

Supplementary Budget Estimates (23 October 2019) – Senate Estimates Questions on Notice Index

Education and Employment Committee

Last updated: Wednesday, 11 December 2019

QON. No	Responsible Minister	Division or Agency	Senator	Subject	Question	Hearing Date and Proof Hansard Page or Written
EEC-SBE19-01	Minister for Industrial Relations	Industrial Relations Policy	KENEALLY	National Labour Hire Licensing Scheme	<p>Senator KENEALLY: So this month. Have you had any meetings with the various stakeholder groups that have been calling for a national labour hire licensing scheme to be implemented urgently—for example, the Victorian Farmers Federation, AUSVEG or the Migrant Workers Centre?</p> <p>Ms Durbin: Not recently.</p> <p>Senator KENEALLY: When was the last time you would have met with stakeholder groups of that nature?</p> <p>Ms Durbin: I'll have to take that on notice.</p> <p>Senator KENEALLY: Can you take on notice whether you have you had any consultation with Victorian Farmers Federation, AUSVEG or the Migrant Workers Centre?</p> <p>Ms Durbin: I'm happy to take the details on notice. My recollection is that, since the cessation of the task force, we've not engaged bilaterally with any organisation.</p>	<p>Wednesday 23 October 2019</p> <p>P 54</p>
EEC-SBE19-02	Minister for Industrial Relations	Industrial Relations Policy	KENEALLY	Migrant Workers' Taskforce	<p>Senator KENEALLY: This is a general question. I take it you would agree that there is exploitation, trafficking and slavery occurring in Australia?</p> <p>Mr Hehir: Certainly, the evidence provided to the Migrant Workers' Taskforce indicated that there was serious exploitation of migrant workers. It identified the trafficking issue, which you quoted previously. I think as part of the work with Taskforce Cadena identified potential slavery, yes.</p> <p>Senator KENEALLY: For the advice of people who may be listening to this, within what sectors of the economy does this type of exploitation and trafficking and slavery mainly occur?</p> <p>Mr Hehir: In relation to the recommendation, the report identified four higher-risk sectors: horticulture—</p> <p>Ms Durbin: Cleaning, security, meat processing and horticulture.</p> <p>Senator KENEALLY: Do any of these sectors rely on undocumented workers?</p> <p>Ms Durbin: I'm not sure we could comment specifically. The Department of Home Affairs may have some intelligence, but I couldn't comment specifically.</p> <p>Senator KENEALLY: Did the Migrant Workers' Taskforce not consider that issue? Did that not come out in the report?</p> <p>Ms Durbin: At the general level, but certainly not to that level of specificity.</p> <p>Senator KENEALLY: So, at the general level it did. Do you have a sense of how widespread the issue is? Did the report make any findings in that regard?</p> <p>Mr Hehir: My recollection is that there were a number of papers published that were referenced. I'm not sure that the taskforce itself undertook any specific analysis around how widespread it was.</p> <p>Senator KENEALLY: So it would be hard for someone to make a claim based on that information? Are you saying that it's not possible to say how widespread it is or isn't?</p> <p>Mr Hehir: My recollection is that the taskforce looked at a number of papers produced by academics, which varied in their estimates. But the taskforce itself didn't reach a conclusion on how widespread it was, in terms of numbers of people. I'll take that on notice to make sure, but my recollection is that they looked at the academic papers.</p> <p>Senator KENEALLY: That would be really useful, thank you. I'm just surprised that you don't have a view to advise us. We've got Mr Woods' report in February 2019; the Australian Criminal Intelligence Commission in 2017-18 talked about the challenge of people being trafficked here, on valid visas, to work; the inquiry into human trafficking and slavery in 2017; the Joint Parliamentary Committee on Law Enforcement; we have your own civil justice division; and your submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade Committee's inquiry into establishing a modern slavery act. It seems there are multiple government reports that document and chronicle that people being trafficked on valid visas to work in exploited conditions is a significant problem for Australia. We have Taskforce Cadena. We have the work that you are doing to respond to the Migrant Workers' Taskforce. It seems odd to me that somebody might make a claim that this is not a problem in Australia.</p> <p>Mr Hehir: Senator, I didn't make that claim. My—</p> <p>Senator KENEALLY: No you didn't, but Peter Dutton did this morning.</p> <p>Mr Hehir: As I said before, the task force identified it as a significant issue. But my recollection is that the task force itself did not attempt to quantify the level.</p> <p>Senator KENEALLY: Thank you.</p>	<p>Wednesday 23 October 2019</p> <p>P 55-56</p>

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EEC-SBE19-03	Minister for Industrial Relations	Industrial Relations Legal	SHELDON	Ensuring Integrity Bill	<p>Senator SHELDON: Good afternoon, Mr Moraitis and Senator Payne. The Minister for Industrial Relations told the parliament on 31 July this year that under the provisions of the ensuring integrity bill, a single instance of unprotected industrial action—for example, the nurses union protesting unsafe nurse-to-patient staffing ratios—would not establish a ground for an application for a disqualification of that union. He said that the notion was 'fanciful' and 'patently absurd'. Minister, based on your understanding of the provisions contained in it, was the minister correct in this statement about the ensuring integrity bill?</p> <p>Senator Payne: I don't have that detail with me, and I haven't seen the minister's comments. But I'm very happy to take your question and the details of that on notice, and respond to you through the committee.</p> <p>Senator PRATT: Minister Payne, this is a policy question, so perhaps the department can explain the way the policy contrasts with the minister's statements.</p> <p>Senator Payne: That's a secondary question. I was responding to Senator Sheldon's question to me.</p> <p>Senator PRATT: No, that's fine. Because you've taken that on notice I thought I might assist Senator Sheldon by seeing if the secretary can explain it in a policy context.</p> <p>Ms Volzke: One instance of obstructive industrial action can amount to a prima facie ground for deregistration. But unprotected industrial action without those additional features will not provide a prima facie ground for deregistration, so the action must also have relatively prevented, hindered or interfered with the activities of an employer or any relevant public service, or had a substantially adverse effect on the health, safety or welfare of the community.</p> <p>Senator SHELDON: You said that the language in the bill does, in effect, turn around, and that one breach in the circumstances you've described is a ground for seeking deregistration?</p> <p>Ms Volzke: One instance of obstructive industrial action. That is an existing provision and ground in the current registered organisations act as well.</p> <p>Senator PRATT: But not for deregistration?</p> <p>Ms Volzke: Yes, it is. It's in—</p> <p>Senator Payne: It's in the current act, the official said.</p> <p>Ms Volzke: Yes, it's in section 28.</p> <p>CHAIR: In (1)(b)!</p> <p>Senator PRATT: Thank you for clarifying that for us; we might come back to that—I just need a moment to digest the way you've put the answer to that question.</p>	<p>Wednesday 23 October 2019</p> <p>P 56</p>
EEC-SBE19-04	Minister for Industrial Relations	Industrial Relations Policy	PRATT	Boston Consulting	<p>Senator PRATT: What's the point of these consultation processes if essentially the government is pre-empting a commitment to implementing what's in the consultation paper? It is not true consultation then if an idea is not worth pursuing?</p> <p>Senator O'SULLIVAN: Haven't they put a paper out?</p> <p>Ms Durbin: That's correct. The Attorney is clear that he supports this idea. He thinks it is a good idea and that it would bring significant productivity and other benefits to large-scale infrastructure projects but it remains under consultation. He will consider the feedback both on the idea and on the technical detail about how such an idea could be legislated and put into operation.</p> <p>Senator PRATT: What is the consultant's brief for Boston Consulting and when are they due to report?</p> <p>Ms Durbin: They've been engaged for 20 days of work. That includes developing an end-to-end process map of the bargaining process, engaging with stakeholders and getting their feedback. They're due to report to us on 8 November.</p> <p>Senator PRATT: So that's 20 days to do the substantive consultation and they're reporting on 8 November. Is that what you said?</p> <p>Ms Durbin: That's when they're due to give the final product to us, yes.</p> <p>Senator PRATT: That's a call-out to anyone who's listening to this estimates as to whether they've actually heard from Boston Consulting, if they've got an interest in these issues. Are you able to tell us how many stakeholders Boston Consulting Group are meeting with in that time?</p> <p>Ms Durbin: I'll have to take the specifics on notice but we're certainly aware that they are engaging directly with employers, bargaining representatives and unions to get their feedback.</p> <p>Senator PRATT: Did you give them a list of unions, peak councils, employers and employer groups you wanted them to talk to?</p> <p>Ms Durbin: We've certainly given them some parameters around where we think it will be most beneficial to engage what is actually a very short-term and truncated project. We would be looking at people who've gone through this experience very recently, so have recently concluded a bargaining process.</p>	<p>Wednesday 23 October 2019</p> <p>P 59</p>

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EEC-SBE19-05	Minister for Industrial Relations	Industrial Relations Policy	SHELDON	Greenfields Agreement Bill	<p>Senator PRATT: You haven't started to draft the greenfields agreement bill?</p> <p>Mr Hehir: That's correct.</p> <p>Senator PRATT: No, even though the minister's made clear his like and support for that and you're engaging in a consultation process. Is that consultation process going to be based on the evidence or the minister's opinion of these issues?</p> <p>Mr Moraitis: That's why we had a discussion paper go out—to get as much evidence as we can with some clear questions. In the case of the wage theft and criminalisation process, there was a corpus of evidence that was a sufficient basis to start on the process.</p> <p>Senator PRATT: What I am worried about, Secretary Moraitis, is that the government has a consultation process for these discussion papers that is entirely in a written form and that is all the department is doing. In the meantime, we know what the government's natural constituency base is and who they're talking to and who they have active conversations with. I just worry about what has more weight in the final outcome on these issues. How do we see where the weight of balance comes through on these questions?</p> <p>Mr Moraitis: As you know, Senator, I'm pretty new to this, but I've watched the way it's been outlined and have referred to the terms of reference, and the terms of reference have been outlined by the team here and that provides a pretty balanced, broad approach. We're adopting a process that's, from my perspective, pretty clear. It's aligned with how we as a department in the past have done legal matters. We consult. We have discussion papers that go out that ask a specific series of questions where we can progress things while the consultation process continues. On the greenfields, yes, the attorney has been out there saying what his preference is, but he certainly—as I know from experience having worked now for over a year for him—looks at the facts and the evidence before coming to a conclusion.</p> <p>Senator SHELDON: So who are the employer groups that have been consulted?</p> <p>Mr Hehir: I'm sorry, I don't have that list in front of me. I'm happy to take that on notice.</p> <p>Senator SHELDON: Righto.</p>	<p>Wednesday 23 October 2019</p> <p>P 62-63</p>
EEC-SBE19-06	Minister for Industrial Relations	Industrial Relations Legal	PRATT	Fair Work Commission Appointments	<p>Senator WALSH: Are you aware or able to speak to what process the minister goes through to satisfy himself or herself that the potential commissioners to be recommended to the Governor-General meet those criteria?</p> <p>Ms Kuzma: I think that, if you look at the qualifications that were announced at that time, the minister was satisfied on the basis of the qualifications of those individuals.</p> <p>Senator WALSH: Is the department involved in making any recommendations to the minister, or is it purely up to the minister to make that determination?</p> <p>Ms Kuzma: The statutory process is that the minister makes a recommendation to the Governor-General and the department supports that briefing process.</p> <p>Senator WALSH: I think this question, then, is for the minister representing the minister. Can you give an assurance to this committee that all future appointments will be made not only in the spirit of appointing on the basis of merit but also with the spirit of maintaining the balance between employee representatives and employer representatives?</p> <p>Senator Payne: I'm sure that the minister and the Attorney-General will propose appointments that are in accordance with the fair work legislation.</p> <p>Senator WALSH: Does that mean that the minister doesn't think it's important to maintain balance between employer and employee representatives?</p> <p>Senator Payne: No. I think that would be a completely unfair imputation. I think the fair work legislation outlines, as the officers have provided to you, the qualifications and requirements for members of the commission, and you would also always expect the minister to make appointments in accordance with the act.</p> <p>Senator PRATT: Has the minister's office been the one supplying the names to the department, or have all of the appointments been generated by the department and put up to the minister?</p> <p>Ms Kuzma: I'd have to take that on notice, Senator, from December 2018.</p>	<p>Wednesday 23 October 2019</p> <p>P 64</p>
EEC-SBE19-07	Minister for Industrial Relations	Industrial Relations Legal	WALSH	Fair Work Commission Expert Panel Appointments	<p>Senator WALSH: These questions follow on about my questions about appointments to the Fair Work Commission. These questions are about appointments to the Fair Work Commission expert panel—that is, the panel that determines minimum wage and award rates for millions of Australians. We've heard, in the previous section, about concerns about the number of appointments with employer experience and the complete absence of any appointments, as far as we're aware, of any</p>	<p>Wednesday 23 October 2019</p>

