort of thing. We tend to be very much at the practical end of the agenda, looking at how we can help small businesses improve their cash flow.

Senator CAMERON: In relation to workers' rights, do you conflate that with red tape?

Ms Carnell: No, quite the opposite. For us it's about a level playing field for small businesses generally. If we can get rid of red tape and make it easy for small businesses to employ people, to pay people properly, to deal with the ATO, to be able to have systems that make it easy for somebody with four employees—Scottish Pacific work that was done recently said the average small business owner is working 60 to 70 hours a week—that sort of stuff, in line with those sorts of things, everyone will be a winner, including the employees. It is the unlevel playing field that is the problem.

Senator CAMERON: Has digitalisation assisted or hindered cash flow issues for SMEs?

Ms Carnell: The data tell us it has improved it.

Senator CAMERON: What initiatives would you like to see from government to address this issue?

Ms Carnell: We would like to see a policy in place that makes it cost effective for small businesses to adopt accounting software, particularly, for there to be incentives for small businesses to use things like e-invoicing. When I say 'incentives', I don't mean handouts. If you use e-invoicing you'll get paid quicker. Being paid quicker is really good. We are not heavily into the business of looking for government handouts. It is about the appropriate incentives to help small businesses with those four employees that don't have much time to get into the system. It's about having software packages that are cost effective and easy to use, like your Apple phone—anyone can use it without instructions.

Senator CAMERON: Should government be developing this sort of thing?

Ms Carnell: I don't think so. Government is bad at developing things.

Senator CAMERON: Tell me that. That's why I asked.

Ms Carnell: Don't let government anywhere near it! But facilitating these sorts of approaches is really, really important and making things easier to use, like the Fair Work Act.

Senator CAMERON: You have mentioned this Australian government guarantee. What would be the parameters of this and how would it work?

Ms Carnell: Back to our affordable capital scenario? In our report we have got some broad-based approaches.

Ms Scott: There is a page on the guarantee, in terms of the framework of how it will work. The work we have done since then is to do some further research on the business growth fund, which is the primary recommendation we've had. We have done that piece of work since that paper has been published. We're now going on to do some further research on the actual mechanics behind the loan guarantee.

Senator CAMERON: Have you seen any research or OECD examples in terms of support for small business that you like to see adopted as policy in Australia?

Ms Carnell: E-invoicing is one of them, actually. It is one of those things that the OECD has done a range of pieces of work in.

Ms Scott: There are a lot of the recommendations that we've had in our published reports. There is a range of issues about unfair contract terms, payment times, access to justice. All the research papers that we have published would have a range of recommendations.

Ms Carnell: On our website we have a document called *Small Business Counts*. It has a range of data that we have collected from various places on small business. A lot of the challenge in this space—we heard some questions to the department earlier—is that a lot of the data is quite old. ABS data tends to be 2016. So we have tried to pull together ATO data, ABS data, NAB—data from a range of sources. But it is still not last month or even last year's data. It's a bit older than that. We try to keep those stats up to speed as much as we can. It has things like the number of women that are going into small business. Women are going well.

Senator CAMERON: It's going up?

Ms Carnell: Yes. They don't go broke as often either.

Senator CAMERON: Not like the coalition?

Ms Carnell: They must all be going into small business!

Senator CAMERON: You'll need to make a comeback, Ms Carnell!

Ms Carnell: Can I promise not to?

CHAIR: Senator Paterson, do you have some questions?

Senator PATERSON: I have a couple of questions. I'm interested in talking about small business readiness for cybercrime and cyberattacks. How seriously do you take the risk?

Ms Carnell: Very seriously. You will see we've done a piece of work, which is on our website, that is a best-practice guide on one page, which you've got to do, which gives small businesses the things they need to stay cybersafe, as much as they can. As you would be aware, small businesses are the in target for cyberattack, because, on the whole, they have bad systems in place. They haven't done the basics that need to happen. You should get on to the site. On that site it gives a lot of the data about what it's costing small businesses and how many attacks on small businesses we're seeing.

Ms Scott: Forty-three per cent are subject to cybercrime.

Senator PATERSON: How aware do you think Australian small businesses are about the risks that they face?

Ms Carnell: Do you know the sad bit here? I think they're aware, but what they do about that then is a really interesting scenario. It's either nothing or, alternatively, they say, 'We're not going to digitalise, because we don't want that nasty cyber stuff to happen to us.' So our challenge here is not even as simple as educating. It's to make small businesses realise that, if they do the basic stuff, that shouldn't be a reason not to go down the digitalising space, because that's where growth is going to be. A lot of businesses tell us, 'We're not going to do this bit, because we're worried about this bit.' And that's worrying.

Ms Scott: There was some research done by the New South Wales Small Business Commissioner in collaboration with the University of Technology Sydney. One of the issues they found was that people thought that using their virus protection software would actually protect them against cybersecurity, so they didn't bother learning any more about it, because they thought they were safe. That shows the importance of education in this space.

Senator PATERSON: Other than the best practice guide that you mentioned, is there anything that you're doing, or other arms of government are doing, to help raise that awareness?

Ms Carnell: You heard about the New South Wales business—

Senator PATERSON: Yes.

Ms Carnell: There are a range of things that exist across government. I think it's really important to bring that together and focus on small businesses, who are really different from everyone else, because—like we were talking about before—they might have four employees who are working a lot of hours and this isn't something they know a lot about. Across federal government and state governments, there's a lot of stuff, but, unless you know where to go, how would you know what's best practice?

Ms Scott: It's about keeping that information very clear and simple, rather than in very technological language. Certainly, industry associations have done a great deal of work in this space for their members, which is very good, because they can make it industry specific.

Senator PATERSON: Is it expensive for a small business to prepare themselves to be cybersafe?

Ms Carnell: No.

Senator Cash: There is also a grants program that is available for small businesses to undertake a cybersecurity health check run via the industry department.

Senator PATERSON: I didn't know about that. Is there any evidence about how consumers feel about their level of trust in small businesses? Do they assume that small businesses have the necessary protections? Do they assume that large businesses are more likely to have them?

Ms Carnell: We don't know.

Ms Scott: No.

Ms Carnell: It's interesting that it hasn't come up in the research that we've got. Although, I did see some research recently that suggested that people were increasingly more concerned about allowing particularly SMEs to utilise their data or to store their data in various ways. I think it would be surprising if that wasn't the case to some extent. It really is important small businesses step up here. There's an awful lot of data in small businesses. My background is in pharmacy and, if you think about it, there's an awful lot of data in that space. There's data on everyone who has a customer account and everyone who takes credit cards. There is data.

Ms Scott: Definitely, as open-data policies are being developed, there needs to be thinking about how small business will deal with that, as well as looking at it from the consumer and large business angle. That will be very important.

Senator PATERSON: Is the main target of cybercriminals the data that small business hold on their customers? Is that what they are looking for, or are there other categories of cybercrime?

Ms Scott: Ransomware.

Ms Carnell: Ransomware is the big one, because it's a way you can get money quickly.

Senator PATERSON: It happens to individuals as well. Your computer gets locked up and you have to pay to release it.

Ms Scott: And they're more likely to pay, because they're not going to have the resources to do anything else about it.

Senator PATERSON: Do you have small businesses contacting you saying: 'I've got a ransomware attack. What should I do?'

Ms Scott: One of the other important findings was, unfortunately, when small businesses do get attacked, they're quite reluctant to report that they've been attacked, because they feel embarrassed about not having been prepared.

Senator PATERSON: Of course.

Ms Carnell: We produce some one pagers like this one called *Online safety*, which we do with the industry association—the 27, or so, of them that we work with. By the way, we don't send them out as pages; they go out on our social media tweets and so on. One of the examples that we used on these one pagers was an example from the Pharmacy Guild. They received an email that appeared legitimate. A staff member clicked on the link in the email and the entire computer system was infected and crashed. It took two days to restore the system at a cost of $40,000.

Senator PATERSON: Ouch!

Ms Carnell: It's useful to use case studies like that, because people see that and go: 'Really? Wow!' Because you'd think that the Pharmacy Guild would have decent systems, and they do apart from click—

Senator PATERSON: Human error. Any systems are vulnerable to it.

Ms Carnell: It goes on to suggest that human error is one of the major issues that exists here. It's funny: one of the things that was brought up with us when we were doing some work on this space was that small business didn't see that maybe giving the work computer to their kids to go and do their homework on wasn't such a good idea. It was fascinating that it hadn't quite dawned on them that it was not a smart way to go, if they were going to look at having a cybersecure business.

CHAIR: Needs must.

Ms Carnell: Yes.

Senator PATERSON: As Senator Cash said, small businesses out there are probably not listening today because they've got other things to do, but, if they're wondering, there are resources on your website to help.

Ms Carnell: There are. We continue to use social media to get this out on a semi-regular basis. When we've got a case like the Pharmacy Guild case—

Senator PATERSON: They're very powerful.

Ms Carnell: we use those to make people think, 'Wow, if it can happen to them, it can happen to me.'

Senator PATERSON: Thank you.

CHAIR: If there are no further questions, we thank you very much for your appearance here today. We'll move on to the ABCC.

Australian Building and Construction Commission

[16:48]

CHAIR: Welcome to you all. As I am new to this committee, I assume it's you, Mr McBurney, who may wish to make an opening statement?

Mr McBurney: Yes, it is. I would.

CHAIR: Please go ahead.

Mr McBurney: If the committee pleases, the ABCC tabled its annual report. It was tabled in the parliament last week on 17 October. I just wanted to highlight some matters out of the annual report, our year-in review. This was picked up in the annual report. Last year we responded to 6,976 inquiries from building industry participants. We launched the ABCC onsite app—an app that delivers information about building industry participants' rights and obligations—for their mobile phones on building sites. We delivered 171 presentations to 5,110 building industry participants. We conducted 1,070 site visits to building and construction worksites. We answered and responded to 4,871 inquiries on the Building Code—that's the 2013 and 2016 code. We assessed 3,092 enterprise agreements for compliance with the code. We assessed 520 workplace relations management plans for compliance with the code. On wages and entitlements, we recovered $262,398 for workers. That's underpayments of $262,398 for 186 employees from 32 employers. We commenced 47 investigations into underpayments and sham contracting allegations. We audited 139 employers for wages and entitlements.

Finally, and what often grabs the headlines with our work, is our enforcement, our court outcomes. Last year, we recovered for the Commonwealth $5.988 million in penalties imposed by the courts. That compares to the previous year's total of $2.146 million. That was a 179 per cent increase in penalties imposed by the courts as a result of proceedings brought by the ABCC. I'm joined today by Deputy Commissioner Pettit and also by my national manager for the Building Code, Ms Janine Drennan. In response to a request from the committee, also available today to answer questions and provide information is my executive director of operations, Mr Murray Gregor. That concludes my opening statement, thank you.

CHAIR: Thank you very much. Minister, do you have anything you wish to add?

Senator Reynolds: No, I don't. But thank you for the opportunity, Chair.

CHAIR: Senator Cameron?

Senator CAMERON: Let me just go to Mr Pettit, who, at the last estimates hearing was definitive about not having known about the issues raised by the former and now disgraced commissioner in breaching his own act. According to your correction letter of 5 October, you became aware on 24 September 2018 that you had received an email forwarded to you on 10 January 2014, and that email went to the issue of former disgraced Commissioner Hadgkiss misrepresenting the law. Who made you aware that you had given incorrect evidence?

Mr Pettit: There are a few issues in your question. One is it was not a letter of correction; it was a letter of clarification. My previous evidence was not that I was unaware of the issue; it was that I had no recollection of the issue before July 2016, when the CFMEU raised it with us. I was made aware on 24 September of the email and it was provided to the committee the next week, and the commissioner made me aware of that email.

Senator CAMERON: So the commissioner made you aware. Commissioner, how did you become aware of the email?

Mr McBurney: The email was provided to me by the Office of General Counsel, and specifically the FOI officer within my agency. He was considering an FOI request that had been made to the agency. A document that was caught by the FOI request was the email that's now been provided by Mr Pettit to the committee. The FOI officer brought it to my attention because he was aware of this issue having been agitated at previous Senate estimates committees and in the interests of full disclosure he felt it important to provide it to me. I in turn immediately provided it to Deputy Commissioner Pettit. I asked him to consider the evidence he'd given on the previous occasion. Deputy Commissioner Pettit did do that and agreed that the email should be disclosed to this committee in the interests of full disclosure.

Senator CAMERON: That was nice of him.

Mr McBurney: And that is the basis upon which the clarification of evidence was provided. I understand Mr Pettit's evidence from the previous occasion. We're not seeking to correct that evidence. He answered to the best of his recollection. This email has since surfaced, and he's available to answer any questions you have on it.

Senator CAMERON: Are you seriously asking us to believe that he simply had no recollection of an email? Is that your position?

Mr McBurney: That's Mr Pettit's position.

Senator CAMERON: Is that your position?

Mr McBurney: I absolutely accept what he has informed me about this.

Senator CAMERON: So, did you have—

Mr McBurney: You're asking about an email in 2014 and a question he was asked at Senate estimates in 2018, and he'll be able to answer your question about that.

Senator CAMERON: It's not simply about an email, Mr McBurney. It's about a breach of the legal obligations of the former commissioner. That's what it was about.

Mr McBurney: And Mr Pettit has answered questions on two occasions about that—about when he became aware of the breach.

Senator CAMERON: Mr Pettit, since you gave evidence on this matter on 28 February, have you had any discussions with Mr Radisich about the evidence you provided?

Mr Pettit: I don't believe so, no.

Senator CAMERON: Is this a memory failure again? Have you or have you not?

Mr Pettit: Not since the last estimates.

Senator CAMERON: Did you have any discussions with him about this email prior to the last estimates?

Mr Pettit: The only conversation I can recall with Mr Radisich was from September 2017, which was in relation not to the email that was forwarded to me but to the underlying email, if you will—the email exchange between Mr Radisich and Mr Copp. I did have a conversation with Mr Radisich in September 2017 about that exchange.

Senator CAMERON: So that didn't jog your memory that you had an email?

Mr Pettit: No.

Senator CAMERON: Just refresh my memory—when did the commissioner raise this with you?

Mr Pettit: On 24 September this year, 2018.

Senator CAMERON: When did you correct the evidence?

Mr Pettit: On 5 October.

Senator CAMERON: Why was there a delay?

Mr Pettit: I made checks to see if I'd responded to the email in any way, so that took some time.

Senator CAMERON: Why did that take some time? Wouldn't you just click on the email and see whether there was a response?

Mr Pettit: Under our email system, emails over a certain age go to what's described as our enterprise vault. They're not contained in our everyday email. So I sought assistance from our IT team to help me go through and make sure I could give a correct record to the committee.

Mr McBurney: Can I just add that in the final sentence of his letter to this committee Mr Pettit explains: 'I have completed electronic searches, and there are no further emails arising from this email to me on 10 January 2014.' They were the searches that were undertaken in that intervening period between when Mr Pettit was notified of the existence of the email and the letter to this committee.

Senator CAMERON: Why did it take nearly two weeks to respond?

Mr Pettit: I think the second week I was going to be in Melbourne, so I sat down with the IT team with my computer and got their assistance to go through and make sure I'd done all the searches correctly.

Senator CAMERON: So you had a memory blank. You put evidence to estimates that was incorrect and you waited nearly two weeks until you went to Melbourne. So what did you do when you went to Melbourne? You spoke to Mr McBurney about it, did you?

Mr Pettit: We did have a discussion.

Senator CAMERON: Did you? Did you have a discussion about how you would handle it?

Mr Pettit: I think the discussion was over who should send the letter to the committee—whether it should come from the commissioner or me as the deputy commissioner.

Senator CAMERON: Why would that be an issue? Why wouldn't you have a responsibility to correct the evidence?

Mr Pettit: I think it is purely the fact that the previous letter had come from the commissioner, and so we just had a conversation about whether it should come from me or whether it should be a letter from the commissioner.

Senator CAMERON: Did offer to correct the record, or did Mr McBurney tell you to correct the evidence?

Mr Pettit: I believe I said that we should forward the correspondence to the committee.

Senator CAMERON: What do you mean by 'we should'?

Mr Pettit: As in the agency should for the committee.

Senator CAMERON: So Mr McBurney raised it with you?

Mr Pettit: Yes.

Senator CAMERON: He advised you had an email and you needed to correct it, and you decided that you would correct. It was not Mr McBurney telling you?

Mr Pettit: I wasn't directed to correct the record. We had a conversation.

Senator CAMERON: So what was the basis of that conversation?

Mr Pettit: I was in Melbourne before I sent the letter, and it was in terms of whether the letter should be from Mr McBurney or from me?

Senator CAMERON: What were the arguments for and against?

Mr Pettit: It was really just a procedural question. It was not a lengthy conversation where we argued over it. It was just the correct protocol of sending a letter of clarification to the committee.

Senator CAMERON: So the commissioner was aware that you had corrected the evidence?

Mr Pettit: The commissioner was aware before I sent through the letter of clarification, yes.

Senator CAMERON: So did the commissioner give you advice on or did the commissioner's office draft the letter?

Mr Pettit: From memory, I drafted the letter.

Senator CAMERON: But your memory's not very good. Did you do it or not?

Mr Pettit: Yes, I drafted the letter. I think the commissioner's office may have sent me a previous letter as a template to use.

Senator CAMERON: Ah, so the commissioner sent you a template letter?

Mr Pettit: Not the commissioner. I think somebody in his office may have sent me the previous clarification letter so I had the address and the like correct.

Senator CAMERON: So you got the address right?

Mr Pettit: So I had the template right, yes.

Senator CAMERON: So was there anything in the template, or was it just the heading?

Mr Pettit: No, I think it was the previous clarification letter. I was sent a copy of that.

Senator CAMERON: So, Mr McBurney, did your office draft a letter for the consideration of Mr Pettit?

