



COMMONWEALTH OF AUSTRALIA

# Proof Committee Hansard

## SENATE

EDUCATION AND EMPLOYMENT LEGISLATION COMMITTEE

**Estimates**

(Public)

WEDNESDAY, 15 FEBRUARY 2023

CANBERRA

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**EDUCATION AND EMPLOYMENT LEGISLATION COMMITTEE**

**Wednesday, 15 February 2023**

**Members in attendance:** Senators Cash, Grogan, Liddle, O'Sullivan, Payman, Barbara Pocock, Rennick, Rice, Roberts, Sheldon and Waters

**EMPLOYMENT AND WORKPLACE RELATIONS PORTFOLIO****In Attendance**

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

**Department of Employment and Workplace Relations**

Ms Natalie James, Secretary

**Corporate and Enabling Services**

Ms Deborah Jenkins, Deputy Secretary, Corporate and Enabling Services Group

Mr Scott Wallace, Chief Information Officer and First Assistant Secretary

Mr Tim Ffrench, General Counsel and First Assistant Secretary

Ms Kerry Kovacevic, Chief Digital Officer and First Assistant Secretary

Ms Giorgina Strangio, Acting First Assistant Secretary

Ms Cosgriff Bridie, Assistant Secretary

Ms Ingrid Nagy, Acting Assistant Secretary

Ms Cha Jordanoski, Acting First Assistant Secretary

Mr Anthony Howatson, Assistant Secretary

Mr Mathew Gilliland, Acting Assistant Secretary

**Employment and Workforce**

Mr Nathan Smyth, Deputy Secretary

Ms Melissa Ryan, First Assistant Secretary

Ms Quyen Tran, Assistant Secretary

Ms Fiona MacDonald, Assistant Secretary

Ms Belinda Catelli, Assistant Secretary

Ms Sonya McCarthy, Assistant Secretary

Ms Robyn Shannon, First Assistant Secretary

Ms Samantha Roberston, Assistant Secretary

Mr Derek Stiller, Assistant Secretary

Mr Tim Matthews, Assistant Secretary

Ms Miranda Lauman, First Assistant Secretary

Mr Stuart Watson, Assistant Secretary

Ms Eve Wisowaty, Assistant Secretary

Ms Jodie Wearne, Assistant Secretary

Ms Carmel O'Regan, Acting First Assistant Secretary

Mr Alistair Beasley, Assistant Secretary

Ms Deborah Brown, Assistant Secretary

Ms Heike Phillips, Assistant Secretary

Mr Jason Stott, First Assistant Secretary

Ms Helen McCormack, Assistant Secretary

Ms Cary Duffy, Executive Director

Ms Kylie Crane, First Assistant Secretary

Ms Anna Ritson, Acting Assistant Secretary

Dr Louise O'Rance, Assistant Secretary

**Skills and Training**

Ms Nadine Williams, Deputy Secretary

Dr Nicky Antonius, Acting Senior Responsible Officer

Ms Clare Sharp, First Assistant Secretary  
Ms Belinda Campbell, Assistant Secretary  
Mr Adam Weiderman, Assistant Secretary  
Ms Carmen Saunders, Assistant Secretary  
Ms Laura Angus, First Assistant Secretary  
Ms Linda White, Assistant Secretary  
Ms Danielle Finnigan, Assistant Secretary  
Ms Vicki Wilkinson, First Assistant Secretary  
Ms Natasha Ryan, Assistant Secretary  
Ms Jo Rossiter, Assistant Secretary  
Dr Simon Booth, Chief Adviser  
Ms Renae Houston, First Assistant Secretary  
Ms Katerina Lawler, Assistant Secretary  
Ms Rachel Livingston, Assistant Secretary  
Mr Matthew Hardy, First Assistant Secretary  
Ms Kathy Dennis, Assistant Secretary  
Ms Jane Hayden, Assistant Secretary

**Jobs and Skills Australia**

Mr David Turvey, First Assistant Secretary  
Dr Damian Oliver, Assistant Secretary, Pricing and Performance  
Mr Clifton Bingham Assistant Secretary, Labour Market Research and Analysis  
Ms Angela Hope, Assistant Secretary, Skills Intelligence and Engagement

**Workplace Relations**

Mr Martin Hehir, Deputy Secretary  
Mr Greg Manning, First Assistant Secretary, Employment Conditions Division  
Ms Jennifer Wettinger, Assistant Secretary, Economics and International Labour Branch  
Ms Sharon Huender, Assistant Secretary, Workplace Relations Strategy Branch  
Ms Tara Williams, Assistant Secretary, Safety Net Branch  
Ms Alexandra Mathews, First Assistant Secretary, Employee Entitlement Safeguards and Policy Division  
Mrs Sue Saunders, Assistant Secretary, Fair Entitlements Guarantee Branch  
Mrs Danica Yanchenko, Assistant Secretary, Workplace Compliance and Enforcement Policy Branch  
Mr Ryan Perry, Acting Assistant Secretary, Recovery and Litigation Branch  
Ms Jody Anderson, First Assistant Secretary, Safety and Industry Policy Division  
Mr Henry Jones, Assistant Secretary, Federal Safety Commissioner  
Mr David Cains, Assistant Secretary, Bargaining and Industry Policy Branch  
Ms Elizabeth de Hoog, Acting Assistant Secretary, Safety and Compensation Policy Branch  
Mrs Angela Wallbank, Assistant Secretary, Workplace Relations Consultations Branch  
Ms Anne Sheehan, Chief Counsel  
Ms Sarah Godden, Senior Executive Lawyer, Bargaining and Coverage Branch  
Mr Stephen Still, Senior Executive Lawyer, Employment Standards Branch  
Mr Adrian Breen, Senior Executive Lawyer, Safety, Compensation and Institutions Branch

**Australian Skills Quality Authority**

Ms Saxon Rice, Chief Executive Officer  
Ms Christina Bolger, Deputy Chief Executive Officer  
Mr Ty Emerson, Executive Director

Ms Carmen Basilicata, Executive Director

**Coal (Long Service Leave Funding) Corporation**

Ms Darlene Perks, Chief Executive Officer

**Fair Work Commission**

Mr Murray Furlong, General Manager

Ms Joelle Leggett, Executive Director, Tribunal Support Branch

Mr Jack Lambalk, Executive Director, Enabling Services Branch

Ms Katharine Scarlett, Acting Executive Director, Client Services Delivery Branch

Mr Patrick McCarthy, Executive Director, Communications, Legal and Organisations Branch

**Fair Work Ombudsman**

Ms Sandra Parker PSM, Fair Work Ombudsman

Ms Kristen Hannah, Deputy Fair Work Ombudsman, Policy and Communication

Mr Michael Campbell, Chief Operating Officer

Mr Rachel Volzke, Chief Counsel

Mr Tom O'Shea, Deputy Fair Work Ombudsman, Large Corporates and Industrial Compliance Group

Mr Steven Ronson, Acting Deputy Fair Work Ombudsman, Compliance and Enforcement

Ms Kate Anderson, Acting Executive Director, Industrial Compliance Branch

Ms Phoebe Nicholas, Acting Executive Director, Legal Compliance and Enforcement Branch

Mr Anthony Fogarty, Executive Director, Policy

**Registered Organisations Commission**

Mr Mark Bielecki, Commissioner

Mr Chris Enright, Executive Director

**Safe Work Australia**

Ms Michelle Baxter PSM, Chief Executive Officer

Ms Amanda Johnston, Deputy Chief Executive Officer

Dr Rebecca Newton PhD, Branch Manager, Chemicals, Occupational Hygiene Policy and High Risk Work Policy

Ms Meredith Bryant, Branch Manager, Evidence, Communications and Strategic Policy

Ms Sarah Costelloe, Branch Manager, WHS Framework and Workers' Compensation Policy

Ms Leah Edwards, General Counsel

**Committee met at 09:01**

**CHAIR (Senator Sheldon):** I declare open this hearing of the Education and Employment Legislation Committee into the supplementary budget estimates 2022-23. I begin by acknowledging the traditional custodians of the land on which we meet today and pay my respects to their elders past and present. I extend that respect to Aboriginal and Torres Strait Islander peoples here today. The committee has fixed Friday, 31 March 2023 as the date for the return of answers to questions taken on notice. The committee has resolved that written questions on notice should be received from senators by close of business on Friday, 3 March 2023.

Under standing order 26, the committee must take all evidence in public session. This includes answers to questions on notice. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence. The Senate has endorsed the following test of relevance for questions at estimates hearings: any questions going to the operations or financial positions of the departments and agencies which are seeking funds in estimates are relevant questions for the purpose of estimates hearings. I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has the discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. The Senate has resolved also that an officer of a department of the Commonwealth shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity

to refer questions asked of the officer to superior officers or to a minister. This resolution does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted.

Witnesses are reminded of the Senate order specifying the process by which a claim of public interest immunity should be raised. I incorporate the public immunity statement into the *Hansard*.

*The extract read as follows—*

**Public interest immunity claims**

That the Senate—

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

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

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

(1) If:

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

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

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

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

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

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

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

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

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

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

*(13 May 2009 J.1941)*

(Extract, Senate Standing Orders)

**CHAIR:** I remind all senators that, as we continue our work implementing the *Set the Standard* report, as chair I will ensure that proceedings are conducted in an orderly, respectful and courteous way. Senators, departments and agencies have been provided with advice on the arrangements in place to ensure the supplementary budget estimates 2022-23 hearings are conducted in a safe environment. This guidance is also available from the secretariat. The committee appreciates the cooperation of all attendees in adhering to these arrangements.

**Department of Employment and Workplace Relations**

[09:04]

**CHAIR:** Today the committee's focus will be on the Employment and Workplace Relations portfolio. I welcome Senator the Hon. Murray Watt, Minister for Agriculture, Fisheries and Forestry, and Minister for Emergency Management, representing the Minister for Employment and Workplace Relations. I also welcome representatives from the Department of Employment and Workplace Relations, including the Secretary, Ms Natalie James. Minister Watt, do you wish to make an opening statement?

**Senator Watt:** No, I don't, but it's good to see everyone.

**CHAIR:** Ms James, do you wish to make an opening statement?

**Ms James:** No, thank you. I also wish to acknowledge the traditional owners of the land on which we're meeting today and extend my respects to elders past, present and emerging, and those Aboriginal and Torres Strait Islander people in the room and tuning in online.

**CHAIR:** I just want to note for the committee there is some delay in some departmental staff arriving due to some activities in the parliament grounds. We'll begin questions in relation to corporate enabling services. Senator Cash.

**Senator CASH:** Good morning, everybody. Ms James, thank you for responding to the letter with the extensive information that you provided to us prior to today's hearing. It was greatly appreciated. We have a number of questions in cross-portfolio. I might just turn to Senator O'Sullivan first. We have a series of questions in relation to the October budget measure, savings from external labour and savings from advertising, travel and legal expenses.

**Senator O'SULLIVAN:** What's the value of the savings that the department was requested to deliver for the 2023 year in aggregate from the October budget measure—savings from external labour, advertising, travel and legal expenses?

**Ms James:** Our chief financial officer has joined us at the table, and she'll be able to give you the precise numbers in relation to that.

**Ms Jordanoski:** In relation to the measure at the October budget, in relation to the savings by external labour hire, let me just pull that up for you.

**Senator O'SULLIVAN:** The amount requested of the department.

**Ms Jordanoski:** In relation to the October budget measure, savings from external labour hire, savings from advertising, travel and legal expenditure, the department contributed a saving of \$11.742 million as per our portfolio budget statement, page 25.

**Senator O'SULLIVAN:** So, the department has identified the savings that you'll make across those areas, broken down by external labour hire, consultancy, advertising campaigns, travel and legal expenses?

**Ms Jordanoski:** As you're aware, that process was undertaken by the Department of Finance. Those numbers were given to us in aggregate as part of the October budget. In terms of how that's applied internally, that's part of how our executive and management are applying our internal budget process. I can't give you the breakdown of where those components are, because we got an aggregate figure from the department.

**Senator O'SULLIVAN:** Have you identified yet where you're going to make those savings?

**Ms James:** We've worked that through as a department as part of our internal budget process, and those savings have been applied across the department.

**Senator O'SULLIVAN:** Are you able to tell us what they are?

**Ms Jordanoski:** I can't give you that breakdown today, but we can take that on notice.

**Senator O'SULLIVAN:** Can the department provide a breakdown of the funding reductions that you've made in totality already in each of the above areas?

**Ms Jordanoski:** In relation to that savings measure?

**Senator O'SULLIVAN:** Yes.

**Ms Jordanoski:** As I said, I'm not able to give you that breakdown, but that saving has been applied across the department in terms of our total budget. They've already been taken out. As part of that measure at the budget, the Department of Finance took the funding away from departments. That funding is no longer available into our department and so in effect it is a saving. How we apply that internally, though, is a matter for our internal budget.

**Senator O'SULLIVAN:** You might like to take this on notice as well. Has the department been informed of the cut that will be made to the funding in the next financial year for the rest of the forward estimates?

**Ms Jordanoski:** In relation to that, those matters are for the Department of Finance and are part of budget deliberations, I assume as part of the May budget. I'm unable to comment on that.

**Senator O'SULLIVAN:** Can the department confirm the total number of new contracts, ongoing or terminating, and the total cost of these contracts issued on AusTender since 30 June 2022 which relate to the following areas—labour hire, consultancy, advertising campaigns, travel and legal expenses?

**Ms Jordanoski:** I'm not able to give you an exact breakdown on those three categories. However, I am able to say that we have entered—

**Senator O'SULLIVAN:** You don't have it now?

**Ms Jordanoski:** No, I don't have that.

**Senator O'SULLIVAN:** Is that something you can provide to us?

**Ms Jordanoski:** I can provide that on notice for you.

**Senator O'SULLIVAN:** If you're able to provide a breakdown of the value of contracts across each area and identify the categories on AusTender which were used to determine the department's identification of the contracts, just for the benefit of taking it on notice?

**Ms Jordanoski:** Thank you.

**Senator O'SULLIVAN:** Is the department on track to meeting those savings targets?

**Ms Jordanoski:** As I said earlier, that funding was taken away from the department's budget. We are on track, because it's been taken away from our appropriation.

**Senator O'SULLIVAN:** You'll break that up?

**Ms Jordanoski:** But in terms of how we apply that, as I said to you earlier, we can give you that breakdown.

**Senator O'SULLIVAN:** Excellent. Has the department sought an exemption or alteration from the savings statement?

**Ms Jordanoski:** No, we haven't requested any exemptions.

**Senator O'SULLIVAN:** Are you able to tell us how many non-ongoing contracts the department has entered into since 1 June 2022?

**Ms James:** Just to clarify, you're talking about non-ongoing employees?

**Senator O'SULLIVAN:** Yes, contracted services.

**Senator CASH:** If you need to, break it down into whatever non-ongoing contracts have been entered into for people undertaking work for the department, whether it be an employee, a consultant or a contractor.

**Ms James:** Non-ongoing employees are employees who are not ongoing. That's a term used in the employment sense. Whereas in the contracting sense we don't usually talk about ongoing or non-ongoing, because contracts are for the duration of whatever the contract is.

**Ms Jenkins:** We've got some different cuts of the data so we'll try to answer your question. Let's just go to non-ongoing employees for a moment. This is a point in time figure.

**Senator CASH:** Not a problem.

**Ms Jenkins:** As at 31 December 2022—and we can provide this, but I'll read some of this out—we had a total of 134 non-ongoing employees and 1,021 contractors. Within that contractor number it's about fifty-fifty that relate to what we call ICT contractors—technology—and the balance of those relate to other, so non-ICT contractors. In relation to that, we've started to reduce the number. I'm going to use round figures for a moment. So, that's the balance of the 500. And we are reducing that by, for example, 25 employees in January to February 2023 and another 64 would be moved effectively from contractors to be part of the APS.

**Senator CASH:** When you say moved from contractors to part of the APS, is that to a permanent position?

**Ms Jenkins:** Correct. It's a bit tricky because of the cuts of the data. What we might try to do is see if we can actually provide a breakdown of that. Am I answering your question?

**Senator CASH:** We understood that it would be difficult to provide it here and now. We'll put on notice for you the exact data that we are looking for to assist you in actually dividing it up for us.

**Ms Jenkins:** Just to point out the obvious, I think you used a June date. We only commenced in July as a department, DEWR.

**Senator O'SULLIVAN:** I could have said 1 July; I said from 30 June.

**Ms Jenkins:** Sorry. I just heard 'June'.

**Senator CASH:** You said at this point in time there's 1,021 contractors?

**Ms Jenkins:** That's at 31 December 2022.

**Senator CASH:** So, 2022, and they're obviously not in permanent roles, because they're contractors?

**Ms Jenkins:** Yes.

**Senator CASH:** That's understood.

**Senator O'SULLIVAN:** Finally, what action is the department taking to ensure it complies with the changes that were legislated in relation to prohibitions on fixed maximum term contracts in certain circumstances?

**Ms Jenkins:** What I can say is we acknowledge that commitment and what we are doing is then working through this. We've participated in the audit of employment by the Department of Finance. Firstly, we understand there's a reform agenda, which we're working with the Department of Finance on. We participated in the audit of employment, which was led by the Department of Finance, including the portfolio agencies. That was in December 2022. We have now started to do things like advertise vacancies in the contact centres, for example. This is the movement of the contractors to APS employees. In addition to this, we are preparing a response to the estimates memorandum, which is the approach to convert external labour roles to the APS. Those are the things we've done.

**Senator CASH:** In terms of the audit that you participated in, can you elaborate on what the audit was and what it entailed?