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					<p>commissioners with employee advocacy experience. Can the department confirm that there are vacancies on that Fair Work Commission expert panel that will need to be filled and the number of those vacancies?</p> <p>Ms Kuzma: Yes, there are vacancies on the expert panel.</p> <p>Senator WALSH: Again, this expert panel deals with the needs of, particularly, low-paid workers, many of whom are on full-time wages of around \$38,000 a year, so well below the poverty line and in many cases doing it tough. I'm sure everyone would agree that they need attention and assistance. My question for the minister is: will the minister give an undertaking to maintain balance on the panel between people with employer experience and people who have experience and knowledge of the needs of low-paid workers or employees in general?</p> <p>Senator Payne: The minister would always make appointments consistent with the Fair Work legislation, but, in relation to the specific vacancies that you're asking about and prospective appointments, I will take that on notice. The minister will always make appointments according to the requirements under the law. I think that that is the appropriate rubric under which the minister should operate.</p>	P 65
EEC-SBE19-08	Minister for Industrial Relations	Industrial Relations Legal	WALSH	Fair Work Commission Expert Panel Appointments	<p>Senator WALSH: Could you assist us to understand how the minister might go about making recommendations for appointments to this panel? What are the considerations or the processes that he might undertake?</p> <p>Senator Payne: I can't speak for the Minister for Industrial Relations in terms of what might be in his mind on that, but I can take questions of that nature on notice.</p> <p>Senator WALSH: We talked before about the review into industrial relations. We know that wage growth across the country is very low. We know there is a particular struggle for people who are on award minimum wages—people who are low-paid workers. Is it the intention of the government to give special consideration to the needs of low-paid workers in its review of industrial relations?</p>	<p>Wednesday 23 October 2019</p> <p>P 65-66</p>
EEC-SBE19-09	Minister for Industrial Relations	Coal Mining Industry (Long Service Leave Funding) Corporation	HANSON	Coal LSL Legislation	<p>Senator ROBERTS: So why are you only taking the evidence from the employer?</p> <p>Ms Jenkins: It's my understanding that that is our requirement under the legislation—that we receive information from employers.</p> <p>Senator HANSON: Is that correct, Minister?</p> <p>Senator Payne: I don't have the Coal LSL legislation with me, but I'm very happy to seek advice on that from the relevant agency. Unless Mr Kembrey has anything to add on the provisions of the legislation, I'll take that on notice.</p> <p>Mr Kembrey: Senator, I think the questions you're asking are quite broad. But, when we have instances where employees—and these are particular employees that may not be receiving a long service leave benefit—provide us with information around what they may have been paid, or argue around their eligibility, that is material that we will review and we will approach employers. We have had cases where we're in disagreement with employers and we have used powers within our legislation to request further documentation for the validation of that. In a situation where we have approximately 50,000 active employers in the industry, it is difficult for us to monitor—</p> <p>Senator ROBERTS: We know of hundreds of people who are currently being underpaid—not your responsibility—and being underreported for LSL, and they're not being treated fairly. It seems to be that they have complicity in this with a major union, a major employer and a major employer of labour hire people—casual employment under a black coal industry award that is for only full-time employees. I want to know what you're doing to make sure those people are treated fairly, because they haven't been treated fairly. That's why I'm asking Ms Jenkins.</p>	<p>Wednesday 23 October 2019</p> <p>P 69</p>
EEC-SBE19-10	Minister for Industrial Relations	Coal Mining Industry (Long Service Leave Funding) Corporation	ROBERTS	Levies	<p>Mr Hehir: If I may assist, my understanding is that there is some disagreement between some employers and the coal long service leave board in relation to who is required to pay levies. My understanding is that the coal long service leave board is attempting to recover funding from those companies. My further understanding is that the Ai Group has made an application to the Fair Work Commission to vary the scope of the Black Coal Mining Industry Award in terms of who's eligible to pay. It's difficult, of course, to know whether the employees you're talking about might be employed by someone who believes they aren't required to pay the levy. There's a possibility—</p> <p>Senator ROBERTS: These people are being paid the levy. The levy is being paid on their behalf, but it's being underpaid. They're casual workers. They're significantly underpaid, their levy is underpaid, their hours are not reported correctly and LSL is just going along with it.</p> <p>Mr Kembrey: I can't speak to the specifics of who you're talking about, because I don't have the information in front of me, but if</p>	<p>Wednesday 23 October 2019</p> <p>P 70</p>

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					you were to be prepared to provide that information it is something we'd take on notice and investigate. Senator ROBERTS: Sure. We will be happy to do that.	
EEC-SBE19-11	Minister for Industrial Relations	Coal Mining Industry (Long Service Leave Funding) Corporation	ROBERTS	Levy Complaints	Mr Kembrey: In the payroll levy collection act, there are a number of different calculations in terms of how the levy is paid. The levy can be paid in regard to their base rate of salary, plus incentives over time and the like. I think it's 75 per cent of the base rate of pay plus incentives and overtime, or, if it is greater, the amount based on their base rate of pay plus allowances and bonuses. That's one category. There is another category in relation to casual labour, and there is another category in regard to how it's paid, if you're on an annualised salary. Senator ROBERTS: Thank you. Mr Kembrey: So that's in the levy collection act. CHAIR: Just to assist you, Senator Roberts, we've got three minutes left. Senator ROBERTS: Thank you, Chair. Ms Jenkins, you're only aware of one person that has complained to you? Ms Jenkins: That's all I am aware of. We can have a look and see if there have been other similar cases, but that's the only formal complaint we have received and followed through with.	Wednesday 23 October 2019 P 71
EEC-SBE19-12	Minister for Industrial Relations	Industrial Relations Policy	ROBERTS	Recognition of Casual Employees	Senator ROBERTS: Perhaps you could also find out if it is true that the first two ministers to accept a report that included recognition of casual employees in an industry award that doesn't recognise casual employment were Ms Julia Gillard and Mr Bill Shorten. Mr Kembrey: I'd have to take that on notice, Senator.	Wednesday 23 October 2019 P 71
EEC-SBE19-13	Minister for Industrial Relations	Asbestos Safety and Eradication Agency	PRATT	Benchmarks of Agency Performance in 2023 Plan	Ms Ross: It's that we've actually put in a set of national targets. At the moment we have eight national targets. One of the difficulties we found in evaluating progress under the 2014-18 plan was that there were no targets included and no data that was collected. No proper measurement was done of what progress was made. That is another big chunk of work that the agency's been undertaking—identifying the data sources to measure the targets so that at the end of this phase of the plan, 2023, we will have quite a better picture of how far we've progressed. Senator PRATT: There'll be performance measures for you as an agency—it will be your role to track performance across the whole country as to the outcomes? Ms Ross: Yes, that's right. Senator PRATT: Do you have any indication yet of what those benchmarks will be in the new plan? Ms Ross: The targets are all there. I can read them out to you if you like. Senator PRATT: No, that's fine. You can take them on notice...	Wednesday 23 October 2019 P 73
EEC-SBE19-14	Minister for Industrial Relations	Asbestos Safety and Eradication Agency	PRATT	Review of the NSP: Reassessment and testing of asbestos disposal legacy sites	Senator PRATT: ... I note one activity listed in the review of the NSP is 'James Hardie: re-assessment and testing of asbestos disposal legacy sites'. Can you tell us about that, please? Ms Ross: Sorry, Senator, I don't know. Can you repeat that? Senator PRATT: That's fine, if you don't know off the top of your head. It was about reassessment and testing of asbestos disposal legacy sites, but I'm happy for you to take that on notice along with the other questions. Ms Ross: I think that might be best.	Wednesday 23 October 2019 P 73
EEC-SBE19-15	Minister for Industrial Relations	Asbestos Safety and Eradication Agency	McMAHON	Register of Illegal dumping sites	Senator McMAHON: Do you maintain any kind of log or register of known dump sites in the Darwin area of the Northern Territory where asbestos-containing materials have been found? Ms Ross: Do you mean illegally dumped or— Senator McMAHON: Either legally or illegally. Ms Ross: We keep a record—and you can see this on our website—of licensed facilities to dispose of asbestos. We have a little tool on our website where you can put your postcode in and it will come up with a range of licensed facilities. In terms of illegal disposal: we don't keep records of that. We have done research on that. If you don't mind, I could take that on notice to see what our research concluded on that. Illegal disposal of asbestos is a significant problem and one of the targets in the new plan is actually aimed at making disposal easier and cheaper, with the aim of preventing illegal disposal. Senator McMAHON: Would that register of sites go back historically? Say, to post Cyclone Tracy, when a lot of material was	Wednesday 23 October 2019 P 73-74