Mr McBurney: No. My office provided Mr Pettit with the previous letter of clarification, which goes to the same issue that was provided to this committee, and it was left for Mr Pettit to draft his letter of clarification.

Senator CAMERON: Did he send you the draft before it was sent here?

Mr McBurney: I saw the letter before it was sent here.

Senator CAMERON: Why?

Mr McBurney: It's important that I be across all issues going to clarification of evidence given by my office.

Senator CAMERON: Did you advise him to send you the draft letter before it was sent to the committee?

Mr McBurney: I would have requested that if Mr Pettit hadn't provided it to me.

Senator CAMERON: In your letter of 5 October you state that you have no recollection of receiving, reading or responding to this email. Are you in a habit of not reading emails or correspondence that are sent to you?

Mr Pettit: I wouldn't ordinarily not read emails. However, this email is from a long time ago. I think, as I said at previous estimates, it was on a single day when I was in the office but was about to go on annual leave. I just have no recollection of whether I did read the email or didn't read the email.

Senator CAMERON: So you've got a letter, an email that's saying there is a real problem with what's being done, and that happens to be the only email that you say you did not read or respond to?

Mr Pettit: I'm the are other emails I didn't read or respond to, but, in relation to this one, the heading is 'new ROE laws—what to communicate to industry', and it merely had at the top 'Colleagues, FYI'. That is not something that would instantly alert me to this being a major issue.

Senator CAMERON: Who was this from?

Mr Pettit: This is the email I have sent to the committee.

Senator CAMERON: No, who sent you the email? Remind us again?

Mr Pettit: Mr Radicic.

Senator CAMERON: What was his position?

Mr Pettit: He was the executive director of operations for the western region.

Senator CAMERON: He wasn't a cleaner; he was an SES officer.

Mr Pettit: Yes.

Senator CAMERON: So you didn't read an email from an SES officer?

Mr Pettit: I may have; I just can't recall reading that email.

Senator CAMERON: Are you seriously putting to us that you could have read an email that says Mr Hadgkiss is not reflecting what the law is and you would forget that? Is that what you're seriously putting to the committee?

Senator Reynolds: Senator Cameron, can you clarify for me what correspondence you're talking about? I understood the correspondence you're talking about is the one that Mr Pettit has just read out, and the correspondence is two words only. It says, 'Colleagues, FYI'. Are you talking about the same email? The one I'm looking at that I understood was in relation to this was from 10 January 2014, and it was a two-word email: 'Colleagues, FYI'. I'm struggling to see how any of us would remember that after we've had probably tens of thousands of emails in four years how we would remember that. It is something that says, 'Colleagues, FYI', and it doesn't describe what you're describing. Are we talking about the same email?

Senator CAMERON: It said more than FYI.

Senator Reynolds: The one I've got here, which is on the public record, says, 'Colleagues, FYI.'

Senator CAMERON: And what was the FYI? It was about the commissioner leaving the ABCC open to criticism. It was about the commissioner not reflecting what the law was, wasn't it?

Mr Pettit: All I can go on is the top of the email, which says, 'new ROE laws—what to communicate to industry', and then says underneath it it says, 'Colleagues, FYI.' I may have read that far and just not read the remainder of the email. It's quite a lengthy email chain. It goes for two pages. I just might not have read the rest of it. I honestly cannot recall, as I sit here today, that I read that email in January 2014.

Senator CAMERON: This is just beyond belief. How can we ever believe any evidence you give to this committee?

CHAIR: Senator Cameron, I'm quite sure you can remember every email you got in 2014!

Senator CAMERON: I'll tell you, if someone had sent me an email and I was in Mr Pettit's position, that says the boss, the commissioner is basically breaching the law, I would remember it.

Senator Reynolds: I think, Senator Cameron, you must be a bit more psychic than the officials were four years ago, because I look at this email, and it says, 'new ROE laws—what to communicate to industry'. To most people that wouldn't float their boat of interest. But it says, 'Colleagues, FYI'—

Senator MARSHALL: I think Mr Pettit's already said there's more to the email.

Senator Reynolds: Yes, he has very clearly. It's—

CHAIR: Let's try to get back to the question, shall we?

Senator MARSHALL: The answer to the question that's been asked would be good.

Senator Reynolds: I think he's answered it very clearly more than once.

Senator CAMERON: How can we believe any evidence you give?

Mr Pettit: I'm giving the evidence to the best of my recollection, but I just do not recall this email from January 2014.h

Senator CAMERON: And you claim that you went on holiday and this was never raised with you again?

Mr Pettit: No. My first recollection of this chain of emails is from September 2017.

Senator CAMERON: That's three years. For three years, an issue that an SES officer felt was important enough to send an email to a number of senior officers—you didn't read it, you claim; you can't remember reading it, you claim; and there was not another mention of that for two years?

Mr Pettit: Senator, just to be completely clear: I can't recall. I may have read the email; I may not have read the email; I can't recall. My first recollection of this email trail, the underlying email trail between Mr Copp and Mr Radisich, is from September 2017. I don't recall anyone raising it with me between those two dates.

Senator CAMERON: That beggars belief. I now want to move to the underpayment of workers on a building site, the Royal Hobart Hospital redevelopment. Did the ABCC inspect this site prior to 5 September?

Mr McBurney: I'm not aware of whether the ABCC inspectors inspected the site prior to 5 September 2018.

Senator CAMERON: This is one of the biggest sites in Hobart. Who's responsible? Is Mr Pettit responsible for this?

Mr McBurney: No, it's Mr Gregor.

Senator CAMERON: Mr Gregor, who has got direct responsibility for site investigations? Is that an SES officer?

Mr Gregor: That would be me, Senator.

Senator CAMERON: So, you had responsibility?

Mr Gregor: Yes.

Senator CAMERON: This is certainly one of the biggest construction sites in Hobart—correct?

Mr Gregor: Yes, it is.

Senator CAMERON: For how long has construction taken place on that site?

Mr Gregor: For a number of years.

Senator CAMERON: You had never visited it prior to 5 September?

Mr Gregor: Yes. My inspectors have visited that site a number of times.

Senator CAMERON: How many inspections were made prior to 5 September, and when were they made?

Mr Gregor: I'd have to take that on notice. I don't have that specific information with me at this time.

Senator CAMERON: Weren't you expecting any questions on this issue?

Mr Gregor: Yes. I can answer questions relating to the particular entitlement issue, if you have any questions relating to that.

Senator CAMERON: I'm asking you about visits to the site. How many inspectors have you got in Tasmania?

Mr Gregor: Two.

Senator CAMERON: Have they provided a report on this site to you or to the commissioner?

Mr Gregor: There are two active investigations relating to issues at the Royal Hobart Hospital.

Senator CAMERON: Can you provide details of any file notes and any reports relating to the Royal Hobart Hospital site in the last 12 months?

Mr Gregor: I'll have to take that on notice. The matters are obviously relating directly to the two current active investigations. They're matters that are currently in train.

Senator CAMERON: What investigations are you undertaking?

Mr Gregor: Specifically, the first one relates to the issue relating to a contractor not paying entitlements to a number of their workers.

Senator CAMERON: Who was that contractor?

Mr Gregor: That contractor was Accuracy Interiors Pty Ltd.

Senator CAMERON: They were a plastering subcontractor—correct?

Mr Gregor: That's correct.

Senator CAMERON: You can't tell me if your inspectors actually had any interaction with Accuracy Interiors, can you?

Mr Gregor: At what period, Senator?

Senator CAMERON: For the period Accuracy Interiors were at the Royal Hobart Hospital site.

Mr Gregor: We had contact with Accuracy Interiors post the commencement of the investigation.

Senator CAMERON: What about prior?

Mr Gregor: Not to my knowledge, Senator.

Senator CAMERON: When did you first become aware of breaches of the Fair Work Act regarding underpayment and issues with visas?

Mr Gregor: We became aware of the particular issue of entitlements on 6 September 2018.

Senator CAMERON: When you're talking about entitlements, you're talking about underpayments?

Mr Gregor: That's correct.

Senator CAMERON: What about the visas?

Mr Gregor: That is not a matter that we are currently investigating.

Senator CAMERON: But you're part of a cross-departmental group that looks at these issues, aren't you—not you, but the ABCC?

Mr Gregor: Obviously, if we became aware of specific issues relating to visas, we would bring that to the attention of the appropriate agency.

Senator CAMERON: When did you become aware that there was an issue with visas?

Mr Gregor: At this time we don't have that information. We are still currently collating information and undertaking investigations relating to the particular circumstances of Accuracy Interiors employees and, obviously, the company itself.

Senator CAMERON: Have you advised Home Affairs that there's a problem with visas? When I say you, I'm talking about the ABCC.

Mr Gregor: Not specifically, Senator.

Senator CAMERON: Why not?

Mr Gregor: Senator, we currently have an investigation. We don't have that information on hand at this time.

Senator CAMERON: You know there's an issue with visas, don't you?

Mr Gregor: No, we don't.

Senator CAMERON: Have you made any inquiries to Accuracy Interiors about the visa status of workers?

Mr Gregor: Yes, we have. We're undertaking an investigation to get a full understanding of the particular employment circumstances of Accuracy's workers.

Senator CAMERON: When did you start this investigation?

Mr Gregor: 6 September 2018.

Senator CAMERON: When did you find out that there may be issues with visas?

Mr Gregor: We've heard rumours about that, but, at this time—

Senator CAMERON: When did you first hear the rumours?

Mr Gregor: Some time after 6 September.

Senator CAMERON: What's 'some time after'? What does that mean?

Mr Gregor: It would have been within a week period of 6 September.

Senator CAMERON: Why can't you just tell me these things, instead of these vague, you know, issues that you keep raising?

Mr Gregor: I don't have that specific information.

Mr McBurney: Senator, it's important that Mr Gregor give accurate information. If he doesn't have the precise date—

Senator CAMERON: Could you get something to give accurate information?

Mr McBurney: If he doesn't have the precise date, we're not going to guess. We can take that question on notice.

Senator CAMERON: Okay. A week after that you found out there were rumours about visas. Why didn't you then raise this issue with the appropriate government departments?

Mr Gregor: My understanding is that Border Protection have knowledge about this specific issue. It's a matter for them in terms of what inquiries they'll make in relation to that.

Senator CAMERON: Who told you that they've got knowledge of it?

Mr Gregor: That was something that was brought to my attention in the early stages of the investigation.

Senator CAMERON: By whom?

Mr Gregor: I believe one of the inspectors.

Senator CAMERON: What did he tell you? Is it he or a she?

Mr Gregor: My understanding is that there were issues raised about visas and that Border Protection had been notified in relation to the matter.

Senator CAMERON: Did you seek to find out whether Border Protection had been notified?

Mr Gregor: Not personally, Senator.

Senator CAMERON: Did the inspector?

Mr Gregor: I'd have to take that on notice.

Senator CAMERON: So what are your responsibilities in terms of liaison with Border Protection on visas?

Mr Gregor: As I said, if we become aware that there are specific issues relating to visa issues, we make contact with the appropriate department.

Senator CAMERON: So you make—

CHAIR: Sorry to interrupt, Senator Cameron, but you have had about half an hour. I'll see if my colleagues want to ask anything. Senator Paterson or Senator Molan? Senator Molan, you have the call.

Senator MOLAN: Mr McBurney, who is responsible for taking action against unions in the building and construction industry? It's your organisation, isn't it?

Mr McBurney: It is my agency for breaches of the Building and Construction Industry (Improving Productivity) Act or the Fair Work Act or a designated building law.

Senator MOLAN: The CFMMEU in particular has shown repeated disdain for the law, with a terrible and appalling record of law-breaking.

Mr McBurney: It's fair to say that the CFMMEU is significantly overrepresented in our compliance activities and our court outcomes. The vast majority or the overwhelming majority of fines imposed on building industry participants to date—the CFMMEU comprise the significant portion of that.

Senator MOLAN: Just roughly, is there some way of measuring that? Is it 50 per cent or 75 per cent?

Mr McBurney: For last financial year, there was $6 million in fines imposed in our court proceedings, of which $5.6 million were for the CFMMEU.

Senator MOLAN: $5.6 million in fines was applied to one single union?

Mr McBurney: Yes—94 per cent.

Senator MOLAN: Ninety-four per cent of all the fines that were applied to unions in the last financial year were applied to the CFMMEU?

Mr McBurney: It's 94 per cent of fines imposed on all building industry participants—employers, employees, trade unions. Ninety-four per cent were imposed on the CFMMEU.

Senator MOLAN: Could you briefly outline the compliance and enforcement role that you play. How do you play it? We've heard a bit about inspections and things like that. How do you play that role?

Mr McBurney: The act sets out my functions, and it sets out my responsibilities and those of ABCC inspectors to investigate contraventions and, where appropriate, to commence or intervene in court proceedings and to put the matters before the court. Every building industry participant is entitled to their day in court. We spend a fair bit of our resources taking enforcement action, putting matters before the court. Currently we have 34 cases before the court. In those 34 cases, the CFMMEU is a respondent in 30 of those 34 matters. Employers are respondents in six of the 34 matters. In two of those matters both the CFMMEU and employers are together.

Senator MOLAN: What sort of conduct takes place that requires the ABCC's intervention—not just of the unions but other participants in the building industry?

Mr McBurney: The cases we take before the court—if we look at our proceedings currently before the court, 14 of the cases involve right of entry. Nine of the cases involve coercion, where coercion is the main allegation. There are five cases where freedom of association is the primary allegation. There are five cases where unlawful industrial action is the primary allegation, and there is one case that relates to wages and entitlement.

Senator MOLAN: So, in six of the 34 cases that were not union based—are there other things that non-unions do that are not related to wages? That was over the previous financial year, wasn't it?

Mr McBurney: They're our current cases before the court. The main case that wouldn't involve the union is underpayment of wages. That would be a case where the union wouldn't be a respondent. The union can be a respondent in cases involving unlawful industrial action if they've been a party to that unlawful industrial action.

Senator MOLAN: How much success have you traditionally had in underpayment of wages?

Mr McBurney: I'll go back to the recoveries for the financial year just gone—$262,398 recovered for 186 employees from 32 employers. It is a significant priority for this agency. We assumed responsibility for recovering underpayments from the Fair Work Ombudsman as of 2 December 2016. Deputy Commissioner Pettit heads up our wages and entitlements compliance team.

Senator MOLAN: Are they small businesses or big businesses mainly? Can you generalise in relation to that?

Mr McBurney: I'll defer to Deputy Commissioner Pettit on that question.

Mr Pettit: It's a spread across the industry. We don't focus on just small business. We have two streams to the wages entitlements work. The first would be where somebody complains, which might be a union, a worker, or a competitor, and says, 'We think this company's underpaying its workers,' and we'll go out and do a reactive investigation. We also have a proactive stream of work where we'll pick an industry segment and we'll go out and audit employers in that industry segment. At the moment we're looking at labour hire companies, and that would be from smaller labour hire companies all the way to the top end of town.

Senator MOLAN: Are unions willing to come to you, or do you detect any reluctance on the part of unions to come to you to fight on behalf of their workers?

Senator CAMERON: They're rolling up to see this mob!

Mr Pettit: I think what I'd say is we haven't got a high number of referrals from union officials.

Senator MOLAN: Most are mainly from individuals?

Mr Pettit: Yes.

Senator CAMERON: They're a union-busting organisation. Why would the unions go to them?

Senator MOLAN: What level of penalties have been handed down by courts in the most recently completed full financial year, 2017-18? You mentioned the CFMMEU has gone just short of $6 million. They must be knocking up a really good total. Are they?

Mr McBurney: It's $5.6 million for the CFMMEU last financial year, $130,000 for other unions, $196,200 for employees, penalties against employees, and $53,040 for penalties imposed on employers. That brings it to a total of $5.987 million or just under $6 million for the financial year. I should add that there is a significant case in New South Wales—the Barangaroo matter—where $3.357 million in penalties was imposed. That's subject to appeal.

Senator MOLAN: But it isn't counted in those figures?

Mr McBurney: It is included in the figures. We included it in the figures because the court has imposed that penalty. Until it is altered or struck out by an appeal court that penalty stands. It's my understanding that it's not been paid yet. The payment of the penalty has been stayed pending the outcome of the appeal. The appeal has been heard, and we're waiting on a decision on that appeal.

Senator MOLAN: Thank you. And—

Mr McBurney: Sorry, you asked about wages and entitlements and the cooperation from the unions—and I'll come to that question. But I talked about the just over a quarter of a million dollars that was recovered last financial year. I can update you for this financial year. In the just shy of four months, $108,536 has been recovered in respect of 27 employees. We consider this as significant. It's significant for each individual worker that we recover money for. We would be happy to take referrals from the union. We would be happy to assist any worker who has been underpaid and we stand ready to take appropriate action, seeking either rectification or putting a matter before the court, where an underpayment has occurred.

Just in relation to that, we commenced a case against a Western Australian ceiling company and its director in October of this year. In that matter, we're alleging that the ceiling company has failed to provide a range of documents to the ABCC, including time sheets, attendance records and payslips. We require this information to determine whether workers, in this matter, have been underpaid. That documentation has not been provided and we have commenced proceedings, under section 77 of our act, alleging contraventions of subsection 77(3) of our act. The maximum penalty for a breach of those provisions is $21,000 for a body corporate and $4,200 for individuals.

I won't say anything more about the case other than what we've alleged. That matter is before the court and that matter will proceed. But it demonstrates that where there is noncompliance, with our powers, by any building industry participant—we don't just go after the CFMMEU. I accept that they are the primary source of business for our agency, because they contravene the act more than anyone else. And that's why they're overrepresented in our statistics. But I stand ready to assist any building industry participant. Further, Senator, I'm under a statutory obligation to do that, as are all of my staff, and—

Senator MOLAN: Where else can union members go to satisfy their belief that they're being underpaid?

Senator CAMERON: The statutory obligation is with you lot to—

CHAIR: Senator Cameron, come on.