**Ms Jenkins:** I'll pass to my colleague.

**Ms Jordanoski:** In relation to the audit of employment, that question is probably better directed to the Department of Finance. We have participated in that process as part of the whole-of-government process.

**Senator CASH:** What was your participation? What was the participation of your department in that process?

**Ms Jordanoski:** Essentially, we took part of the process and followed the Department of Finance guidelines in relation to that, and provided our information.

**Senator CASH:** Are they public guidelines?

**Ms Jordanoski:** No, I'm not aware that they are. Those questions are best directed to the department.

**Senator CASH:** That's fine. We might put some questions on notice in relation to that. On the 1,021 contractors as at the date that you gave, 31 December 2022—Minister Burke is obviously on the record saying that he will crack down on insecure work in late 2023. In terms of those who were in the non-permanent roles in this department, are they going to be transitioned over to permanent roles?

**Ms James:** There are a number of things that we consider when we make decisions around, for want of a better term, hiring. We of course have our own Public Service Act provisions and the imperative of the government to reduce the number of contractors, particularly in ongoing roles. As Ms Jenkins mentioned, we have already started to convert, for want of a better word, and offer contractors in our contact centres ongoing employment through merit selection processes under the Public Service Act. Where we consider that the role is ongoing and there is funding for it, and the equivalency is there in terms of the cost of the employees versus the cost of contractors, that's something that we can do and that we are looking to do. It becomes a little trickier in some areas such as technology. By and large the majority of our contract workers are in the area of technology, and these are workers who are used to working as contractors, and the equivalency in terms of APS salaries is not necessarily practical or attractive to them in terms of that industry. That's something we can't immediately do, because we don't have the structures there. This is part of what the Department of Finance is looking at as we look to engage more people directly as APS employees. But we also do look to the nature of the programs. Are they ongoing programs? For example, with terminating programs or functions that aren't ongoing we do need to make responsible decisions around our budget in terms of tenure. My personal preference is to employ people. I think that we are a great place to work. We are a department that does really impactful and important work and a department that I hope people are keen to work with. But we do need to weigh up a large number of things. The imperatives of the legal framework, of course, first and foremost govern what we do.

**Senator CASH:** You did make a comment that there are some in those roles who prefer to stay in those roles for a number of reasons, including obviously the salary. I personally have been approached by many people who are of that position. The issue I have with that, though, is how does this correspond with Mr Burke's campaign to crack down on these non-permanent roles, and the criticisms that you have of businesses that do this? If a business was to sit here today and articulate the exact same position that you have articulated, would that be accepted by government?

**Ms James:** Just to clarify, I think that my sense in coming back into the Canberra based Public Service is there has been a significant increase in the use of contractors in the area of IT, and probably for lots of reasons. Many areas of the labour market are under pressure. There are some areas where talent is hard to come by. I think the Canberra based Public Service has probably contributed to the way this industry operates by continuing to hire so many contractors. Far be it for me to channel the Secretary of Finance's role, but I think that if the Public Service as a whole makes decisions about how we're going to go about engaging our very talented technology workforce differently, then that would influence the market. I think that might shift the way people think about jobs. I think we need to do better when it comes to remote work and flexibility. We can always do better on that front. There are other things that we offer that can attract people. This is an area of the market that is the way it is in part because of the way the Public Service in Canberra has operated. I would say, observing that there have been some technology companies here and in the US who have been putting off large technology workforces, I do wonder whether there might be a shift in the market, and perhaps people looking for different arrangements for work. This is something we'll continue to look at. We do have a significant technology workforce and some complex systems. We need to make sure that they work for the public, consumers, jobseekers and the like. I think that, as the Public Service, we're in a position where we can influence the market, and always provide people choice. Security and higher pay, good pay and good conditions shouldn't be mutually exclusive. We should be able to offer both.

**Senator CASH:** I'll come back to a line of questioning. I understand.

**Senator GROGAN:** I'd like to talk about the procurement process for Workforce Australia Employment Services. I'm keen to understand what the process was for letting those contracts.

**Ms James:** That's a pretty big question. We're doing cross-portfolio at the moment and I think employment is next. I'm happy to shuffle the deck.

**Senator GROGAN:** The procurement piece—

**Ms James:** A combination of the two. I'm relaxed about shuffling the deck. Maybe I shouldn't be. Maybe I'll regret that precedent that I just set. Chair, I'm in your hands as to how you'd like to manage that. Would you like to do them now or wait?

**CHAIR:** Why don't we do corporate first, because there's a line of questioning.

**Senator CASH:** I have a series of questions. Just in terms of the conversation—and it is a very interesting conversation—what I'm struggling with, though, are the comments that you make in relation to the Public Service and in particular the Canberra Public Service. Those comments though are directly translatable to how business itself would actually think, and yet business has a directive by government to behave in a certain way. You are the Department of Employment. You're responsible for the legislation that just passed. Will the department set an example for how the government wants to see the workplace run? In particular, are you setting yourself active targets to reduce the number of contractors that you currently have, for example, or people who are employed in roles that are non-ongoing but for over a period of two years?

**Ms James:** We will make decisions based on the principles of wanting to provide the best conditions possible as appropriate when we're hiring. We will follow the guidelines and directions of the Department of Finance, noting that there is work still to come around that I think will be APS wide. We'll always be looking to attract talent in all the ways we can think of.

**Senator CASH:** I will obviously be providing the comments you've made to business, because I think they are very instructive to them. But in particular the last comment that you made, do those comments actually apply to business in terms of their decision-making as well? Given you're the secretary of the department, you will make your decisions based on the guidance. I'm assuming businesses across Australia can take comfort from that they will also be able to make their decisions based on the guidance. But as you said, it needs to be the decisions that are ultimately in, in this case, the Canberra APS. For a particular business in rural and regional Australia, in my home state of Western Australia, and in South Australia, they will make decisions based on the very good guidance you just gave, and they will be the correct decisions?

**Ms James:** Our guidance is in the form of rules, really, from the Department of Finance. I accept that of course business will respond to the market and we're part of the market.

**Senator CASH:** In terms of rules, are we able to have a copy of those rules provided to the committee?

**Ms James:** This is a work in progress. The audit that Ms Jordanoski mentioned before, I'm imagining/expecting will result in a framework for the entirety of the APS around this issue of ensuring that we offer attractive, secure and well paid employment.

**Senator CASH:** I appreciate all of that. This is what I'm struggling with. There is a very clear message that the government gave to business last year. It passed the legislation. I have spoken to businesses across Australia who at their own expense—it doesn't matter how big or small they are—are now engaging lawyers to undertake a review of their employment conditions, contracts of employment, et cetera, to ensure that they do not fall foul of the government's legislation. In particular, if you recall, there is actually a penalty involved if you now employ someone for over a period of time. What I'm hearing from here is that there are some rules but I can't find out what the rules are. You're working through the process and eventually there'll be a framework. I just find that there is an inconsistency saying, 'We've got some rules that we're working through. A framework may or may not ultimately be provided to us.' It's okay to have non-permanent roles in the Australian Public Service Commission, in particular in Canberra, because of the market in which we operate, but at the same time you have a minister who in speech after speech and statement after statement says that we want to crack down on so-called insecure work for everybody else. It's just the inconsistency in messaging. I'll be honest with you; I didn't think I would get the answers I'm getting today. I thought they'd be completely different answers. I appreciate you're being honest. I genuinely do. But in being honest, it's opened up a can of worms for business. In particular, when I send out the—Hansard—from today I will be telling business, 'Model yourself on the Department of Employment, because they're making decisions in their own best interests. They admit that it may not be possible to adhere to the government's advice.' Senator Watt, I'm happy for you to comment.

**Mr Watson:** I was just checking some of the evidence that had been given.

**Senator CASH:** If you want to correct the record or if there's something you want to add, I'm more than happy.

**Mr Watson:** No.

**Senator CASH:** Do you see where I'm going? I've got businesses calling me every single day, and then you've just given us a whole lot of guidance in relation to what the minister's own department is or is not doing based on a whole-of-government approach that hasn't yet been finalised but you hope there's going to be a framework. Businesses aren't in that same position.

**Ms James:** Could I respond to that?

**Senator CASH:** Yes, this is a very interesting conversation.

**Ms James:** I've clearly done something wrong if I've defied your expectations and it's interesting. Nevertheless, I think we are conflating a few different things here. There's the legislation, the secure jobs, better pay laws that passed the parliament last year, which of course we comply with. If you would like to talk more about that when the relevant officers are at the table later, I'm sure they would be happy to talk with you about it. In the Public Service we also have the Public Service Act, which already limits, constrains or sets rules for how we engage non-ongoing employees and contractors. We have guidance under the Public Service Act framework as well, and then there's this finance piece. I feel that we're talking about all of them at once as if they're all the same thing. Most of the framework that the Public Service is focused on does not apply to business. I think if we go back to the—Hansard—through the conversation we traversed, I do recall saying—and if didn't I'll say it now—that first and foremost we comply with the laws that apply to us, the Public Service Act and of course the Fair Work Act. Much of what we've traversed in the more recent part of this conversation goes to the Public Service framework, which of course is an imperative for us, but not an imperative for business, albeit it does influence business that engages with the Public Service.

**Senator CASH:** I'm happy to move on. We can come back to casuals in the more appropriate section. I just have a series of questions now in relation to the previous consultation on the same job, same pay bill, but also the consultation that will be undertaken in relation to the next round of industrial relations reform.

**CHAIR:** I had a brief chat with the deputy chair. If we could just take it to the next section and move on?

**Senator CASH:** I'll just pop those questions into the IR section. That's fine.

**CHAIR:** We will move over to employment services.

**Senator CASH:** I still have two other sections to go through very quickly.

**CHAIR:** Is that the same as—

**Senator CASH:** Yes—this is in corporate and then we'll move to employment.

**Senator Watt:** If we do the consultation about the IR changes later, and keep going with genuine corporate stuff.

**Senator CASH:** That's fine.

**CHAIR:** That's good.

**Senator CASH:** This is just in relation to the announcement by Minister Burke of the appointment of Mr Hatcher as the new President of the Fair Work Commission.

**Senator Watt:** Again, I think that would probably be more a matter either for workplace relations or even potentially the Fair Work Commission, I guess.

**Senator CASH:** I'm asking for the department's role in relation to this.

**Senator Watt:** The department can still answer those questions when we get to the right section.

**Senator CASH:** If you prefer to do them then, that's all right.

**Senator Watt:** I just want to make sure that we've got exactly the right people here at the right time.

**Senator CASH:** As I said, I can move them as well.

**CHAIR:** Can I indicate that we'll probably be coming to it earlier, so I'd expect we may be there in about five to 10 minutes.

**Senator Watt:** Next is employment, and those matters are probably after that.

**Senator CASH:** The only other question I have just in terms of machinery-of-government changes—and we didn't get to talk about it at the last Senate estimates—is the abolition of the Registered Organisations Commission, and just how the machinery-of-government changes will work, if you want to call them machinery-of-government changes, from the department's perspective. Could you just take me through how that will work?

**Ms James:** I think we would also see the appropriate place to do that is in outcome 3, which is workplace relations.

**Senator CASH:** That's fine.

**Senator Watt:** We're happy to do it. We're just trying to make sure the right people are here at the right time.

**Senator CASH:** That's not a problem at all. I've finished in cross-portfolio.

**CHAIR:** So, we now go to employment services?

**Senator CASH:** That is correct.

[09:33]

**Senator Watt:** Just while the officials are coming, can I just make the point in relation to the contractor issues you were talking about and the conversion. I didn't catch every figure that the department provided you with, but it certainly sounded to me that there's a substantial number of non-permanent staff who were engaged by this department who have been converted to permanent roles or are in the process of doing so—admittedly, not every single one of them; Ms James provided some evidence about the particular issues around IT contractors. But I certainly don't think it would be accurate to suggest that this department and Minister Burke have not taken this issue seriously. It's starting to happen, as it is in my own department. There's a substantial number of contractors or other non-permanent staff who have been converted, but I don't think anyone pretended that was all going to be done in a period of seven months.

**CHAIR:** If you have a new line of questions, we'll go back to it.

**Senator CASH:** Are we on to employment now?

**CHAIR:** Yes, we're on to employment.

**Senator CASH:** Senator Liddle and Senator O'Sullivan will take this line of questions for employment.

**CHAIR:** We might jump over to us and then come back to you.

**Senator GROGAN:** I would like to talk about the process for the procurement of the delivery of Workforce Australia employment services. Can you step me through what that process was and when it started?

**Mr Smyth:** I'm just waiting for some of my staff to arrive who were responsible for the actual procurement.

**Senator GROGAN:** Who knew estimates would be running ahead of time at this time of the day!

**Mr Smyth:** I think part of the issue too is that some of my staff were caught behind some activities that were occurring outside of Parliament House and have been unable to gain entry into the building at this particular point.

**Senator CASH:** Was that deliberate?

**Mr Smyth:** I'm not that good at organising something like that!

**CHAIR:** We should give you the questioning back. You can start off and we will take it when they're here.

**Ms James:** Of all people, Mr Smyth is not the one with those connections.

**Senator O'SULLIVAN:** Is that across all areas?

**Mr Smyth:** It's a few areas.

**Senator GROGAN:** I think it's the President of Fiji and a reception—

**Senator O'SULLIVAN:** No, I mean in terms of officials who haven't been able to come in. I've prioritised my questions based on who's in the room.

**Mr Smyth:** Ms Shannon is my key procurement person, but I can talk to you about—

**Senator CASH:** You'll be all over it. You're outstanding. You will be all over it.

**Mr Smyth:** We went through a pretty substantial procurement process based on an extensive process prior to that ran for a number of years. There was the *I want to work* report that was delivered to the department in 2018. From that the government on 20 March 2019 advised the sector that the government had adopted all of the recommendations of the report. We set about having two trials, in Adelaide's south, South Australia, and in the mid-North Coast of New South Wales. Those trials basically looked at policy settings for the new arrangement and had seven different providers engaged in that process. From there we then went into a whole series of consultations with the sector in terms of refining some of the micro policy settings based on the evidence that we obtained through those trials. We then started with a series of deeds that we had exposure drafts to for the sector around seven separate procurements that we ran for that process.

**Senator GROGAN:** So, there are seven different elements of—

**Mr Smyth:** There were seven different elements that were part of the new employment services model, and there were deeds that give an exposure draft to the sector. The sector then responded to those deeds. We also brought on board two separate independent probity advisors for the entire process and we ran a pretty substantial recruitment process as well in order to surge staff as well as contractors into around 500 people across Australia to be able to assess all of those proposals. We had an internal governance arrangement that sat over the top of all of that ensured we had the appropriate processes in place to withstand any probity considerations. We also then gave the sector more than the standard allocated time to respond to tenders, and we released separate tenders at particular points in time, running from around I think August/September 2021. We've only really just finalised one of the final procurements, which was for workforce specialists as well.

**Senator GROGAN:** So, when were the first contracts signed? You were saying you did them in seven different tranches, effectively?

**Mr Smyth:** We did them in seven separate tranches. I was the delegate for those decisions, and then we advised the sector that we had a period where we needed to transition from the jobactive scheme into Workforce Australia. That meant that we needed to try and give the new organisations that were coming into the service system as well as those that were exiting a period of around three months to be able to undertake that transition, to be able to become accustomed to the new IT system that we were building and also to understand their deed obligations, obtain finance—all of those kinds of things.

**Senator GROGAN:** So, sign the contract and then a three-month transition?

**Mr Smyth:** There was a period of transition following that. The contracts were signed in March 2021.

**Senator GROGAN:** And that was for the main—

**Mr Smyth:** The procurement that we actually did, as I said—

**Senator GROGAN:** Maybe for ease, can you just step me through the seven different tranches, the seven different elements of the Workforce Australia employment services—

**Mr Smyth:** The main one was Workforce Australia. I'll just get all of my details on the seven here exactly. The programs that we've got are Workforce Australia Transition to Work; that is our specialist youth service. There were 37 providers contracted into that. Workforce Australia self-employment—

**Senator GROGAN:** So, it's 37 people, but when were those contracts signed? Were they not signed in March 2021?

**Mr Smyth:** They were signed in March. I'll get an exact date. Ms Shannon will have further detail on all of those. I'll just check all of my dates.

**Senator GROGAN:** That's all right; March 2021 will do for the moment.

**Mr Smyth:** And then Workforce Australia Self-Employment Assistance, which is the replacement program for NEIS, which is all about entrepreneurship and building your own business, had 23 providers contracted for that. We had Workforce Australia Employability Skills Training.

**Senator GROGAN:** Again, for those 23 providers, when were they contracted; was it March 2021?

**Mr Smyth:** They were one of the later ones that were actually contracted. That was the second last tender that we ran. I'll get the dates for you and I'll take that on notice if I could. Under Employability Skills Training, 35 providers were contracted for that component part. There was another contract for Career Transition Assistance, and we had 23 providers for that. For Entrepreneurship Facilitators, there were 18 providers contracted. For Workforce Australia, we had 41 providers contracted as well. That's the largest tender of the lot.

**Senator GROGAN:** So, the first of those seven were signed in March 2021.

**Ms James:** I think it was March 2022.

**Mr Smyth:** Sorry, March 2022. I'm getting my dates mixed up. We only started the new service on 4 July last year, 2022.

**Senator GROGAN:** And the others have been signed subsequently from March 2022?

**Mr Smyth:** They were pretty close to around that March period for the vast majority of them. We've just finalised, as I said, the workforce specialist panel members, and we're in the finalisation of that contract stage right now.