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					disposed of? Ms Ross: No. As I said, the tool on our website is just where there are licensed facilities currently where you can go to dispose of it. I don't know whether our research may have mapped some of those other sites. I think we have been looking at that. There was a big project in the Northern Territory to clean up some of the land where some of the debris from Cyclone Tracy had been dumped. So I'm happy to take that on notice and see what information we have on that. Senator McMAHON: Thank you...	
EEC-SBE19-16	Minister for Industrial Relations	Australian Building and Construction Commission	SHELDON	Investigations – suspected breaches	Senator SHELDON: Has the ABCC ever investigated to ascertain what role employer associations played in suspected breaches? Mr McBurney: I'm not aware of specific cases. I'd need to take that question on notice. Senator SHELDON: So, you're not aware that there have been any employer associations that have been investigated? Mr McBurney: I know that employer associations have been investigated. I'm aware of one case, which we advised the committee of last year and earlier this year. Senator SHELDON: Can you remind me of that? Mr McBurney: That was the Royal Hobart Hospital site. Part of our investigation, on which we corresponded with the committee, concerned the inductions performed by the MBA in Hobart in relation to that site.	Wednesday 23 October 2019 P 74
EEC-SBE19-17	Minister for Industrial Relations	Australian Building and Construction Commission	SHELDON	Legal Costs	Senator SHELDON: What's been the total amount of legal costs, internal and external, incurred by the ABCC in proceedings commenced against employees, unions and union officials, as opposed to employers and employer associations? Mr McBurney: I'd need to take that question on notice. Senator SHELDON: I'd hazard a guess that, with one case of underpayments, there hasn't been a great deal when it comes to employers. And thank you for drawing my attention to the matter that was raised before at estimates. As you're aware, there was a question raised regarding the inductions of 1,150 workers on a project performed by Master Builders, who charged \$99 per worker, receiving an estimated \$113,000 in construction, and you made a complaint to John Holland regarding the potential breach of the 2006 building code, which prevents inductions being delegated to Master Builders. The union said the induction courses for the Chinese plasterers were inadequate and many had told the union that they were not provided with access to an interpreter, despite their speaking little or no English. Master Builders Tasmania also confirmed executive director Matthew Pollock said in September the contracting companies did not identify the need for interpreters during its induction sessions. It also was revealed in September about 130 mostly foreign nationals were allegedly not paid by subcontractor Accuracy Interiors for up to two months. Have you investigated the 130 people, mostly foreign nationals, who were allegedly not paid by subcontractor Accuracy Interiors for up to two months? Mr McBurney: Yes, Senator.	Wednesday 23 October 2019 P 75
EEC-SBE19-18	Minister for Industrial Relations	Australian Building and Construction Commission	SHELDON	ABCC prosecutions/investigations	Senator SHELDON: In its history, since December 2016, how many employers has the ABCC prosecuted or referred to other relevant agencies for investigation for the following: sham contracting? Mr McBurney: We've not prosecuted an employer for sham contracting since 2 December 2016. In relation to referrals, I'll take the question on notice. Senator SHELDON: Wage theft? Mr McBurney: As I explained earlier, I've got one case before the court. Senator SHELDON: One case and one case only. Are you aware how much money is owed in this industry? The Master Builders Association has stated publicly that over \$6 billion, as I understand, occurs in wage theft. Senator PRATT: Just in the construction industry? Senator SHELDON: Just in the construction industry. Mr McBurney: All I can do is advise you of what steps we've taken to fulfil our statutory remit to recover wages in the building and construction sector. Senator SHELDON: Has the ABCC prosecuted or referred other relevant agencies for nonpayment of superannuation? Mr McBurney: We've not commenced a prosecution for that. Senator SHELDON: So there are hundreds of millions of dollars owed by employers in this industry and you've taken no action. Breach of award or enterprise agreement? Mr McBurney: I can take you to the work we've done on recovering wages and entitlements since we assumed that responsibility on 2 December 2016—	Wednesday 23 October 2019 P76-77

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					<p>Senator SHELDON: No, I'm asking if you've taken action against any employers for a breach of award or enterprise agreement?</p> <p>Mr McBurney: We've not taken court action for that.</p> <p>Senator SHELDON: A breach of occupational health and safety laws?</p> <p>Mr McBurney: At this stage, I might defer to my deputy commissioner, Mr Pettit, who's responsible for our wages and entitlements operations.</p> <p>Mr Pettit: The one proceeding we would've filed would have been for a breach of an enterprise agreement on a modern award. I'm not sure which one it would have been for, but I can get you that detail if you'd like it.</p> <p>Senator SHELDON: The detail would be helpful. It's obviously not high on the priority list, even though I do note that my opening comments and questions from the statements that the ABCC says that they're supposed to be pursuing since December 2016. A breach of immigration laws?</p> <p>Mr McBurney: We're not responsible for prosecuting breaches of immigration laws.</p> <p>Senator SHELDON: Have you referred to other relevant agencies for investigation?</p> <p>Mr McBurney: We have made referrals, but I'd have to take the question of the number of those referrals on notice.</p> <p>Senator SHELDON: Breach of taxation laws?</p> <p>Mr McBurney: We're not responsible for prosecuting breaches of taxation laws. I do have an information-sharing power to make referrals to the Australian Taxation Office, and I have done that and I can provide the details of the referrals to you on notice.</p> <p>Senator SHELDON: So we've no sham contracting, one case of wage theft and nothing with regard to superannuation. We may have one with regard to enterprise agreements. The Fair Work Commission has a detailed litigation policy, the latest version of which was published in October 2018. Can you point me in the direction of where I can find the ABCC's formal litigation policy?</p>	
EEC-SBE19-19	Minister for Industrial Relations	Australian Building and Construction Commission	PRATT	Figures	<p>Senator SHELDON: I pointed out to you before, and I gathered you weren't disagreeing with the figure and I'm hoping for you to contradict it, that over \$6 billion in underpayments in the construction industry exist and you're telling me that \$1 million is a good job well done?</p> <p>Mr McBurney: Senator, if I can take you to the break-up of the figure and explain to you why I say that is the case. We recover underpayments in two respects. The first is where a complaint is made to us. So a worker claims to have been underpaid and contacts and the ABCC and we investigate the matter. The second is through our proactive audit activity. So in respect of wages recovered, last year we recovered \$823,724 for 1,376 employees. In respect of those 1,376 employees—</p> <p>Senator PRATT: From how many employers?</p> <p>Mr McBurney: I don't have that figure. I'll take that on notice.</p> <p>Senator PRATT: But you do have that data?</p> <p>Mr McBurney: We do have that data, yes. I'll ask—</p> <p>Senator PRATT: Why don't you put the number of employers in your report?</p> <p>Mr McBurney: The relevant information for inclusion in our—are you referring to our annual report or our quarterly report— ?</p> <p>Senator PRATT: That's right.</p> <p>Mr McBurney: In our annual report we report on the amount of wages recovered and the number of employees that relates to.</p> <p>Senator PRATT: Maybe I suggest to you that you put the number of employers that were involved in that behaviour.</p> <p>Mr McBurney: We can take that under consideration.</p> <p>Senator PRATT: Thank you.</p>	<p>Wednesday 23 October 2019</p> <p>P 78</p>
EEC-SBE19-20	Minister for Industrial Relations	Australian Building and Construction Commission	SHELDON	Wages	<p>Senator DAVEY: Talking of litigation, I understand that you continue to be involved in proceedings against a number of unions, with a number of cases taking place since your last estimates appearance. Can you take me through the case concerning Aldi Altona's construction and what the court's ultimate decision was?</p> <p>Mr McBurney: I might defer to my deputy commissioner legal, who's across the details of that case.</p> <p>Mr Kelleher: The Aldi Altona decision was handed down by the Federal Court on 11 October 2019, imposing total penalties of \$92,000 against the CFMMEU and an experienced organiser for their involvement in a blockade of Aldi's Altona store during its construction in 2014. The blockade in that case followed the union's demand that the construction company sign an enterprise agreement with the union. On 5 December 2014, CFMMEU organiser Drew MacDonald blocked the entrance to the site with a vehicle, preventing trucks carrying equipment and materials from accessing the site. As a result of that blockade, work—including the installation of precast concrete panels, structural steel work and concrete preparation work—could not proceed. On 8</p>	<p>Wednesday 23 October 2019</p> <p>P 81-82</p>

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					<p>December 2014, Mr MacDonald again blocked the entrance to the site with a vehicle, preventing work, including excavation and formwork for a concrete pour and structural steel work. The CFMMEU was penalised \$80,000 and Mr MacDonald \$12,000, and, in that case, Justice Bromberg also ordered Mr MacDonald to personally pay his penalty, and that personal payment order is one of, now, six imposed by the Federal Court.</p> <p>Senator SHELDON: I don't want to break your full train of thought, but what was the difference in wages between the workers that were working for the company that was the contractor, and the amount of money that was being pursued under the EBA for those workers to be covered by—</p> <p>Mr Kelleher: I'd have to take that question on notice.</p> <p>Senator SHELDON: Thank you.</p>	
EEC-SBE19-21	Minister for Industrial Relations	Fair Work Ombudsman	SHELDON	Reports by Unions NSW	<p>Senator SHELDON: I have another question regarding job advertisements—a separate matter. You may be aware of allegations of job advertisements in newspapers—both the English-language press and the migrant press—that advertise amounts that are illegal wages. Does the Fair Work Ombudsman do an analysis of those adverts, does it investigate those adverts and does it take action as a result of those adverts? What are its powers to do that?</p> <p>Ms Parker: I think the Migrant Workers Taskforce recommended that that be specifically prohibited, and we supported that at the time when we were on the Migrant Workers Taskforce. In terms of responding, it would be a request for assistance, I imagine. We don't scan newspapers or look for it. But, if someone brought it to the attention of the Fair Work Ombudsman, we would look into that. It depends on the issue. Part of it could simply be to say to the employer, 'Fix it.' But, if we get complaints that they're actually paying less than that, it would go into the normal track of finding out what's happened and trying to rectify that.</p> <p>Senator SHELDON: There was a report by Unions NSW released in July 2017, <i>Lighting up the black market: enforcing minimum wages</i>, and it found that 78 per cent of positions are advertised with unlawful wage rates on Chinese-, Korean- and Spanish-language websites. I appreciate you've made submissions regarding the department's concern about this activity as well. Unions NSW also released a report in December 2018, <i>Wage thieves: enforcing minimum wages</i>, which said that, in other-than-English-language newspapers, 70 per cent were advertising illegal amounts. Also, on the matter of English-language advertising—I'm in the hands of the chair with regard to this—there are two examples that I have of adverts for truck drivers, requesting HR truck driver numbers, on a Jora Australia website. Please take this on notice.</p> <p>Ms Parker: Okay.</p> <p>Senator SHELDON: QLS Logistics in Berrinba say that they'll pay a truck driver \$300 plus GST day rate if they work from five to six days long, guaranteed each week. It goes on to talk about their work arrangement. However, they have to have an ABN number. There's another example, on SEEK, of an MC truck driver requested at a company called Semmens Transport from Brisbane. It is also offering 38 to 70 hours per week, immediate starts. The job is full-time hours but a casual position. That is a question about correct classification of payments. I'm not suggesting this is a proper or improper way to approach these issues—not regarding those two examples; I have serious concerns about them—but I note in the case of welfare recipients that the government has a policy of robo-debt. If that policy were applied in a similar fashion to migrant workers that have been ripped off under their visa arrangements, maybe more humanely, if that were applied automatically when you were checking immigration employment contracts and tax department responses, and correlating that to potential for wage theft, what would be the potential consequences of that?</p> <p>Ms Parker: These things that you read out are completely unacceptable, obviously. We're happy to take those and look at those. What I will say is that we do work closely with the tax office and Home Affairs. There is ongoing work with them. We refer to each other, we alert each other. We regularly share information where we can where there are related issues. There often are related issues: if a worker is being underpaid, often tax isn't being paid, superannuation isn't being paid and all the other things that go with it. We have pretty good relations with our colleagues on these issues. Yes, this is going on and it is a real problem. Employers need to find out what they should be required to pay and they should be paying it.</p>	<p>Wednesday 23 October 2019</p> <p>P 85-86</p>