Senator MOLAN: Are there any bodies that they can go to?

Mr McBurney: In the building and construction industry, they come to us.

Senator CAMERON: They can go to their union.

Senator PATERSON: Senator Cameron, to quote you back to yourself: have some respect.

Senator MOLAN: Do you see any other functions out there that aren't going through you? Do you believe you're handling most, if not all, of the cases of underpayment in the building industry?

Mr McBurney: To give the union its due, they have a responsibility to represent their members and ensure there is not underpayment of their members, and on that they are very active. I'm not in competition with the union on this. I stand ready to assist any worker who needs our assistance as regulator. If the worker wants to go to the union and have the union pursue unpaid wages, that's entirely a matter for them. But we're available to any person, any victim of underpayment, in this industry.

Senator MOLAN: Do the unions then go to a court? Is it not an unusual activity for them to take a worker's request for a court?

Mr McBurney: Yes, they can.

Senator MOLAN: Do you have a feel for how often that occurs?

Senator CAMERON: Chair, point of order. Mr McBurney is not capable of answering questions about the enforcement—

Senator Paterson interjecting—

Senator CAMERON: Why do you keep butting in?

Senator PATERSON: You butted in before the official was midway through an answer to another senator—

Senator Reynolds: I think Senator Cameron would like to sit at this side of the table, here, and give evidence.

Senator CAMERON: I've got a point of order. Can I do my point of order?

CHAIR: Let's hear the point of order.

Senator CAMERON: My point of order is that it is not appropriate for Mr McBurney to be answering questions about the enforcement rights of the CFMMEU. He's not responsible for that and it's not his area.

Senator MOLAN: I don't think I asked that.

Senator PATERSON: On the point of order, Chair, Senator Molan was asking the ABCC about the recovery of underpaid wages in the building industry and noncompliance with the law in the building industry, which is squarely within their expertise. It is hard to think of an agency better informed to answer these questions.

Senator CAMERON: On the point of order, this agency is very junior, in terms of its enforcement in this. It was against the opposition of the coalition that these amendments went through, and Mr McBurney cannot speak for the CFMMEU.

CHAIR: I'm happy to—

Senator MOLAN: I don't think he was, in any way at all.

CHAIR: Mr McBurney wasn't speaking on behalf of a union. He was speaking, generally, in the area of enforcement within a responsibility that is squarely his. I would ask you to contain your answers to areas where you have expertise.

Senator Reynolds: Senator Brockman and Senator Molan, perhaps I can assist Senator Cameron. He may not have seen this document before, but it's the building and Building and Construction Industry (Improving Productivity) Act 2016. In part 2, on page 20, it talks about the functions of the ABCC commissioner. One of those is—

instituting, or intervening in, proceedings in accordance with this Act.

Senator CAMERON: Chair, I was—

CHAIR: The minister has the floor.

Senator Reynolds: I was listening closely. The question Senator Molan asked, you've said, was in order. Mr McBurney and the officials are entirely within the act and, in fact, the functions of the ABCC commissioner. If you like, we could certainly give Senator Cameron a copy of the act, but it clearly demonstrates that the commissioner is well and truly talking within his—

Senator CAMERON: If we win the next election we won't need it, because it'll be gone.

CHAIR: Don't start measuring curtains yet, Senator Cameron.

Senator Reynolds: Senator Cameron, I would recommend the act to you, because it clearly shows what the commissioner's functions are.

CHAIR: Thank you, Minister. Senator Molan, you have the floor.

Senator MOLAN: Thank you. To repeat the question: do you have a feel, in any way, for the frequency or amount of underpayment that is recovered by organisations that are not the ABCC?

Mr McBurney: I don't have statistics on that.

Senator MOLAN: I thought that would be your answer.

Mr McBurney: What I do have is a specific function. I have a specific function to intervene in proceedings brought under my act or the Fair Work Act. I have intervened in proceedings brought by the CFMMEU. Firstly, I monitor meetings brought by any building industry participant—that's part of my functions—including the CFMMEU. I have intervened in the most recent reporting period in a matter brought by the CFMMEU, in Queensland, involving a building company and I intervened in support of the CFMMEU's position.

Senator CAMERON: Congratulations.

Mr McBurney: I intervened in support of the CFMMEU's position, in that case, because it involved right of entry. And on right of entry, more often than not, I've prosecuted the CFMMEU for breaching the law. In that case, it was the occupier who breached the law. It cuts both ways, on right of entry. Right-of-entry obligations need to be observed by both parties. So in that case I supported the CFMMEU's position, and the court outcome reflects a penalty being imposed on the builder, in that case.

Senator MOLAN: Thank you, and I'll get to specific cases in a little while. Can you remind me, again—I made some notes—of the proportion of penalties, last year, that were handed down against the CFMMEU? Was it 94 per cent?

Mr McBurney: Yes, 94 per cent.

Senator MOLAN: I understand there have also been a few new cases finalised since we last met in May of this year. Can you tell me about the BKH case, please?

Mr McBurney: Yes. In the BKH case, my agency—this is a case that arose in New South Wales. The CFMMEU was a respondent as well as Brian Parker, Robert Kera, Luke Collier, Darren Taylor, Benito Manna, Mansour Rasaghi and Ben Garvey. What we alleged in that case was that on 5 June 2014 a CFMEU, as it was then, official Darren Taylor threatened to smash the jobs of one of the subcontractors so that other subcontractors would know what was coming. Mr Taylor told the subcontractors that if they didn't sign a CFMEU agreement it would 'pick one of you and come after you'. Following the meeting, Mr Kera sent a threatening text message to a subcontractor who attended the meeting. This developed into a blockade of the Wolli Creek site on 16 March 2015.

Senator MOLAN: A blockade?

Mr McBurney: A blockade. The court found that Mr Kera and Mr Parker had participated in the blockade, and the court found that Mr Kera exercised a degree of control or supervision over other persons participating in the blockade that day and Mr Kera also participated in a further blockade of the site on the following day, 17 March 2015. As a result of that case, the court imposed penalties of $237,000 on the CFMEU, $6,000 on Mr Manna, $2,500 on Mr Garvey, $20,500 on Mr Collier, $8,00 on Mr Rasaghi, $20,000 on Mr Kera, $11,000 on Mr Taylor and $8,000 on Mr Parker, bringing the total penalties imposed in that matter to $313,000.

I will conclude. It's not for me to judge the conduct in this case. The court and the judge are in the best position to do that. He hears the evidence. Justice Flick said in his judgement:

The conduct … evidences a continuing commitment on the part of the CFMEU to pursue its industrial objectives by unlawful means and a continuing commitment to pay such penalties as are imposed as but the "cost of doing business".

Senator MOLAN: A continual commitment through unlawful means as a cost of doing business?

Mr McBurney: Yes, that's what Justice Flick said. It repeats a line of commentary from other judges in the Federal Court. One of the most concerning features of this case is that His Honour observed that this was done not out of any genuine concern to safety but for the purpose—

Senator Cameron interjecting—

Senator MOLAN: Chair—

CHAIR: Senator Cameron, please, we have listened to your questions in silence. Senator Molan, you have the call.

Senator MOLAN: Thank you. That behaviour has been going on for longer than four years?

Mr McBurney: Yes, it has.

Senator LINES: The same questions.

Senator MOLAN: No, no, no. Thank you very much.

Senator LINES: You've been asking the same questions.

Senator PATERSON: There's a lot of fresh material, though, Senator Lines. Fresh material every year—in fact, every three months.

Senator Reynolds: Senator Lines, you weren't here, but the question was actually: what new circumstances have arisen since the last estimates? So these are, indeed, new matters.

Senator MOLAN: In previous evidence that you've given, Mr McBurney, you spoke about who pays these fines—the $313,000. Is the system that the judge will direct the individual to pay the fine rather than the CFMEU, or a union?

Mr McBurney: For this particular case, the penalties have been imposed by the court, but it's open to the CFMEU to pay the fines for all of the individuals in this particular case.

Senator MOLAN: Okay. Thank you.

Mr McBurney: There's not been a personal payment order made for this case.

Senator MOLAN: On this case—okay. Thank you. Can you tell me about the case or cases—it might be just one case—concerning Mr Mark Gava?

Mr McBurney: Yes, Senator.

Senator CAMERON: It was after the pre-estimates discussion.

Mr McBurney: That case involved the CFMEU and Mr Mark Gava as respondents. CFMEU official Mr Gava made application to the Fair Work Commission for an entry permit as his entry permit had expired on 28 November 2016. This case arose because, on 2 October 2018—that is, earlier this month—the Federal Court imposed penalties totalling $74,000 against the CFMEU and Mr Gava for two contraventions of section 503 of the Fair Work Act. Mr Gava admitted the two contraventions but later submitted that the conduct constituted only a single contravention. The court held that Gava had contravened the act twice. Mr Gava's first contravention occurred when, on 1 December 2016, he signed and caused an entry notice to be sent to the head contractor, Hansen Yuncken, with the intention of giving the impression that he was authorised to enter the site. On the following day, he entered the site, pursuant to the said entry notice, with the intention of giving the impression that he was authorised to enter the site. Senator, this was an offence of dishonesty; it was an offence of dishonesty by Mr Gava. The CFMEU admitted that it was liable for Mr Gava's conduct, and that was the basis upon which it was penalised. We did seek a personal payment order against Mr Gava in this case, but the court declined to make that order based on the fact that the contraventions were isolated and that Mr Gava is no longer an employed organiser at the CFMEU. Justice White said that these matters indicated that personal deterrence was not a predominant factor in Mr Gava's case as it would otherwise have been.

Senator MOLAN: Can you tell me about the Royal Adelaide Hospital case, please?

Mr McBurney: In the Royal Adelaide Hospital case, the respondents were the CFMEU, Mr Jim O'Connor and Mr Jack Merkx. In this case, the court found that Mr O'Connor and Mr Merkx had threatened to take industrial action against the contractor with the intent of coercing the contractor to terminate the employment of highlands and with the intent of coercing the contractor to employ an individual by the name of Jason Clark, who was on the CFMEU executive. On 27 August 2018, the court imposed penalties on Merkx and the CFMEU. The CFMMEU were penalised a total of $71,400 for the conduct of its assistant secretary, and Mr Merkx was penalised a total of $10,200 for attempting to coerce a subcontractor to terminate a worker and replace him with a union office holder at the Royal Adelaide Hospital site in 2014.

Senator MOLAN: What about the Parliament Square case, as it's commonly called?

Mr McBurney: The Parliament Square case is a case that arose in Tasmania. The respondents to this case were the CFMEU and its official Mr Richard Hassett. Mr Hassett entered the Parliament Square project on three occasions in 2015. On 28 July he swore at the site management and a workplace health and safety supervisor; on 21 October he entered the site without providing an entry notice; and on 5 November 2015 he entered the site without providing an entry notice and again swore at the construction manager. On that occasion, Mr Hassett only left after the police were called, and he returned later that day producing an entry notice under the state act. During this visit, he spoke to the project manager in an abusive manner.

In handing down its penalties in this matter, the Federal Court said: 'Mr Hassett should not have been on site in the first place, and he should have complied with the requirements of the Fair Work Act once he was on site. Even if it is accepted that swearing and the use of foul language is common on construction sites among employees and contractors, it does not, therefore, follow that similar latitude is to be extended to permit holders when they are exercising rights conferred on them by the act.' His Honour went on to say that he considers Mr Hassett's conduct in this instance breached the standards of conduct that would be expected of a permit holder by reasonable persons who had relevant knowledge of the duties and responsibilities attaching to such office. The penalty imposed on the CFMEU was $170,000 and the penalty for Mr Hassett was $18,000—a total of $188,000.

Senator MOLAN: Thank you. I've only got a couple of minutes left, and unfortunately there are a lot more cases to go through. How about the Bendigo theatre case?

Mr McBurney: The Bendigo theatre case arose in Victoria. The respondents were the CFMMEU, Nigel Davies and Alex Tadic. On 29 July 2014 Mr Davies failed to produce his entry permit and refused a direction to leave the site when asked. On 1 August Mr Tadic was abusive towards the project manager whilst exercising state and territory OHS rights. In this case, Justice Tracey found that Mr Davies was defiant and dismissive in the face of lawful directions that he leave the site. It was said:

Mr Tadic contravened … the Fair Work Act by acting in a loud, rude, aggressive and abusive manner and by using profane and indecent language towards the authorised representative of the occupier of the site for between three and five minutes.

… … …

The union has adopted the attitude that it will not comply with any legislative constraints, placed on its operations, with which it disagrees. Such an approach is an anathema in a democratic society.

In this case, the CFMMEU was penalised $245,000; Mr Davies was penalised $19,000 and Mr Tadic was penalised $7,500—a total of $271,500.

Senator MOLAN: And were there individual payment directions being made in those cases?

Mr McBurney: Personal payment orders were not directed to be made in this case. I should add that we did seek one in respect of Mr Tadic in this case, but Justice Tracey noted that no penalties had been imposed on Mr Tadic for over a decade and his previous misconduct was not at a level that would justify imposing that.

Senator MOLAN: Thank you.

Senator CAMERON: I want to try to deal with things that are not on the public record. Has the ABCC inspected the Hobart hospital site since 5 September?

Mr Gregor: Yes, it has. I also have been provided with the number of occasions that the ABCC has visited the site prior to the commencement of the current investigations.

Senator CAMERON: What were they?

Mr Gregor: Did you want the specific dates?

Senator CAMERON: That's what I asked for, yes.

Mr Gregor: They are 12 January 2016; 15 February 2016; 30 August 2016; 1 May 2017;. 2 November 2017; and 18 April 2018.

Senator CAMERON: Thank you. Let me go back to this issue of the relationship with Border Protection. Why didn't your officers advise Border Protection when they heard that there could have been breaches to the visa system?

Mr Gregor: My understanding is that we never received any specific information relating to any suspected breaches of visa. My recollection is that I'd heard a rumour that there may have been an issue, and it was principally along the lines that there were foreign workers onsite so there must be visa issues.

Senator CAMERON: You didn't think you should just say that you'd heard that there could be problems? You just ignored that?

Mr Gregor: I didn't ignore it.

Senator CAMERON: What did you do?

Mr Gregor: I had no specific information that I could provide to Border Protection relating to the matter.

Senator CAMERON: So, you visited the biggest construction site in Hobart in November 2017 and you didn't visit again until April 2018?

Mr Gregor: Yes.

Senator CAMERON: When did you visit it after that?

Mr Gregor: It was subsequent to the commencement of the ongoing investigation at the moment.

Senator CAMERON: So, here we have one of the biggest wage thefts of workers and your officers were nowhere near that site for five months?

Mr Gregor: We were at the site in April 2018.

Senator CAMERON: Yes, but this was going on until recently.

Mr Gregor: Well, we had no knowledge relating to any issue relating to underpayments. There'd been no report to us.

Senator CAMERON: Was this wilful blindness? Or you just didn't do your job?

Mr Gregor: No, not at all.

Senator CAMERON: What was it?

Mr Gregor: We had no knowledge or information that workers were being underpaid on that site.

Senator CAMERON: If a CFMEU union official goes on a site you guys get the blue lights going and you head out there, but here workers are getting ripped off and you don't go near the site.

Mr Gregor: As soon as we became aware of an entitlement issue relating to that particular project, we commenced an investigation.

Senator CAMERON: Do you find something funny, Mr McBurney?

Mr McBurney: We don't have blue lights, Senator.

Senator Reynolds: I thought you might have been confusing them with the police force—nonetheless.

Senator CAMERON: So, twice, in five months, and then nothing from April 2018? Why? What else were they doing?

Mr Gregor: A lot of other compliance activities are undertaken throughout Tasmania. Tasmania is a fairly large island and there is other construction that is ongoing throughout the state. My inspectors are busy undertaking a full range of compliance and education activities, investigative activities, at all times.

Senator CAMERON: So, there wouldn't be much going on now, because you've got a formal investigation going on at Royal Hobart, have you?

Mr Gregor: We've obviously got the formal investigation ongoing, but we are undertaking our normal day-to-day activities in undertaking side visits and compliance activities and reactive investigations to other matters throughout Tasmania.

Senator CAMERON: You've got two officers, have you?

Mr Gregor: Yes, but we also support the Tasmanian office with inspectors relating to not only the Royal Hobart investigation that is currently ongoing but also other compliance activities and work that we undertake down on the island.

Senator CAMERON: When did you commence the Royal Hobart investigation?

Mr Gregor: On 6 September 2018.

Senator CAMERON: When do you think you will finish that investigation?

Mr Gregor: There are two parts of the investigation. There's an enormous amount of documentation that we've received. There are obviously a large number of persons of interest and witnesses that we are seeking to obtain cooperation from. So, I cannot give you an accurate estimate at this time.

Senator CAMERON: Are you receiving cooperation from the subcontractors?

Mr Gregor: As the matter is an ongoing current investigation it would not be appropriate for me to spell out precisely—

Senator CAMERON: I'm not asking for anything precise. I'm just asking whether you're getting cooperation—you're either getting cooperation or you're not. That doesn't impinge on your investigation.

Mr Gregor: Well, it may do. As I've said, as the matter is currently ongoing, it wouldn't be appropriate to—

Senator CAMERON: How would it? How would that impinge on your investigation, telling me whether you are getting cooperation? Can you explain that to me right now?

Mr Gregor: Forewarning others whom we've yet to speak to, whether potential witnesses are cooperating or not, would not be helpful in our undertaking the investigation.

Senator CAMERON: Why wouldn't it be helpful? You've got powers, haven't you?

Mr Gregor: Yes.

Senator CAMERON: So, are you saying that if you tell me whether you're getting cooperation or not your powers are insufficient to properly investigate? Is that what you are telling me?

Mr Gregor: I'm not saying that.

Senator CAMERON: Tell me why advising me whether you're getting cooperation or not is a problem.