**Senator GROGAN:** What was the value of that contract?

**Mr Smyth:** The value of the contract for Workforce Australia was \$5.8 billion. Transition to Work was, I think, \$1.2 billion. These add up. There are other elements of programs that sit within that as well. We run the ParentsNext program, which is on a separate schedule. That was around a \$400 million-plus contract as well.

**Senator GROGAN:** So, with those contracts being signed in March 2022, that's pretty close to the May election. How close to caretaker was that?

**Mr Smyth:** I think the finalisation was a few days, probably a week or two, before we went into caretaker, and maybe around a 10-day period before caretaker commenced.

**Senator GROGAN:** Given that you just said it took a year to get to that, given the transition and all of that, with the signing of those contracts a couple of days before the caretaker period, was there any consideration to holding that over, given the caretaker conventions and the intention?

**Mr Smyth:** It was a decision of the government to have those contracts in place in March 2022, because the new system was required to cut over and contracts had already been extended for a period. Ms Shannon has arrived; she is the expert. We had an IT build and we had contracts that had been extended for a period. The previous iteration of employment services was Jobactive. That was initially for a five-year contract. It was extended an additional two years and became a seven-year contract. We'd really reached the end. The new employment services system had been through extensive consultation, extensive negotiation, trialling and looking at all of the micro policy settings. We were ready to roll over. If we hadn't rolled over, it potentially would have required a further 12-month extension for those contracts. That would have come at a substantial cost to the taxpayer. In addition, it was very clear from what was occurring in the labour market and what we were seeing in terms of the performance of Workforce Australia that it was no longer fit for purpose.

**Senator GROGAN:** The caretaker convention is a deeply important part of the government.

**Mr Smyth:** Absolutely.

**Senator GROGAN:** I'm just concerned that was signed so close to the election. That was a decision of the minister of the day?

**Mr Smyth:** I was the delegate in terms of signing those, but the government had made it very clear that we were to move forward with Workforce Australia and transition to the new contracts in March 2022.

**Senator GROGAN:** Minister Watt, I don't know whether you have any commentary on the caretaker provisions and such a large contract. Was that another five years, did you say?

**Mr Smyth:** We'd have to have extended by a minimum of 12 months.

**Senator GROGAN:** No. The contracts you signed just prior to caretaker were for how long?

**Mr Smyth:** There are different component parts. But effectively there were deeds that were signed for a period of six—

**Senator GROGAN:** Six years, did you say?

**Ms Shannon:** Yes.

**Mr Smyth:** That's a deed, but then there are work orders that go to the particular contracts. The work orders are signed for three years.

**Senator GROGAN:** Prior to an election, given the nature of the caretaker conventions, and knowing obviously the situation in terms of the differing views of different parties, was that the wisest form?

**Mr Smyth:** We weren't given clear issues around any problems that anyone in any particular part of politics actually had with the transition to the new contract. The government is the government of the day until caretaker takes place and an election takes place. There is no pre-caretaker period or anything like that.

**Senator GROGAN:** I'm well aware. I've sat in that dark zone just before a caretaker and had to make decisions before, and it is challenging.

**Mr Smyth:** It is challenging.

**Senator GROGAN:** But it is a very critical decision that gets made. Minister Watt, I don't know whether you have any commentary?

**Senator Watt:** My understanding is these issues are being looked at—I think even by the Audit Office. I have to say, it has a bit of a smell about it that such a large set of contracts worth \$7 billion were let by the former government immediately before caretaker. Frankly, if you look at some of the ministers who were involved and their track record, I think that's probably something worth having a look at. I'm pleased that the Audit Office is doing so.

**Senator GROGAN:** Let me wrap up. You've said that the deeds were signed for six years. But there are work orders underneath that which are for shorter periods of time.

**Mr Smyth:** Yes, there are two arrangements. We've actually developed a rather innovative approach to the procurement here where we have a panel of licensees and that panel then, depending on how they responded to the RFT, were selected for a work order that was given for three years for the program. We are constantly reviewing performance so those providers that are not meeting certain performance benchmarks in terms of our performance framework will be exited from the market, and somebody who is sitting as a licence holder on the panel can then be selected to replace that organisation. Those organisations that are high performing will receive contract extensions under the current procurement framework. There's a kind of a rolling arrangement for that. But Ms Shannon can talk to the actual specifics around this.

**Senator GROGAN:** I'm about to get pulled up on time. I think that's enough detail for me at this point. I do have some further questions about this contract. The Audit Office is looking into this decision made just prior to caretaker by the minister. Do you have a sense of when that report will be done?

**Mr Smyth:** That was an election commitment by the current government to have a review of the process that was undertaken. It really is looking at our adherence to Commonwealth procurement guidelines and Australian Public Service policies in relation to the audit. They've commenced that audit. We've been advised that we expect the final report to be made available sometime in June of this year.

**Senator GROGAN:** Thank you very much.

**Senator O'SULLIVAN:** Can you tell us what arrangements the department had in place to ensure that procurement complied with the Commonwealth Procurement Rules and probity principles at that time?

**Ms Shannon:** There was a range of arrangements. I guess a key arrangement was the appointment of an external probity adviser for all of the procurements that we did. The department has quite a strong in-house procurement team, but we thought it was appropriate to source that arm's-length advice. All of the procurements were guided by the purchasing plan as well as the probity plan. We had comprehensive briefings for all of our staff and training in all of the requirements, depending on the role and the procurement process. There is a range of different roles. There was comprehensive training. People had to disclose any real or perceived conflicts of interest, for example.

In terms of the divisions of the Commonwealth Procurement Rules, they were all open approaches to market. We complied with all of the connected procurement policies such as the Indigenous Procurement Policy and the black economy policy. There's a whole range of policies that we very carefully stepped through. I guess the whole exercise was governed by a very comprehensive project plan where we worked to meet key milestones and make sure that as we've progressed we were observing all of the required steps. That really is, I think, the substance of the ANAO's review. They will look at how the department designed the process, the assessment and decision-making stages throughout the procurement. They are going to look at all of those processes. We obviously were very mindful of our obligations and we're working closely with the ANAO on its review.

**Senator O'SULLIVAN:** Mr Smyth, you said that you were designated as the delegate? Can you explain to us what that meant? What did that entail?

**Mr Smyth:** That meant that in some respects I was overall responsible for process, and I was the person who ended up making the final decisions in relation to which providers were selected to be on panels and which providers were selected to obtain licences under the seven separate procurements.

**Senator O'SULLIVAN:** How long was the department working on the procurement before signature?

**Ms Shannon:** Obviously there were consultations, as Mr Smyth referred to. Then the department gave a notice to the market—I'll see if I can find that—which was well in advance so that the market could start to prepare for the procurement. I will just see if I can find the date. The whole process was probably 18 months. From various budget announcements, the planning and preparation for a procurement of this scale is enormous and we actually had to build an IT system to support the way that we assessed. Instead of bringing everybody to Canberra in the middle of COVID we developed a hub and spoke-type model. We had to ensure that we had a secure system for people to be able to work in. Elements of the procurement required quite a substantial lead time.

**Senator O'SULLIVAN:** Mr Smyth, in your earlier answer you said that to extend the program it would have come at considerable cost to the taxpayer. Are you able possibly to quantify that?

**Mr Smyth:** I'd have to take that on notice. There were arrangements in place whereby the Commonwealth was taking responsibility for a substantial portion of the caseload as well. We'd already gone through that for the online employment services system. But the extension of the existing contracts under previous arrangements and different payment arrangements that would have been maintained for the period would have, in our estimation, come at a cost, but what that actual cost was I would have to take on notice.

**Senator O'SULLIVAN:** What would have happened if we had waited to commence the process until after the election? You said it would have added at least 12 months?

**Mr Smyth:** Our estimation was that we would have had to extend existing contracts for probably around 12 months. You would have to factor in that a new government may well come in and change what could have been in train. Working through what a new government might want to keep or change would mean that there would be a period of uncertainty for the market unless contracts were extended.

**Senator O'SULLIVAN:** As to how it's working now—and I'm happy for you to take these first two on notice, because it would take some time up of the committee now—can we get a list of all of the providers delivering services under Workforce Australia services and the Transition to Work program? Can we have the latest Workforce Australia caseload data broken down by provider, state and territory, region, age and gender? Again, I'm happy for that to be provided as a table on notice.

**Mr Smyth:** I think we've provided that on notice following the last estimates period as well, but we're happy to update that.

**Ms Shannon:** The list of providers is on the department's website as well as AusTender. If we haven't provided it, we could provide that on notice.

**Senator O'SULLIVAN:** Can you provide us with some clarity around the status of people currently in the online system? So, the number of people currently in the system?

**Mr Smyth:** I will get Ms Ryan to come to the table.

**Ms M Ryan:** Currently in our online system, Workforce Australia Online, there are 155,811 participants in our online service.

**Senator O'SULLIVAN:** How many people have entered the system in total since it started? My next question will be: how many have exited?

**Mr Smyth:** We have 155,000.

**Ms M Ryan:** As at 31 December; I should qualify that.

**Mr Smyth:** Our statistics are as of the end of 2022, December. The inflow has been 119,288. The exits have been 126,079.

**Senator O'SULLIVAN:** Okay. I think I understand that.

**Senator CASH:** You say the inflow is 119,288. You said the current figure as at the end of 2022 was 155,000?

**Mr Smyth:** It's 155,811.

**Senator CASH:** With the inflow, what was that date from?

**Mr Smyth:** That's the inflow from the commencement of the service.

**Senator O'SULLIVAN:** From 4 July?

**Mr Smyth:** As you can imagine, people that become unemployed or are seeking income support payments are referred in to Workforce Australia. There's constantly a flow of people coming in and there is constantly a flow of people that are reattaching to the labour market or their income support payment has reached certain thresholds—all of that. So, they exit from the system.

**Senator O'SULLIVAN:** So, when you first started there was the initial number?

**Mr Smyth:** That's right.

**Senator O'SULLIVAN:** And then it's 119,000?

**Mr Smyth:** There's been an initial 119,000.

**Senator O'SULLIVAN:** That have come in since. Okay.

**Mr Smyth:** And exits at 126,000.

**Senator O'SULLIVAN:** Thank you. Can I have the number of people who have returned to the system since within the three and six months after exiting due to employment?

**Mr Smyth:** I don't have those numbers with me. Could I table that on notice?

**Senator O'SULLIVAN:** They would be kind of cycling back in. Can you take that on notice? Thank you. And the number of people who have been through the system and exited to provider services following completion of their allotted time in online services?

**Ms M Ryan:** We know that there's been a group of participants that, as you may recall, in online can voluntarily exit at any stage. Since the commencement of Workforce Australia to the end of December they may have exercised their choice and moved. This is data that we collect through our contact centres. There are about 10,050 participants who have chosen to exit before their 12-month period in service. A number of those other participants now will just be reaching their exit period. I don't actually have the data there at the moment. The rule for online servicing is that you can stay in that service for 12 months if you're not engaging in work, study or training. That kind of anniversary will be coming up now, and then they'll start to exit, but I don't have that data with me. Likewise, for some of the participants, if they were engaged in work, study or training, they were able to have an additional six months in service, taking up to 18 months. A number of those participants are now receiving notifications to say that they've now reached their maximum time in service and they will be moved to a provider. I will have to take on notice the exact numbers.

**Senator O'SULLIVAN:** I'll put some of these questions on notice following estimates in terms of providing numbers and that sort of thing. What I'm really interested in understanding that we can just briefly discuss now is what the department is doing to ensure that people aren't, in a sense, getting parked in online, staying there for an extended period, falling out of the habit of working and getting into work and ending up becoming more entrenched in unemployment and welfare. What steps are you taking? What are the learnings that you've had now, having run the online service for quite some time? How are we making sure that jobseekers are not parked and they're actually, where needed, pushed on to a service provider to get that tactile support?

**Ms M Ryan:** There are a number of safeguards in place for online services. A couple of features we trialled in the NEST that have carried over to Workforce Australia—

**CHAIR:** The NEST?

**Ms M Ryan:** The New Employment Services Trial. My apologies, I shouldn't use acronyms.

**CHAIR:** I am familiar with it.

**Ms M Ryan:** We have built into our system a four-month digital service review and an eight-month digital service review. That's a questionnaire. So if a participant isn't recording any paid work, study or training they receive a message to say, 'How are you going? What are you doing? Are you still finding online servicing appropriate for your needs?' If they answer in a way where we think actually they might be better off with a provider, we will nudge them to elect to move to a provider. Likewise we have our digital services contact centre that can reach out to them as well just to see how they're going and whether they know a range of training and other supports are available. One of the features now of the online employment system is that online participants can also access a digital employment fund. If we're thinking, 'How are you going with your job search?' and they say, 'I'm finding it really hard. I need a licence,' the employment fund is there to provide those financial reimbursements for them. So we'll pay that and they can—

**Senator O'SULLIVAN:** Be provided with some training.

**Ms M Ryan:** Yes, it can provide some training or provide a licence. It's a restricted category, but they can access a range of things to help them. Likewise we did have a delay built into the system, and that was for a range of reasons to do with some IT and other functionality. From the end of this month as well we'll be rolling out what's called our four-month mandatory activation requirement, particularly for those participants who aren't making progress, where maybe the only activity they're doing is potentially job search. That will be employability skills training. Likewise that's to test to see whether or not online servicing is still appropriate to support those participants in preparation for interviews. Likewise one of the training blocks for employability skills training is industry based training. So if in a local area there's a prospective employer or industry that has a need to fill a range of roles, they can come with a provider and work through some of those training modules so those participants perhaps could then be ready and skilled up to move into those available roles.

As I said, we have a range of safeguards. Likewise our contact centre will do proactive outbound calls reaching, looking at them, particularly with the rollout of our new points based activation system, to see whether there are some people where we think, 'What's happening? You're not meeting your points target,' and having a conversation with them to see whether they might need that support of a provider rather than being in online.

**Senator O'SULLIVAN:** At our next opportunity to ask questions I'll cover the points based activation. Just a final question on this: the first assessment is at four months?

**Ms M Ryan:** Yes.

**Senator O'SULLIVAN:** It does seem a bit of a long time?

**Ms M Ryan:** Yes.

**Senator O'SULLIVAN:** Someone could really fall out of work and fall out of habits.

**Ms M Ryan:** We start actually nudging them at around three months to reach out to them. But a lot of our evidence from our evaluations and some of our post-program monitoring surveys—and Dr O'Rance can elaborate—is that we do see a lot of people exiting within that three-month period.

**Senator O'SULLIVAN:** What happens to someone, say, if they're not logging in, they're not connecting or they're not showing any activity before four months? Does that get picked up?

**Dr O'Rance:** It might be helpful to add some information about the flow. Typically for a new person coming in, the median time in service is about three months. For people who are screened as eligible for online employment services—so those are the people who are assessed as the lowest risk of long-term employment—it's shorter. The people who are in online services who get to the four-month point are already the minority of the group who come in. We have a lot of people who are in and out within only a few weeks.

**Senator O'SULLIVAN:** I will put some questions on notice to quantify some of that.

**Senator BARBARA POCOCK:** Can I check that it's appropriate in this session to ask questions about Career Revive, Launch into Work and the Local Jobs program?

**Mr Smyth:** Absolutely.

**Senator BARBARA POCOCK:** The department appeared at a hearing for the Select Committee on Work and Care that I chair on 16 September. At the hearing the department mentioned that several programs support women and carers into participation in the labour market, including the Local Jobs and Launch into Work, and you provided evaluation, such as exists, of these programs on notice. Your response in relation to the Local Jobs program indicated that the department commissioned an analysis of the program in April 2021 which found that outcomes are achieved indirectly and hidden to employment facilitators. Can you explain to me what that means?

**Mr Smyth:** I will have to get one of my colleagues to come to the table to talk about that.

**Ms Lauman:** Would you mind repeating the question?

**Senator BARBARA POCOCK:** This is an answer I received from the department to a question on notice about the evaluation of the Local Jobs program. The evaluation found that outcomes are achieved indirectly and hidden to employment facilitators.

**Ms Lauman:** The broader Local Jobs program is really around building efficiencies in local labour markets. It uses a number of elements within the program to achieve that. One is employment facilitators who are based on the ground in communities with a support officer and who convene a Local Jobs task force, which draws on businesses, industry and community organisations to develop a strong understanding of that local labour market and to identify priorities for potential intervention within that labour market. They also work with communities to develop projects that might be considered under two funding systems that sit under Local Jobs, which are aligned to those priorities. But a lot of the achievements of the program are through the connections that are driven by that

employment facilitator, guided by the priorities of that community. A lot of the outcomes are things that grow organically through the connections, networks and opportunities that those employment facilitators are driving rather than under a specific funded program.

**Senator BARBARA POCOCK:** I'm still none the wiser other than that there were a large number of meetings held. Is it the case that over five years between 2020-21 and 2024-25 just over \$214 million is being allocated to this program?

**Ms Lauman:** The total allocation for the Local Jobs program from 2020-21 through to 2025-26 is \$276.3 million.

**Senator BARBARA POCOCK:** That's a lot of money for a program where we can't quantify its effectiveness. How can taxpayers be confident that their money is being well spent?

**Ms Lauman:** I'd say a couple of things. The evaluation that you're referring to is an evaluation that was done on the first stage of the program, which was when we had 21 employment facilitators in the field and were running that program really for half of the employment regions that we cover. So it is a reflection of a point in time. It's also a reflection of the fact that we've used that evaluation to iteratively inform innovations within that program. So while I think you're reflecting that there was an overemphasis on the number of meetings under that program, Ms Wisowaty's team have been revising the performance framework and have been revising the reporting focus of that program to ensure that it's not the volume of meetings but the impact of engagements that's really being recorded going forward to give us a much better sense in the evaluation that will flow for the second half of the frame, which will cover the 51 employment regions around the impact that's having. We're also looking internally at specifically the projects that are funded through the Local Recovery Fund and the National Priority Fund and ensuring that we have a firm evidence base to compare and contrast the value and outcomes of those programs so that they can inform not only future funding rounds but also future policy development.