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EEC-SBE19-22	Minister for Industrial Relations	Fair Work Ombudsman	GREEN	Café 63 Chermside	<p>Senator GREEN: Talking about migrant workers and cafes and targeting those sections, there has been a report today that a Brisbane cafe has been accused of paying its staff with food instead of money. You've been quoted in that article. Can you tell me just a little bit more about that case and how much money you expect the underpayment to be?</p> <p>Ms Parker: As you said, it's 11 employees at the Cafe 63 Chermside. They were paid in meals, desserts and drinks between August 2017 and January 2018. Those were visa holders. Seven juniors under 21 were cooks, kitchen attendants and food and beverage attendants. I should clarify that they weren't only paid in meals, desserts and drinks. They were given some wages as well. But it is not lawful to be paid in anything other than money. You've asked me how much they were underpaid overall. We've only commenced legal action, by the way, so these are allegations. They are facing penalties of up to \$63,000 per breach, and, potentially, the owners, maximum penalties per breach of up to \$12,600. In this case we're seeking an independent audit of their wage payment practices and we are hoping for courses for employers as well. But as I said, these are allegations at this stage. We haven't completed the matter.</p> <p>Senator GREEN: They are pretty shocking allegations As you know, Brisbane was one of the hotbeds of the 7-Eleven case and the exploitation of migrant workers there. Are there any changes that we need to make to help you do that work, so we don't have a repeat? 7-Eleven happened in 2015, and this is still happening now with these particular migrant workers. I know it is an allegation, but this seems to be continued behaviour. Is it a Brisbane issue or is it just this type of work that we are talking about?</p> <p>Ms Parker: This is an issue that used to be common practice. People would be given payment in a whole range of different ways. In some cases, we find that it is pure ignorance. They think it is acceptable. The food is good and you should be—</p> <p>Senator GREEN: From the employers or the employees?</p> <p>Ms Parker: Sometimes the employees think it's fine. Other times, the employer thinks it is fine and is ignorant about it. So part of our role is education. But in this case our view is this is deliberate and they should know better. Therefore we are taking the matter to court.</p> <p>Senator GREEN: In the report it says that you were alivened to the case after hearing allegations. Where did the report of allegations come from? Was it the employees themselves or another party? Are you able to tell me that?</p> <p>Ms Parker: Mostly it is the employee. One of the things that came up earlier, I think with the ABCC, is that we have a line that is anonymous that workers can call in without saying who it is and just alert us. That means that when we do go and investigate there doesn't have to be any mention of which worker or any worker. It can be seen as popping in randomly.</p> <p>Senator GREEN: Do you know if that is what happened in this case?</p> <p>Ms Parker: I am not sure. We can take it on notice. I am not sure who reported it.</p>	<p>Wednesday 23 October 2019</p> <p>P 87-86</p>
EEC-SBE19-23	Minister for Industrial Relations	Fair Work Commission	PRATT	Matters before the FWC	<p>Senator PRATT: Welcome, Ms O'Neill and all your officers. I want to begin by asking if you're able to provide for the committee a list of matters before the commission in which the federal government have appeared or intervened in the last three years, and a summary of the positions that they've taken in each of those proceedings.</p> <p>Ms O'Neill: I certainly don't have that information at hand, but I'm happy to take the question on notice.</p>	<p>Wednesday 23 October 2019</p> <p>P 95</p>
EEC-SBE19-24	Minister for Industrial Relations	Industrial Relations Legal	PRATT	Social media or other statements that would undermine public confidence in the Commission	<p>Senator PRATT: Can I just briefly ask whether the commission's had any reaction from the minister after it was revealed that pre-Christmas in 2018 that Fair Work Commission Deputy President Gerard Boyce had posted anti-union and pro-Liberal tweets on social media?</p> <p>Ms O'Neill: Senator, was your question whether the minister has made any comment?</p> <p>Senator PRATT: Whether the minister has taken the issue up at all with the commission, or have you done anything—has there been any internal response to that?</p> <p>Ms O'Neill: I can't speak for the minister. I'm not aware of any communication in relation to that, but I can't speak to that. It has been dealt with internally, I can say that, Senator.</p> <p>Senator PRATT: So you would now have a policy around the use of social media or other statements that would undermine public confidence in the commission, undermine respect for the commission or undermine the reputation of the commission?</p> <p>Ms O'Neill: It's not in the nature of a new policy, Senator. There's a code of conduct that applies to members that makes it essentially clear that they shouldn't engage in matters of a political nature—I'm paraphrasing slightly there, but that's essentially</p>	<p>Wednesday 23 October 2019</p> <p>P 98-99</p>

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					<p>the flavour of it.</p> <p>Senator PRATT: And, so, in that context, his actions pre-Christmas of 2018 triggered the response in upholding the code of conduct, or was there some other trigger for that?</p> <p>Ms O'Neill: The code of conduct is essentially a guide to members. It's based on a judicial guide. It's not a prescriptive set of rules.</p> <p>Senator PRATT: No, I understand that but, clearly, the code of conduct was invoked. I just wanted to ask: was there a particular trigger for invoking upholding the code of conduct in terms of who intervened?</p> <p>Ms O'Neill: The president raised it with the member concerned.</p> <p>Senator PRATT: Did anyone from the government also raise it with the commission?</p> <p>Ms O'Neill: Not to my knowledge.</p> <p>Senator PRATT: Can I ask you perhaps, Senator Payne or Mr Moraitis, when those events happened, if there was any reaction from the government?</p> <p>Mr Moraitis: We'll take that on notice. It was a previous minister and a previous department, but I can take that on notice, if you like, Senator.</p> <p>Senator PRATT: Thank you.</p>	
EEC-SBE19-25	Minister for Industrial Relations	Fair Work Commission	ROBERTS	Chandler Macleod Group Disputes	<p>Senator ROBERTS: I'll come to the EA. Thank you for that. Are you aware that not only are these casual coalminers being massively underpaid; they are being denied equivalent entitlements such as sick and holiday leave, redundancy and penalty rates for shift work, and, while their full-time counterparts working side by side with them receive long service leave after eight years, these so-called full-time casual workers, whose actual hours worked are severely underreported to Coal LSL, rarely attain long service leave, as casual employment allows immediate terminations and intimidation, and fatigue from ill-treatment and burnout from limited time off causes many miners to leave the industry? Does the Fair Work Commission deal with issues that relevant to casual employees working as miners in the black coal industry in New South Wales?</p> <p>Ms O'Neill: I'm not aware of the particular case that you're referring to.</p> <p>Senator ROBERTS: Would you like my office to give you a briefing?</p> <p>Ms O'Neill: Let me explain the role of the commission in those cases.</p> <p>Senator ROBERTS: In view of the chair's comment, could you make it very brief?</p> <p>Ms O'Neill: Okay. The role of the commission would essentially be to determine the terms in the relevant award—that would go to casual employment and other matters—after hearing parties and, secondly, to deal with disputes that arise under the award, if that is what the dispute's procedure provides.</p> <p>Senator ROBERTS: How can this be when the black coal industry award does not allow casuals in the black coal industry other than office administrative personnel? These people I'm talking about—hundreds of people—are working in production side by side with full-time employees, doing the same job with the same skills and the same qualifications. They have an EA, an enterprise agreement that was approved, apparently by the Fair Work Commission. Yet the EA cannot be less—correct me if I'm wrong—than the award, in terms of employment conditions, and an employment classification that is not in the award, casuals, cannot be added to an enterprise agreement. That leaves the employee worse off by far. These people are 40 per cent underpaid. They're far worse off than if they were covered by the Black Coal Mining Industry Award. There is no annual leave, no sick leave, no redundancy and no accident pay. How can that be?</p> <p>Ms O'Neill: The requirement under the legislation that the commission administers, in terms of the comparison, is that any enterprise agreement must provide, amongst other things, that each employee covered by the agreement will be better off overall compared to the underpinning award. That's not to say—</p> <p>Senator ROBERTS: Are they better off when they have no annual leave, no sick leave, no redundancy, a lower pay rate and no accident pay?</p> <p>Senator Payne: Ms O'Neill just needs to finish her answers.</p> <p>Ms O'Neill: I can't speak hypothetically. That is the requirement of the commission. In considering whether to approve an agreement, I don't know, there are appeal mechanisms available if there has been an error, but, on the face of it, I've got no</p>	<p>Wednesday 23 October 2019</p> <p>P 99-101</p>