Mr Gregor: As I've said—

Senator CAMERON: You just don't want to say, do you?

Mr Gregor: As I've explained, as the matter is currently under investigation, it would not be appropriate for me to go into the specifics of our ongoing inquiries.

Senator CAMERON: Mr McBurney, are you claiming public interest immunity on this?

Mr McBurney: Just before we break, there have been a number of social media tweets published about this particular investigation identifying our officers—photographs of workers and—

Senator CAMERON: That's not what I'm asking.

Mr McBurney: It goes directly to the point that Mr Gregor was defending: this is an early stage of an investigation and the cooperation we seek from those involved is being undermined by the interference being run by the CFMEU on our lawful investigation of this matter. We're seeking cooperation to assist the workers who potentially have been underpaid in this. And the social media posts, photographs of our investigators going about their lawful duties—

Senator CAMERON: I've asked you: are you seeking public interest immunity.

CHAIR: Order! We will come back to this.

Mr McBurney: We can take it on notice.

Senator Reynolds: In relation to this, I will take that question on notice—

Senator CAMERON: It's not up to you. This is an independent statutory authority.

CHAIR: The minister has taken it on notice.

Senator Reynolds: As has Mr McBurney.

Senator CAMERON: Well, it's not up to you, Minister.

CHAIR: The minister has the call.

Senator CAMERON: The minister has got absolutely no right to intervene.

CHAIR: Well, we will be coming back. I want to release some of the later witnesses. We're going to have a short private meeting in order to formally agree that, and then we will recommence very briefly and then go to the dinner break.

Senator Reynolds: We shall wait; thank you.

CHAIR: Okay. Perhaps you could let Safe Work Australia, the Asbestos Safety and Eradication Agency and Comcare know that they are all free to go home, with our thanks and our apologies. I've been informed by Labor senators that they will be requesting a spillover hearing. But those three agencies can go home.

Senator Reynolds: I'm sure they are listening, and on their behalf, thank you very much for the early consideration for releasing them tonight. On behalf of the minister and the department, thank you for that early advice.

**Proceedings suspended from 18:01 to 19:01**

CHAIR: We will resume this supplementary estimates hearing of the Senate Education and Employment Legislation Committee. We are in continuation with the Australian Building and Construction Commission, and Senator Cameron has the call.

Senator CAMERON: Just before we continue, Chair, is there any response in relation to the claims for public interest immunity?

CHAIR: I think this is for you, Minister.

Senator Ruston: Could you give me a few minutes to get up to speed please, Chair?

CHAIR: This is in relation to the ABCC—correct me if I'm wrong, Senator Cameron. Was this the earlier one?

Senator CAMERON: Both.

CHAIR: The one just before, okay; sorry.

Senator Ruston: I've been advised that the minister is claiming PII on the basis of the prejudice—the investigation of a possible breach of the law or the enforcement of the law in a particular instance.

Senator CAMERON: That's it?

Senator Ruston: That is the advice I have.

Senator CAMERON: So all investigations of the ABCC are now subject to public interest immunity. Is that the claim?

Senator Ruston: Senator Cameron, I've been advised that it's not a blanket claim, it is just a claim that's made with respect to the particular instance of which you were asking questions.

Senator CAMERON: Could Mr McBurney then take us to the issues that go to public interest immunity in relation to my specific question?

Mr McBurney: Yes. Senator, your specific question is about the extent of cooperation of subcontractors—if I understand correctly—in relation to this investigation. The evidence given so far is that the ABCC has confirmed it has an investigation into two allegations arising from the Royal Hobart Hospital site. It commenced the investigation of the first matter on 6 September 2018. That investigation is at an early stage. The position is that we have sought information from a number of people on site and, the extent to which those people have cooperated, disclosure of that information may prejudice the information.

Senator CAMERON: I'm not asking about any details. I haven't asked for any details of the cooperation. I simply asked: are you getting cooperation?

Mr McBurney: And the answer to that question, the answer to whether we have got cooperation from subcontractors, may prejudice the investigation based on what's happened with this particular investigation on this particular site. Prior to the break, I was taking you to what's been published on social media about this particular investigation.

Senator CAMERON: I don't care about that. I'm not interested—

CHAIR: Let the official—

Senator CAMERON: This is nonsense. It's just nonsense.

CHAIR: Let the official finish answering.

Mr McBurney: I was outlining the deliberate interference that's been carried out in relation to our investigation.

Senator CAMERON: Are you saying I'm deliberately interfering?

Mr McBurney: No, I'm not.

Senator CAMERON: I hope you're not.

Mr McBurney: I'm saying what's been posted on social media is calculated and deliberate interference into the ABCC's investigation. That's clear.

Senator CAMERON: I don't think you should go home tonight. I think you should stay here tomorrow because we might want you back on this.

Mr McBurney: I'm in the committee's hands. I'm more than happy to.

CHAIR: That's not your decision, Senator Cameron.

Senator CAMERON: If we're not finished questioning then he will need to come back.

Mr McBurney: Chair, there is one issue in relation to this investigation that I'd ask Mr Gregor to clarify in answer to some previous questions from the senator.

Mr Gregor: In the break I had the opportunity to make some further inquiries relating to the visa issue. I can confirm that no referral has been made to Border Force as the ABCC has no specific information that any worker on the project was working in breach of any visa conditions.

Senator CAMERON: Okay! That's another nail in the coffin of the ABCC. So you indicated this formal investigation started on 6 September.

Mr Gregor: That's correct.

Senator CAMERON: For the Chinese visa workers working for Accuracy Interiors, has the ABCC ascertained whether they were in Australia on student visas, skills visas or working holiday visas and, if you have, can you provide a breakdown?

Mr McBurney: Those questions go to the very nature of the investigation. This investigation is at an early stage. Disclosing any information about the investigation could potentially prejudice the investigation.

Senator CAMERON: Why can't you tell us what visas they were on? Have you looked into this issue of what visas they were on?

Mr McBurney: We've commenced an investigation. We're at a very early stage. You're seeking details of the investigation. It would be prejudicial to the investigation to answer any of these questions. At the conclusion of the investigation, as we do with all of our matters, we will present the relevant evidence to a court, or I have the ability to make a referral to another agency.

Senator CAMERON: I'm not going to accept that. I'll get some advice on this. So I'll keep going. In terms of underpayments, it was reported workers may not have been paid for up to nine weeks. Is that correct?

Mr McBurney: It's an early stage of the investigation. Disclosure of information about the investigation may prejudice the investigation.

Senator CAMERON: That's absolute rubbish. There's either a factual position these workers have not been paid or they have been paid. How does that have any bearing on your investigation?

Mr McBurney: Senator, that is precisely what we're investigating, and you're asking us to form a conclusion.

Senator CAMERON: So you're claiming public interest immunity on that?

Mr McBurney: Yes. It is an ongoing investigation. It would be prejudicial to compel this disclosure of information about the details of an investigation.

Senator CAMERON: So you're claiming PII. Has the ABCC identified any sham contracting arrangements amongst the workforce of Accuracy?

Mr McBurney: The same answer.

Senator CAMERON: Claiming public interest immunity?

Mr McBurney: It's an ongoing investigation.

Senator CAMERON: An ongoing investigation. You can't tell us how long the investigation will go for?

Mr McBurney: Sorry?

Senator CAMERON: You can't tell us how long the investigation is scheduled to take?

Mr McBurney: That question has been answered by Mr Gregor. We can't tell how long any investigation will take. It takes as long as it takes.

Senator CAMERON: So what action have you taken on the underpayments against the company or the head contractor?

Mr McBurney: No action has been taken as yet. We've commenced an investigation.

Senator CAMERON: No action. You're always pretty slow in action when it comes to employers, aren't you? You're always pretty slow when it's the employers.

CHAIR: That's commentary. Let's try to stick to questions.

Senator CAMERON: Is this project covered by the 2016 Building Code?

Mr McBurney: I understand it is not covered by the 2016 building code. We've been able to ascertain that.

Senator CAMERON: What are the implications, then, for your investigation if it's not covered by the code?

Mr McBurney: We are investigating the two matters outlined by Mr Gregor, and we can investigate breaches of any designated building law and the 2013 code, and that's what we'll proceed with in this investigation.

Senator CAMERON: So it's not covered by the code?

Mr McBurney: It's not covered by the 2016 code.

Senator CAMERON: So you're saying it's covered by the 2013 code?

Ms Drennan: Yes.

Mr McBurney: The 2013 code, yes. The joint venture is covered by the 2013 code.

Senator CAMERON: So both the codes are still in play?

Mr McBurney: Yes. Sorry. When you say both the codes are still in play, we have jurisdiction under both codes, but for this—

Senator CAMERON: So is the 2013 code still a live instrument?

Mr McBurney: Yes.

Ms Drennan: Yes.

Senator CAMERON: So have you seen any provisions of the breach of the 2013 code?

Mr McBurney: We're in the early stage of an investigation. We're investigating all of these matters that commenced on 6 September. I would be more than happy to report to you and answer all of these questions at the conclusion of the investigation.

Senator CAMERON: Is it correct that the Building Code 2016 requires notification of a breach of the code or a suspected breach of the code to the ABCC within 21 working days or as soon as practicable?

Ms Drennan: Both codes have notification requirements with suspected breaches. I can take you to them. The 2016 code, I think, was what you asked about with the notification requirements. Is that right?

Senator CAMERON: What about the 2013 code as well?

Ms Drennan: Sure. The 2016 code says:

A code covered entity must notify the ABCC of a breach, or a suspected breach, of this code of practice as soon as practicable, but no later than 2 working days after becoming aware of the breach or suspected breach

It's a different provision in the 2013 code, and I can obtain that if you like.

Senator CAMERON: But in the 2013 code there's still an obligation too?

Ms Drennan: Yes. On this particular site, the contractor is subject to the 2013 code, and the notification requirements in the 2013 code are:

A building contractor or a building industry participant must notify the Director of a breach, or a suspected breach, of this code of practice within 21 days after becoming aware of the breach or suspected breach.

Senator CAMERON: So why doesn't the two days apply here? This is just a technicality, is it?

Ms Drennan: It depends on when a contractor tenders for a project. That's how you work out what code applies. Because the JV tendered for the project prior to 2 December 2016, they're subject to the 2013 code on this particular project.

Senator CAMERON: Can you confirm that the head contractor failed to ensure that the subcontractor Accuracy Interiors acted in a manner consistent with the Building Code by not engaging in sham contracting and visa noncompliance and not failing to pay workers?

Mr McBurney: All of those matters are under investigation.

Senator CAMERON: You're claiming PII on that as well?

Mr McBurney: All those matters are under investigation.

Senator CAMERON: Are you claiming PII on that question?

Mr McBurney: Yes, I am.

Senator CAMERON: Did John Holland comply with the obligations to notify the ABCC of the suspected breach within 21 days?

Mr McBurney: Could I take a second on that question? I believe we can answer that question.

Senator CAMERON: Hallelujah, you can tell me something!

Mr McBurney: I will ask Mr Gregor to address you on that.

Mr Gregor: The joint venture formally notified the ABCC, in accordance with the Building Code 2013, of the suspected breach relating to the entitlement issue on 6 September 2018.

Senator CAMERON: So they notified you, and that day you started your investigation?

Mr Gregor: Correct. That's right.

Senator CAMERON: If you can tell me about that, why can't you tell me about the other issues about the visas and the like? What's the difference?

Mr McBurney: I can address that. The notification triggered the investigation. On what is being investigated and the conclusions on that, we need to allow the investigation to take its course. But the genesis of the investigation, the fact of the investigation, we do not seek to make a claim over.

Senator CAMERON: Are you investigating when John Holland became aware that the subcontractor was breaching the code?

Mr McBurney: The two issues currently being investigated are as Mr Gregor explained earlier.

Senator CAMERON: Tell me again?

Mr Gregor: As I previously outlined, the investigation was commenced on 6 September 2018. That matter and a further matter that came to our attention are currently—

Senator CAMERON: So what is the matter? What is the matter you are—

Mr Gregor: The additional matter?

Senator CAMERON: No, both.

Mr Gregor: The first matter relates to the entitlement issue and allegations of sham contracting. The second issue relates to the payment of an induction fee allegation by workers in order to work on the project.

Senator CAMERON: So there's no investigation into whether the company has breached visa conditions?

Mr Gregor: We have no remit in that area. If we become—

Senator CAMERON: But you're heard rumours?

Mr Gregor: Through the course of our investigation, if we identify information that identifies issues relating to workers' visas, we will make an official referral to Border Force.

Senator CAMERON: Have there been many reports in the press about breaches of visa conditions?

Mr Gregor: Certainly, if anyone has any specific information relating to that, obviously we'd be very interested to hear from them.

Senator CAMERON: Why don't you make inquiries?

Mr Gregor: We have, as I said, two active investigations underway.

Senator CAMERON: Why don't you make it three active investigations and find out if there are any breaches of visa provisions?

Mr Gregor: We have no authority to be undertaking investigations specifically looking at visa issues.

Senator CAMERON: If you don't, why don't you notify Border Force that you heard rumours that there might be breaches?

Mr McBurney: I have a power of referral. I don't do referrals on rumour. I do referrals on evidence or facts.

Senator CAMERON: You have no power to investigate. You've heard rumours, so you just walk away from it?

Mr McBurney: No. We don't.

Senator CAMERON: But what have you done?

Mr McBurney: We've commenced an investigation.

Senator CAMERON: Not into the visa issue.

Mr McBurney: We've commenced an investigation into the matters within our remit. The two matters and—

Senator CAMERON: You have the power to refer and you haven't even advised that there could be breaches.

Mr McBurney: Wherever the investigation takes us, if it identifies contraventions of laws outside of our jurisdiction, we will at the appropriate time furnish that evidence to the appropriate authority by way of a formal dissemination, which I have the power to do under the act. This is the early stage of an investigation, and I'm not doing a referral based on rumour. I'm allowing Mr Gregor and his officers to fully investigate the matter. They will, at the appropriate time, furnish me with advice, evidence or information to be referred if appropriate.

Senator CAMERON: Given that John Holland advised you of the suspected breach on 6 September, are you confident that it did that within their statutory responsibilities and that they didn't know prior to that and did not refer it?

Mr Gregor: As the commissioner said, this is the early stages of the investigation. We're looking at the full circumstances, at all levels, relating to what you've raised about the timing of the code notification by John Holland's joint venture. We will obviously consider each and every issue as we progress through the investigation.

Senator CAMERON: If you find John Holland to have breached the code, will that be a litigation matter?

Mr Gregor: Under the Building Code, no. No, it wouldn't be.

Senator CAMERON: So they can breach the code, and you don't take any legal action against them?

Mr Gregor: Perhaps I'll let Janine Drennan answer that.

Ms Drennan: When there's a breach of the code, the code and supporting material provide that either it can be rectified or there can be a recommendation for a sanction to the minister. If the commissioner is not satisfied that the matter has been rectified, or it cannot be rectified, then the commissioner can make a recommendation to the minister.

Senator CAMERON: I thought you guys operated under the theory that every breach would be litigated?

Mr McBurney: That has not been the case.

Senator CAMERON: It was the case, certainly with the CFMEU and the unions.

Mr McBurney: No. We're bound by the Legal Service Directions of the Commonwealth. In every case we take to the court, we need to obtain external legal advice that there is evidence to support a contravention of the law and, secondly, we must weigh the public interest, as all regulators do. That does not permit every breach to be litigated. That would be contrary to the legal service provisions.

Senator CAMERON: How could John Holland rectify the breach?

Mr McBurney: You're asking a hypothetical question, assuming that there has been a breach. What happens with a breach of the code, as Ms Drennan has explained, is if the breach has not been adequately rectified then I can make a recommendation to the minister that a sanction be imposed. It's then a matter for the minister. The extent to which a notification can constitute a breach is a matter that we deal with on a regular basis. If there is an explanation for a failure to notify, that's then taken into account. But ultimately it's a matter for the minister whether a code sanctions it.

Senator CAMERON: Can you provide details of how many times employers have failed to notify in the last two years?

Mr McBurney: I can take that on notice.

Senator CAMERON: Can you then also advise as to what actions were taken for each of the specific failures to notify breaches?

Mr McBurney: I'll take that on notice.

CHAIR: Senator Cameron, you're coming up close to half an hour. You still have a few minutes.

Senator CAMERON: I have a few to go.

CHAIR: I'm wondering where we're at in terms of getting to future witnesses.

Senator CAMERON: Just let me get through them. It might not be too long if you let me finish and we don't get Senator Molan asking questions that are Dorothy Dixers that have been worked out with the ABCC before they came in.

Senator MOLAN: About the most appalling behaviour of unions, presumably?

CHAIR: Senator Cameron, you have a few more minutes. I will then offer the call to our colleagues. Please continue then.

Senator CAMERON: Were the Master Builders Association conducting inductions on the site?

Mr McBurney: That's a matter under investigation.

Senator CAMERON: That's under investigation. Are you aware that Master Builders were being paid to conduct inductions on the site and they were conducting inductions in English when those workers couldn't speak or understand English?

Mr McBurney: We're aware of the allegation, and that's being investigated.

Senator CAMERON: Is that a breach of the Building Code?

Mr McBurney: It's a breach of the law. If the evidence supports that, that's a contravention and it's a breach of a law. Once you have a contravention of the designated building law, that is a breach of the code. It would be both a breach of the law and a breach of the code.

Senator CAMERON: What's the sanction that can be imposed on conduct of that type?

Mr McBurney: Firstly, it's a matter for the court as to what financial penalty would be imposed. Secondly, of the sanctions available to the minister, the most serious sanction is a 12-month exclusion sanction from tendering for Commonwealth work.

Senator CAMERON: Would this type of behaviour be a serious sanction: taking money from subcontractors to provide a service in a language that the workers can't understand?

Mr McBurney: I can't deal with hypotheticals. The allegations—

Senator CAMERON: That's what happened on the site.