**Mr Smyth:** It's also worth remembering that, if you look at the period that evaluation took place, which was, I think, 20 September to around June 2022, we were right in the middle of COVID. There were a substantial number of lockdowns and all of that occurring across Australia. What the program was really trying to achieve at that point was to better understand trajectories coming out of COVID, what was occurring at the local labour market level, impacts on particular cohorts, where growth was, where real demand was going to be, given it was going to take a while for the labour market to fully recover. There was a lot of intelligence gathering and understanding around local labour market conditions and what the most appropriate place based interventions would be.

**Senator BARBARA POCOCK:** I recognise it was a very difficult time, but I think taxpayers have a right to understand what the outcomes are of a program that's so sizeable. If I understand the mechanics correctly, it's the placement of people in local communities. In what places? In councils? What's the mechanics of it at a local level?

**Ms Wisowaty:** There are 51 employment facilitators and support officers around each of the employment regions in which we deliver employment services, and so the mechanics of engaging them was through a tender process.

**Senator BARBARA POCOCK:** So 51 people and \$276 million?

**Ms Lauman:** As to the break-up of that money, there's an allocation each year for those employment facilitators who are in place, which from 2022-23 through to the end of the program is about \$20 million a year for those people. But the vast majority of the funding sits in the Local Recovery Fund and the National Priority Fund, and that is money that is allocated under those funds but not necessarily money that is expended. So there is a procurement framework that sits over that and there is a decision-making framework that goes with that. So if there is double spending, for example, money will not be acquitted. So there are a range of checks and balances in place to ensure that money is going where it's needed to fill gaps. I should emphasise that the employment facilitators have a support officer, and that's particularly important in our bigger employment regions. So for example, in the Northern Territory the span of the employment region is Darwin and surrounds and Alice Springs. Our employment facilitator is physically based in Darwin and the support officer is physically based in Alice Springs. It assists those community connections to have both of those roles there.

**Senator BARBARA POCOCK:** So the funding is paying for those two positions and for a set of programs, it seems, that are included in the tender? What sorts of programs?

**Ms Wisowaty:** There are two funds. There's the Local Recovery Fund, which supports local projects aligned to the priority of the Local Jobs plan. So in terms of the structure of the program there's the employment facilitator and the support officer, and they're in that region to drive collaboration and to sort of really be like the

local backbone of that particular employment region. They have, and share, a jobs and skills task force. So that's got employers, community organisations within the regions, skill services and employment services providers. They get together on a monthly basis and discuss the priorities of the regions, where there are workforce gaps and what are the barriers to employment, and they put that all together in a Local Jobs plan. The Local Jobs plan sets out those priorities and how they will be looking to address them. The Local Recovery Fund is done through a separate procurement process, which seeks community groups and others to put up tenders, and part of this assessment process for that region would be to look at whether it meets the priorities or is addressing the barriers in that particular region. Then there is one more, which is the National Priority Fund, which is looking at more structural barriers to employment and can go across regions.

**Senator BARBARA POCOCK:** Who approves those programs/tenders?

**Ms Lauman:** For the Local Recovery Fund tenders the delegate for those decisions is our state managers in each of the states. So they have a strong working knowledge, and they are ultimately responsible for the contract management as well of the employment facilitators. They use their local acumen as well as their broader knowledge of the employment landscape for the Commonwealth and the state to make the decisions for those tenders. As to the National Priority Fund, Mr Smyth is the delegate for that program, because it has that broader remit.

**Mr Smyth:** Can I give you a real example? Two weeks ago I was down in Murray Bridge in South Australia, where I was meeting with the local mayors of the affected communities along the Murray through all of the flooding and witnessed firsthand what's going on there. That was with our employment facilitator and with our state manager and one of our key program managers there to work out where the potential identified gaps are, how those regions were likely to recover, what support they might need around local labour market interventions and the like. We had state government representatives there as well so that there was an avoidance of duplication and we could work out exactly what the local requirements were on the ground and make necessary recommendations and build programs around that. So that's the kind of way that program operates.

**Senator BARBARA POCOCK:** Is it possible on notice to get a listing of what has been funded under those programs through the overall heading of the Local Jobs program?

**Mr Smyth:** Yes, we can do that.

**Senator BARBARA POCOCK:** So the projects and their expenditure. I'm also very curious to get an outline of exactly how you're going to evaluate under your revised evaluation approach.

**Ms Wisowaty:** In terms of the second stage of the evaluation, that's still under development now. We're working with our evaluation colleagues to set forward how we would do that. It's not unusual in terms of a local place based system to look at local system outcomes, which is looking at how the local stakeholders work together. One of the remits of the implement facilitators is that they don't have to utilise the funds under our program, they can leverage other state or local government funds or other Commonwealth government funds to try and seek those solutions. For example, there was a transport issue in the Nowra region, and obviously the Commonwealth government is not responsible for providing bus services and transfer per se.

**Senator BARBARA POCOCK:** But you still must evaluate your contribution and its outcomes within a larger group of funding providers?

**Ms Wisowaty:** Yes, and we'll try to capture all of that. But what I'm saying is the Local Recovery Fund projects and the outcomes will not be the entirety of the impact of the program.

**Senator BARBARA POCOCK:** Yes. In relation to the Launch into Work program, your response to our previous question on notice indicated the program had 425 participants. Of those who commenced, a number—I think 79 per cent—got employment. You indicated that one of the program's aims is to create long-term secure employment for women. Have you been looking at further analysis and outcome assessments in an evaluation of that program?

**Ms Lauman:** We have. The program has recently recommenced with an expanded remit. I can give you some updated numbers, if you're interested, on that as well. But as part of that expanded remit there will be an evaluation that will be put in place, like the Local Jobs evaluation that's in its formative stages of development at the moment. But certainly our current figures to the end of 30 December are that we've had 538 participants complete projects. Of those, 81 per cent of the participants are women from disadvantaged backgrounds, 79 per cent of the participants have recorded an employment outcome and six months after the end of the project 72 per cent of the participants are still employed with that same employer. So as part of our ongoing monitoring we're looking to expand that data capture to understand how many women and other disadvantaged participants are

employed but not necessarily with the same employer. Particularly in the current labour market, there's obviously quite a lot of movement, and once people have that first opportunity they may seek to move on.

**Senator BARBARA POCOCK:** Thank you for that. How much is being expended on that program—we were unable to be clear about that—in that 12-month period?

**Mr Watson:** The program is allocated just a freckle under \$19 million per year across the forward estimates. As Ms Lauman stated, we only just recommenced the activity on the program in the last few weeks, in fact in December. So we haven't expended any money against that program so far this financial year. Given we're starting to ramp up the program late in the financial year, it's probably put on advance notice for the next estimates that we'll struggle to spend that \$19 million this financial year but we'll give it a red-hot go.

**CHAIR:** We can come back to you, unless you have a brief question?

**Senator BARBARA POCOCK:** No, I want to come back to the question of evaluation. I'm happy to do that later.

**Senator GROGAN:** Back to Workforce Australia, you gave me a range of numbers of organisations in those seven tranches. What's the total number of people contracted for Workforce Australia?

**Ms Shannon:** There are multiple services under the umbrella of Workforce Australia services. I'll just get my little cheat sheet, because I can never quite remember. There are 43 organisations that currently have a licence to deliver Workforce Australia services, and as Mr Smyth mentioned earlier there are 99 organisations that are on the panel in total.

**Senator GROGAN:** How many of those providers refer to their own other services—services like registered training organisations, career transition assistance providers and the employability and skills training providers?

**Mr Smyth:** We track this through the employment fund. The employment fund is a notional fund whereby when somebody comes into Workforce Australia there's an allocation made against that individual that doesn't have to be expended on that individual but accrues to that particular provider. On own organisation expenditure, if you exclude wage subsidies, because that is the largest component part of that expenditure but you're not allowed to have a wage subsidy for an own org or a related organisation, 27.6 per cent is expenditure on own organisations. Some 68.2 per cent of our providers have claimed own organisation expenditure under the employment fund.

**Senator GROGAN:** So just to be really clear, 68 per cent of providers are referring to their own business?

**Mr Smyth:** They may provide a service in house that is eligible for a claim under the employment fund. An example might be that one of our organisations out in Broken Hill has an in-house psychologist, and that psychologist is utilised for participants in the program to provide psychological services, et cetera. That is a legitimate claim under the employment fund.

**Ms Shannon:** Just to add to that answer, the level of fee that the provider can claim against the employment fund is capped at a professional recognised rate.

**Senator GROGAN:** So they can't overcharge?

**Ms Shannon:** Exactly. There are controls within our program guidelines and our IT systems for some types of expenditure that actually give us assurance that providers are claiming it appropriately and they can only claim to a certain level. Another example would be—

**Senator GROGAN:** Just to be clear, I used to run a job network provider, and we also had a training provider that I used to run and a psychological service. I'm quite familiar with what the benefits might be and how that can potentially work, but I also have a fair deal of incoming, in my state of South Australia, where I'm seeing maybe the referrals are less appropriate to certain services.

**Mr Smyth:** That is something that we are acutely aware of and are really monitoring as much as we can. It's certainly occurred in the past that providers have given training to individuals that may not have been appropriate to that individual's circumstances or that individual's career aspirations, such as bulk barista training for people—something like that. So we are scrutinising that. Also, as Ms Shannon said, the fees that are claimed under the employment fund should be commensurate with those charged in the normal market. So if somebody is getting charged \$300 an hour for a particular service when someone down the road can provide that service for \$100 an hour, we have a problem.

**Senator GROGAN:** As to the bulk referral piece—I'm very familiar with stuff that's happening in some parts of South Australia where there's a standard tick-box list where somebody walks in the door and all of a sudden they're doing barista training. There's a laundry list of things and they work through them over a number of

months, none of which is going to get them a job. One young man who has been diagnosed with a spinal condition and cannot stand for more than an hour at a time was sent straight off to barista training.

**Mr Smyth:** They're the things that we want to know about so that we can immediately crack down on them. If any of that information becomes available, we would be more than happy for you to refer it to us so that we can chase it up and investigate and take appropriate action.

**Senator GROGAN:** Thank you. I understand there's a cap on referrals. You've spoken about the cap on the amount of money that can be charged for an own service, but what about the cap on referrals?

**Ms Shannon:** That relates to two activities. My colleague Ms Ryan might want to come up as well. Employability skills training and career transition assistance are two programs that Workforce Australia service providers can refer their own participants to. If they deliver both services in the same employment region, there is a 50 per cent referral cap. In some regions there is no other provider and obviously then—

**Senator GROGAN:** No cap?

**Ms Shannon:** No cap, but the department again is looking closely at that and we are able to monitor that.

**Senator GROGAN:** So for those where there is only one service, would you then just accept that there's no other option and just kind of go 'whatever'? How do you scrutinise that when there's only one provider?

**Ms M Ryan:** We are monitoring it.

**Senator GROGAN:** I'm not saying you're not, sorry. Don't misinterpret me.

**Ms M Ryan:** It comes down to being able to provide and ensure that participant has choice and can access that training. So that's going to benefit them. If the only provider that's in that local region happens to be their provider as well, then we have to work through that, because otherwise we would be disadvantaging that individual because they wouldn't be able to access that training. That could actually be the difference to helping them get a job. It's a bit of a balance, and we do have to watch it and ensure that there aren't any sharp practices. We have to ensure that ultimately it's benefitting the jobseeker. Does it represent value for money and so forth? They're the criteria.

**Ms Shannon:** For the first block of EST the provider cannot seek reimbursement out of the employment fund. They must pay for that course out of their other revenue. That acts as a constraint in terms of them needing to exercise the judgement that this particular intervention will actually benefit the individual. There are a few different ways that we actually—

**Senator GROGAN:** Can I just explore that a little bit? For the first referral to a course or a service they don't get to reimburse?

**Ms Shannon:** For block 1.

**Ms M Ryan:** It depends on the nature of the course.

**Senator GROGAN:** I was just going to say that sounds a little bit weird.

**Ms M Ryan:** No.

**Senator GROGAN:** It's like, 'Let's send them off to a two-buck-fifty scenario and then claim the next one.'

**Ms M Ryan:** Yes. Employability Skills Training is largely a course that's available for online jobseekers, so it's for our participants that are job ready and so forth. Part of the reasoning for that is that we changed some of the settings under Workforce Australia so that, if a provider wants to refer a participant to an Employability Skills Training course, they will have to fund that out of their own funding and not out of the employment fund, because a lot of the program of Employability Skills Training block 1 is services that we would expect to be core services that a provider should be delivering anyway.

**Senator GROGAN:** They should be delivering those anyway, absolutely.

**Ms M Ryan:** So that's why we put that restriction in, and then—

**Senator GROGAN:** No. That's fine. I'm very conscious that I have a very limited amount of time.

**Ms M Ryan:** Okay. My apologies.

**Senator GROGAN:** So why 50 per cent? Is it a magic number? Where does it come from?

**Ms M Ryan:** In terms of the 50 per cent, I'm not sure actually.

**Ms Shannon:** I think it's fair to say that, under the previous arrangements for Career Transition Assistance, the 50 per cent referral cap was in place then. I don't think there was an evidence base around why it's 50 exactly, but the department was able to observe that seemed to provide an appropriate mix of referrals to their own entity

as well as to other CTA providers in a region. So we have some evidence that setting seemed to optimise the dispersal of referrals, but there is no science behind that.

**Senator GROGAN:** Maybe you could flesh that out a little bit for me on notice.

**Ms Shannon:** Yes.

**Senator GROGAN:** I'm just keen to understand what the 50 is and why it was not 60 or 40.

**Ms Shannon:** Of course.

**Senator GROGAN:** Obviously, the referral to own-entity services has been around for some time. Can you just step out what the risks are and how you manage them?

**Ms Shannon:** I would describe them as risks of, I guess, self-serving referral, of perhaps not putting the jobseeker's need at the centre of the service offer, which is really what we expect providers, particularly those in the Workforce Australia services model, to do in order to understand the needs of that particular participant and then tailor the service appropriately. There are also risks of sharp practice; that's why we put in place some of those guideline controls and rules, as well as IT controls and rules. We also have a program of assurance and monitoring, so we actually observe outlier behaviour. We have a range of controls in place, but they are in place because, over the course of successive employment services contracts, we have found some provider practice, as I've said, that's either self-serving or sharp in nature. Also, as you flagged too, the actual experience of the participant is not the experience that we would wish because they're not getting that tailored service or training that they want or the support that they need. So that's what we're looking for; we want to make sure that's not happening.

**Ms James:** Could I just perhaps add that this conversation neatly illustrates the moral hazard in an outsourced employment services framework. One of the risks or things that we need to manage is also how much time of Ms Shannon's and Ms Ryan's people is spent looking at the detail and the data around all of this practice of providers and trying to work out where it is and is not legit. Getting the balance right in managing the moral hazard in this is really tricky because we do want to make sure that jobseekers have access to the support and training that they need. But it's fair to say that there's a mix of complex incentives in this framework, and getting the balance right around the incentives involves constant work.

**Ms Shannon:** In the absence of referral to some related entities, you could think of an example that Mr Smyth gave early of somebody, say, in a rural or regional area, with limited access to mental health services or a large co-payment. The provider could refer them on, knowing that they're going to be on that waiting list for some time; in the case of at least one medium-size regional provider that I can think of, they actually decided to move into allied health so that they could actually provide the right service.

**Senator GROGAN:** Absolutely, and I think that's one of the challenges. Going to Ms James's point about that moral hazard, the level of monitoring required in an outsourced service becomes enormous.

**Ms Shannon:** Yes.

**Senator GROGAN:** I am being wound up. Just quickly—I'm not asking for the naming of names—have you had any cause to caution providers; is that what you do in the first instance? How do you go about advising providers that you're concerned?

**Mr Smyth:** We do. We've had a number of cases where we've had cause for concern and a number of cases where we've recovered substantial amounts of money from providers who have been engaging in expenditure that really was not appropriate to the needs of the individual and certainly looked to maximise revenue streams. There is also the fact that some people make mistakes sometimes; that's fine, but we will still recover. But, yes, there are small, medium and large cases where we've had to recover substantial sums of taxpayers' money.

**Senator GROGAN:** What then happens to those providers? If they're found to have breached the rules that you've laid out, sure, you recover the money and such like, but what's the next step? Do they get bounced out of the system?

**Mr Smyth:** They can be, and they can have their market share reduced, their referrals reduced. We can also, as I said, exit providers from the market.

**Ms Shannon:** There are examples of all of those things.

**Senator GROGAN:** Thank you very much. That has been very helpful.

**Senator CASH:** I just want to ask a follow-up question before we go to Senator Liddle. Secretary, in response to a question from Senator Grogan, you spoke about the moral hazard in an outsourced model. Can I just ask: has

the department provided any advice to government in relation to bringing this service back into a government run model?

**Ms James:** No, we haven't. There is a parliamentary inquiry underway. I think that's right, isn't it?

**Ms M Ryan:** Yes.

**Mr Smyth:** It's a select parliamentary inquiry.

**Ms James:** Yes, so there's that part. We have had discussions about the moral hazard in the outsourced model. Noting that we have a brand new model with Workforce Australia and that Workforce Australia is a system based on a lot of work and evidence done by the good people in this department, I think we would say—Mel would tell me not to, because it's too soon to know—that it's a system that's doing better in these times than the previous system would have been doing, had it still been in place, but we can't do the counterfactual. So, no, we haven't provided advice along those lines, but we are acutely aware that there is a parliamentary inquiry looking at Workforce Australia at the moment and considering a number of issues around the moral hazard in an outsourced model. It is a model that has been in place for a long time. I was a brand new public servant in 1996-1997 in the department where this happened, so I remember it well, but that was some time ago. So looking at the balance around this and how we do get those incentives right is really important.