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					<p>reason to think that the agreement doesn't meet the statutory criteria.</p> <p>Senator ROBERTS: Why would Coal LSL have referred people employed as casuals in the coal industry to bring their complaints to the Fair Work Commission, as has happened in the past?</p> <p>Ms O'Neill: Senator, I am sorry. It's just really difficult in an abstract hypothetical way to—</p> <p>Senator ROBERTS: Would you like our office to give you a briefing?</p> <p>CHAIR: Or perhaps we could put some questions on notice that might assist the witness to have some more time to respond.</p> <p>Senator ROBERTS: I am asking for general responses, Chair. For example, one of the miners appeared at the Fair Work Commission in front of Deputy President Hamberger nearly two years ago. We can get the documents to you, if you would like them. Reportedly, Deputy President Hamberger signed off on many of the same enterprise agreements. So, why has the Fair Work Commission in the past refused to assist casual workers in the black coal industry—as I said, coalminers doing the same work alongside the people classified as full-time workers—doing the same rostered work hours? How can that be?</p> <p>Ms O'Neill: All I can say is that members of the commission, in determining the provisions in the award, follow the act. Similarly, in approving the enterprise agreements, they ensure that they meet the statutory tests, which include the BOOT, the better off overall test.</p> <p>Senator ROBERTS: About two years ago a casual worker provided formal, written complaints over a period of 12 months. The then employment minister, Michaelia Cash, advised him to go to the Fair Work Commission. The Fair Work Commission said—and I am quoting him now, 'Yes, we identified an issue exists, but would not intervene because he had legal representation.' Then this miner had a phone conference with the Fair Work Commission to get accident pay. He requested his full accident pay and the Chandler Macleod Group refused. At that point the mediation ended and the Fair Work Commission said there is nothing more that they could do. People have been abandoned in the Hunter Valley.</p> <p>Ms O'Neill: Again, sorry, but in the abstract I really can't add to my answers.</p> <p>Senator ROBERTS: How many disputes from 2016 to date involving Chandler Macleod Group have been brought by coalminers to the attention of the Fair Work Commission, involving complaints about coal long serve leave entitlements, and have they all been resolved? You probably will have to take that on notice?</p> <p>Ms O'Neill: I am happy to take that on notice.</p>	
EEC-SBE19-26	Minister for Industrial Relations	Fair Work Commission	O'SULLIVAN	Appointments	<p>Senator O'SULLIVAN: I would like to ask you about the triage of issues. Can you let me know if any members undertake the initial triage of general protection conciliations?</p> <p>Ms O'Neill: It is not triage. The commission's role in dealing with general protection claims involving dismissal is limited to convening a conference and providing an opportunity for the parties to resolve the matter by agreement. If the matter is not resolved, then essentially the commission considers issuing a certificate to that effect. That certificate is a necessary precondition to enable the applicant to then go on and make an application in Federal Circuit Court or the Federal Court. That mediation, if you like, and issuing the certificate is the role of the commission, other than and in very limited circumstances where, by consent, the commission can arbitrate. So in terms of your question, 'Do members of the commission undertake that work?' the answer is: at times, yes.</p> <p>Senator O'SULLIVAN: So different members take a different role there? They have a different allocation; is that right?</p> <p>Ms O'Neill: The work of members varies based on a model of regional allocation. We have regional coordinators that allocate work to members in their region, and there is an overlay of case type, and practice leads allocate particular types of cases to members in conjunction with the regional coordinator. I hope that makes sense.</p> <p>Senator O'SULLIVAN: Yes, I think so. Are you able to provide us—and I'm happy for you to take this on notice—with a breakdown for 2018-19 of the proportion of matters allocated to each member that are general protection conciliations, including for those members appointed during the 2018-19 year?</p> <p>Ms O'Neill: I'll take it on notice, but I foreshadow—and there have been multiple questions on notice in the past dealing with this, and discussions at estimates—we're not in a position to provide a breakdown of the work of individual members by case type.</p> <p>Senator O'SULLIVAN: Why is that?</p> <p>Ms O'Neill: It's essentially about protecting the independence of the tribunal, and there are a series of authorities that I'm happy to elaborate on in the course of the answer.</p>	<p>Wednesday 23 October 2019</p> <p>P 101</p>

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EEC-SBE19-27	Minister for Industrial Relations	Fair Work Commission	O'SULLIVAN	Tribunal Members	<p>Ms O'Neill: It's essentially about protecting the independence of the tribunal, and there are a series of authorities that I'm happy to elaborate on in the course of the answer.</p> <p>Senator O'SULLIVAN: The 2014 award review is still ongoing, isn't it?</p> <p>Ms O'Neill: It is. We're at the end part, but it is still ongoing.</p> <p>Senator O'SULLIVAN: And that has produced hundreds, possibly even thousands, of decisions. Is that right?</p> <p>Ms O'Neill: It has. It has been a very significant body of work.</p> <p>Senator O'SULLIVAN: Are these mostly full bench decisions?</p> <p>Ms O'Neill: From the beginning through to the last month, there have been a total of 470 decisions and statements. I don't have a breakdown of the proportion of those that are full bench or single members. But, certainly, a significant amount of the work has been undertaken by the full bench.</p> <p>Senator O'SULLIVAN: Most of them are full bench decisions?</p> <p>Ms O'Neill: Yes.</p> <p>Senator O'SULLIVAN: Okay. You said you can't identify the members, but can you break it down at all by member, like 'member A'—preferably by name, but if you can't then that's fine.</p> <p>Ms O'Neill: How about I take on notice and see what we can do.</p> <p>Senator O'SULLIVAN: Yes.</p> <p>Ms O'Neill: So the question is: of the decisions in the four-yearly review, what's the breakdown of who has been involved in those decisions?</p> <p>Senator O'SULLIVAN: I'll just state the question, so it's clear. Can you provide a breakdown of the number of decisions each member has been involved in over the period since 2014?</p> <p>Ms O'Neill: In relation to the four-yearly review?</p> <p>Senator O'SULLIVAN: Yes.</p> <p>Ms O'Neill: I'm happy to take that on notice.</p> <p>Senator O'SULLIVAN: Yes, that's fine. Thank you.</p>	<p>Wednesday 23 October 2019</p> <p>P 102</p>
EEC-SBE19-28	Minister for Industrial Relations	Registered Organisations Commission	WATT	Inquiry cost - AWU	<p>Senator WATT: So \$1 million on the litigation. How much has the ROC spent on the investigation overall?</p> <p>Mr Bielecki: I don't have that information.</p> <p>Mr Enright: It won't be very much, because we commenced the investigation on a Friday and the AWU issued its proceedings, I think, the following Tuesday or Wednesday.</p> <p>Senator WATT: I'm presuming there was work done on the investigation before the raids occurred.</p> <p>Mr Enright: There was lead-up. I haven't got the figures; we can take that on notice. But I am saying it won't be much in relative terms.</p> <p>Senator WATT: I am talking about from the moment that Senator Cash referred this matter to you onwards.</p> <p>Mr Enright: You use the term 'referred'. I actually commenced inquiries, as I said in evidence in the Federal Court about this matter, and staff of my commission assisted me, before Senator Cash wrote anything. Cash provided two letters in one week. My evidence has consistently been that we commenced inquiries before Senator Cash had provided anything.</p> <p>Senator WATT: Let's get it from that date then.</p> <p>Mr Enright: From which date, sorry?</p> <p>Senator WATT: From when you commenced.</p> <p>Mr Enright: I commenced my inquiries on the date of the media articles relating to the \$240,000-odd donations made by the AWU.</p> <p>Senator WATT: We all know how those media articles started as well. So what I'm asking is: from the date of those articles, what was the cost?</p> <p>Mr Enright: I'll take that on notice. That will be from that date to the commencement of the investigation, or a couple of days after it was commenced, on 20 October.</p> <p>Senator WATT: So all up, between the litigation and the investigation, we are talking about more than \$1 million. How can the ROC justify this expenditure of more than \$1 million when it is based on an erroneous view held by Mr Enright, who didn't even</p>	<p>Wednesday 23 October 2019</p> <p>P 109-110</p>

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					<p>seek legal advice on the issue? How can you justify that?</p> <p>Mr Bielecki: The costs are justified because we defended a series of allegations raised against us. The majority of the time in the trial was occupied by allegations that the ROC's decision was affected by an improper political purpose.</p>	
EEC-SBE19-29	Minister for Industrial Relations	Registered Organisations Commission	O'SULLIVAN	AWU – four-year provision	<p>Senator WATT: Are you going to appeal the judgement?</p> <p>Mr Bielecki: The case is not over. It is premature to talk about an appeal. We are carefully considering His Honour's reasons.</p> <p>Mr Enright: And I just want to reject your notion that we did not seek legal advice. We sought legal advice from a Queen's Counsel prior to commencing the investigation and in relation to the investigation as to the grounds, and both senior and junior counsel were involved in various aspects of the matter before the investigations commenced. What more can you do except go to Queen's Counsel and seek advice? Senator WATT: What more you can do is get Queen's Counsel advice, or any legal advice, about a provision that quite clearly validates certain acts after four years.</p> <p>Mr Enright: And we did get such advice.</p> <p>Senator WATT: From whom?</p> <p>Mr Enright: From Queen's Counsel.</p> <p>Senator WATT: On section 320?</p> <p>Mr Enright: We have Queen's Counsel advice on section 320.</p> <p>Senator WATT: In this case?</p> <p>Mr Enright: No.</p> <p>Senator WATT: Because you didn't think it was necessary.</p> <p>Mr Enright: Well, because my view had been based on my understanding of the operation of that section over the period of six years and various court judgements about the operation of that section. My understanding was quite clear. I've given that evidence.</p> <p>Senator O'SULLIVAN: Just a clarifying question: that four-year provision was introduced in 2009 under the Labor government; is that correct?</p> <p>Mr Enright: I can't specifically recall now. I could take it on notice. I can't specifically recall when it was introduced. I became involved in industrial relations issues in 2013, and I was aware of it from that time, so I could take it on notice.</p> <p>Senator O'SULLIVAN: My understanding is that it was the Labor government in 2009 that introduced the legislation, which means that something the union did must be taken to be correct if it was done more than four years ago—so, from that point. I just think it's an important context to have in this discussion and the prosecution that Senator Watt's hearing.</p> <p>Mr Bielecki: Up until this judgement, the operation of that section was considered to be confined to issues around a breach of rules, as opposed to a breach of office of duties.</p>	<p>Wednesday 23 October 2019</p> <p>P 110-111</p>
EEC-SBE19-30	Minister for Industrial Relations	Safe Work Australia	SHELDON	Road Transport Industry	<p>Senator SHELDON: I want to highlight a substantial deficiency in the figures in the road transport industry. A third of road transport commercial vehicles are considered as owner-operators. The vast majority—I wish I could quote where the figures come from, but I can say that I'd be confident that it's well over 99.9 per cent—are not on workers compensation. If there is 0.1 per cent, they're probably employees being called contractors. Those people would not be included in your dataset. That's a significant question that is being raised about what is one of the most dangerous industries. What is the dataset giving us when we're trying to make decisions as a government, an opposition or the various state jurisdictions? I will just put you on notice that there is a suggestion about how that could be dealt with, because that is a serious failing in the keeping of data. I appreciate there are limitations on the data that's passed on, but there should be a proactive way of collecting that data.</p> <p>Ms Baxter: As well as the datasets that we've got, I might just clarify: the traumatic injury fatalities database that we hold will pick up every fatality. It doesn't matter how someone's employment relationship is characterised, those are picked up in that database. But, as well, we have the Australian strategy, which is a 10-year strategy running till 2022, and one of the priority industries that has been identified in that strategy is road transport, logistics and warehousing. Certainly, the work health safety regulators around Australia are very aware of the fact of the high risks involved in road freight transport, and we have had discussions about it at Safe Work Australia, and I'm aware that a number of regulators take action and take initiatives to address the hazards and the risks that they're seeing in that industry.</p>	<p>Wednesday 23 October 2019</p> <p>P 120</p>