Mr McBurney: We're investigating that very matter.

Senator CAMERON: You're investigating it. Do you know if those inductions were conducted onsite or offsite?

Mr McBurney: That's part of our investigation.

Senator CAMERON: So you are investigating the MBA?

Mr McBurney: In this matter, yes.

CHAIR: I will offer the call to my colleagues, Senator Cameron. Senator Paterson or Senator Molan, did you want the call?

Senator MOLAN: Yes. How long have I got?

CHAIR: You can take up to half an hour if you want to.

Senator MOLAN: Okay. I'll see how Dorothy and I go!

Senator CAMERON: At least you admit it.

Senator MOLAN: I will continue the line of questioning that I had before, Mr McBurney. We were speaking at that stage about the appalling behaviour of the CFMMEU and the vast range of fines and penalties that had been applied to it, almost $6 million in the last financial year. We were going through individual cases. Could I take you to the Broadway on Ann case, please?

Mr McBurney: Yes.

Senator MOLAN: Can you give us some background on the Broadway on Ann case, and then we'll get up to more current activities?

Mr McBurney: The Broadway on Ann case involved the CFMEU and David Hanna as respondents. David Hanna was, at the time, the CFMEU's national construction and general divisional president. He entered a Brisbane construction project on 10 February 2015. While on the site, Mr Hanna threatened a site manager and caused workers to leave the site. He admitted that, on that date, he entered the site without providing the appropriate entry notice. When asked to provide his right of entry permit, he raised his middle finger and said he did not need one. He squirted water at one of the site managers, which struck their face, shirt and mobile phone. He told a site manager, as he attempted to record his behaviour on his mobile phone, 'Take that phone away or I'll effing bury it down your throat. You ask me if you want to take a picture of me.' He used an employee's swipe card to swipe out a number of employees engaged on the project—the effect of which was that the occupier of the premises did not have a record of which employees had left the premises and which had not.

On 25 May 2017—so prior to my last appearance here—the Federal Circuit Court imposed a penalty of $10,200 on Mr Hanna for his unlawful conduct. Then on 23 October the court imposed penalties totalling $306,000 on the CFMEU in relation to Mr Hanna's conduct. The primary judge in that case observed, 'It's no understatement to describe the CFMEU as the most recidivist corporate offender in Australian history.' The CFMEU appealed the decision, which is why I am talking about it today. On 14 August 2018 the full court handed down its decision in respect of that appeal. The full court found that the primary judge was required to resentence Mr Hanna, and the full court, by majority, imposed penalties matching the penalties that the primary judge imposed—that is, $306,000 on the CFMMEU. That is the same amount as determined by the primary judge. In his reasons for decision Justice Logan stated:

… an organisation which manifests an inability by its internal governance to rein in aberrant behaviour cannot expect to remain registered in its existing form.

Justice Tracey said in his reasons for decision:

The contravening conduct has continued unabated to a point where there is an irresistible inference that the CFMEU has determined that its officials will not comply with the requirements of the FW Act with which it disagrees.

He concluded by saying that the history of contraventions 'bespeak deliberate abuse of the CFMEU's privileged position as a registered organisation in the federal industrial relations system'.

So that has gone to appeal. The appeal has been unsuccessful on the CFMEU's behalf. On 10 September 2018 the CFMMEU filed a further application for special leave to appeal against the full court's decision to the High Court of Australia. We have filed our response to that, and no hearing date has been set.

Senator CAMERON: I have a point of order. You're prepared to talk about all this stuff you have prepared to reply to Senator Molan—the stuff worked out between the Liberal Party and you—but this could be sub judice?

Senator MOLAN: I do object to that. We have worked nothing out.

Senator CAMERON: But you do a deal with the Liberals. No wonder you guys have got no credibility.

ACTING CHAIR (Senator Paterson): Order, Senator Cameron! That is not a point of order. I now want to give Mr McBurney an opportunity—

Senator CAMERON: You're not the chair.

ACTING CHAIR: Order! I am actually the acting chair.

Senator CAMERON: You're not the acting chair.

ACTING CHAIR: The chair appointed me.

Senator CAMERON: Nobody appointed you the acting chair.

ACTING CHAIR: Yes, actually the chair did.

Senator CAMERON: When?

ACTING CHAIR: Before he left the room, as is usual practice.

Senator CAMERON: I don't care. You're not the acting chair. Get the chair in.

ACTING CHAIR: Senator Cameron, why don't you consult the secretariat before you embarrass yourself?

Senator CAMERON: I'm not taking anything from you. You're not the acting chair.

ACTING CHAIR: I am actually.

Senator CAMERON: You are not the acting chair.

ACTING CHAIR: The chair is entitled to appoint someone to step in.

Senator CAMERON: Well we should be told when an acting chair is appointed.

ACTING CHAIR: If the chair is not in the room, I think it's fairly obvious.

Senator CAMERON: No, it's not obvious. He could have appointed me.

ACTING CHAIR: The chair is back.

CHAIR: You were out of the room too, Senator Cameron, and Senator Paterson was certainly the acting chair.

Senator PATERSON: Mr McBurney, I was going to give you an opportunity to respond to that allegation that Senator Cameron raised that there has been coordination between the ABCC and the Liberal Party in respect of this estimates. Is that true?

Senator CAMERON: Of course there has.

Mr McBurney: I've been asked the question previously. No questions are provided by me or my office.

Senator CAMERON: But you brief and you discuss it—that was your last evidence.

Senator MOLAN: That's not proof.

Senator CAMERON: We know what you're up to.

Mr McBurney: With the chair's permission can I just address the issue of sub judice. What I have communicated to the committee is what is clearly on the public record. It's important I say at the end of that that this matter is subject to appeal. I will not pass any comment on the prospects of appeal, but I am able to report on the decision of the judge at first instance and the decision of the appeal court, which is entirely appropriate for matters that are on the public record and not subject to suppression orders.

Senator CAMERON: Well, you worked it out with the Libs; I understand that.

Senator MOLAN: Mr McBurney, you quoted I think it was Judge Salvatore of the Federal Circuit Court where he said that the CFMMEU was the most recidivist corporate offender in Australian history. That was Judge Salvatore?

Mr McBurney: I believe it was.

Senator MOLAN: I wonder if you would give us some background on the—

Mr McBurney: I am corrected; it was Judge Vasta.

Senator MOLAN: Thank you. How is that spelt?

Mr McBurney: V-A-S-T-A.

Senator CAMERON: The same as the Liberal member in the House of Reps.

Senator MOLAN: Could you give us a background on the Ergo 2 apartments case?

Mr McBurney: The Ergo 2 apartments case is a matter arising in South Australia. The respondents were the CFMEU, CFMEU New South Wales, Michael McDermott, Anthony Sloane and Aaron Cartledge. Hindmarsh construction was the head contractor for that project in Sturt Street, Adelaide. The conduct occurred while the respondents were exercising or seeking to exercise right of entry. On 28 April 2014, CFMMEU officials Michael McDermott and Anthony Sloane attended the project and, we allege, acted in an improper manner by failing to provide an entry notice, failing to leave the site when directed and holding discussions with employees in rooms or areas of the site not agreed to and not during meal times and other breaks. Mr McDermott acted in an improper manner by failing to provide his entry notice, remaining on site and holding discussions. That was in relation to 23 May. Mr McDermott again made further contraventions on 6 June, and then on 14 July it was Mr McDermott and Mr Cartledge.

The Federal Court imposed penalties totalling $137,590 against the CFMMEU and its three officials for unlawfully entering the site on four occasions. Mr McDermott admitted he unlawfully entered the site on four occasions, while Mr Cartledge admitted to unlawfully entering the site on one occasion. Following a contested trial the court found that Mr Sloane unlawfully entered the site on one occasion. In handing down her reasons for decision, Justice Charlesworth stated:

The Union's history of non-compliance is properly described as reprehensible.

She also stated:

The contraventions involved a blatant and deliberate disregard of the requirements of the law …

In respect of Mr Sloane, the court said:

Mr Sloane has demonstrated no appreciation of the importance of observing the conditions attaching to the privileges afforded the holder of a permit …

In relation to Mr McDermott, her Honour said:

The circumstances in which the contravention occurred do, however, involve a display of mockery and defiance on Mr McDermott's part.

… … …

Mr McDermott's attitude accompanying this contravention is appropriately described as cavalier and aloof. This is, I find, a blatant contravention involving a knowing and deliberate departure from the law.

In relation to Mr Cartledge, her Honour said that Mr Cartledge intended to convey that he and Mr McDermott would enter the site notwithstanding insistence that they observe the requirements of the act. Mr Cartledge stated that he would 'turn a blind eye' to purported safety concerns. Mr Cartledge adopted an attitude that he could and would ignore the requirements of the act. The contravention was accompanied by a seriously deficient attitude on Mr Cartledge's part toward the importance of complying with the laws.

In the end result, the CFMMEU was fined $116,790; Mr McDermott, then state assistant secretary, $14,400; Mr Cartledge, state secretary, $3,500; Mr Sloane, who was a New South Wales official at the time, $3,000. Total penalties in that matter were $137,590.

Senator MOLAN: Thank you, Mr McBurney. I won't go on, because there's a certain sameness about all of these—the Cardigan Street matter, the Gorgon project case—but, overall, I think the penalties that have been awarded against the CFMEU are in the order of $16 million. Does that sound right to you?

Mr McBurney: Senator, if you total the penalties from the various iterations of the agency I now lead—that is, commencing with the Building Industry Taskforce and proceeding through the ABCC, the FWBC and now the reiteration of the ABCC—total penalties for the CFMMEU amount to $16,319,000.

Senator MOLAN: Thank you very much. You spoke before about the impact on your staff of being regularly harassed through social media and bullied, in some cases threatened, by unions, particularly the CFMEU. What is the impact on the welfare of your staff and their mental health when they see stunts like what Mr John Setka did and his explicit father's day tweet, where he insulted the ABCC workers, and with the help of his own kids.

Mr McBurney: I think the less said about that particular matter, the better. It is a cause for concern that I can accept a debate on the issues and I can accept accountability and transparency and the questions we receive—quite properly—at estimates committees, but what is not acceptable is the level of personal abuse coming on social media towards my staff. The level of threats and intimidation coming to my staff, both on site and on social media is not spontaneous; it is calculated. It goes through to the publications of the CFMEU, their printed publications, vilifying our staff and that is what needs to be called out because these are public servants doing their job. They are doing the work of the Commonwealth, they are carrying out their functions in a professional manner and they will serve the government of the day, but they don't deserve this. They don't deserve these constant attacks, and we are mindful of the wellbeing of our staff. We have support services in place for them, but the primary concern I have is the welfare of my staff and the attacks they are subject to.

Senator MOLAN: If they are doing those kinds of calculated abuse and attacks on you, the regulator of the industry, I can only imagine what they are doing to subbies and to individual workers, et cetera. Do you see any indication of that?

Mr McBurney: We have seen it in the cases we have presented to court, and Mr Upton is a prime example—the recent case in Western Australia. He was found to have threatened and intimidated 60 workers on a building site, so that is a serious concern. The concern is it is not rogue operators within the union. It is coming from the top. It is coming from the senior officials of the union. They are setting the example and they are leading the way. Putting my staff to one side, it is intolerable for anyone to have to put up with this level of abuse when they just want to work and be able to get on with their job.

Senator MOLAN: As we watch the industry from afar, we see statements from Mr Setka—maybe you don't want to talk about it, and please say so if you don't—where he says he is coming after ABCC inspectors. What action do you take to physically protect your people?

Mr McBurney: We have policies and procedures in place. I cannot allow any of my inspectors to go on site unaccompanied by another inspector. I hear the threats that are made and we need to take appropriate precautions to protect our staff and—touch wood—our staff have not been subject to physical intimidation. It is the verbal threats and intimidation that have been a cause for concern over recent investigations in recent years.

Senator MOLAN: You have got a broader role, though, don't you? Combating union misbehaviour we have been speaking about for some time, is a large part of your role. Under the legislation, you include educating industry participants on their rights, dues and obligations. Are you still active in that? I think you gave information—171 education lessons.

Mr McBurney: Presentations, yes. Our first and foremost responsibility is education, and that education is to all building industry participants. Whether it's a union official, a worker, an employer or a subcontractor, we need to be there for all building participants. I talked about this in the annual report, because what I'm most proud of is that assistance we continue to give. Last year 6,976 inquiries were responded to. When you ring the ABCC—and I say this at all my presentations—when ring our hotline number, your call will be answered within 60 seconds. If you don't believe me, try it out. It will be answered by a real person. You will speak to a real person—not only that; they're an expert in their field, so they can respond to inquiries that are made to our agency. That's a very important educative function, because if we can educate industry it prevents litigation. Litigation is costly; it's expensive. We would much prefer to be in a position where we're educating, rather than litigating.

Senator MOLAN: Thank you. What does concern me is the ALP state governments in Queensland and Victoria seem to illustrate that there is some union influence over them, because they've recently intervened in cases concerning right of entry provisions, I understand. There is a case before the Federal Court at the moment—and we need to be careful about what we say—concerning right of entry on the Bruce Highway. Without going into too much detail, can you just outline what that case involves?

Mr McBurney: Yes. I'll confine this strictly to what's on the public record.

Senator MOLAN: Certainly.

Mr McBurney: The Bruce Highway project involved an upgrade of the Bruce Highway, and on six successive days union officials entered site and refused to show their permits. Police had to be called. They were arrested and taken from site. We applied for an injunction in the Federal Court to prevent this occurring. That injunction was granted by Justice Collier earlier this year. This case proceeded to court today. It's been argued before Justice Collier in the Federal Court in Queensland. It's the substantive hearing. The state of Queensland has intervened in the matter, as they're entitled to do, and the state of Queensland has made submissions in the matter. I've got an update from court, which is that the hearing has concluded. The judgement is reserved, but the opportunity is being provided for the parties to make some written submissions, and then Justice Collier will deliver her decision in due course. I don't want to pass judgement on the position taken by the state of Queensland. All parties are entitled to make submissions they deem appropriate, and the court will in due course hand down its decision.

Senator MOLAN: Is it appropriate to indicate who they intervened for?

Mr McBurney: Well, an intervener intervenes as of right and can make whatever submissions. They have the full rights and entitlements of a party. As I understand it, from having read the written submissions, the submissions of the state of Queensland are generally more supportive of the CFMEU position than they are of the ABCC position. All I can say is my position has been made clear: if you want to exercise right of entry, show your permit.

Senator MOLAN: Have any other state governments sought to intervene in similar circumstances?

Mr McBurney: We're relying on the previous full court decision in Victoria in Powell's case. In that case the state of Victoria intervened and took a contrary position to that of my predecessor agency, and the court ultimately upheld the position of the regulator. It's that decision that we are placing reliance on in the case argued today.

Senator MOLAN: Thank you.

CHAIR: Senator Cameron, before you start, I am just going to duck out for a moment. In my absence, Senator Paterson has the chair.

Senator CAMERON: Well, that's good—at least I know. Mr McBurney, on the Hobart hospital site, are you aware that Master Builders were charging workers $99 per induction?

Mr McBurney: We are aware of that allegation and we are investigating it.

Senator CAMERON: Are you aware of how many workers have been inducted to date?

Mr McBurney: That's the subject of ongoing inquiries.

Senator CAMERON: Are you aware of the total induction cost and the total number of workers that have been inducted?

Mr McBurney: All of those matters are the subject of the investigation.

Senator CAMERON: Are you aware that the standard time for these inductions is normally between four and six hours?

Mr McBurney: I'm not personally aware of that, but that will be addressed in the course of the investigation.

Senator CAMERON: Are you aware that the MBA inductions took half an hour and the inductions were in English and the workers couldn't speak English?

Mr McBurney: I am not personally aware of that.

Senator CAMERON: Are you investigating that?

Mr McBurney: All issues pertaining to the induction are currently the subject of the investigation that Mr Gregor has outlined, and we would be very interested in whatever information can be provided to assist the investigation. If you have detailed information or you have sources that can provide that information, we would be greatly appreciative of that.

Senator CAMERON: You don't need me to do anything because you can simply add that to your investigation, can't you?

Mr McBurney: Yes, but if you've got reliable information—

Senator CAMERON: So just add it to your investigation and hopefully you investigate, because I will be asking questions about that in future.

Mr McBurney: Yes, I'm more than happy to report back to you on the next occasion as to the progress of the investigation.

Senator CAMERON: Is it correct that the Building Code doesn't allow for an employer to delegate the duty of administrating inductions and, in particular, restricts a building association such as the MBA from conducting them due to concerns regarding freedom of association?

Mr McBurney: You're asking a question about the application of the code now, and I'll ask Ms Drennan to answer that question, in the general sense rather than the specific sense of the Hobart hospital site.

Ms Drennan: Generally? Are you asking about the 2016 code or the—

Senator CAMERON: Both.

Ms Drennan: The 2016 code contains a provision that specifically relates to inductions. I will find it for you. The 2016 code says:

… the code covered entity must ensure that:

… … …

(p) officials, delegates, or other representatives of a building association do not undertake or administer induction processes.

The 2013 code doesn't contain that particular provision. The 2013 code doesn't contain a provision that specifically relates to induction, but it contains a general obligation to protect freedom of association, to have policies and implement policies that protect freedom of association. I am happy to read that out to you, if you'd like.

Senator CAMERON: So, is the ABCC's interpretation of that then that an organisation such as the MBA shouldn't be carrying out those inductions?

Ms Drennan: It's not something that we've had to consider up until now. In terms of employer association, we haven't had any allegations, that I'm aware, of an employer association conducting an induction before now. So we would have to consider the circumstances and the application of the code in the circumstances.

Senator CAMERON: That would not be consistent with the 2013 code then?

Ms Drennan: Sorry, what do you mean?

Senator CAMERON: Given the freedom of association issues, an employer organisation shouldn't be carrying out these inductions?