**Senator CASH:** Minister, can you rule out employment services becoming a government agency again?

**Senator Watt:** I think Ms James has already indicated that all of these issues are the subject of a parliamentary inquiry. I certainly haven't had any discussions of that nature with the minister, so I really can't add anything more to what Ms James has said.

**Senator CASH:** It's just that, obviously, a number of providers and people who are interested in employment services often listen in to this part of the program. So you're not going to rule out employment services becoming a government agency.

**Senator Watt:** I'm not ruling anything in or out.

**Senator CASH:** It's not being ruled in or out, so it's on the table. Thank you.

**Senator Watt:** No, no. I didn't say that it's on the table.

**Senator CASH:** Well, you're not ruling it in or out—

**Senator Watt:** I just said that—

**Senator CASH:** so it is a potential option for the government.

**Senator Watt:** I have no knowledge of any intentions one way or another around that.

**Senator CASH:** Could you take on notice then whether or not the minister himself is providing any thought to employment services, the current model, becoming a government agency again and being insourced or whether any work has been commissioned in relation to that?

**Senator Watt:** I think I can take on notice whether he's commissioned any work regarding that. I'm not sure that I can take on notice whether he's given any thought to something.

**Senator CASH:** It would be the work then; thank you.

**CHAIR:** Senator Liddle.

**Senator LIDDLE:** With the youth unemployment rate more than double the unemployment rate, I'm interested in talking about outcomes and programs for young people. In the last five years, how many young Australians have had an employment outcome across all programs that service young people?

**Mr Smyth:** I don't think I'd be able to give you the exact details across all employment programs. The National Indigenous Australians Agency runs the CDP program and has a number of young people in that program; that would be the right agency to get that information from. Also, the Department of Social Services runs Disability Employment Services, which has a substantial number of young people in it as well, so that is the appropriate entity to get that information from. We can provide you with some information around our mainstream employment programs, such as transition to work programs et cetera.

**Ms Shannon:** Just broadly, young people who are at risk of having a difficult transition from school to work may be eligible for the Transition to Work program, which is a specialist youth program with quite a strong focus on helping, particularly, young people who have not completed year 12 or equivalent to attain that level of qualification and then move into work or young people who perhaps are more supported on a pathway into work, where that is an appropriate option. That's one of the main sorts of specialist programs that we have in our portfolio. Other young people may also participate in online employment services, depending on their advantage

or educational attainment and other things like that, or they might be supported by the Workforce Australia services providers.

Probably, on notice, if that's okay, we can give you some information about the outcomes perhaps historically because it's still quite early days in our new program. Actually, historically, my colleague points out to me that Transition to Work was in operation from 2016 to 2022 and, since the start of the service, 96,499 outcomes were achieved. Of those, 48,804 were 12-week employment outcomes and 31,318 were sustainability employment outcomes, which means that they were employment outcomes that were sustained for a longer period of time. To put that in context, we should probably give you the number of young people who participated in the program over that period, and we might need to give you that on notice. But, undoubtedly, youth unemployment is a concern; historically, it is higher. One of the things that we know is that a lot of young people really do need that help to make the transition from school to work, and that's really why the Transition to Work program was developed and has been retained under the new Workforce Australia services model.

**Senator LIDDLE:** I do want to talk about two specific programs after this question, but I'd like to understand whether, given the current employment environment, we have any new programs that actually respond to the opportunities that have been available in the last 18 months and will be available going forward. Do you have something new in there that responds to our new employment environment?

**Ms Robertson:** Key changes were made to the Transition to Work program, under Workforce Australia. Quite a few changes were made to actually integrate the service into Workforce Australia, and it was based on experience with managing the program as well as evaluations that were undertaken. The core components of the old TTW program that were successful and well regarded were actually retained, so that was like a non-competitive service delivery model. So what we do is that we have only one provider within a particular employment area that provides a transition to work service. What we actually ask is that the providers in neighbouring areas, utilising the program as a whole, actually work together around strategies to engage young people, and it works quite well. So we have communities of practice that have been developed over time where we share information to actually bring people in, engage them and keep them within the service.

The service is very flexible, with the way that it's designed. We actually pay for, I guess, a place for the person within a service, and people can come and go in and out of that particular place, if you like. But that means that there's a lot more flexibility with the way that funding is actually utilised for that young person. We've got demand driven funding, obviously, which we've retained, and those upfront payments for that early investment. Young people who actually go into Transition to Work don't comply with the targeted compliance framework, as we currently know it—to actually stay in the program, they're required to do 25 hours per week of some sort of activity within the program—so new criteria has also been brought into the service as part of the changes.

We've got new 'youth at risk' criteria for people who are at risk. Also, where young people who participate in the program get to the 18 months, which is generally the end of the period during which they sit within the program and get that intensive servicing, our providers can actually do an assessment of those people's needs and, if they think they need a little more time, they can actually increase that period for another six months, so that young person can sit there for two years. To try to get people into the program, particularly those who are at risk, a lot of engagement actually goes on initially to try to bring them into the service. The services themselves are very youth friendly. A lot of those that I've visited have food, couches, safe spaces, phone chargers and things like that for young people and are very flexible with their opening hours.

**Senator LIDDLE:** I want to ask you about the status and future of the PaTH program.

**Mr Smyth:** The government did make a decision in relation to the internship component part of that program. That was removed from the program, and we also are now re-looking at the whole issue of work experience. We've been engaging with a number of organisations externally doing extensive consultation on appropriate settings for work experience programs. It was an election commitment of the current government to abolish the Internships Program of PaTH and also EST, one of the key component parts of that PaTH program, is still retained within the current program settings. But Ms O'Regan might want to talk to you.

**Ms O'Regan:** Yes. As Mr Smyth has said, an election commitment that the government made was to abolish Youth Jobs PaTH Internships. So, of the Prepare, Trial, Hire pathway, it's the middle one: the internships, the work experience part of that program. The reason for that is that it didn't meet the government's expectations around fair and equitable pay because participants were not always receiving the same as other workers in that place: the relevant award wage or enterprise agreement wage. Similarly, the National Work Experience Program had similar policy settings, so a decision was taken in the October budget to abolish both. As Mr Smyth has said, we are currently consulting with a range of stakeholders on two things really: we're exploring what a work experience replacement approach might look like and also consulting on an outcome from the Jobs and Skills

Summit, which was a commitment that the government made to explore, with a range of stakeholders, the best practice principles for work experience programs for disadvantaged people in particular.

**Senator LIDDLE:** So, regardless of which program we're talking about, how do you make sure that no current participants in programs that are being altered, changed or reviewed will be disadvantaged as part of that change process?

**Ms O'Regan:** I'm sorry, I'm not sure that I caught all of that. How are we ensuring—

**Senator LIDDLE:** No current participants.

**Ms O'Regan:** The program has already ceased. The PaTH internships were placements from four to 12 weeks and the National Work Experience Program was placements of up to four weeks. Let me just check the timing here of when those programs were paused.

**Mr Smyth:** I think they were actually paused on 1 July—

**Ms O'Regan:** Yes, that's right.

**Mr Smyth:** so they actually were paused prior to the commencement of the new Workforce Australia program.

**Ms Shannon:** I believe that people who were in a placement at the time completed the placement and then no new placements were entered into.

**Senator LIDDLE:** I just want to ask a question about ParentsNext. Why is it important to provide extra resources for parents and women in particular who wish to return to the workforce after having children, particularly young women?

**Ms Shannon:** I'm happy if you want to speak to the policy rationale.

**Ms O'Regan:** ParentsNext is a program that is designed to intervene early. We know that for parents with young children, because of long periods out of the labour force, the disadvantage can accumulate. ParentsNext is designed to intervene early, before a parent's youngest child turns six, which is when parents will have Job Search requirements; so the aim is to help them to prepare and plan for employment before they reach that point. Ideally, they would never enter employment services when their youngest child is aged six. There's plenty of evidence around young parents, in particular—for example, from the priority investment approach—that early investment in that group does significantly reduce disadvantage and reliance on income support over the life course.

**Senator LIDDLE:** Is the government committed to the continuation of that program?

**Ms James:** It's worth noting, again, that a parliamentary inquiry is reviewing the current settings and, in particular, reviewing ParentsNext. That inquiry, chaired by Julian Hill, is due to report quite soon on the ParentsNext piece, so we anticipate that there may be some recommendations in the report that the government might consider in terms of the future of ParentsNext. A wealth of evidence has been provided before that parliamentary inquiry. That inquiry has been very thorough and it has heard from many stakeholders on this program.

**Senator O'SULLIVAN:** Chair, I have a follow-up.

**CHAIR:** Yes, by all means, Senator O'Sullivan.

**Senator O'SULLIVAN:** In relation to the abolition of the internship component of PaTH, what consultation was done with stakeholders before that decision was made?

**Ms M Ryan:** As Ms O'Regan noted, the decision to abolish PaTH Internships was a government decision, so there was no consultation. Before Workforce Australia was launched on 4 July, we did write out a formal letter and send it to EST providers that would most notably be impacted by that decision to advise them that we were pausing PaTH Internships and the National Work Experience Program. Then, as we went through that, they were formally advised on 9 September that the programs were ceasing. In terms of acknowledging that there was some impact on those services that those Employability Skills Training providers were delivering—because those providers tendered on the basis that they may have been delivering some elements of PaTH Internships and so forth—we then invited them to submit claims for reasonable costs for some compensation. So we are now assessing those reasonable-costs proposals and will be in a position then to be able to provide compensation to those impacted providers in the coming couple of months; I think it's due in March.

**Senator O'SULLIVAN:** So it was a decision of government. Did the government ask young people what sort of value they were getting out of—

**Ms James:** It's just worth noting that it was an election commitment, so this was broadcast ahead of the election, ahead of the—

**Senator O'SULLIVAN:** Was the department aware of an engagement that then opposition party had?

**Ms James:** It wouldn't be for us to talk about any engagement that they might have had and, certainly, we wouldn't have been involved in any engagement that might have been had from opposition. But what we would note is that the policy was clearly broadcast well ahead of the election, and I suspect that a rationale was probably articulated at the time.

**Senator O'SULLIVAN:** What stakeholders did the Labor Party then engage with, in making that decision to abolish the Internships program?

**Senator Watt:** Obviously, I'm not in a position to give you a list of those stakeholders, but I'm certain that the minister did undertake some form of consultation, and this program was obviously widely commented on through the media, with stakeholders making comments as well. So all of that would have been what informed that decision.

**Senator O'SULLIVAN:** On notice, can we get a list of the stakeholders that were engaged with?

**Senator Watt:** I can certainly take on notice what consultation occurred.

**Senator O'SULLIVAN:** I'm very interested in understanding whether young people, in particular—who were seeking to get experience of working in real-world workplaces, as opposed to just sort of make-work workplaces, and needed to get that experience to get that leg up—were engaged; I'm very interested in that.

**Senator Watt:** Why don't I take on notice what work was undertaken that led to the development of that policy or something like that?

**Senator O'SULLIVAN:** Okay.

**Senator CASH:** And we can clean it up.

**CHAIR:** I know that Senator Pocock has some questions. So we'll go to our break five minutes early, if that's okay with everybody, and then come back and start with Senator Pocock. As for departmental officers, we'd ask that the same crew come back; thank you.

**Ms Robertson:** Could I just add to the record.

**CHAIR:** By all means.

**Ms Robertson:** We talked earlier about the placements in Transition to Work. As for the denominator, we had 171,443 total commencements between 2016 and 2022.

**Ms Shannon:** Then we gave you the figures of employment outcomes, so that's the total that those figures relate to.

**CHAIR:** Thank you. We will now suspend.

**Proceedings suspended from 10:56 to 11:10**

**CHAIR:** We will recommence.

**Ms James:** Before we move to questions, may I address an issue relating to Senator O'Sullivan's letter to me of 9 February 2023?

**CHAIR:** Yes. We have to table the documents that were mentioned.

**Ms James:** It just occurred to me that is not on the record, given that it was a letter from Senator O'Sullivan to me. I wrote back. I did cc you, Chair, and the secretariat. If we could table that outgoing letter and our response, that would be great. I reflected on this last night. In response to your first question, Senator, about staffing, I ran my eye down the list. The list suggested that we had six SES Band 3s. I do not have six deputy secretaries; I have four. This data includes people on leave, on long leave—or any form of leave. Given that it was 31 December, we had some people on leave and we had people acting. Lest it cause any consternation about my senior team: we have four deputy secretary positions, but the 'six' is there because the figure includes all people on all forms of paid leave.

**Senator O'SULLIVAN:** Do we need to correct that before you table it?

**Ms James:** It is correct in that these figures include people on leave and people who are acting. We might note that in the explanation. We do say that it includes people who are acting, but not the leave; we might just note that.

**CHAIR:** We can note that when we accept the correspondence.

**Senator O'SULLIVAN:** We could get an updated copy.

**CHAIR:** I will accept that as a tabled document.

**Senator BARBARA POCOCK:** Before I go back to a couple of evaluation questions, I want to pick up an issue raised by Senator Cash, and your comments, Ms James, about the Workforce Australia arrangements and the moral hazards created by the privatisation and the private provision of employment services. You pointed to the cost burden of investigating whether a service that is provided is legit and the cost of investigations. Some of us on this side of the table have had experience in a previous time when the CES existed. CES, for example, would have provided the architecture for a local jobs program of the kind we discussed in my earlier questions. It had an infrastructure across the country in the public sector which was a key guiding hand to the local employment needs of regions—now no longer existing. I have a question about the proportion of contracts at present that go to for-profit providers in Workforce Australia. Do you have any data on that?

**Ms Shannon:** If I go to the main program, in Workforce Australia services, of the 43 provider organisations with a licence to deliver services, 28 are not-for-profit and 15 are for-profit. In the Transition to Work service, of the 35 providers, 26 are not-for-profit, and 11 are for-profit. In the ParentsNext program, of the 53 providers, 42 are not-for-profit and 11 are for-profit. We have one much smaller program that I've got some data on, which is the Time to Work Employment Service, which is a pre-release prison service. Of the 13 providers, eight are not-for-profit and four are for-profit.

**Senator BARBARA POCOCK:** What proportion of services is provided by for profit versus not-for-profit?

**Ms Shannon:** I think I do have that information.

**Mr Smyth:** Certainly, our largest providers are for-profit providers.

**Mr Stiller:** I've got the figure for Workforce Australia services specifically. Within that program, 58 per cent of services nationally are provided by not-for-profit providers.

**Senator BARBARA POCOCK:** In Workforce Australia services?

**Mr Stiller:** Yes.

**Ms Shannon:** That's the main employment service.

**Senator BARBARA POCOCK:** Has the department done any assessment, or does it have any analysis underway, of how much of the expenditure in the program goes to profit, out of the proportion that's provided by for-profit providers?

**Mr Smyth:** Are you referring to the profit margin?

**Senator BARBARA POCOCK:** Yes.

**Mr Smyth:** No, we don't. The way that they do their business is up to them. We have a performance monitoring framework and we look at financial viability in the conduct of the procurement exercise for those organisations. How they go about their day-to-day business, and their particular margins, is not something that we track.

**Senator BARBARA POCOCK:** You don't do any analysis of the profitability of any of the providers?

**Mr Smyth:** We do a financial viability assessment of providers. We do that as part of the procurement exercise.

**Ms Shannon:** I would also say that, for not-for-profit providers, we're aware that some of them may use the revenue that they obtain from the delivery of employment programs to cross-subsidise the delivery of other programs as well. They're, if you like, reinvesting that in other activities that they conduct.

**Senator BARBARA POCOCK:** Thank you for that. I will go back to the evaluation issue. I think there is some evidence of a lack of evaluation in terms of outcomes of employment programs, and clearly there are some efforts to strengthen and change methods of evaluation, which is very welcome. A significant amount of money is going into these programs and a lot of work needs to be done to support, for example, young people, as we've heard from Senator Liddle, and also women who are returning to work who have been carers. Senator, I wanted to hear your response to a comment made by the assistant minister for Treasury, Andrew Leigh, who published an op ed in the *Financial Review* on 1 February. He said:

Right now, the quality of evaluation in government is woeful.

Do you think that comment has some validity?

**Senator Watt:** I really can only comment on what I've seen in the various roles that I've had in opposition and in government. I think there is a lot of room for improvement in how federally funded programs are monitored and evaluated.

**Senator BARBARA POCOCK:** The Albanese government has said it is committed to improving the quality of evaluations through government. It's good to hear your view about that. Prior to the election, Labor promised to

implement an evaluator-general in Treasury to provide expert evaluation of programs across government. Has the department had any conversations with Treasury or the Department of Finance in relation to how you can draw on those whole-of-government evaluation mechanisms to strengthen your own employment programs and their evaluation?

**Ms Crane:** The answer is yes, we have had a number of conversations, not just with Treasury but with other departments across the Commonwealth. A starting point is understanding what the evaluation capability looks like in each department. It is very different. As a starting point, understanding what we have got and how we use it is the first part. The second part of that conversation is: what's lacking and where might we address those gaps? There has been one of those meetings, which I have attended. That's the engagement that we've had to date.