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EEC-SBE19-31	Minister for Industrial Relations	Safe Work Australia	SHELDON	Road Transport Workforce Injuries	<p>Senator SHELDON: I appreciate the issue with regard to fatalities. You explained that very clearly to me. On the situation regarding serious injuries and, I might add, other injuries, there is not a set of figures that actually includes over a third of the workforce, because, if they're not on workers comp, they're either self-insured or not insured because they're owner-operators—and there are a multitude of reasons for that. There's a third of the workforce not being included, so, when you are trying to make decisions about particular industries which are dominated, in particular, by owner-drivers, because of the nature of those markets and of how they operate—it's hard to make a decision about what is a proactive way to deal with injuries. I'd like you to take on notice to come back to me to say how you're going to include a third of the road transport workforce that's not now included for serious injuries and other injuries. I think that's pretty fundamental.</p> <p>Ms Baxter: We can certainly have a look at that and take that to our members. As you may or may not be aware, Safe Work Australia is not me. It's not my staff who are sitting here this evening. Safe Work Australia is actually our members body, which is constituted of representatives from each of the jurisdictions and also representatives from employer organisations and employee organisations. So I'd be very happy to have a look at it back in the agency and then take something forward to members for their consideration. It's they who make the decisions about what we do and what we pursue.</p>	Wednesday 23 October 2019 P 120
EEC-SBE19-32	Minister for Industrial Relations	WHSP	SHELDON	Road Transport Workforce Injuries	<p>Ms Baxter: We can certainly have a look at that and take that to our members. As you may or may not be aware, Safe Work Australia is not me. It's not my staff who are sitting here this evening. Safe Work Australia is actually our members body, which is constituted of representatives from each of the jurisdictions and also representatives from employer organisations and employee organisations. So I'd be very happy to have a look at it back in the agency and then take something forward to members for their consideration. It's they who make the decisions about what we do and what we pursue.</p> <p>Senator PRATT: In that context, how do you manage representation from people who are self-employed within a work safety context, giving them a voice and representation within the policy development of Safe Work Australia?</p> <p>Ms Baxter: For instance, one of the members of Safe Work Australia is the Australian chamber. They have a number of peak organisations that have membership of their body. It's also possible for people to make representations through their jurisdiction members as well. So their voices can be heard in those ways.</p> <p>Senator SHELDON: Senator Payne, I am not questioning the accuracy of what has been put to me, but could I put on notice whether the minister could consider appropriate steps for this to be taken to a higher level—maybe COAG—because I know these conversations have been occurring in state and national jurisdictions for considerable time beyond this government. So I think, particularly in light of the serious injuries that we are seeing in the sector, let alone the fatalities, that are not being recorded, they could be considered.</p> <p>Senator Payne: Thank you, Senator Sheldon, and thank you for the issues that you've raised. I'll take that on notice and also take it up with the minister.</p> <p>Senator SHELDON: Thank you.</p>	Wednesday 23 October 2019 P 120
EEC-SBE19-33	Minister for Industrial Relations	Safe Work Australia	SHELDON	Gig Economy	<p>Senator SHELDON: I have already asked for one matter to be considered by the minister. Could I ask you to come back to us about raising it with your members on the issue in regard to the gig economy. I am not saying it is less serious. In actual fact there is a substantial overlap in some of the requests I have just made. Could you come back to your members about that?</p> <p>Ms Baxter: Yes.</p> <p>Senator SHELDON: The difference between the other question I put to the minister to consider on notice is that that matter has been on the books for a very long time. The gig economy is less important, but it has been on the books for a shorter period of time. I first want to hear if there is a response from the members, before I make any other requests.</p> <p>Senator Payne: Understood.</p>	Wednesday 23 October 2019 P 121
EEC-SBE19-35	Minister for Industrial Relations	Comcare	WALSH	Claims for Psychological Injury + AAT	<p>Senator WALSH: So there's some sort of assessment process and, occasionally, some sort of review process in relation to people who may have been previously reviewed?</p> <p>Ms Weston: Yes. For claims, there is a liability assessment by Comcare. If a person is not satisfied with that, there is an internal review undertaken by Comcare, in a separate area. If a person is not satisfied by that, they have recourse to the Administrative Appeals Tribunal and then further review channels after that.</p> <p>Senator WALSH: In this article, it sounds like the review would have been initiated by Comcare after payments had already commenced.</p>	Wednesday 23 October 2019 P 124

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					<p>Ms Weston: The Comcare scheme is a long-term scheme—not for two years or something, like some of the other compensation schemes—and so, from time to time, people will get better. I'm not talking about this case in particular. But some people get better, and it is appropriate to do reconsideration about whether the payments and other assistance compensation continues; and, if it's deemed that that is the case, there is a process then to work with the claimant to cease those payments.</p> <p>Senator WALSH: I assume you keep statistics. Would you be able to provide the committee with statistics, de-identified, on how many claims for psychological injury you are currently assessing and how many approved claims might be under a review of the nature that you just described?</p> <p>Ms Weston: Are you talking about whether we could give you some annual statistics about how many claims of a psychological nature there have been, how many had the next stage review and then how many went to the Administrative Appeals Tribunal?</p> <p>Senator WALSH: Yes.</p> <p>Ms Weston: We can certainly do that.</p> <p>Senator WALSH: Would you be able to provide us with information, based on those categories that you just helpfully identified for me, on how many times surveillance is involved?</p> <p>Ms Weston: I'll take that on notice.</p>	
EEC-SBE19-36	Minister for Industrial Relations	Industrial Relations Legal	WALSH	Fair Work Commission Appointments	<p>Senator WALSH: These questions relate to appointments to the Fair Work Commission, and I think they are for you, Secretary Moraitis. In December 2018, the former minister made six new appointments to the Fair Work Commission to replace one vacancy. Is that correct? Can you confirm that?</p> <p>Mr Moraitis: I personally don't know. I'll have to get someone who is aware of that.</p> <p>Ms Kuzma: Yes, there were appointments to the Fair Work Commission in December 2018.</p> <p>Senator WALSH: My understanding is that all of those six appointments were individuals with employer backgrounds. Are you able to comment on that or confirm that?</p> <p>Ms Kuzma: I think we would be able to provide you with information about the backgrounds that I think was released at the time of the appointments.</p>	Wednesday 23 October 2019 P 63
EEC-SBE19-37 (written)	Minister for Industrial Relations	Australian Building and Construction Commission	ROBERTS	Construction costs of a new QLD home unit	It has been suggested that a CFMMEU enterprise agreement added up to 30% extra to the cost of a home unit in Brisbane. Since the establishment of the Australian Building and Construction Commission (ABCC) what has the ABCC done to contribute to lowering the actual construction costs of a new Queensland home unit?	Wednesday 30 October (written)
EEC-SBE19-38 (written)	Minister for Industrial Relations	Australian Building and Construction Commission	ROBERTS	ABCC KPIs	Please detail what are the ABCC's KPI's and the performance of the commission against those.	Wednesday 30 October (written)
EEC-SBE19-39 (written)	Minister for Industrial Relations	Industrial Relations Policy	ROBERTS	12 hour shift workers sick leave	The recent Federal Court decision regarding 12 hour shift workers under the Fair Work Act being entitled to 10 days sick leave at the shift rate under the National Employment Standards (NES) may cost many employers dearly. Would you agree that the court's decision was inconsistent with industry practice, and that it will have, as the Australian Industry Group put it: "11substantial cost implications" for a large number of employers if the decision stands?	Wednesday 30 October (written)
EEC-SBE19-40 (written)	Minister for Industrial Relations	Industrial Relations Policy	ROBERTS	Recent Court decision regarding 12 hour shift workers under Fair Work Act	What is the Government doing about this case and how are they mitigating the damage from this case?	Wednesday 30 October (written)

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EEC-SBE19-41 (written)	Minister for Industrial Relations	WHS Policy	PRATT	Senate inquiry into industrial deaths in Australia – Implementation of recommendations	The Senate Standing Committee on Education & Employment conducted an inquiry into the framework surrounding the prevention, investigation and prosecution of industrial deaths in Australia an reported on 17 October 2018. The Government response was tabled on 20 December 2018. 1. Please provide the committee with an update on how the implementation of the 23 recommendations is going? 2. Specifically, can COMCARE provide the committee with an update of how the implementation of recommendations is going in each state and territory?	Friday 1 November (written)
EEC-SBE19-42 (written)	Minister for Industrial Relations	WHS Policy	FARUQI	Senate inquiry into industrial deaths in Australia – Implementation of recommendations	The Senate conducted an inquiry into industrial deaths . I sat on that inquiry and just wanted to follow-up on the implementation of some of the recommendations of that inquiry. The Government accepted a number of recommendations and committed to working with Safe Work Australia to improve support for families, including establishing a best practice model for centralised, timely and high quality family liaison, and transparent services provided by trained and sensitive professionals. What is the progress on this?	Friday 1 November (written)
EEC-SBE19-43 (written) SQ19-001454	Minister for Industrial Relations	WHS Policy	FARUQI	Senate inquiry into industrial deaths in Australia – Working with States and Territories	The Government also promised to work with all jurisdictions to improve investigations and prosecution outcomes by carefully examining enforcement, investigation and prosecution functions. Has this happened and what are the outcomes? a. When did the Department make the last contact with States and Territories to improve investigation and prosecution outcomes? b. Has the Department identified which States and Territories have the most problems with investigating and prosecuting those responsible for workplace deaths? Can you tell us which ones those are?	Friday 1 November (written)
EEC-SBE19-44 (written)	Minister for Industrial Relations	WHS Policy	FARUQI	Senate inquiry into industrial deaths in Australia – Contact with state and territory WHS ministers	In its response to the inquiry, the Government committed to writing to the state and territory WHS Ministers to seek their agreement for Safe Work Australia (SWA) to review the National Compliance and Enforcement Policy (NCEP). Has the Minister written to the WHS Ministers for each jurisdiction and what was their response? a. If yes, what has happened since? Has a review been conducted? i. (If yes to review) What were the recommendations of this review? ii. What is the progress on implementing those recommendations? b. If not, why has the Minister not written to the state and territory WHS Ministers?	Friday 1 November (written)
EEC-SBE19-45 (written)	Minister for Industrial Relations	IR programmes	FARRELL	FEG liabilities	Can you provide the most recent figures on FEG liabilities or costs? What is the trend in claims against FEG?	Friday 1 November (written)
EEC-SBE19-46 (written)	Minister for Industrial Relations	IR programmes	FARRELL	Introduction of the Corporations Amendment (Strengthening Protections for Employee Entitlements) Act 2019	Regarding the introduction of the Corporations Amendment (Strengthening Protections for Employee Entitlements) Act 2019: a. Since the legislation was passed in April, have you seen any reduction in claims with the FEG? [Parts (b) to (e) below transferred to Treasury.] b. As a result of the legislation, how many successful cases have been brought by Government regulators under Part 5.8A of the Corporations Act since its introduction? c. [if none] Why not? d. How many would have been caught if they had chosen an earlier start date for the powers?	Friday 1 November (written)