Ms Drennan: There's a difference between the two codes. So I would have to consider whether it would apply in the circumstances of the 2013 code. There's a specific provision in the '16 code that talks about that issue and applies to building associations.

Senator CAMERON: So you are investigating whether the MBA carried out inductions in relation to the Royal Hobart Hospital?

Mr McBurney: Yes.

Senator CAMERON: Are you investigating whether the inductions were on site or off site?

Mr McBurney: We are investigating that general allegation. We will investigate and take it wherever it takes us. We will assess the evidence and take appropriate action.

Senator CAMERON: Since you have become commissioner, Mr McBurney, do you intend to continue using the MBA for training for your officers?

Mr McBurney: You asked me about this on the previous occasion and I was somewhat unprepared. I have made inquiries about this since. Quite helpfully, I attended the building simulation centre to observe the training firsthand.

Senator CAMERON: This is the MBA's building simulation centre, is it?

Mr McBurney: Yes, it is. It is the building leadership simulation centre in South Melbourne. I attended on 1 August 2018. We had a full day's training of 12 inspectors on that day. I have to say it is some of the best training we do. It prepares our inspectors in an environment we cannot simulate. We don't have a facility anything like this. The facility is utilised by a number of state and federal government regulators. The training has been delivered to WorkSafe and the Victorian Building Authority from that facility.

Senator CAMERON: You are a regulator who is now investigating the MBA, but you are paying the MBA to train your investigators. Surely that is not appropriate. Isn't that clearly a breach of what you should be doing?

Mr McBurney: I don't accept that, for two reasons. Firstly, we pay the commercial rate—

Senator CAMERON: It doesn't matter what you pay.

Mr McBurney: to use that facility. Secondly, the training is conducted and supervised by our staff. Mr Gregor has been instrumental in this. We design the training, we deliver the training, we use the facility. It is no different to us hiring a room at a hotel for a conference. We are hiring the facility and we are using their resources, but we are delivering the training. In the course of the training Mr Gregor has two of his team leaders in the control room supervising the training and providing the feedback. That is how the training proceeds. Like other regulators, like other state regulators, we will continue to use that facility because I think it is some of the best training we do.

Senator CAMERON: So even though you could be litigating against this participant in the industry, you choose to use them and provide them a benefit by the expenditure of public funds for your training? That is outrageous.

Mr McBurney: I make no apologies for it. It is training that we have conducted in the past and we will continue to do it in the future. In relation to any building industry participant, if they have a training facility that is open to us to hire that is going to add value to our staff, I am open to using any facility.

Senator CAMERON: Hopefully not for much longer, if we are lucky enough to win the next election. We won't have you back. I am finished.

Senator MOLAN: I have a very simple question. Senator Cameron has asked you on a number of occasions if you are aware of certain transgressions or potential contraventions of the law. You have said that you don't act on rumours. I just wondered what obligation I would have as a member of the public, or especially as a member of parliament, to make a formal complaint if I became aware of it?

Mr McBurney: There is no statutory legal obligation. We seek assistance and cooperation in all of our investigations, so if anyone has information that can be furnished, we would seek that. Our investigations are down to the level of cooperation and the evidence we receive. So, in any instance, if anyone can provide information that would assist our inquiries, we would greatly appreciate that.

CHAIR: I thank the ABCC for their attendance and evidence here this evening.

Fair Work Ombudsman

[20:01]

CHAIR: The committee will now call the office of the Fair Work Ombudsman. I welcome Ms Parker and officers. Ms Parker, I welcome you back to the committee in your new capacity and acknowledge the service of your predecessor, Ms James. Do you wish to make an opening statement?

Ms Parker: No, thank you.

CHAIR: I assume you don't wish to make a statement, Minister.

Senator Ruston: No.

Senator CAMERON: Welcome, Ms Parker, Mr Campbell, Ms Hannah, Ms Webster. Does the Fair Work Ombudsman have specific teams for migrant workers?

Ms Parker: Yes, we do.

Senator CAMERON: How many staff and at what levels?

Mr Campbell: We have 32 inspectors in our overseas workers team.

Senator CAMERON: What's the total number of inspectors you have?

Mr Campbell: 188.

Ms Parker: Sorry, was your question just about inspectors?

Senator CAMERON: No. How many staff are there and at what levels?

Ms Parker: We do other work on migrants more broadly than just inspections. There's a migrant team for vulnerable workers.

Ms Hannah: That's six people.

Ms Parker: That's additional people for that. So more for the policy side of our business, which is about broader research and responding to that work that came out of the vulnerable workers legislation.

Senator CAMERON: These 32, are they structured in teams or by state? What is the structure? Or are they just in head office?

Mr Campbell: The inspectors are allocated to different locations. Broadly it is the east coast, but we have officers in Western Australia and Adelaide as well.

Senator CAMERON: What level of staff are these?

Mr Campbell: Mostly APS5s, and APS6s as well.

Senator CAMERON: It's 32 inspectors and six for vulnerable workers.

Ms Parker: Yes.

Senator CAMERON: Mainly on the east coast?

Mr Campbell: Yes. Predominantly in Melbourne, Sydney and Brisbane, but there are others in other locations as well.

Senator CAMERON: Can you provide on notice details of how many and which locations? Does the Fair Work Ombudsman have in-house interpreters to assist with inquiries, complaints and investigations?

Mr Campbell: Yes, we do.

Senator CAMERON: How many, and where are they?

Mr Campbell: We have an internal register that tracks individuals within the network that are bilingual and translate at a certain level, so they can assist in situ. We also have the TIS service, which is a formal translation service provided for under contract. I'm not sure where it's housed. If we need a translation service to assist with telephone calls, or if it's a piece of field activity, we can bring in a TIS operator. So we have both internal and external.

Senator CAMERON: Can you provide details of how many of your staff are engaged in the translation?

Mr Campbell: Sure.

Senator CAMERON: How do you determine the skill? Because interpretation is a bit different from actually speaking the language, isn't it?

Mr Campbell: It is. Depending on the nature of the activity, if it's to assist a conversation or the provision of advice or information, that's one thing where you can have someone assist. But if it's a formal activity, we'll bring in a registered translator to assist us with that, because they need to be at a certain level and competency to ensure that it's conducted in the right manner.

Senator CAMERON: It would be good if you could give me a breakdown of how many staff can do the generalised assistance, how many are proficient or have qualifications for interpreting, and how often you use the external group and how much it costs for the external group—who does it and how much does it cost?

Mr Campbell: Yes.

Senator CAMERON: How many Fair Work Ombudsman inspectors are based in state and regional offices?

Ms Webster: I may be able to assist with some of that information. You're looking at per location, is that right?

Senator CAMERON: Yes.

Ms Webster: I have a list, but it relates to all locations, not just the regional areas.

Senator CAMERON: I did ask state and regional.

Ms Webster: I can take you through that. The ongoing headcount in ACT is 46. All 46 are located in the Canberra office. In New South Wales there is a total of 219. Four are located in Coffs Harbour, 11 in Newcastle, two in Orange, 200 in Sydney and two in Wagga Wagga. In the Northern Territory we have three ongoing headcount. All three are located in Darwin. In Queensland there are 98 personnel. Eighty-one are located in Brisbane, four in Cairns, seven on the Gold Coast, two in Rockhampton and four in Toowoomba. Moving into South Australia, the total is 72. Sixty-nine are located in Adelaide, two in Mount Gambier and one in Port Augusta. In Tasmania there is a total of 29 personnel. Twenty-five are located in Hobart and four in Launceston. In Victoria there are 266. Six are in Bendigo, 255 in Melbourne, four in Traralgon and two in Warrnambool. In Western Australia there are 37 headcount. Four are located in Bunbury and 33 in Perth. That brings us to a total head count of 770 personnel.

Senator CAMERON: From previous estimate sessions, we understand that some Fair Work Ombudsman inspectors in regional and state offices are part of more complex team structures with ties to other states and a national office.

Mr Campbell: Yes.

Senator CAMERON: Could you provide a chart or other explanatory material about how these teams work in practice if they're not physically located together?

Mr Campbell: Sure.

Ms Parker: Yes, that's right—we do that.

Senator CAMERON: Thank you. In the last 12 months how many referrals have been made to Australian Border Force?

Ms Hannah: We've made 35 referrals under an assurance protocol.

Senator CAMERON: If you are advised that there could be a breach of a visa, do you automatically refer that to Border Force or do you investigate?

Ms Hannah: We do it as part of an investigation.

Senator CAMERON: So how do you investigate a potential breach of the visa system?

Mr Campbell: If we identify that an individual has not been paid in accordance with their visa requirements, or is not employed in the role that they should be in accordance with their visa, then we'll refer that to Border Force for action.

Senator CAMERON: Do you have to have evidence of that or can you ask Border Force? Have you asked Border Force to actually look at, say, one site because you've been given some uncorroborated information?

Mr Campbell: We'd normally make an assessment ourselves before we refer it to Border Force.

Ms Hannah: That's right.

Senator CAMERON: How do you do that?

Mr Campbell: As parts of our field activities. If we identify that a visa holder, for example, should be employed as a chef and is being employed as a cleaner, and is being paid $20,000 a year versus $50,000 a year, we'd refer that to Border Force for their consideration and action to determine whether or not that's a breach of the visa. For us the interest is the workplace relations contravention that also exists.

Senator CAMERON: You probably heard some of the discussion I had with the ABCC in relation to the Royal Hobart Hospital. Do you now have a clear delineation between the Fair Work Ombudsman and the ABCC in relation to visa issues?

Mr Campbell: I suppose the delineation is the same as the delineation that exists for all of our other work. If it involves commercial construction and the commercial construction sector—in the case of the hospital, very clearly so—they're matters that the ABCC would look at and refer if necessary.

Senator CAMERON: They say they've got no jurisdiction or powers in relation to visas, but you do have, don't you?

Mr Campbell: We do, because we have a dual role working with both the immigration department and Border Force to assist with visa monitoring.

Senator CAMERON: Given the debate that you heard with the ABCC, would that now encourage you to have a look at the visa situation for those Chinese workers and other migrant workers in the Royal Hobart Hospital?

Mr Campbell: I actually don't know. I haven't heard all of that evidence clearly. I did not know that they said they don't have an ability to refer matters to Border Force if they saw visa exploitation. What I heard—and I was up the back of the room—was that they did not have evidence that they had identified visa workers that had been treated inconsistently with their visa rights and obligations.

Senator CAMERON: Earlier they also said they don't go—

Mr Campbell: Without being difficult, can I take that on notice? Historically, when they were Fair Work inspectors as well as building inspectors, they had a similar capability to us to refer visa breaches to Border Force. I don't know if those have been extinguished.

Senator CAMERON: Can I then draw your attention to the issue that there could be visa issues at the Royal Hobart Hospital and could I ask you to have a look at it?

Mr Campbell: Yes. I think we can take it on notice to see if we have jurisdiction clearly for that matter and, if so, work with the appropriate organisations to—

Ms Parker: We can certainly bring it to the attention of the Department of Home Affairs as well.

Mr Campbell: Yes.

Senator CAMERON: So you'd be prepared to bring it to their attention even without having investigated?

Ms Parker: What I would do is bring to their attention that you've raised it in estimates.

Senator CAMERON: That's good. I appreciate that. The Fair Work building commission could have done that as well, but they chose not to. I appreciate that. Can I now move to the ACTU political rallies. On 10 October, Mr Campbell, you as Deputy Fair Work Ombudsman sent a letter to employer groups reading: 'Proposed 23 October 2018 Change the Rules Rally.' Is that correct?

Mr Campbell: Yes.

Senator CAMERON: Which employer groups was the letter sent to?

Mr Campbell: The Australian Chamber of Commerce and Industry, the Australian Industry Group, the Business Council of Australia and the Australian Mines and Metals Association.

Senator CAMERON: None of the state chambers?

Mr Campbell: No. The ACCI is obviously a representative organisation for those affiliates.

Senator CAMERON: Were all of the letters in identical terms to the AMMA letter?

Mr Campbell: Yes, they were, except the terms of the ACCI letter were slightly different because it's an affiliate organisation.

Senator CAMERON: Can you provide copies of that letter?

Ms Parker: All the letters or just—

Senator CAMERON: Have you got it now?

Ms Parker: Do you mean all the letters?

Senator CAMERON: Yes.

Ms Parker: That's fine. We can provide those on notice.

Senator CAMERON: You don't have them here?

Ms Parker: I don't think we do, no—not all of them. We just have an example, which you have probably seen.

Senator CAMERON: Okay. So did the Fair Work Ombudsman write to anyone other than employer groups with advice regarding legal rights and the proposed ACTU rallies?

Mr Campbell: No.

Senator CAMERON: When was the decision made to send the 10 October letter?

Mr Campbell: It followed the announcement by the ACTU of the proposal to run the industrial rally. I think that was 26 September.

Senator CAMERON: What do you mean by 'industrial rally'?

Mr Campbell: The Change the Rules Rally.

Senator CAMERON: You described it as an 'industrial rally'. What do you mean by 'industrial rally'?

Mr Campbell: A rally with the intent, as I understand it, to influence the change of Australia's workplace relations system and industrial relations laws.

Senator CAMERON: Was the letter approved by you, Ms Parker?

Ms Parker: Yes, it was.

Senator CAMERON: Did you draft the letter or did Mr Campbell draft the letter?

Ms Parker: Mr Campbell drafted the letter. I approved it.

Senator CAMERON: Was a draft of the letter sent to the department or the minister's office?

Ms Parker: No.

Senator CAMERON: Are you sure of that?

Ms Parker: Absolutely sure, Senator.

Senator CAMERON: Did you have any contact of any kind—meetings, briefings or emails? Had anyone at the Fair Work Ombudsman had any of those with the minister or her office relating to the 10 October letter before or after it was sent?

Ms Parker: No. As Mr Campbell said, we discussed it internally. It came about through me seeking advice on our role. As you know, I'm the new CEO, so I sought advice from Mr Campbell about our role as a regulator of the Fair Work Act in relation to these rallies or industrial action and other similar things. Mr Campbell advised me on the role of the agency and what they have been doing. We determined that it would be appropriate to advise employers. Given that some of them may not have known about the rallies, we decided to advise them on the rallies and their responsibilities under the act.

Senator CAMERON: When was the minister or her office advised that the 10 October letter was to be sent?

Ms Hannah: They weren't advised. The first that they would have known about it was when they read about it in the newspaper.

Senator CAMERON: Okay—

Ms Parker: Sorry, Senator, I think Mr Knott actually provided a copy of his letter to the minister. He wrote back to us and he attached Mr Campbell's letter to his letter and sent it to the minister. That's when the minister would have received it.

Senator CAMERON: Can you provide copies of—

Ms Parker: Does that make sense?

Senator CAMERON: Yes.

Senator CAMERON: Can you provide details of that to me?

Ms Parker: Certainly, yes.

Senator CAMERON: What consultation did the ombudsman engage in with the department before sending the 10 October later?

Ms Parker: We didn't have any.

Senator CAMERON: The first purpose of the letter was clearly to enlist employers to take steps to discourage their employees from participating in the political rally wasn't it?

Ms Parker: No, it wasn't. That's not our view. Our view on this is that our role as the Fair Work Ombudsman is about providing information about the Fair Work Act and responsibility. So it was setting out what the legislation provides and requires. Nothing in our letter says that people can't attend a rally and we've never said that, and the characterisation in the media is incorrect on some of that. You will see, when you see the letter, that we have never said that. What we have said is that people are required to take leave. They can't just walk off the job.

Senator CAMERON: Where in the letter does the Fair Work Ombudsman ask AMMA to remind their members they should not unreasonably refuse employee applications to take leave to attend the rallies?

Ms Parker: The letter we first sent didn't include that. We did provide advice on our website that it includes that advice.

Senator CAMERON: So this was done after the letter was sent?

Ms Parker: Yes, that's right.

Senator CAMERON: Why wasn't Mr Campbell included in the first letter, so that employers were advised of all of their obligations under the act? Why did you not include that important part?

Mr Campbell: It would have been a very long letter if I sought them to advise them of every obligation they have under the act—

Senator CAMERON: It doesn't matter about the length of the letter—

Mr Campbell: The intent was to flag both their rights and entitlements and their obligations with regard to possible unlawful industrial action. It wasn't the intent to encourage them to resist their employees attending the rally, and it didn't include content around rights of employees to seek leave, because that wasn't the information that I was seeking to portray through this correspondence. If there were a concern about an employer acting against an employee with regard to their right to take leave that would be an equally serious yet different issue for the organisation.

Senator CAMERON: No, it's the same issue. The issue is clear, that what you did was send a letter to the AMMA that didn't fully explain employees' rights. I put it to you that was deliberate.

Ms Parker: I suppose we would say that employers are very well aware of employees' rights to take leave. It's a longstanding part of the act. We wanted to point out that the rallies were on. We didn't want people inadvertently breaching the law. We expected them to remind their employees of their obligations. As I said before, there is no issue with attending a rally if employers agree to leave. We've never said anything against the rallies—

Senator CAMERON: But that wasn't included in the letter, was it?

Ms Parker: I've already answered that. No, we didn't have it specifically in the letter.

Senator CAMERON: Yes, so it was clear—

Ms Parker: We didn't have other—

Senator CAMERON: that this is another example of, under the Liberal government, so-called independent organisations basically delivering on the wishes, the views and the ideology of the government. If it wasn't, then you would have provided full details to employees about their obligations.

Ms Parker: We took that on board when there was clearly confusion about that particular issue in the media. We took it on board, and we subsequently put very clear advice on our website. We provided that advice to our frontline staff who answer calls, when they are providing advice to anyone who contacts them, to make sure they understand that, if they seek leave, they're entitled to have leave and their employers can't unreasonably refuse to have leave. We updated the website, we listened to stakeholders, we understood that needed to be pointed out and we pointed it out.