In terms of the comment around employment services and our focus on it, we are slightly different from some other departments in that we do have in-house evaluation capability and have had for over 20 years for employment services, so it is a longstanding capability that we have invested in and built up. We do have a rigorous and consistent approach to considering evaluation up front, particularly in new policy design and how we will evaluate the outcomes of those programs, but also in thinking about what type of evaluation is needed.

As we've mentioned today, and as a number of my colleagues have talked about, evaluations feature quite heavily in many of the programs, but the way those evaluations are conducted and the period of time they go over varies greatly, depending on the size of the program and the nature of it, whether it is a pilot or an ongoing program. We do make it a matter of course to publish the evaluation reports up on our website, once finalised, so that others have access to them.

**Senator BARBARA POCOCK:** It is very evident from this morning's back and forward that the valuation of some very significant programs remains inadequate and clearly needs the attention of the department at a high level. Hopefully, an evaluator-general and a larger machinery of evaluation across government can be helpful to that. I will move on to one other issue. What has been the take-up rate for the Restart mature workers subsidy program?

**Ms Tran:** The Restart wage subsidy program actually ceased on 30 June, as part of the jobactive arrangements. The Department of Social Services are still delivering the Restart wage subsidies for Disability Employment Services participants. With Workforce Australia we have a broader pool and more flexibility in our current wage subsidies, so mature-age participants are catered for within that framework. The flexibilities in the wage subsidies under Workforce Australia have been changed as part of this so that we have flexibility in both hours as well as the maximum amount.

**Mr Smyth:** From the inception of that subsidy in 2014 until it ceased in Workforce Australia at the end of June 2022, there were 76,376 Restart subsidies. Of those, 26,743 were from DES, Disability Employment Services. Ms Tran said that Disability Employment Services, through a separate funding mechanism, are continuing with that subsidy. Ours have been rolled into our broader wage subsidy pool.

**Senator BARBARA POCOCK:** Thank you. Very impressive memory of numbers there. I wanted to know what checks you have in a program like that to ensure additionality of employment. How confident are you—

**Mr Smyth:** It is a very good question. We leave that very much to the discretion of our providers because they are closer to the labour market, understanding the needs of the business and the individual concerned. There is clearly a degree of dead-weight loss that is associated with wage subsidies. The evidence is out there that is somewhat the case. We constantly look at whether or not there was that additionality. It is an inexact science, I have to say. Nevertheless, there is strong evidence to suggest that wage subsidies in general do provide a degree of additionality into the workforce, particularly for those people who are at the margins, where that wage subsidy tips the employer into a positive approach to hiring the individual concerned.

**Senator BARBARA POCOCK:** In a way, that links back to general evaluation, doesn't it?

**Mr Smyth:** Yes, it does.

**Senator BARBARA POCOCK:** And how effective we are at picking something. It can be very subtle.

**Mr Smyth:** That's correct; yes.

**Senator BARBARA POCOCK:** Thank you very much.

**Senator PAYMAN:** My question goes to labour hire and Workforce Australia. I was wondering if you could explain to the committee how labour hire companies interact with Workforce Australia providers in their day-to-day operations, especially when it comes to them acting as intermediaries?

**Ms M Ryan:** I can answer part of it, but I am not sure if this is where you are coming from, Senator. If it's a question directed at the department and our use of labour hire, we do have a large proportion of our staff working

in our Contact Centres Branch who are employed through labour hire arrangements. We are looking to convert a number of those positions to ongoing APS positions. We are in the process of doing recruitment processes, through merit, to do that. In terms of departmental operations, our contact centre is supported by a large proportion of labour hire at the moment.

**Mr Smyth:** Our providers do also run labour hire firms. They are not allowed to utilise a wage subsidy or related entity—that is, their labour hire firm. There are clearly participants on our caseload that are hired into labour hire arrangements. We don't intervene in that process.

**Ms Shannon:** Labour hire companies are employers. Participants can be placed into employment with a labour hire company and an outcome for that placement can be paid if the job meets the rules for an outcome. Many people will achieve a 26-week outcome through placement and labour hire.

**Senator PAYMAN:** Can a provider create a network of labour hire companies to place participants in jobs quickly, while still meeting its obligations under the performance framework to provide sustained employment and equality of service to employers?

**Ms Shannon:** If the employment meets the requirements under the deed and guidelines then that is a scenario that can occur.

**Senator PAYMAN:** Further to that, to what extent are wage subsidies flowing to labour hire companies, and are there any restrictions or caps in place?

**Ms M Ryan:** In terms of the changes under Workforce Australia, previously, under jobactive, there was probably a higher proportion of wage subsidies going into labour hire companies. With Workforce Australia services, wage subsidies are only available for those participants being supported by a Workforce Australia provider. That cohort has a larger proportion of vocational and non-vocational barriers. It may be that they aren't, potentially, the cohort that labour hire firms would have readily attached to, in terms of being the most job-ready. We need to provide more targeted assistance to those participants. We are actively encouraging providers to offer wage subsidies which will result in more secure, sustainable employment. We are trying to catch it from both ends. Ms Tran might be able to clarify if there are any caps.

**Ms Tran:** No, there are no caps for a provider to offer a wage subsidy to a labour hire company. We do monitor. We have a look at what is happening. They have to meet the guidelines of the wage subsidy, which is offering a wage subsidy and having that agreement approved within the 28 days. That is another way in which we look to ensure that the provider has those relationships with the employer up-front and is negotiating those parameters of the agreement before the employment commences. But we don't have any caps.

**Mr Smyth:** It's worth mentioning that the employment services provider has to balance out the amount of money that they have available that is notionally allocated to their employment fund and utilise their discretion to best meet the needs of the participant. They are able to negotiate a wage subsidy up to \$10,000, but \$10,000 is a significant pool on that employment fund. They have to balance that out against providing accredited and non-accredited training, licensing et cetera to the individual concerned. As Ms Ryan said, a more disadvantaged caseload is now sitting with providers. Our expectation is that a strong level of investment is made in the individuals to ensure that they are ready to enter the labour market and that a wage subsidy is not necessarily the first default that a provider utilises to get that person into employment.

**Senator PAYMAN:** I get that. What is the total value of wage subsidies flowing to labour hire companies since the Workforce Australia system was introduced?

**Ms M Ryan:** We would have to take that on notice.

**Mr Smyth:** We would have to take that on notice because that would then go to ABNs and whether we were able to determine whether somebody was a labour hire firm or not. It is not an easy process in that regard.

**Ms James:** From our systems point of view, we are measuring and recording outcomes in jobs and where the system—not 'we', but the system—is agnostic as to who the job is with, subject to the related parties piece, which is a limited exception. If a worker is placed with a labour hire firm, that is an outcome. If they are placed with a big corporate, that is an outcome. Even if they are placed as a contractor, that is an outcome. So the system is agnostic to that. It is not that we are unable to drill into some of these things, but the system is not necessarily going to make that available to us. We may need to do manual work to go through that.

I speak from experience. When I was at the Fair Work Ombudsman, our system didn't record complaints from employees at labour hire companies. That wasn't necessary for us to resolve the matter and so it wasn't something we recorded. When senators and others became interested in that question, it was difficult for us to get data. That

may be the case here. We are happy to take your question on notice and come back with what we are able to provide.

**Senator PAYMAN:** That would be good. You mentioned earlier that there are exceptions. What conditions are there on the employer to get that wage subsidy? There have to be some guidelines or conditions for them to apply for that?

**Ms Tran:** There is a wage subsidy agreement that is pretty much standard across Workforce Australia. We have that publicly available. I can table and provide the agreement to the committee. The agreement does clearly stipulate the conditions of that placement. It has to be very clear in terms of the hours that are available to the participant. It has the quantum of funding. It also relies on the provider understanding what the participant's needs are and ensuring that participant is placed in an appropriate placement and that they have the skills and the readiness to be able to take on that placement. We've got that fairly clear. It is an agreement between the provider and the employer through that wage subsidy agreement.

**CHAIR:** I appreciate what you are saying when the jobs go into contracting work; that includes, obviously, gig work?

**Ms Shannon:** It has to be a job of a certain number of hours and a certain number of weeks. When I was saying it has to meet the deed and guideline requirements, perhaps we can give some information about that. It does have to be a job. If somebody is required to look for full-time work, then the expectation would be to try to maximise the hours of work.

**Ms M Ryan:** The placement needs to be ongoing work of not less than six months.

**CHAIR:** I am interested about the criteria—if you can come back to me on notice about the criteria of contract labour. Gig work is considered in some circumstances as contract labour; that's a contested space. I would be interested under those circumstances how that works. For example, if a person were engaged by a food delivery company and the hours available were considerable, and if the individual made themselves available for those hours, how that would work? If it is the contractor making the requirement, is that the obligation? Or is the obligation centred on the individual saying, 'I will make myself available for 40 hours', 60 hours, or whatever it might be, to do a gig function? I am interested in how that works.

**Ms Shannon:** We would have to unpack that. It goes to the nature of the employment relationship, which I appreciate is an area of complexity and probably outside my expertise. Self-employment versus contractor is something we can look at.

**CHAIR:** Thank you.

**Senator GROGAN:** I was approached by a young person who was working for a disability provider. She was told, 'These people will take you on.' She was very excited. When she got there, they paid her in cash the first week. She is a friend of the family, so she rang me, and I said, 'No, you need a contract.' She went back. Eventually, after three weeks of them just giving her a little wad of cash at the end of each week, they gave her a contract. She had to set up her own ABN and it ended up that the hourly rate was below the minimum wage. I said, 'No, go back and try again.' The provider, throughout this, was saying, 'Well, do you want the job or don't you?' I kept saying to her, 'You have to report this.' She said, 'I can't because then they won't help me.' It's a difficult situation.

**Mr Smyth:** They are the issues that we want to know, and jump straight on them.

**Senator GROGAN:** She got a nice contract that I helped her negotiate and she's fine. I am sure the provider is getting some sort of tail payment that, in my humble opinion, they don't deserve. It is a one-off thing. My question is: in that contract scenario, without her being able to approach somebody because the provider didn't engage in the conversation with her and she was terrified they would stop helping her, what manner do you have of tracking that? You said earlier that a contractor, signing up, going and getting your own ABN and doing that is okay and counts as an outcome. Then she is paid below the minimum wage and she is confused and doesn't have any entitlements. How do you track that kind of behaviour?

**Ms Shannon:** I am talking with Ms Ryan here. There are two issues here. One is self-employment and whether the provider is supporting someone into self-employment. Once you start to go down the path of getting your own ABN and other things, then that puts you into the self-employment space. The provider can get outcomes for assisting people to become self-employed. That is not a wage subsidy scenario. Separately, if somebody is placed through a labour hire company, which is an employer, if they meet the deed and guideline rules around both the nature of the agreement and the nature of the employment, which also must include appropriate remuneration, then a wage subsidy may be payable. The provider has the discretion to determine whether the wage subsidy should be offered.

At the end of the day, the purpose of a wage subsidy is as a hiring incentive. There are secondary benefits for the employer: they might need to invest in additional training for that new hire, they might need to invest in additional supervision. They might bring on other people. They can open up another shift. There are a range of things. The idea of a wage subsidy, that's the intent.

**Senator GROGAN:** My question wasn't really about a wage subsidy.

**Mr Smyth:** Can I look into that further? It is a classic case of somebody being, in my word, exploited. We would not condone that in any way, shape or form.

**Senator GROGAN:** What gets me is that I wrote it all out for her and said to her, 'Go and talk to the employer and say this—and forget the provider.' She went in, and she is now working permanently for that organisation and having a great time. She's on an award wage. It wasn't hard.

**Mr Smyth:** That might not have been where she actually got to.

**Senator GROGAN:** That is not what the provider had put her towards.

**Ms Tran:** Can I clarify: the provider will not get a payment just for placing a participant in a position or finding them employment. A participant needs to have achieved a four-, 12- or 26-week outcome. So there is that side. We don't automatically pay on placement into an employment opportunity. Some of that can also be partial payments in recognition of their capacity to work, reduced work capacity and the like. They do need to have that sustained employment over those periods of time before the provider gets an outcome payment.

**Senator GROGAN:** I think you know what I am talking about, Mr Smyth.

**Senator O'SULLIVAN:** Do you check if the person is off benefits as well?

**Mr Smyth:** There are two elements. We pay partial outcome payments and we pay full outcome payments. 'Partial outcome payments' is when someone's reliance on income support is reduced by 60 per cent. A full outcome payment is 100 per cent off income support.

**Ms M Ryan:** We rely on the exchange of information that's collected by Services Australia to verify if that person has come off income support as well, through a data exchange.

**Senator O'SULLIVAN:** Is the government committed to the principle of mutual obligation?

**Senator Watt:** The answer is yes.

**Senator O'SULLIVAN:** Can you rule out any changes to mutual obligation requirements?

**Senator Watt:** That is a broad question. It depends on what you see as comprising mutual obligation.

**Senator CASH:** That is the next question then. The government is committed to the concept of mutual obligation. Can you elaborate on the government's understanding of what it sees as mutual obligation, and where it differs from mutual obligation that is currently in place?

**Senator Watt:** In a broad sense, what we consider 'mutual obligation' to mean is that the community, through the taxpayer, has an obligation to support those in need, including those not in work. There is a reciprocal obligation on those not in work to make genuine attempts to find work, and those genuine attempts would be supported by publicly funded programs. That is the broad concept. What would differ between this government's approach and what we saw from the former government, is that the efforts provided by this government to support people to find work would be genuine, would not be punitive, and we would not be constantly looking for headlines to demonise people who are out of work. We would be making sincere attempts to help people out of work to find work, including through training programs and employment programs, rather than worrying about getting a headline demonising people out of work.

**Senator CASH:** Then is the government still committed to the Work for the Dole program?

**Mr Smyth:** You would be aware that program is being reviewed by the house select committee on Workforce Australia Employment Services. We'll consider that committee's recommendations when it delivers its report by the end of September this year.

**Ms James:** It does remain a feature of the current system. Because of the new system coming into place on 1 July, Work for the Dole is an intervention that happens after people have been in the system for six months. They are only hitting that point now. 'Mutual obligation' has many components. The minister has just set out the principles. A lot of micro policy goes to the mutual obligations framework as well as compliance aspects. Minister Burke, when Workforce Australia started, made some very early adjustments to the system at the microlevel to adjust the mix of ongoing activities as a jobseeker that count towards them meeting your mutual requirements. The government, and us, are constantly reviewing this new system and settings and adjusting at the microlevel. Certainly the minister has dealt with the philosophical element of your question.

**Senator CASH:** Have the minister or the Prime Minister commissioned any work from the department in relation to Work for the Dole?

**Ms James:** I am sure we briefed on where it fits into Workforce Australia and the mechanics of it.

**Ms M Ryan:** There are different activation periods when a person online gets activated and, likewise, when a participant in Workforce Australia services may be activated. To provide a summary of what's happening: for a person in Workforce Australia services, as the secretary just noted, participants who have been on the caseload for six months now will be receiving notifications that they may need to go in for a Work for the Dole activity, as their compulsory activity. That's on the basis, though, that they haven't made progress or it's the appropriate activity. That is absolutely still a feature of our program settings.

**Senator CASH:** Are there any proposed changes to the Work for the Dole program on foot?

**Mr Smyth:** We are awaiting the recommendations of the select committee's report. As Ms Ryan said, participants are hitting that six-month period now. The changes that were made were around micro credentialing and people getting a qualification for some of the activities that they may be engaged in through Work for the Dole programs.

**Ms M Ryan:** Under jobactive it was an annual activity requirement, where a participant may have needed to be doing a Work for the Dole activity for six months. Under the policy settings for Workforce Australia, a participant can participate every six months in an eight-week Work for the Dole program. We have reduced the time frame and introduced micro credentials and so forth.

**Senator CASH:** Minister, can you rule out any watering down of the Work for the Dole program, in terms of obligations that erode?

**Senator Watt:** I am not going to pre-empt the findings of that committee inquiry.

**Senator O'SULLIVAN:** Has Minister Burke provided any direction to the chair of that committee in terms of the outcomes that the committee should be trying to achieve?

**Senator Watt:** Not that I'm aware of.

**Senator O'SULLIVAN:** Can you take that on notice?

**Senator Watt:** I am happy to do that.

**Senator O'SULLIVAN:** It seems that we are reliant on the outcomes of that committee. I will be interested to see. I want to stick on mutual obligations and, in particular, the points-based activation system. Before I do, can you take this on notice: can you provide to the committee data on Work for the Dole placements for the last five years, broken down by gender and state and territory? With the points-based activation, can you outline to the committee how the department measures flexibility within the PBAS, and provide a best practice example of a provider using the PBAS flexibility?

**Ms M Ryan:** In terms of how we can measure flexibility, with the tailoring of the points-based system we can see that immediately, through whether or not a provider has adjusted an individual's points target. The maximum points target is 100 points per month. There are some automated labour market credits that can be applied if a participant is a principal carer, has partial capacity to work or is over 55 years of age. That can have a reduction on a person's points target. Providers also have the flexibility to make further adjustments to an individual's points target, based on their individual circumstances. They can also make adjustments to a participant's job search requirement. Whilst a participant needs to meet a points target, they also need to do a minimum of four job searches a month. What we have been able to see, through our data, is that providers are making those adjustments.

We have also been engaging with them. Where we are looking at particular participants who, by all accounts, we would argue probably shouldn't have a maximum points target, we are working with those providers to say, 'Why haven't you made those adjustments?' and providing practical examples and support to give them the tools to make those adjustments. We have been doing active monitoring and looking at the variety of tasks and activities a participant is actually recording against their points target, and working with those providers.

Ms McCarthy might want to give an example of where you have seen that the provider has worked with a participant to make some adjustments to their points target.