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					e. Did Clive Palmer make any representations to government about the powers?	
EEC-SBE19-47 (written)	Minister for Industrial Relations	IR programmes	FARRELL	How much is being lost to affected workers in superannuation	Looking at claims against the FEG, does this give you any estimates of how much is being lost to affected workers in superannuation?	Friday 1 November (written)
EEC-SBE19-48 (written)	Minister for Industrial Relations	IR programmes	FARRELL	Worker Entitlement Funds	How much would you estimate the operation of Worker Entitlement Funds have saved the taxpayer through not having to access the FEG scheme?	Friday 1 November (written)
EEC-SBE19-49 (written)	Minister for Industrial Relations	IR programmes	FARRELL	Migrant Workers Taskforce recommendations	The Migrant Workers Taskforce recommended “that the Government extend access to the Fair Entitlements Guarantee program, it should be done following consultation regarding the benefits, costs and risks, and it should exclude people who have deliberately avoided their taxation obligations” a. Has the FEG scheme been extended to Migrant Workers as per the recommendations of the Fels Review?? b. [If yes] How much has been paid out to date to Migrant Workers? c. Has the Minister given instructions for the Department to work on the extension of the FEG to migrant workers? d. [if yes] When did the Minister give this instruction? e. In a statement to media at the end of last month the Minister said “Details of timing and the mechanism for consultation on this proposal will be outlined in due course” – has this happened? f. [If not] When will this happen? g. Why is it taking so long? h. Who will be consulted? i. As it appears to be a simple legislative reform why is this taking so long? j. Do you have an estimate of costs associated with this change?	Friday 1 November (written)
EEC-SBE19-50 (written)	Minister for Industrial Relations	IR Policy	FARRELL	Capacity of FWO to implement Fels Review recommendations	The Fels Report made several recommendations that would impact on the work of the Fair Work Ombudsman. In its report it said <i>A major area of consideration relates to the adequacy of the enforcement response of the relevant agencies, primarily the Fair Work Ombudsman (FWO), which has the major responsibility, but also the Australian Border Force. We are of the view, given the scale and entrenched nature of the problem, that there needs to be a much stronger enforcement response than has been evident to date.</i> <i>.... It would, nevertheless, be useful for the Government to undertake a public capability review of the FWO to ensure it has the resources, tools and culture necessary to combat effectively the wage underpayment problem particularly affecting temporary migrant workers.</i> Has the Department undertaken a public capacity review of the Fair Work Ombudsman to ensure it has the capacity and resources to be able to implement and oversee the measures recommended by the Fels Review and accepted in principle by the government in entirety. a. Who has the Minister or his office met with as part of the process of drafting the first two discussion papers? b. Who has the Minister or his office consulted with as part of the process of drafting the first two discussion papers? c. Who has the Department met with as part of the process of drafting the first two discussion papers?	Friday 1 November (written)

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					<ul style="list-style-type: none"> d. Who has the Department consulted with as part of the process of drafting the first two discussion papers? e. What discussion papers are the Department currently working on? f. When is the Review expected to be concluded? 	
EEC-SBE19-51 (written)	Minister for Industrial Relations	IR Policy	FARRELL	Engagement of Boston Consulting Group	<p>The Department confirmed in Senate estimates the engagement of the Boston Consulting Group at a “quoted” cost of \$137,500 for 20 days’ work to develop “an end to end process map of the bargaining process”. They are to report on 8 November 2019. Can the Department:</p> <ul style="list-style-type: none"> a. Confirm the final cost of engaging the Boston Consulting Group to perform this task; b. Provide a full list of stakeholders engaged in this process, including employers, bargaining representatives and unions; c. Confirm the date the Report was completed and handed to the Department; and d. Provide a copy of the final, completed report. 	Friday 1 November (written)
EEC-SBE19-52 (written)	Minister for Industrial Relations	IR Legal	FARRELL	Process for recommending appointees to the FWC	<p>As asked by Senator Pratt and taken on notice by the department: Has the Minister’s office been the one supplying names (of recommended appointees to the FWC) to the department, or have all the appointments been generated by the department and put up to the minister?</p>	Friday 1 November (written)
EEC-SBE19-53 (written)	Minister for Industrial Relations	IR Legal	FARRELL	Process for recommending appointees to the FWC	<p>As asked by Senator Walsh and taken on notice by the minister representing:</p> <ul style="list-style-type: none"> a. Will the Minister give an undertaking that he will maintain balance on the Panel and not appoint more individuals from employer or industry aligned groups with an ideological opposition to unions and working people? b. Who will the Minister consult regarding these appointments? c. When will the Minister be announcing these appointments? 	Friday 1 November (written)
EEC-SBE19-54 (written)	Minister for Industrial Relations	IR Policy	FARRELL	Impact of reduction in penalty rates	<ul style="list-style-type: none"> a. How many extra jobs have been created through the reduction in penalty rates in the retail, fast food, pharmacy and hospitality industries? b. What impact on the Australian economy have these penalty rate cuts achieved? 	Friday 1 November (written)
EEC-SBE19-55 (written)	Minister for Industrial Relations	WHS Policy	FARRELL	Injuries and deaths of self-employed or owner operators in the commercial road transport industry	<p>Given that around one third of road transport commercial vehicles come under the category of self-employed or owner-operators and the overwhelming majority of those are not eligible for worker’s compensation, and given that this eligibility is the basis on which data is being collected, can the Minister answer the following questions:</p> <ul style="list-style-type: none"> a. What appropriate steps can or are being taken by the Government to ensure that the full number of worker fatalities and injuries are being recorded and included in the national datasets being used for the road transport industry, including by Safe Work Australia? b. Can the Minister undertake an examination of the role that State Governments as well as the Federal Government can take to ensure the national datasets on fatalities and injuries in the road transport industry are including all workers – regardless of their employment status and/or eligibility for workers’ compensation or the submission of a compensation claim? 	Friday 1 November (written)
EEC-SBE19-56 (written)	Minister for Industrial Relations	WHS Policy	FARRELL	Gig economy	<ul style="list-style-type: none"> a. What is the Department doing to ensure that workers in the gig economy – including rideshare, food and other product delivery services undertaken not just by trucks and cars but also bicycle, scooter and other road delivery methods – be included in the national dataset for fatalities and injuries at work? b. What is the Department doing to ensure that the self-employed, contractors and gig workers – as well as all workers – have a stronger voice in work safety policy through Safe Work Australia? 	Friday 1 November (written)

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EEC-SBE19-57 (written)	Minister for Industrial Relations	Asbestos Safety and Eradication Agency (ASEA)	FARRELL	National Strategic Plan 2019-2023	<ul style="list-style-type: none"> a. What are the main differences between the new strategic plan and the previous plan? b. What is the basis for these changes? c. How will the ASEA regularly measure ASEA’s performance against the strategic plan over the next five years? d. What are the main benchmarks for measuring ASEA’s successes or failures? e. According to the Review of the 2014-18 National Strategic Plan, activity status reported against deliverables and outcomes in the majority of cases are listed as “ongoing” or “in progress” - why is this all taking so long? f. In the Review of the NSP 2014-18 it says that the final report is an opportunity to celebrate the collective achievements of all stakeholders. Please provide more information on those achievements. g. In the Review of the NSP 2014-18 it states that the evaluation of the NSP 2014-2018 has revealed some key lessons, please provide information as to what those lessons are. h. One activity listed in the review relates to James Hardie: “Reassessment and testing of asbestos disposal legacy sites” – please provide more information. i. Does the Agency still have a grants program? j. If yes, how much has been budgeted for grants in this financial year? k. Is it more or less than previous years? l. If no, why not? 	Friday 1 November (written)
EEC-SBE19-58 (written)	Minister for Industrial Relations	Asbestos Safety and Eradication Agency (ASEA)	McMahon	Asbestos Safety	<ul style="list-style-type: none"> a. In the months and years following Cyclone Tracy, Christmas 1974, large quantities of asbestos containing materials were dumped at numerous sites around the greater Darwin area. Does the department maintain a register of these sites? b. Upon questioning during Senate Estimates, one of your representatives stated your department liaises, primarily, with WorkSafe NT on asbestos related matters in the Northern Territory. What is the extent to which WorkSafe NT reports to your department with pertinent information on asbestos related matters? c. Are there any guidelines, expectations or obligations covering this reporting? d. What is the scope of asbestos reporting? Does it include incidences where contaminated materials are discovered during excavations, earthworks, building construction, roadworks and the like? Does it include reporting newly discovered friable asbestos in existing buildings? e. Does your department track any asbestos clean-up work (remedial, quarantine etc.) when an incident is reported to your department? f. Is your department aware of any work to remove asbestos from the Alice Springs Hospital? g. Is your department aware of any incidents involving asbestos at the Royal Darwin Hospital? h. The Royal Darwin Hospital is the same design as the Canberra Hospital and was built around the same time. Is there any comparison in cost, methodology, identification of asbestos containing materials, or extent of removal between the two buildings? i. There is a mass of asbestos at the Nightcliff, NT foreshore. This mass is so large it is referred to as an artificial reef by locals. Pieces of this “reef” wash ashore along the Nightcliff foreshore and Casuarina beach area. What measures have been undertaken by your department, or other departments, to properly clean this site? 	Monday 5 November (written)
EEC-SBE19-59 (written)	Minister for Industrial Relations	ABCC	FARRELL	Investigation of suspected breaches by the ABCC	<ul style="list-style-type: none"> a. Has the ABCC ever investigated suspected breaches by an employer? b. Has the ABCC ever successfully prosecuted an employer for a breach? c. Has the ABCC ever investigated to ascertain what role the employers association played in any suspected breaches? d. Has the ABCC ever investigated to ascertain what role the employers association played in any actual breaches? e. ABCC – Your website says ‘In certain circumstances, we institute proceedings for contraventions of the Building and Construction Industry (Improving Productivity) Act and Fair Work Act, particularly in relation to <u>Wages and entitlements</u>’. How many proceedings has the ABCC commenced since it was re-established in 2016 for the recovery of unpaid or underpaid employee entitlements? f. How much has the ABCC recovered for employees who have been underpaid? g. What has been the total amount of legal costs (internal and external) incurred by the ABCC in proceedings commenced against employees/unions/union officers as opposed to employers/employer associations? 	Friday 1 November (written)