Senator CAMERON: But I'm asking: why wasn't it pointed out in the first place?

Ms Parker: I've explained. We corrected the information—not corrected; we added to the information later. We provided it in a range of contexts. We told everyone who spoke with us that there were two components. The letter originally was about ensuring people understood that the rallies were on, and what they were required to do.

Senator CAMERON: Yes, but, if they were granted leave, it would not be possible unlawful industrial action, would it?

Ms Parker: No; that's right. We've never said it was. Our letter is very clear on that.

Senator CAMERON: But you had to send a second letter out because your first letter caused confusion—probably deliberately.

Ms Parker: The employers also clarified in their advice about that issue as well. They were very clear, the ones we sent it to.

Senator CAMERON: So the second purpose of the letter was clearly to enlist employers to collate evidence to prosecute workers for attending the political rally, wasn't it?

Ms Parker: No.

Senator CAMERON: For what other purpose are employers asked to undertake the actions set out in points A to E on page 2 of the letter?

Ms Parker: If employees walk off the job, it could constitute unapproved industrial action—unprotected. If employers want us to take action on that as the balanced and impartial regulator that regulates all parts of the law, not just certain parts of the law, then they need to collect information. If they don't, there's nothing we can do.

Senator CAMERON: Well, you're certainly well-balanced and impartial when you're basically asking employers to provide evidence to prosecute employees.

Ms Parker: I reject that.

Senator CAMERON: You can reject it all you like, but it's clear that that's what happened.

Ms Parker: I still reject it.

Senator CAMERON: Did the Fair Work Ombudsman write to unions asking them to remind their members that they have the right to request leave, that their employer should not unreasonably refuse applications to take leave, and asking them to record any unreasonable requests?

Ms Parker: No. The union had called the rally, and it was already providing advice to all its members. The employers were the ones that may not have known about the rallies. The unions running this knew exactly what the rallies were about.

Senator CAMERON: And the employers knew exactly what the rallies were about as well, but you decided to intervene, didn't you?

Ms Parker: I have written once to Ms McManus.

Senator CAMERON: What was that?

Ms Parker: In response to two letters from her.

Senator CAMERON: Can you table those two letters, plus the response?

Ms Parker: Yes, that's fine.

Senator CAMERON: Do you have them here?

Ms Parker: I may have. If I could come back to it—I may well have them, yes.

Senator CAMERON: While you're looking for them—

Ms Parker: Actually, no, I don't think I do.

Senator CAMERON: You can table them on notice. Did the Fair Work Ombudsman write to employees or unions reminding them of their rights to make applications to the Fair Work Commission, as you did for employers?

Ms Parker: No.

Senator CAMERON: Were the two letters from the secretary of the ACTU, Ms McManus, complaining about the 10 October letter?

Ms Parker: Yes.

Senator CAMERON: What were the complaints?

Ms Parker: The ACTU did not, obviously, agree with us writing to employers.

Senator CAMERON: As simple as that? It must have been more than that.

Ms Parker: Senator, I am going to provide you with the letter, so, once you have it, you can have a look yourself.

Senator CAMERON: Sorry—I can have a look at it for myself, can I?

Ms Parker: I can't recite the letter, sorry.

Senator CAMERON: You didn't bring it with you?

Ms Parker: Do we have a copy of the letter?

Ms Hannah: No, we don't have a copy.

Ms Parker: Sorry, Senator, we didn't actually bring a copy of the letter.

Senator CAMERON: Someone must have a laptop.

Mr Campbell: Senator, if you give us a little bit, we might be able to find one.

Ms Parker: I'll probably have one here—thank you. I have a copy.

Senator CAMERON: Would you like to table them?

Ms Parker: Yes, that's fine. I have a letter of 12 October and of 17 October.

Senator CAMERON: That is the two letters from—

Ms Parker: Yes.

Senator CAMERON: And do you have your response to the ACTU? While we're waiting for that, before sending the 10 October letter, did the Fair Work Ombudsman have any contact with the ACTU about the political rallies?

Ms Parker: No, Senator. I did try to make an appointment with Ms McManus, but she was not available until after November.

Senator CAMERON: What do you mean you tried to make an appointment?

Ms Parker: My office phoned hers twice to try and make a time to speak with her.

Senator CAMERON: About the rally?

Ms Parker: Yes, about that and other things.

Senator CAMERON: So why didn't you write to her?

Ms Parker: I did. The letter you will get in a moment—you will see that I also—

Senator CAMERON: I thought the letter we were getting was in response to her two letters.

Ms Parker: I phoned her office twice, Senator. I'm not sure why I would have to write to her. The idea was to meet with her. We were both in Melbourne. I thought that would be appropriate. She's kind of a block away from me, I think.

Senator CAMERON: So Mr Knott on behalf of AMMA wrote to the Fair Work Ombudsman on 12 October proposing four actions that the Fair Work Ombudsman should take in preparing for and responding to both the organising and taking of unlawful industrial action. Is that correct?

Ms Parker: Yes, that's right.

Senator CAMERON: Has the Fair Work Ombudsman responded to Mr Knott's letter?

Ms Parker: Yes, Senator.

Senator CAMERON: Can you provide a copy of that?

Ms Parker: Yes.

Senator CAMERON: Do you have it here?

Ms Parker: I hope so.

Ms Hannah: Yes, we do.

Senator CAMERON: When the secretariat come back, we'll get a copy of that as well. Has the Fair Work Ombudsman taken any steps to follow the suggestions in the AMMA letter?

Ms Parker: Senator, I believe the response letter says that we believe the steps we were taking were appropriate.

Senator CAMERON: That's not what I am asking—

Ms Parker: The answer's no.

Senator CAMERON: Well, just say that. Just say no. Then I don't have to ask you any other questions. When was the decision taken to update the Fair Work Ombudsman website on 17 October to note that employers should not unreasonably refuse applications to take leave?

Ms Hannah: Senator, the decision was made the day before.

Senator CAMERON: On the 16th?

Ms Hannah: Yes.

Senator CAMERON: And why was the website updated?

Ms Hannah: Because we'd listened to feedback from stakeholders, communicated to us via two letters from the ACTU and also via the media, that there was some confusion, and we wanted to clarify that.

Senator CAMERON: We don't have the ACTU letter at the moment, but was the ACTU saying there was confusion or that you were providing inadequate information?

Ms Hannah: It was clear to us from the letter that there was confusion, and that was communicated also through the media.

Senator CAMERON: So you'd come to the view there was confusion.

Ms Hannah: Yes, I had.

Senator CAMERON: But the ACTU didn't raise the issue of confusion. They simply raised the issue of inadequate information—impartial information?

Ms Parker: Not inadequate, Senator. They were questioning the advice we were providing to employers, which we reject. Our advice was accurate.

Senator CAMERON: Who determined that the website should be updated? Was that you, Ms Parker?

Ms Parker: Yes. It was myself and Ms Hannah.

Ms Hannah: Yes.

Ms Parker: We do that on a regular basis. That's the role of any of our information. Our website is updated all the time.

Ms Hannah: We're constantly reviewing our website and making sure that it's accurate, and we take on board feedback from stakeholders as a usual practice.

ACTING CHAIR: Senator Cameron, how many more questions on this issue?

Senator CAMERON: Quite a few.

ACTING CHAIR: I might break at that point and give the call to Senator Molan.

Senator MOLAN: I'd like to look at some of the less contentious—

Senator CAMERON: Sorry, Chair. I think that other letter has been done now. That has been done now, yes? Thanks. Sorry, Senator Molan.

Senator MOLAN: Ms Parker, something that strikes me, as I am handed this letter, the letter of 17 October, is that you say this notification occurred through a public statement to employees, employers and registered organisations?

Ms Parker: That's right.

Senator MOLAN: So you did advise everyone?

Ms Parker: Yes, on our website.

Senator MOLAN: We've spent a lot of today speaking about small business. You provide support to small business through your Small Business Showcase, yes?

Ms Parker: That's right.

Senator MOLAN: Could you describe, technically, how that's done?

Ms Hannah: Yes. Would you like to take that, Michael?

Mr Campbell: I'd get Nicky to talk about the Small Business Showcase.

Senator MOLAN: I think that was our election commitment back in 2013, wasn't it?

Mr Campbell: It's part of a suite of educative offerings that we have now to support small business, on the back of some of the commitments that were made earlier, particularly around providing pay and conditions information through a calculator, which we call the PACT, on our website. Perhaps I can have Ms Chaffer talk about our Small Business Showcase, which is an important part of our educative offerings for our website. Ms Chaffer leads our Proactive Compliance and Education branch.

Ms Chaffer: The showcase is basically a virtual hub where we consolidate all of our information available to small businesses into the one spot. It includes a home page of nine topics, including hiring and paying employees; keeping the right records; leave, including annual and sick leave; managing employees; handling employee requests; ending employment; help that's available to small business; keeping up to date through My account; and links to our other organisations. There is also somewhere to see how your business stacks up, where we offer a checklist. Small businesses are able to complete the checklist to see how they're stacking up and complying.

Senator MOLAN: What are the online tools? I'm sure you have online tools.

Ms Chaffer: Yes, we have several online tools. We have the pay and conditions tool, which is one of our most popular resources on the website. It calculates minimum rates of pay, provides a leave calculator and a shift calculator. A redundancy payment calculator as well is one of our resources. We have, like I mentioned, checklists. We have an online learning centre, which has modules ranging from hiring an employee to keeping accurate records and requirements as outlined in the act—to mention a few.

We also have the Workplace Basics quiz. That's another quiz that's available. It's similar to the quiz I outlined earlier, where you can take certain modules testing your knowledge on leave, termination and redundancy, types of employment, disputes and grievances, flexible working arrangements, record keeping and pay slips.

Additionally, aside from our website, we also have our Record My Hours smartphone app, which enables employees to track the hours that they work using what is, I guess, a sort of geographic tracking device inside the app. We've got some low-literacy storyboards for our CALD customers, our non-English-speaking-background customers. We've got a series of videos that are targeted at young workers. So, the videos cover topics from workplace myths busted, how to address being treated unfairly at work, apprenticeships and trainees, and unpaid work, to name a few. We've also got a number of best practice guides. We have 13 of those guides ranging from managing underperformance to gender pay equity, improving workplace productivity through bargaining, small businesses and the Fair Work Act. We have 11 checklists. I mentioned a couple of those before. Again, ranging from starting a new job to parental leave, an induction checklist—

Senator MOLAN: Plain language explanation of legislation?

Ms Chaffer: Yes. We also have a number of guides and books. We have 15 of those available. Again, the guides range from things like a guide to promoting compliance in your franchise network, a guide to hiring new employees, a step-by-step guide to applying for small claims, our *Fair Work Handbook*., a guide to starting a new job—

Senator MOLAN: That's great. I get the general view. How do you measure the access that you get to that? You mentioned that the pay and condition tool is one of the most popular, as you can imagine.

Ms Chaffer: Yes, it is.

Senator MOLAN: How do you measure the access to that?

Ms Chaffer: We usually measure the visits and, within PACT, we'll often measure the number of calculations that people undertake in PACT. I think it was 500,000. I will grab that figure for you, Senator.

Senator MOLAN: In what period?

Ms Chaffer: PACT has had 13 million visits since May 2015, when the tool was launched.

Senator MOLAN: And that's your educational function. Another function is protecting vulnerable workers under the legislation that exists. We passed legislation and there are a bunch of new measures in relation to that. How will the protecting vulnerable workers measures crack down on noncompliance and protect workers?

Mr Campbell: The amendments provided a host of different improvements to our regulatory model. Firstly, they gave us new evidence-gathering powers. We've now got the ability to compel an individual to provide evidence to us where we haven't had that power before, particularly when it comes to testimonial evidence. So that assists us in the conduct of our investigations, specifically in time and wage investigations. The penalties associated with certain contraventions regarding wage underpayments were increased significantly, as was a multiplying effect for serious contraventions. Where somebody has, perhaps, been a recidivist or the behaviours are systematic or particularly exploitive, the court now has the ability to impose increased penalties. So that's going to be yet another important deterrent against those who attempt to do the wrong thing. In addition, we were provided with additional resources, which has allowed us to provide additional services to the community—particularly the vulnerable section of the community—in addition to having more field staff as well. It has assisted us across a range of different functions or parts of our role.

Senator MOLAN: How do you define 'vulnerable'?

Mr Campbell: For us, it's a feature of the characteristics of the individual. It might be that they've got limited language skills. It might be that English isn't their first language. It might be that they're new arrivals to Australia. They might be visa holders or they could be young. They could have another characteristic, such as a disability, which might make them more open to exploitation or risk of exploitation. We consider those individuals ones which require the most protection from the state and where we will allocate resources and take action.

Senator MOLAN: What additional funding has been supplied to you to perform this function?

Mr Campbell: The additional budget was a $20 million measure over four years.

Senator MOLAN: Have you translated that into staff?

Mr Campbell: There were certainly staff as part of the—

Senator MOLAN: How many?

Mr Campbell: Can I take that on notice? I'll have another officer answer that question for you. Certainly, we were able to recruit more field staff to assist to implement that new function.

Senator MOLAN: Have you seen success in that in terms of what has come through the courts?

Mr Campbell: Not yet. We're just starting to lodge cases now that will ask the court to have a mind to serious contraventions and also ask the court to consider activity which we say contravenes the new provision of the act, particularly as it goes to providing false and misleading information to inspectors, which is a particularly serious contravention. It also will test new record-keeping obligations where, in the past, we've found that the failure to keep records has been a real inhibitor to our ability to both prosecute and investigate these matters. So the new provisions in that space will assist us as well, but, again, it will start to flow through the courts in our program—

Senator MOLAN: My notes mention reversing the onus of proof for where employers have not kept appropriate records. Can you explain that to me?

Mr Campbell: I might have Ms Webster talk to those provisions if that's okay.

Ms Webster: First, as Mr Campbell alluded to, there has been just one matter so far that we filed recently where we're alleging contravention of the new section 718A which relates to false or misleading information or documents being provided in the course of an investigation. That matter is currently before the court. It is a matter involving a Crust Gourmet Pizza Bar.

Senator MOLAN: Sorry, who was that?

Ms Webster: It's a matter involving a Mr Lee and Desire Foods Pty Ltd, Mr Lee being the part owner and director. The business is a Crust Gourmet Pizza Bar. It is, in fact, the first matter that we've filed, but, as Mr Campbell has indicated, there are a number of other matters that are in the pipeline as well where we will have an opportunity to proceed and put before the courts matters involving some of these other enhanced provisions. Certainly, one such provision which will be quite important and will have a significant deterrence impact is serious contravention. So, under the protecting vulnerable workers amendments, now where a contravention is considered to be serious, there is the capacity for the court to order up to 10 times the penalty which was previously available to the court.

Senator MOLAN: Custodial sentences?

Ms Webster: Not custodial sentences. We operate under a civil penalty regime, but we anticipate quite significant penalties that will come through that particular provision.

Senator MOLAN: Thank you very much for that.

CHAIR: We'll just suspend briefly. I'll just check to see if Senator Cameron has any more questions. I assume that he probably does.

Senator CAMERON: That was the quickest session.

CHAIR: If you hadn't come back in nice and quickly, that would have been it!

Senator CAMERON: I'll go back out if you like.

CHAIR: You have the call, Senator Cameron.

Senator CAMERON: According to a spokesperson for the Fair Work Ombudsman quoted in a Workplace Express article on 19 October: 'To clarify comments and queries from a range of stakeholders, the Fair Work Ombudsman provided additional information on its website relating to upcoming rallies.' Who were the range of stakeholders who commented or queried the Fair Work Ombudsman's initial advice?

Ms Hannah: It was the ACTU and also some of the industry associations who we wrote to.

Senator CAMERON: Who are 'some of the industry associations'?

Ms Hannah: Mr Knott, for instance.

Senator CAMERON: For instance? What's the other instance?

Ms Hannah: I would have to take that on notice and go and check. There was a branch—

Senator CAMERON: Are you telling me basically it was the ACTU and Mr Knott?

Ms Hannah: There were also other commentators.

Senator CAMERON: Who were the commentators?

Ms Hannah: Other stakeholders. I would have to take that on notice to give you an accurate answer.

Senator CAMERON: Which commentators contacted you?

Ms Hannah: Like I said, I'd have to take it on notice. And I'm referring to stakeholders.

Senator CAMERON: What do you mean by 'commentators'?

Ms Hannah: I'm referring to stakeholders.

CHAIR: She's corrected herself, so let's just move on Senator Cameron.

Senator CAMERON: Why wasn't the advice included in the letters to employers on 10 October?

Ms Parker: I've answered that. I can't add any more, sorry. One of the things we have noted is that industrial action is something that is a significant public interest. We've had—

Senator CAMERON: This is not industrial action, Ms Parker.

Ms Parker: Potential industrial action, it is.

Senator CAMERON: You said it was industrial action—that just shows the bias.

Ms Parker: No, I said 'the topic'.

Senator CAMERON: It shows the bias that you've engaged in.

CHAIR: Senator Cameron, let the official answer the question.

Ms Parker: The topic was what I was referring to. I said industrial action is a significant public interest matter, and it is.

Senator CAMERON: This wasn't industrial action, was it.

Ms Parker: Our website has been viewed 32,000 times on the topic of industrial action since 1 January. The public is interested in this issue. There is potential for this to be industrial action.

Senator CAMERON: Can you provide any previous examples of the Fair Work Ombudsman writing to employers in this manner in relation to political protests?

Ms Parker: I'll take it on notice.

Senator CAMERON: How many instances of wage underpayment were reported to the Fair Work Ombudsman in the 2017-18 financial year and up to today?

Ms Parker: We might not be able to give that to you today. We can give it to you as accurately as we can.

Mr Campbell: I'm sorry I don't have the number for you, but 19 per cent of all of the allegations received in the 2018-19 year to September concerned underpayment of wages.

Senator CAMERON: Is there a number?