**Ms McCarthy:** As Ms Ryan has said, we are definitely seeing in the data a high proportion of our providers in Workforce Australia services adjusting that points target. An example of that would be someone who has—

**Senator O'SULLIVAN:** Does the provider get to adjust it or does it need approval from the department?

**Ms McCarthy:** There are different reasons. There are two automatic adjustments that happen in the system, and then the providers can further adjust a points target, if that is the case. The automation of credits comes in if they are in a low labour market type of environment or they have certain personal circumstances. For example, if someone is a principal carer parent, the system will automatically drop their target by 40 credits—and for someone who is mature age, over 55, and for someone who might have a partial capacity to work. Those are the three categories that will get a 40-point deduction automatically. As Ms Ryan said, the target can be further adjusted by a provider. We have done a lot of cameos within the department to have a look at different scenarios that are actually happening. We might see, for example, a homeless person getting those reduced to a maximum of 20 points per month. They can also set that target for six months. You can reduce a jobseeker's target for a month or up to six months, depending on their personal circumstances.

We're also seeing, for people who are attending drug and alcohol rehab centres, how they can fully meet the requirements during that period of time. Their target could be reduced to zero during that period of time, while they're undertaking that activity.

**Senator O'SULLIVAN:** Is there a default target?

**Ms M Ryan:** It can be set to nil requirements. That's about having the relationship between the individual and the provider. They can determine that, given what's going on in that person's life at that moment in time, it would be appropriate that their requirements be set to zero. They have made that informed decision. Obviously, we might ask them for it, but they have got that relationship, so they've made that decision.

**Senator O'SULLIVAN:** There's not a default—for example, everyone has 100 points?

**Mr Smyth:** We do start at 100 points and then there are labour market deductions and personal circumstances deductions, as Ms McCarthy has indicated.

**Senator O'SULLIVAN:** Can you please take on notice a breakdown of how many participants on the caseload currently have the 100 points and then the range below that—the number of people at different ranges.

**Mr Smyth:** Forty-nine per cent of people have a 100-point target at the moment in Workforce Australia services.

**Ms M Ryan:** Is that for Workforce Australia or is that across the whole services?

**Mr Smyth:** That's Workforce Australia services.

**Senator O'SULLIVAN:** There would be quite a range of variability, wouldn't there, for that 51 per cent that are on less than 100? Can you give us a breakdown there?

**Mr Smyth:** Forty-eight point four per cent have a reduced target and around 2.6 per cent have a zero target in Workforce Australia services. That's with providers.

**Senator O'SULLIVAN:** Can you maybe provide me with a table?

**Mr Smyth:** We can give you the detail.

**Senator O'SULLIVAN:** In particular, I would like a breakdown by gender, age, program, employment, region and state. Thank you. Can the department provide the committee with the number of participants in Workforce Australia online who opted out and chose to be assisted by a provider?

**Ms M Ryan:** I mentioned that earlier today. As at the end of December, we had 10,050 who had opted out of online services. That is from our data that we have captured through our systems. That is people contacting our digital services contact centre and asking to be referred to a provider or using the online system to do that themselves and move to a provider. I might have to clarify the exact figure.

**Senator O'SULLIVAN:** I understand that there were some limitations in the system that meant that this data couldn't be provided earlier.

**Ms M Ryan:** Yes. Some of that data is still reliant on us capturing some of that reporting. I will take it on notice to make sure that I am giving you the right figure. As I have said, the figure I just mentioned, the 10,050, is a figure we capture when participants call our digital services contact centre. We record that. I have to make sure that I am not understating the figure.

**Senator O'SULLIVAN:** Are you able to tell us what period of time this covers?

**Ms M Ryan:** I can clarify. We have captured that there were 8,126 participants who called the digital services contact centre to elect to move to a provider. On our online platform—which I think you previously asked a question on notice about—1,924 utilised the online platform functionality to move to a provider. That's from 1 July 2022 to 31 December 2022.

**Senator O'SULLIVAN:** I want to ask about the quality assurance processes. Are there any new requirements that employment service providers must meet to deliver the Workforce Australia contracts? What is the current quality assurance process?

**Ms Crane:** There are a number of aspects when it comes to quality. I might work through them. Hopefully, that will cover all of the things that you are interested in. When providers were first given their licence, they had nine months. At the end of March, we expect all Workforce Australia services providers to have achieved our quality assurance framework certification. That includes audits around quality standards and audits around quality principles.

The basis of that is to make sure that they have appropriate governance documentation in place, their systems, their training and other things that support them to deliver, and to assure themselves that they can do that appropriately for participants and are set up for continuous improvement. There is also an aspect of that which goes to their Right Fit for Risk assessment, ensuring that they've got the appropriate protections in place for their IT systems. That's the set-up piece. There is ongoing certification after that.

In terms of the quality assurance, when it comes to licensing, the Provider Performance Framework was mentioned in a couple of the earlier responses. As part of the licensing review, there are five modules that providers are assessed against. Those modules look at things like sustained employment and progress to employment. There are quality aspects in there as well. That's quality servicing to participants, quality servicing to employers, and their licensing arrangements. It is picking up: have they been issued with breaches and is there anything happening there?

The other aspect of quality goes to what we have talked about in the program. We monitor: do we have outliers in expenditure or do we have odd things happening in claiming practices? That happens as part of our program assurance. Certainly, the assurance pieces existed under jobactive. The licensing piece is new. The quality assurance framework existed under jobactive.

**Senator O'SULLIVAN:** Are you able to table the template and the criteria used by the department to assess providers?

**Mr Smyth:** We can give you the five performance modules. Sitting under those are 13 performance measures that we are going to assess against. We are happy to provide that to the committee.

**Senator O'SULLIVAN:** You said that some of this did exist under jobactive. What are the key differences in the quality assurance now, compared to the previous jobactive contracts?

**Ms Crane:** The main difference in what I outlined would go to the Provider Performance Framework. Whilst elements of that would have been assessed and considered previously, because this is a licensing model, as Mr Smyth indicated earlier, high-performing providers would have a licence extension and low-performing providers would be exited from the market. This framework is what's being used to monitor providers over the course of their contract, but it also allows us to work with them to course adjust. If we can see things are happening, it allows us to get in early and have a conversation with them. It also allows us to exit them from the market and bring another provider in.

**Senator O'SULLIVAN:** Have you had feedback from providers with regard to their experience with the quality assurance assessment and whether or not it's efficient, or indeed if it's actually introducing additional red tape or an onerous workload?

**Ms Crane:** If you are talking about a provider performance remit specifically, most of the feedback in the first instance has been seeking to understand what it is, and how they can run their business to monitor performance in between. We are still early days in sending out those results. The first lot of data for a couple of those measures only went out in December, so it is too early to say that there are conversations around that. The service delivery assessment is the first time that both the department and providers will assess how they are going around all the things they committed to in their tender documents, how they are tailoring services and what that looks like for business on the ground. The self-assessment was voluntary; they didn't have to do that part of it. We have given it so that we are transparent in what we consider. We will then look at what you are talking about: what has been the process on both parts, is it working, and is it driving the changes and behaviours we are looking for?

**Senator O'SULLIVAN:** What evidence base have you used behind the current quality assistance framework?

**Ms Crane:** I will do it at a high level. There might be things I miss which pre-date me sitting in the role and which we might be able to add on notice. The performance framework has been designed to be a balanced approach to considering all the elements that make up supporting a participant into sustainable employment. I am sure there has been evidence here at estimates previously around trying to reduce churn in the system, ensuring that providers aren't parking participants and only working with those who are more job-ready. Each of the

elements I have described in the framework address that, making sure the focus isn't just about job placements that are not sustainable, and that they are not about just working with easy participants who are more job-ready than others. It is about focusing the effort on progress to employment and watching that happen; on sustained employment, making sure that we are seeing the placement turn into a 12- and 26-week outcome, and ensuring we have the views of the participants in their job search requirements. Is their PBAS being tailored? Are they getting support from their provider? On the employer side there is a critical relationship. Are providers engaging with employers well? Are they sending through participants who are appropriately suited for that job? Are they supporting them to stay in work? With the compliance piece I mentioned around licensing, if we can see sustained and repeated behaviour where providers are receiving breaches, they are in breach of their contract. All those elements make up whether this provider is the right provider to be in the market delivering the services they are contracted to deliver.

**Senator O'SULLIVAN:** How many staff in the department oversee and assess the quality assurance framework?

**Ms Crane:** I will have to take that on notice.

**Senator O'SULLIVAN:** And can you take on notice how that differs from the previous jobactive contract?

**Senator RICE:** I have a few questions about quality assurance. Thank you for your response to my QON 1127, in which you talked about the monthly continuous assessment of payment integrity. What reporting does the Quality Assurance and Risk Management Branch prepare each month?

**Ms Crane:** Are you talking specifically about things that go to providers, or things we might do internally as well?

**Senator RICE:** Reporting to providers, and internal reporting. Who is the audience for the reporting you are doing? Is there any public reporting?

**Ms Crane:** I will cover off what I have here. I have others watching this session. If I miss anything, I am happy to take it on notice and we can provide that as well. If we start with what used to be the random sample survey, which is now the continuous assessment process, we send out those results. That would have been off the back of each of the rolling samples. That will be an assessment at the end of each month. Providers will have those results sent back to them. In those instances there is a period of working with the provider around: 'Here is what we have determined to be meeting or not meeting requirements and do you have the evidence?' We work through that process. That is the most visible piece of that. Outside of that, in a publishing sense, as some of the measures I talked about for the Provider Performance Framework become available, they will be provided to the providers through their provider lead. Some measures will take a lot longer to build up data from the surveys from participants. As an example, we need enough data there to be able to provide that to them. As that becomes available, it is provided to the provider and it will be made public once we have the full 12-month set of data. The intention is that will be published on the department's website for participants and others to see.

**Senator RICE:** Will there be any reporting before that full 12 months?

**Ms Crane:** Providers will have it, yes; publicly, no. Internally the department will have that. Internally that is what we will work with providers around: where we can see areas of concern, where they might need to change practices or, where there is best practice, where we can see things and promote that. In an external publishing sense, no.

**Mr Smyth:** From the end of June this year we are going to start; at the beginning of July we will publish ratings.

**Senator RICE:** Going back to 1 July last year, we are at eight months of data now.

**Ms Crane:** That specifically is about the Provider Performance Framework and reporting on those measures. I will finish the quality piece: potentially you are getting to other data that we might report on which is not in an assurance space, but more broadly around transparency of data. Internally, in previous testimony we talked about the program assurance work that happens. The department uses internally a lot of developed IT products where, in near or real-time, the program area can monitor assurance. What they will look at in the employment fund is: do we have providers with outlier expenditure? What does that look like? That would not necessarily trigger, 'There's something wrong here,' but, 'You need to go and talk to them and have a conversation about it.' It is happening.

**Senator RICE:** Is that data reported back to the providers? You are doing that analysis, but what are you reporting to whom? What is the intention of that being public? What data could be made available publicly now?

**Ms Crane:** In a program management sense, the program managers, many of whom have been at the table today, will be using that to actively drive their program. So, through a provider lead they will be having a

conversation with a provider around, 'This is what we are seeing; can you explain what is in the data?' In some instances it might be that, instead of putting one claim through, they batch them up and do a bulk one, and can explain it. In others we might need further evidence from them around value for money, if it happens to be that. In a broader distribution of what we are seeing, Mr Smyth presents to the CEOs once a month through a virtual forum. We have ongoing engagement sessions with the peaks and the community peaks around what we find. We will talk about that work in a range of different forums, depending on what it is. That could be, 'Here is the bad practice we are seeing, and this is what we are monitoring,' or, 'Here is what we are seeing in a positive sense.'

**Senator RICE:** Could you take on notice what the framework is and the various formats and various audiences that you are reporting. In particular, if you are saying that you can't give us any data until you have 12 months of data with the performance of the providers, what will be the framework for the data that is going to be provided, come the beginning of next year?

**Ms Crane:** We can certainly provide that.

**Senator RICE:** That full 12 months is a lot of data. Is there any data that can be made public? You have over six months of performance now, which should be giving you a reasonable sample, noting that it may change once you have a full year's data.

**Ms Crane:** Part of the challenge we have is that, whilst Workforce Australia will have been running for 12 months, as you might recall, we had a number of transition settings in place for the first couple of months, which means you are not comparing apples to apples if you take 12 months of data. We have also had contingency, or pausing of mutual obligation, for a range of disasters. We are working through how we ensure that what we are providing to providers and that what we provide publicly is accurate. We want to make sure that we have statistically valid data in there that it is robust enough for us to make decisions on, and that it reflects the performance of the providers. Outside of the assurance piece, we are about to recommence publishing of a range of data sets, which had been on pause since the commencement of Workforce Australia. In a couple of months the caseload information will be made public again, which has the caseload by employment, region, cohort, and the targeted compliance framework information. That will be delivered much earlier than I have just talked about.

**Senator RICE:** If you can take on notice what the framework is going to be, that would be good. I want to check on data that is collected and stored on different payments. In particular, are you tracking referrals to associated entities?

**Mr Smyth:** We covered that earlier in evidence. We track related party entities through the employment fund. Going through the employment fund expenditure, if you exclude wage subsidies because providers are not able to engage in a wage subsidy arrangement with their own organisation or a related party entity: 27.6 per cent is expended with own organisations; and 68.2 per cent of providers have claimed expenditure for own organisations. Of our total employment fund expenditure to date, or commitments to date, excluding wage subsidies, 27.6 per cent of that expenditure is going to own organisations.

**CHAIR:** We have gone through this in some detail. You may want to do a follow-up question on notice.

**Senator RICE:** Okay; I will leave it. I will check what the evidence is. I'll put other questions on that on notice. Going to the answer you gave to my QON 1128, which is about outcomes claimed by Workforce Australia each month; there is lots of good data. In table 1 you have 'Employment outcomes: Claims for Workforce Australia by month' and then a heading that says, 'Transition to work'. Is that a specific transition-to-work program under Workforce Australia overall?

**Mr Smyth:** Maybe we have used a different numbering system, but I don't have that question before me; did it relate to transition to work?

**Senator RICE:** No. It related to data on outcomes: a breakdown of outcomes or outcome type, exits from online. The second half was payment suspensions or penalties since the introduction of Workforce Australia.

**Ms James:** I don't have a question 1128 in my list. Perhaps the number you have is incorrect.

**Senator RICE:** I have it here in front of me: 'Senate parliamentary question, Question No. 1128, question date 16 December 2022'.

**Mr Smyth:** Is it a parliamentary question on notice?

**Senator RICE:** Yes.

**Ms James:** Not an estimates one.

**Mr Smyth:** That's probably why.

**Ms James:** Sorry; we don't have that in front of us.

**Senator RICE:** Yes, 'notice paper question'. Sorry, I wasn't specific.

**Ms James:** We are focused on the Senate estimates questions on notice when we arrive here, so forgive us.

**Mr Smyth:** You have asked for data in relation to outcomes, breakdowns by month, JSCI levels, exits from online and PBAS.

**Senator RICE:** I have a couple of questions for clarification. In table 1, where it says, 'Workforce Australia services' and then 'Transition to Work', I want to check that's the specific Transition to Work program under Workforce Australia.

**Mr Smyth:** That would be the youth program under Workforce Australia; correct.

**Senator RICE:** Could you take on notice to provide updated numbers for December and January for that table?

**Mr Smyth:** We can do that.

**Ms O'Regan:** Can I note on that: with the outcome claims, it can take up to two to three months for all the claims to be lodged, so numbers always get revised upwards. I wanted to clarify that the data will be the outcomes that have been claimed. That's not the same as the outcomes that have been achieved.

**Mr Smyth:** We'll caveat that in our response.

**Senator RICE:** Going to table 7, which is 'Client-requested transfers between Workforce Australia services and Workforce Australia online', there is a consistent flow—many more people requesting a transfer from the online system to Workforce Australia services. I am interested in your reflections on what is driving that.

**Mr Smyth:** Ms Ryan talked about that earlier. It may well be that some of those people have had a change in their individual circumstances, meaning that they require more face-to-face servicing. There are broader opportunities around wage subsidies, but also the employment fund has a more expansive arrangement of services that are able to be offered to participants. Part of it could be that, through our own assurance arrangements and following up and looking at a participant's progress in the online system, we actually have a discussion with them that says something like: 'You seem to be struggling, and we think that a provider might be best to meet your circumstances and your needs.' So there's that discussion and prompting et cetera that can occur too. The number is still relatively low, given the overall number of people in the system.

**Ms M Ryan:** That proportion of people who have elected to opt out is very comparable to our experience in our online employment services trial and our experience administering the new employment services trial as well. Individuals can exercise choice at any stage to move to a provider.

**Senator RICE:** Noting the fact that people moving to Workforce Australia services is much greater than people moving the other way, I am wondering whether you have any insight? Have you got any further analysis of why that's the case?

**Mr Smyth:** There is an assessment we do up front that determines whether or not an individual is at risk of remaining unemployed for a considerable duration. That's through the Job Seeker Classification Instrument. We do an assessment and we give a person a rating. Those people that are the most job-ready attached and are at lower risk of longer term unemployment will generally remain in the online system. Those that don't will go to providers. There's less of a likelihood of people coming from a provider back into online, because of our initial assessment of their situation.

**Senator RICE:** Do you have an analysis of why people are shifting from one to the other, and would you be able to provide any data about that?

**Mr Smyth:** I'll take that on notice.

**Senator RICE:** Table 8 shows the number of payment suspensions. There is a consistent measure of around 70,000 people being suspended each month. Do you have any breakdowns of who those people are? What payments are getting suspended? What's driving that suspension?