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EEC-SBE19-60 (written)	Minister for Industrial Relations	ABCC	FARRELL	ABCC interaction with the media	<ul style="list-style-type: none"> a. What policies does the ABCC have around providing private documents to the media? b. Is briefing of the Media authorised by the ABC Commissioner? c. Can the Commission confirm it would be a breach of the ABCC’s obligation to not keep company documents and processes confidential? d. Has the ABCC ever given documents to the Master Builders Association (MBA) received from parties other than the MBA? e. If so, was this authorised by the other party? 	Friday 1 November (written)
EEC-SBE19-61 (written)	Minister for Industrial Relations	ABCC	FARRELL	Underpayment in the building and construction industry	<ul style="list-style-type: none"> a. What percentage of the Australian workforce comes under the ABCC’s jurisdiction? b. Why are there a comparatively low amount of underpayments rectified as enforced by the ABCC? c. Does the ABCC consider that underpayment is more uncommon in the building and construction sector than other sections of the economy? d. If so, what factors does the ABCC put that down to? e. In the most recent ABCC annual report \$823,724 was recovered for 1,376 employees. From how many employers? f. The ABCC annual report states that “Employers are provided with education and an opportunity to voluntarily rectify any underpayments”. Is this consistent with the approach that all industry participants are provided after the ABCC identifies possible contraventions of the Act that it is meant to be enforcing? 	Friday 1 November (written)
EEC-SBE19-62 (written)	Minister for Industrial Relations	ABCC	FARRELL	ABCC’s formal litigation policy	Please provide a copy of the ABCC’s formal litigation policy.	Friday 1 November (written)
EEC-SBE19-63 (written)	Minister for Industrial Relations	FWO	FARRELL	Advertisement of jobs below the minimum award rate	<ul style="list-style-type: none"> a. Is the FWO aware that some job advertisements advertise below the minimum award rate or in breach of the Fair Work Act 2009? b. Does the FWO believe it is appropriate for an employer to advertise a job with a rate below the minimum award? c. Is the FWO aware of a report by Unions NSW released in July 2017 “Lighting up the black market – enforcing minimum wages” that through an audit of 200 job ads on Chinese, Korean and Spanish foreign language websites that 78% of positions were advertised with unlawful wage rates? d. What action does the FWO intend to take to stop these kinds of illegal practices? 	Friday 1 November (written)
EEC-SBE19-64 (written)	Minister for Industrial Relations	FWO	FARRELL	MAdE Contribution Payment	<p>In the Fair Work Ombudsman’s response to estimates questions on the wage theft issues involving the MadE (George Calombaris) company and the contribution payment amount, the Ombudsman said “It’s probably fair to say we would have like it to have been higher, but there were reasons why it wasn’t higher”.</p> <p>What were the reasons it wasn’t higher?</p>	Friday 1 November (written)
EEC-SBE19-65 (written)	Minister for Industrial Relations	FWO	FARRELL	Uber	<p>Can the FWO provide the Committee with the legal advice it received to make the decision that Uber drivers are not employees?</p> <p>Given that the FWO ruling in June was to a large extent based on drivers being able to log in and log out of the Uber work app, and to this extent decide when they work, could this create future loopholes for employers engaged in sham contracting?</p>	Friday 1 November (written)

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EEC-SBE19-66 (written)	Minister for Industrial Relations	FWO	FARRELL	Escarpment Group	Can the FWO advise if any workers from the Escarpment Group of properties have undertaken or concluded an out of court settlement with their employer in relation to underpayment or accommodation costs or other issues? If so, would this settlement prevent or limit the FWO in any way from speaking to those workers about their treatment by the Escarpment Group?	Friday 1 November (written)
EEC-SBE19-67 (written)	Minister for Industrial Relations	ROC	FARRELL	AWU raids – legal costs	a. Please provide the final, total amount spent in legal costs in association with the raid on the AWU offices? b. Please break down the final, total of legal costs incurred by the ROC in respect to: i. Responding to subpoenas to produce evidence and witnesses in the Federal court matter re the AWU investigation; ii. All other appearances, advice and preparation relating to the Federal Court matter; iii. Payments to external solicitors; iv. Payments to Barristers; v. internal legal costs; and vi. any other costs.	Friday 1 November (written)
EEC-SBE19-68 (written)	Minister for Industrial Relations	ROC	FARRELL	Number of Employer Associations in each state and territory	As of 1st January 2019 how many employer associations does the Registered Organisation Commission cover by state; a. Queensland b. Australian Capital Territory c. New South Wales d. Victoria e. Tasmania f. Victoria g. South Australia h. Northern Territory i. Western Australia	Friday 1 November (written)
EEC-SBE19-69 (written)	Minister for Industrial Relations	ROC	FARRELL	Fines from Employer Associations	How much as the Registered Organisation Commission collected in fines from employer association in the following years; a. 2016 b. 2017 c. 2018 d. 2019 (to date)	Friday 1 November (written)
EEC-SBE19-70 (written)	Minister for Industrial Relations	ROC	FARRELL	Registered Employer Associations	Can you please provide a full list of all currently registered employer associations?	Friday 1 November (written)
EEC-SBE19-71 (written)	Minister for Industrial Relations	ROC	FARRELL	Registered Employee Associations	As of 1st January 2019 how many employee associations does the Registered Organisation Commission cover by state: a. Queensland b. Australian Capital Territory c. New South Wales d. Victoria e. Tasmania f. Victoria	Friday 1 November (written)

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					<ul style="list-style-type: none"> g. South Australia h. Northern Territory i. Western Australia 	
EEC-SBE19-72 (written)	Minister for Industrial Relations	ROC	FARRELL	Fines from Employee Associations	<p>How much as the Registered Organisation Commission collected in fines from employee association in the following years:</p> <ul style="list-style-type: none"> a. 2016 b. 2017 c. 2018 d. 2019 (to date) 	Friday 1 November (written)
EEC-SBE19-73 (written)	Minister for Industrial Relations	ROC	FARRELL	Registered Employee Associations	Please provide a full list of all of ROC's currently registered employee associations.	Friday 1 November (written)
EEC-SBE19-74 (written)	Minister for Industrial Relations	ComCare	FARRELL	Cost of new offices in Darwin and Launceston	Please provide the total cost of establishing new offices in Darwin and Launceston, including a breakdown of capital and recurrent costs.	Friday 1 November (written)
EEC-SBE19-75 (written)	Minister for Industrial Relations	Comcare	FARRELL	Statistics from Comcare annual report	<ul style="list-style-type: none"> a. According to the 2018-19 Annual Report, premium rates have dropped from 1.06% in 2018-2019 to 0.85% in this financial year. For the corresponding period, liabilities have decreased from \$2192m to \$1665m. It is also noted that accepted claims have reduced by 30%. Is this how Comcare has managed to reduce its premiums and liabilities? b. Please provide more information about the 30% reduction in accepted claims? c. Please provide a breakdown of categories of claims rejected, and how it differed from the previous year? d. On what basis were the majority of claims rejected? 	Friday 1 November (written)
EEC-SBE19-76 (written)	Minister for Industrial Relations	Safe Work Australia	FARRELL	Current Safe Work Australia members	Please provide the Committee with a complete list of current members, including employer and employee organisations and representatives from jurisdictions.	Friday 1 November (written)
EEC-SBE19-77 (written)	Minister for Industrial Relations	Safe Work Australia	FARRELL	Injuries and deaths of self-employed or owner operators in the commercial road transport industry	<p>Given that around one third of road transport commercial vehicles come under the category of self-employed or owner-operators and the overwhelming majority of those are not eligible for worker's compensation, can Safe Work Australia answer the following questions:</p> <ul style="list-style-type: none"> a. Please confirm what the sources are for the dataset that is used to report on the deaths and injuries experienced by workers in the road transport industry? b. To what extent, if at all, are injuries, serious injuries and deaths included in this data set based on eligibility for workers' compensation, and would therefore not include those who are classified or considered as owner-drivers? c. Can Safe Work Australia and/or its members report back on steps being taken to make the data set more accurate for the road transport industry by including ALL injuries and deaths of workers in the industry – regardless of the employment status or eligibility for workers' compensation of the workers concerned, including full-time, part-time, casual employees, contractors and owner-drivers? d. Can Safe Work Australia identify those workers injured or killed in the course of gig economy work in the road transport industry? This would include, but not necessarily be limited to, rideshare, food and other product delivery services undertaken not just by trucks and cars but also bicycle, scooter and other road delivery methods. 	Friday 1 November (written)

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EEC-SBE19-78 (written)	Minister for Industrial Relations	Safe Work Australia	FARRELL	Gig economy	<p>a. Are gig economy workers included in the data set used by Safe Work Australia?</p> <p>b. If not, why is this not the case and what steps are being taken, or could be taken to address this deficiency in the reporting of injuries and deaths?</p> <p>c. What is Safe Work doing to ensure that the self-employed, contractors and gig workers – as well as all workers – have a stronger voice in work safety policy in Safe Work Australia?</p> <p>d. Can Safe Work Australia confirm that it will raise this issue with their members and report back on progress made?</p>	Friday 1 November (written)
EEC-SBE19-79 (written)	Minister for Industrial Relations	ABCC	WATT	Amount recovered by the ABCC in 2018-19	<p>In the ABCC Annual Report 2018-19, it is stated that \$823,724 was recovered for 1,376 employees. For this, please provide in each instance:</p> <p>How did the ABCC become aware of the issue?</p> <p>Does this instance constitute a contravention of workplace laws?</p> <p>What was the total amount recovered?</p> <p>Were the recovery wages?</p> <p>If so, were they regular wages or overtime?</p> <p>If the recovery was an entitlement, what entitlement?</p> <p>If there was any further action taken?</p> <p>Was the entitlement due pursuant to a term of an Award or Enterprise Agreement? Include details of the award/agreement and the specific term or terms</p>	Friday 1 November (written)
EEC-SBE19-80 (written)	Minister for Industrial Relations	ABCC	WATT	Contravention of workplace laws by employers	<p>How many suspected contraventions of workplace laws by employers were reported to the ABCC?</p> <p>How many suspected contraventions of workplace laws by employers were discovered by the ABCC?</p> <p>How many investigations have been initiated in response to the suspected conventions mentioned above?</p> <p>How many warnings were issued as a result?</p> <p>How many court proceedings were instigated as a result?</p> <p>Did each confirmed contravention lead to a penalty?</p> <p>Please provide the raw numbers and the ratio of contraventions by employers to both court proceedings entered into and penalties applied.</p> <p>Please also provide following in respect for contraventions by trade unions.</p>	Friday 1 November (written)
EEC-SBE19-81 (written)	Minister for Industrial Relations	ABCC	WATT	ABCC legal resources	<p>What are the total amount in hours and dollar terms of the ABCC internal legal resources used to investigate contraventions of workplace laws by employers?</p> <p>What are the total amount in hours and dollar terms of the ABCC internal legal resources used to investigate contraventions of workplace laws by trade union?</p> <p>What was the total amount of external legal or consultation services contracted during investigations of contraventions of workplace laws by trade union?</p> <p>What was the total amount of external legal or consultation services contracted during investigations of contraventions of workplace laws by an employer?</p>	Friday 1 November (written)
EEC-SBE19-82 (written)	Minister for Industrial Relations	ABCC	WATT	Time and cost of investigation	<p>What is the average time spent on an investigation of contraventions of workplace laws by an employer?</p> <p>What is the average time spent on an investigation of contraventions of workplace laws by a union?</p> <p>What is the average cost of the above?</p>	Friday 1 November (written)

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EEC-SBE19-83 (written)	Minister for Industrial Relations	IR Policy	Waters	Parental responsibilities	What work is the government undertaking to encourage companies to create workplace environments where male parents are not considered unusual for seeking, and being granted, flexibility to share parental responsibilities?	Tuesday 12 November (written)

82 in total