Mr Campbell: I'll get that for you. Let me get you something on notice, because there's also underpayment of allowances associated with termination. Let me get you something that is more specific than that; perhaps I can do it on notice.

Senator CAMERON: How much—

Mr Campbell: It's a significant part of our work.

Ms Parker: We had 64,533 online inquiries, so we could estimate the percentage of that being around underpayments, if you said the percentage was—

Mr Campbell: I've got some figures. I'd rather clarify them for you, but time not paid is 19 per cent; termination is 15 per cent; underpayment of an hourly rate is 14 per cent. There are other types that could come into that number. It's a significant part of what we do. Almost all of the investigations we conduct go to an underpayment of a wage or entitlement.

Senator CAMERON: What was the value of the underpayments?

Ms Parker: We can certainly say we got $29,679,387 back in the financial year for workers.

Senator CAMERON: I'm asking for the value of the underpayments, not what you got back.

Ms Parker: You mean the total of—

Senator CAMERON: The underpayments.

Ms Parker: We wouldn't be able to answer that.

Senator CAMERON: Because we've had this discussion in a previous inquiry.

Ms Parker: Yes, we have.

Senator CAMERON: And you don't seek to recover the full amount for workers. You do a deal.

Ms Parker: We seek to recover the underpayment for which we can actually get some evidence that there's underpayment. That's the nature of the business. There has to be some proof, because there are two parties, the employer and the employee, and they're both entitled to have a view.

Senator CAMERON: Well, I will have something to say in the report in relation to the Fair Work Ombudsman's approach on this. It seems to me that you do a deal under an enforceable undertaking and the people who lose out are the workers and the people who gain are the employers you do the deal with.

CHAIR: Is that a question, Senator Cameron?

Senator CAMERON: That's a statement. That's what happens.

CHAIR: That's what I thought, so the official doesn't need to answer it.

Senator CAMERON: That's correct, isn't it, Ms Parker.

Ms Parker: No.

Senator CAMERON: Why do you only go back six months in some of your enforceable undertakings when you've got evidence of longer breaches?

Ms Parker: If we have evidence of longer then obviously we will go back further than that.

Senator CAMERON: We'll see. What percentages of wage underpayments were received through the different enforcement methods that the Fair Work Ombudsman uses, for example mediation, enforceable undertakings, infringement notices, litigation and other types of enforcement action?

Mr Campbell: I'll need to find the figures for you. I have figures for the 2017-18 financial year. Is that okay?

Senator CAMERON: Yes.

Mr Campbell: By way of mediation 5,125 matters were resolved.

Senator CAMERON: What about enforceable undertakings?

Mr Campbell: We centred into seven enforceable undertakings for the last financial year.

Ms Parker: In litigation we initiated 35 and achieved $7.2 million in court ordered penalties.

Senator CAMERON: How many were you unsuccessful in?

Ms Webster: I could take that on notice, but none come to mind.

Senator CAMERON: What about infringement notices?

Mr Campbell: Six hundred and fifteen.

Senator CAMERON: Did they result in any return to the workers?

Mr Campbell: They are on-the-spot fines. They are generally for record-keeping contraventions. There would be a total figure. Perhaps one of my colleagues behind me might be able to get it for me.

Senator CAMERON: Did workers recover wages as a result of those infringement notices or fines?

Mr Campbell: I am trying to get at that infringement notices are for record-keeping failures. That doesn't mean there couldn't be an underpayment that was resolved or not resolved associated with that work, but there was an issue with the record-keeping practices of the employer, of a nature that required an on-the-spot fine.

Ms Parker: Just for that. In answer to your question: 615 in 2017-18; total amount of $397,341.

Senator CAMERON: When did you start your term as Fair Work Ombudsman?

Ms Parker: In mid-July.

Senator CAMERON: Is it correct that the reporting date of the annual report is 30 June 2018?

Ms Parker: Yes, that's correct.

Senator CAMERON: Is there a reason why you feature as the Fair Work Ombudsman in the annual report and not the previous Fair Work Ombudsman, Natalie James?

Ms Parker: Yes, it is a requirement when there is a handover like that. Ms James had already left while we were finalising the annual report. It is slightly odd, I agree, but it is a requirement. That is how it is done.

Senator CAMERON: If you sign off on the report, you have to satisfy yourself that the report is accurate.

Ms Parker: Yes, as far as possible. I rely on the officers for that.

Senator CAMERON: Is there a reason why it is done like that?

Ms Parker: That is a very good question. I might have to take that on notice.

Senator CAMERON: I am interested, because you were not the Fair Work Ombudsman for that period.

Ms Parker: I know. I asked the question myself: why am I signing this off? Somebody has to sign it off.

CHAIR: If you're the official in the role when the document is finalised, I guess you have to sign it off.

Ms Parker: It is one of those anomalies when there's a period of time—

Senator CAMERON: Whom did you seek advice from?

Ms Parker: From deputies, my head of corporate, the chief financial officer. The audit committee also assured me that they were comfortable. The financial statements all go through the audit committee. I also have the Registered Organisations Commission in here, because they are part of the entity.

Senator CAMERON: You may not know the answer to this, but is that the same rule for corporations?

Ms Parker: I don't know the answer to that.

Senator CAMERON: Are there any lawyers here that might know that?

Ms Webster: I am a lawyer, but I must say I can't answer that question either. I am happy to take it on notice.

Senator CAMERON: I would be interested to see why this happens. It seems bizarre to me. There might be a valid reason, but I would like to know what it is.

Ms Parker: Somebody has to sign off the annual report, and I was in the chair at the time.

Ms Hannah: You were the responsible officer.

CHAIR: It being nine o'clock—

Senator CAMERON: Can I finish with one last question?

CHAIR: And then we can release?

Senator CAMERON: Yes, as far as I am concerned I am finished. We can go for a break if you like.

CHAIR: No, I am sure the witnesses will have a very happy time if you are finished.

Ms Parker: Would you like us to find out about corporations as well? Is that what you are asking?

Senator CAMERON: If you don't mind. You are not obliged to, but I am interested.

Ms Parker: It is interesting; I agree.

Senator CAMERON: You also feature as the deputy secretary of the department. If someone picks the two reports up, they will see that you were the Fair Work Ombudsman for that period of 12 months and for the same period you were the deputy secretary for the Department of Jobs and Small Business. Even some explanatory note on the reports might be better than what has been done.

Ms Parker: I accept that. In fact, now that you say that, I could well have put a statement in here with something to that effect. We could always add it later.

Senator CAMERON: I am not being critical; I am just interested in how this works.

Ms Parker: Quite right. We could always put that as a separate line or in my year-in-review.

Senator CAMERON: I see you as a detail person, after the time I've had, so I would have thought—

Senator MOLAN: This is a charm offensive I'm seeing.

Senator CAMERON: I have known Ms Parker for a long time, and sometimes it has not been charming, let me tell you. Is that right, Ms Parker?

Ms Parker: Yes.

Senator CAMERON: I am finished. On that note, I give in.

CHAIR: On that note, we will release the office of the Fair Work Ombudsman with our thanks. Safe travels. After a 15-minute suspension we will come back with the Fair Work Commission.

**Proceedings suspended from 21:02 to 21:10**

Fair Work Commission

CHAIR: We'll resume the hearing with the Fair Work Commission. Welcome. Do you have an opening statement?

Ms O'Neill: No, thank you, Chair.

CHAIR: Excellent. Thank you very much. Senator Cameron, you have the call.

Senator CAMERON: I've got nothing that can't go on notice. Given the time of night, if the government wants to ask questions and I need to respond to them, that's okay, but I've got nothing that I can't put on notice.

CHAIR: Senator Molan?

Senator MOLAN: We certainly have no questions at all.

CHAIR: Then I sincerely apologise. I'm sure you're not terribly disappointed!

Ms Carruthers: Very thankful, though.

Ms O'Neill: Thank you very much.

Registered Organisations Commission

[21:14]

CHAIR: I welcome representatives from the Registered Organisations Commission. Do you wish to make an opening statement?

Mr Bielecki: Yes, thank you—a brief opening statement. The Registered Organisations Commission is pleased to appear before the committee today. Registered organisations have a special position in the IR framework. They exist to serve their members. Each is responsible for its own conduct. Each is funded by other people's money—members' money. We seek to drive behaviours and organisations that sees them focused on acting in the best interests of their members. We regulate 106 federally registered organisations across Australia. Sixty-one are employer organisations and 45 are trade unions. We assess and analyse financial reports from about 375 reporting units, which includes branches of registered organisations.

Today, I want to very briefly highlight two current important and complementary areas of our compliance work, including a number of innovations we have initiated. The first area is education, which I've made a priority focus for the ROC, to help organisations to comply with the requirements of the act. We have rolled out a host of guidance materials. Some of the most notable outcomes in this area include the national 2018-19 ROC Education Strategy, which for the first time schedules our major education activities for a year in advance. It was very well received upon its release. It was one of the most viewed documents on our website. It enables organisations to plan how they'll meet their education needs and it includes strategically timed refresher sessions delivered just ahead of the related compliance obligation arising for organisations. The second milestone in this area is that we've developed a rich bank of education resources for organisations, nearing 140 static and interactive products. Third, we have this month released new educational materials for the first time aimed at rank-and-file members to assist them to understand the financial records of their organisations. Finally, and also a first in this area, is the unprecedented engagement we've had with our stakeholders through our comprehensive and, again, well-received national program of face-to-face information workshops.

By the end of next month, we will have delivered workshops in five locations across Australia, including Parramatta, Melbourne, Darwin, Perth and, next month, Brisbane. Interest in them has been high. Feedback indicates that organisations value them. They spearhead our continued extensive engagement and cooperation with registered organisations. The extent of the outreach achieved by these workshops is evidenced by the fact that, to today, around 300 people have participated from in excess of 60 per cent of all registered organisations. I have attended each workshop and have spoken to many participants and have seen firsthand the value they have received. All of these efforts have resulted in tangible benefits for organisations. Significantly, they've also resulted in an improvement in compliance levels since the commission commenced and, as importantly, they have fostered good working relationships with the vast majority of organisations we work with.

Education is one part of the story; conduct is the other part. The second area I want to briefly highlight is some of the non-compliance we have so far seen. Members rightly hold high expectations of their organisations, and I readily acknowledge that most organisations are focused on doing the right things. Nevertheless, there remain deficiencies in process and lapses, some of which are serious and cannot be overlooked.

To date the ROC has investigated or conducted proceedings in relation to alleged conduct by organisations and their officers that, if proven, fall well short of community expectations in a range of different situations. Examples include the serious misuse of members' funds, such as for officers' personal use, and officers granting themselves extensive back pay; the falsification of financial records; the failure to lodge financial records over an extended period; depriving their own members of pay increases and entitlements; undermining the democratic principles that should underlie the operation of organisations, such as depriving members from being able to find out at any given time who has been or who is running their organisations; inflating membership numbers by failing to purge in some cases tens of thousands of nonfinancial members from their membership register, adding hundreds of people to membership registers without their knowledge or consent and having from year to year wildly fluctuating and inexplicable discrepancies in their membership numbers; and, in one instance, failing for over 10 years to hold elections for officers. All of this matters because in each of these cases the existing governance structures and practices of the organisations have not prevented the conduct. We've been focused on trying to equip organisations and their officers to address these issues by themselves, with minimal intervention by the ROC. However, these examples underscore the need for us to remain vigilant about acting on organisations' failures in their first-line responsibilities. Members would be much worse off if these types of deficiencies went unchecked by organisations or by the ROC; in the face of inaction, there would likely be more of it.

That concludes my opening statement. Thank you.

CHAIR: Thank you very much.

Senator CAMERON: Well, I'm a bit gobsmacked by that little effort, I must say. This is an organisation that is trying to sugar-coat basically being a willing tool of the government, a biased organisation that has set about to deliver the political agenda of the government.

CHAIR: Senator Cameron, let's try and keep the commentary to a minimum and ask some questions.

Senator CAMERON: Forgive me if I don't start clapping when I hear that nonsense.

Senator PATERSON: None of us clap in Senate estimates.

Senator CAMERON: I want to know this: what legal costs have you incurred responding to subpoenas to produce evidence and witnesses in the Federal Court matter regarding the AWU investigation?

Mr Bielecki: The only subpoena that I'm aware of is one that's been issued to Mr Enright, and as far as I know we haven't incurred any expense in relation to that. He will be subpoenaed to attend and give evidence on behalf of the AWU at the trial that's listed for 11 February.

Mr Bielecki: What legal costs have you incurred for all other appearances, advice and preparation relating to the Federal Court matter?

Mr Bielecki: I have that figure. To date the litigation in this matter has cost $491,804.

Senator CAMERON: Okay. How much has been paid to external solicitors?

Mr Bielecki: Our external solicitors have been paid the amount of $274,043.

Senator CAMERON: Is it the same solicitors?

Mr Bielecki: Yes, sir.

Senator CAMERON: Who are they?

Mr Bielecki: Ashurst.

Senator CAMERON: How much has been paid to barristers?

Mr Bielecki: We have paid our senior counsel, Mr Frank Parry QC, $107,766; our junior barrister, Mr Matthew Follet, $116,686; and Mr Chris O'Grady QC, who was instructed at one hearing called on at short notice when Mr Parry and Mr Follet weren't available, $11,079.

Senator CAMERON: Can you provide details of the bills that you've received from these external lawyers and solicitors, the accounts?

Mr Bielecki: Yes, I can.

Senator CAMERON: What internal legal costs have been incurred?

Mr Bielecki: We don't track internal legal costs.

Senator CAMERON: So you have incurred legal time internally?

Mr Bielecki: Yes.

Senator CAMERON: Do you have the amount of time that you've spent on this?

Mr Bielecki: No, we don't record time.

Senator CAMERON: So you could be looking at half a million at least of public money on this political attack on the AWU?

CHAIR: That's speculation.

Mr Bielecki: The money's not being spent on any action or, as you would put it, 'attack'. The money is being spent to defend ourselves from an attack on us.

Senator CAMERON: When you're biased, that's what happens.

Mr Bielecki: Senator, I reject that allegation.

Senator CAMERON: Well, bad luck; it's on the public record. So which employees at the ROC have provided a witness statement to the AFP as part of the AFP investigation of the leak of the raid?

Mr Bielecki: Senator, you know that I can't speak about matters related to the investigation.

Senator CAMERON: So have any ROC employees been interviewed as a suspect by the AFP?

Mr Bielecki: Senator, as you know, I can't discuss anything in relation to the investigation.

Senator CAMERON: I've got no further questions.

Senator Ruston: Can you just give me two seconds? I believe there may be a piece of information of importance to be tabled in response to one of the senator's questions. Just give me two seconds, Doug.

Senator CAMERON: Sure. I've got all night!

Senator Ruston: I don't particularly want to be here all night, as lovely as it would be to spend it with you. Chair, the matter has got nothing to do with the Registered Organisations Commission, so you can let them go.

CHAIR: In that case, there being no further questions from any senators, the Registered Organisations Commission is released with our thanks. Safe travels. Yes, Minister?

Senator Ruston: Chair, on behalf of the minister from the other place, I would like to table a letter to you which outlines her request for the PII in relation to the death on the Work for the Dole site.

Senator CAMERON: Who is this from?

Senator Ruston: From Minister O'Dwyer. Can I table that?

CHAIR: Yes, please. Have we got copies of that?

Senator Ruston: That's the original.

CHAIR: We can organise copies of that. I assume the other senators want to see it.

Senator Ruston: I just want to make it clear that this obviously is the PII claim in relation to the death on the Work for the Dole site, so the PII claim that was made whilst I was here just recently with the ABCC is obviously a claim that they are making. I just want to be clear that that is the PII case I am referring to.

Senator MARSHALL: Can I just make an observation? When people rely on *Odgers'* *Australian Senate Practice* on matters like this, they should be a little bit more specific about which part of potentially several thousand pages of *Odgers'* they're actually relying upon.

CHAIR: Luckily, we have a copy right here. I can tell you: 8662.

Senator MARSHALL: Well, you didn't write the letter, so I'm not sure whether—

CHAIR: I've read the letter and I've got *Odgers'* in front of me.

Senator MARSHALL: Well, the person who wrote the letter is relying on *Odgers'*. I don't know whether they're relying on the bit that you're talking about or they're relying on something else. I was just making the observation that, when people are going to rely on *Odgers'*, they should be specific about the part that they're relying on, regardless that, obviously, the chair of this committee has been able to go into Minister O'Dwyer's mind and confirm which part of *Odgers'* she has relied upon. Maybe he does have that miraculous ability—

CHAIR: To read?

Senator MARSHALL: but in the absence of that, I just make the observation and ask that, if they're going to rely on *Odgers'*, they be a little bit more specific about which part of *Odgers'* they're relying upon.

Senator Ruston: We'll certainly make sure that we get to part 4.6.3 of the parliamentary committee guidelines referred to as an addendum to the letter, if that would—

Senator MARSHALL: How easy would it have been if that were the case?

Senator Ruston: A point taken, Senator Marshall.

Senator MARSHALL: Thank you.

CHAIR: Senator Cameron, do you have anything?

Senator CAMERON: Yes. I'm advised that the case against the individual company has been resolved. There was a guilty plea and it's just a sentencing that's underway. Anyway, I don't know that we can do much about this tonight. We're going to have a look at it. I think we're reconvening tomorrow, aren't we?

CHAIR: We're reconvening, as to the program, with Education—yes.

Senator CAMERON: Yes. So maybe we can deal with it then. I can't add anything to it.

CHAIR: As there are no further questions, this concludes the committee's examination of the Jobs and Small Business portfolio. I thank Ministers Reynolds, Cash and Ruston for their presence, all officers of the Department of Jobs and Small Business and the various agencies—all witnesses, in fact, who have given evidence to the committee today. I also want to thank Hansard, Broadcasting and the secretariat.

**Committee adjourned at 21:34**