**Mr Smyth:** We do have data in terms of the Targeted Compliance Framework and cohorts. One of the things that we're certainly noticing is that those participants that are in the online system are far less likely to receive payment suspensions and demerits. We have no-one in the online system that is in the penalty stage—recognising that it does take a period of time to get to the penalty stage and there needs to be a capability review and then a capability assessment undertaken after a person reaches three or five demerits. Our approach generally is that, if participants are accruing demerits at a rapid rate in the online system, for us that would be an indication that something is not right and the online system is not appropriate, and so we would move them to a provider.

**Senator RICE:** In the interests of time, could you table that analysis. Again, somebody contacted me about being cut off, along the lines of: 'I got my payment cut off by my job service provider because I didn't attend an appointment when I told them I couldn't attend because I was in court all that day. On the phone they assured me my payment wouldn't be cut off, and then I got a notification saying it had been cut off.'

**Mr Smyth:** That's unacceptable.

**Senator RICE:** Would the number of those unacceptable outcomes show up in your analysis data?

**Mr Smyth:** We do track where there are potential provider errors and the like in relation to suspension. We'll take that on notice and come back to you.

**Senator RICE:** Thank you.

**Senator O'SULLIVAN:** I want to ask about the employment white paper. I understand that Treasury has been asked to prepare the employment white paper, and not the Department of Employment and Workplace Relations. Is that correct?

**Mr Smyth:** That's correct. They led the Jobs and Skills Summit. That was the Treasurer's responsibility, with coordinating ministers as well. Treasury have established a task force within Treasury. It is looking at a lot of issues that are broader than what our portfolio looks at; it is looking at a whole-of-government, whole-of-nation and whole-of-economy approach.

**Senator O'SULLIVAN:** It is looking at employment. You are the department of employment.

**Mr Smyth:** It's partly looking at elements of employment, but it's looking at a load of other areas.

**Senator O'SULLIVAN:** The employment white paper.

**Ms James:** This is a piece of work that a number of departments across government are involved in, including ours. All parts of the Department of Employment and Workplace Relations are involved. There's an employment aspect, but there's a very significant skills aspect as well, and a workplace relations aspect. There are immigration elements and industry elements. Treasury has at least one interdepartmental committee on which we are represented. We have a number of officers within our department who are contributing to that piece of work.

**Senator O'SULLIVAN:** It does seem odd to me that it is not being done by the Department of Employment and Workplace Relations. As secretary, did you express any concern that it is not being done?

**Ms James:** I am very comfortable with Steven Kennedy and the department of the Treasury leading this work.

**Senator O'SULLIVAN:** Minister, did Minister Burke raise any concerns about the department of employment not being tasked with this role?

**Ms James:** No, Senator.

**Senator O'SULLIVAN:** Sorry; that was to the minister.

**Senator Watt:** No.

**Senator O'SULLIVAN:** Minister Burke has been in parliament for over 20 years, I understand. He is the minister for employment. He also has a professional background in the employment sector, I understand. For some reason, Treasurer Chalmers has been given carriage of the white paper, which really should be in Minister Burke's patch. There was no concern expressed by the minister?

**Senator Watt:** No. Ms James has explained why Treasury is leading this job. It's a broad, multi-agency paper and review. It's appropriate that it be led by one of the central agencies of government.

**Senator O'SULLIVAN:** It seems odd that the Department of Employment and Workplace Relations has been shut out.

**Senator Watt:** They're hardly shut out.

**Ms James:** That is not a correct description at all. As I have said already, we have a number of officers who are very involved in providing input, ideas and insight into the Treasury white paper process. Jobs and Skills Australia is involved. All the key parts of my department are playing a role.

**Mr Smyth:** It was an election commitment that it would be led by Treasury.

**Senator O'SULLIVAN:** Thank you for responding to the letter. We were able to get the figure of 3,070 employees within the department. How many of them have been seconded to sit on the task force?

**Ms James:** Most of this work is going on within the department. I think we might have a secondee.

**Ms O'Regan:** Yes; I am aware of one secondee at EL2 level from my part of the department.

**Senator O'SULLIVAN:** I got a reaction across the table when I said you'd been shut out. Fair enough. But there is only one person, out of 3,000, from the department.

**Ms James:** The process of the white paper is reaching across all—

**Senator O'SULLIVAN:** Can you see why I would think that is being shut out?

**Ms James:** Not really. In the world of government decision-making we have a lot of processes, particularly with wicked problems and challenges in the labour market and economy these days. They take lots of different departments and areas of expertise to solve. Within government it is extremely common, for a piece like this, that a department like Treasury would be taking the lead. They are reaching across all areas of government. There are a number of structures, like interdepartmental committees, that are involved. The Treasury folk are getting out and consulting with a number of people, including with the community, with the public. They have been through a written submission process. In any given week, one of the people in DEWR would be talking to people in Treasury about this piece of work. It's very important. It's going to be a signature piece for the government, and DEWR is a partner in that.

**Ms O'Regan:** Absolutely.

**Senator O'SULLIVAN:** You mentioned that there is a history. Over the last 10 years, various white papers have been done. I recall the defence white paper, which was done by the Department of Defence. The agricultural competitiveness white paper was run by the department of agriculture. We have the department of infrastructure and transport running the aviation white paper. Why have the department of employment and the minister for employment been relegated to the sidelines for what should be signature policy and something central to your department?

**Ms James:** I don't accept your characterisation. To be honest, it didn't cross my mind that we would take full responsibility for this. It is not something that I think we would be as well placed to do as Treasury, given how many components reach across other departments and the economy. It is a classic central agency function—dare I say it, and you won't hear me say it that often—and that is where it belongs, in my view.

**Senator O'SULLIVAN:** Were the department and the minister consulted on the terms of reference for the employment white paper?

**Ms James:** Work on the Jobs and Skills Summit started before our department was formed on 1 July. I can say that our department was involved in conversations from the very beginning, the planning of the Jobs and Skills Summit and all that's followed. We also had a secondee working with Treasury during that time. As for conversations the minister had, particularly before this department existed and my appointment, I can't speak to that.

**Senator O'SULLIVAN:** Do you have regular meetings with the officer that has been seconded to Treasury?

**Ms O'Regan:** Yes, we do have regular meetings with him. We also have the interdepartmental committee, which has three band 2s representing the department. There's a band 2 representing the workplace relations group, one representing employment and one representing skills. Yes, we have a regular engagement with various members of the Treasury task force that is developing the white paper, including the secondee that we have over there, as well as a lot of ad hoc interaction with our secondee.

**Senator O'SULLIVAN:** Has the department made a submission to the employment white paper?

**Ms O'Regan:** No, we have not.

**Senator O'SULLIVAN:** But you will, though?

**Ms O'Regan:** No. It's a government-led white paper. We took a decision, as I think other departments did also, that it would be the government making a submission to itself.

**Ms James:** I'm very comfortable that our input, insights and experience are helping to frame this piece of work.

**Senator O'SULLIVAN:** The white paper has an objective of full employment. Can you confirm what unemployment rate the government considers to be full employment?

**Mr Smyth:** I would leave that to Treasury, when they talk about NAIRUs and everything else. That would be an issue for the Treasurer and the Treasury department. It's not an exact science, I suspect. It is a particular policy consideration that Treasury has responsibility for.

**Senator O'SULLIVAN:** Ms James, as secretary of a very fine department, given its core government target, you don't have an understanding of what full employment would be; what rate it would be?

**Ms James:** I am not an economist and I wouldn't proffer a number. I will say that our department is providing insight and input on all of the matters of relevance to us, including this one. The other aspect that we have been at pains to emphasise is to consider the security of employment. In our labour market we have a full range of arrangements, and being employed is not the only thing that matters. The nature of that employment is important, too, from the point of view of income security and job security. That is something we have been injecting into this conversation around what targets should be or could be and what they take into account.

**Senator O'SULLIVAN:** You haven't been told what 'full employment' is yet?

**Ms O'Regan:** I believe full employment is one of the issues the white paper is exploring. There are a range of views on how full employment should be defined. It links to other macroeconomic levers as to what the goal should be for government: what is the full employment goal and what does it mean for the rest of the economy?

**Senator O'SULLIVAN:** Minister, what is the government's full employment policy?

**Senator Watt:** Just as the officials have referred that to Treasury, I think it best that be put to the minister, and the Treasury minister as well.

**Senator O'SULLIVAN:** The minister representing the Minister for Employment cannot tell us what full employment is?

**Senator Watt:** No. The officials have, for good reason, said that a range of calculations are taken into account on this and that is a question best put to Treasury.

**Senator O'SULLIVAN:** This might go to Treasury as well. The white paper submissions were due on 30 November 2022. I note that the submissions from the consultation paper last year are not yet available on the website. When will they be made public?

**Ms James:** You would need to put that to the Department of the Treasury.

**Senator O'SULLIVAN:** Thank you.

[12:35]

**CHAIR:** This brings us to the end of outcome 1. We turn now to outcome 3, Workplace Relations.

**Senator PAYMAN:** My question is to the department. Can you take the committee through Mr Bielecki's reappointment to the Registered Organisations Commission, effective 1 May 2022? Did this reappointment take effect during the caretaker period before the election?

**Mr Breen:** Mr Bielecki's most recent appointment took effect on 1 May 2022. I will have to take on notice the caretaker period details; I do not have that to hand.

**Mr Hehir:** We might need to check the decision time frame. Appointment time frames can be different from decision time frames. Decisions are taken, and that's okay, but the time of appointment may be later than the time of the decision. That is the clarification Mr Breen will be looking for.

**Senator PAYMAN:** Was the abolition of the ROC an election commitment by Labor?

**Mr Breen:** That was either in the later platform or a national commitment that had been foreshadowed in advance of the election, yes.

**Senator PAYMAN:** So we are on the same page. What reason was given for Mr Bielecki's reappointment, particularly as there was a strong chance that Labor would win the 2022 election?

**Mr Breen:** It would have been a matter for government in that the registered organisations legislation was in place, and at that time provided for the position of Registered Organisations Commissioner.

**Senator PAYMAN:** Was a temporary reappointment a potential avenue available to the minister of the day?

**Mr Breen:** A range of options is available to the government of the day.

**Senator PAYMAN:** And a temporary reappointment was one of those options?

**Mr Breen:** Yes, that would be an option.

**Senator PAYMAN:** I am asking that because Mr Bielecki's termination payment for the early termination of his contract will be \$130,416.37. Can the department justify why \$130,000 of taxpayer money will now be spent on a termination payment for the head of a discredited and partisan institution?

**Ms James:** I appreciate your question. I was not in this role at that point. I note two things: firstly, appointments are matters for government; secondly, the appointment to the role having been made, the matters that determine what happens when a position is abolished are set out by a Remuneration Tribunal determination. Those Remuneration Tribunal determinations—I don't know which one applies—would set out the benefits

payable on abolition of office, which I imagine is what has been referenced here. Neither of those two matters are within the control of the officers at this table, or decisions made by the officers at this table.

**Senator PAYMAN:** Would you have the details to confirm the total cost to the taxpayer of the ROC's year-long probe into the AWU?

**Mr Hehir:** That question is more appropriately put to the ROC. They are scheduled for appearance tonight. They are an independent statutory authority. They are responsible for their spending. It is more appropriate that question go to the ROC.

**Senator Watt:** It is a matter that has been reported in the media in years gone by that the legal fees for the ROC's probe into the AWU cost taxpayers about \$1.2 million.

**Senator PAYMAN:** That is ridiculous!

**Senator Watt:** Mr Hehir is right; the ROC will be able to confirm that this evening when they attend.

**Senator PAYMAN:** Those questions will be put to the ROC tonight.

**Senator CASH:** I indicated earlier this morning that I had some questions—which segue very nicely from the questions Senator Payman was asking—about the Registered Organisations Commission. I know they are here tonight, but these are for the department. It was an election commitment to abolish the Registered Organisations Commission. How are the machinery-of-government changes going to work?

**Mr Hehir:** We are still in discussions with central agencies around the exact mechanisms. The normal process where there is a transfer of functions is that it will be regarded as a MOG and you use section 72. That is my position; that is what I would expect to happen. But there are circumstances where that does not automatically happen. We saw that, for example, with the ABCC. It was not a transfer of functions. The Fair Work Ombudsman already had a set of functions, so it wasn't regarded as a transfer of functions. In that case, section 26 was used. PM&C, Finance and the department are all working together to provide advice as quickly as we can to the agencies on that. Unless I am told there are other circumstances, my view is that section 72 is probably the one I would pursue.

**Senator CASH:** When do you anticipate finalising the advice so the process can begin?

**Mr Hehir:** As soon as possible. I am working with two other agencies, so I cannot commit to their timing. They are the ones who make the final decision.

**Senator CASH:** What additional resources are being given to the Fair Work Commission to ensure that they can continue the functions of the Registered Organisations Commission?

**Mr Hehir:** My recollection is that it was a complete transfer of funding. I'll need to check that.

**Ms J Anderson:** Yes, that's correct.

**Senator CASH:** How many staff members are transferring from the Registered Organisations Commission to the Fair Work Commission?

**Mr Hehir:** There is provision for them all to transfer. Part of that will depend on whether it is a section 72 transfer or a section 26 transfer.

**Senator CASH:** If they all decided to opt for transferring into the new body, would that be an option available to them?

**Mr Hehir:** Yes; that's my understanding. If it is section 26, the Fair Work Ombudsman and the Fair Work Commission would need to talk about it, because section 26 arrangements are done by agreement between agency heads. My understanding is that is possible. You need to talk to those agencies.

**Senator CASH:** Effectively, then, it's the role of the commissioner that no longer exists.

**Mr Hehir:** That's correct.

**Senator CASH:** But the other body of the team—if they should choose to do so and it works out and is agreed—could actually transfer over. As you say, there are some times, depending on the option, when there has to be discussion.

**Ms J Anderson:** That's correct.

**Mr Hehir:** Yes. I might just clarify that. If it is section 72, they transfer.

**Senator CASH:** They transfer. Section 26?

**Mr Hehir:** There's a discussion and choice.

**Ms J Anderson:** Noting that staff, under section 26, may choose to go.

**Senator CASH:** Are they able to go elsewhere within the Public Service?

**Mr Hehir:** That is subject to agreement.

**Senator CASH:** So, again, it's the agreement and the ongoing discussion between—

**Mr Hehir:** As part of that, for the ABCC, some staff went, under section 26, into a range of departments, including some into my team.

**Senator CASH:** Do the functions of the Registered Organisations Commission, as currently set out in the registered organisations act, change in any way, in terms of the new arrangements which will be undertaken by the Fair Work Commission? Will they be able to continue to ensure that registered organisations, regardless of whether they're an employer organisation or an employee organisation, are using their members' money appropriately?

**Mr Breen:** The obligations on registered organisations and officeholders in terms of disclosures and those kinds of things remain the same. The powers of the general manager replicate the powers that were available to the commissioner previously.

**Mr Hehir:** I might just add to that. The parliament passed some changes, I think last year, to provide additional options for the commission in relation to—

**Mr Breen:** In terms of infringement notices. There is broader discretion for the general manager in terms of how that disclosure and other obligations are complied with and enforced.

**Senator CASH:** In terms of the new arrangements ensuring that registered organisations, regardless of whether they're employer or employee organisations, use their members' money correctly, as you said, that obligation remains the same. The registered organisations act sets that out. Does that also apply to the new arrangements ensuring that officials of registered organisations are, for example, not using their members' money for personal expenses—again, regardless of whether they are an employer or an employee organisation?

**Mr Breen:** Yes. All of those duties and obligations remain the same.

**Senator CASH:** In terms of the current investigations that are being undertaken by the Registered Organisations Commission, what is the process for how the investigations themselves may transfer?

**Mr Breen:** The arrangement would be that those processes would continue, but any powers, directions or anything that would formerly have been done by the Registered Organisations Commissioner would now be done by the general manager.

**Senator CASH:** Understood. One of the issues that I have been made aware of is some serious allegations in relation to the United Firefighters Union of Australia, the Queensland branch, relating to its credit card usage. My understanding is that the matter is currently being investigated by the Registered Organisations Commission. Is anyone at the table aware of this case?

**Mr Hehir:** No, I'm not aware of this case. It hasn't been raised with me. That's probably a question better put to the ROC.

**Senator CASH:** This is in terms of discussions on the transfer of functions et cetera. I will obviously be pursuing a line of questioning tonight with the Registered Organisations Commission. If there is a current investigation into the Queensland branch of the United Firefighters Union of Australia, relating to credit card usage, this would transfer over to what we'll call the new body?

**Mr Breen:** Yes, that's right.

**Senator CASH:** Minister, are you aware of any investigation by the Registered Organisations Commission into the United Firefighters Union of Australia, Queensland branch?

**Senator Watt:** I was not aware of that, no, until you raised it.

**Senator CASH:** I'm just asking you.

**Senator Watt:** I might have heard something, if you've raised it at previous estimates, but it doesn't bring any recollections to me.

**Senator CASH:** One of the complaints is that Mr John Oliver, who I understand is the state secretary of this union, has been inappropriately using his credit card for personal expenses over a number of years. Again, can I just confirm that is still able to be investigated on behalf of the union members?

**Mr Breen:** The powers and all of the arrangements remain the same. Any investigations or inquiries would continue. Any decisions which would have been made by the Registered Organisations Commissioner would now be made by the General Manager of the Fair Work Commission in that capacity.

**Senator CASH:** I just want to take you through some of the examples of the credit card expenditure that I've been made aware of.

**Senator Watt:** Alleged allegations.

**Senator CASH:** That I've been made aware of.

**Senator Watt:** Yes, but you left out the word 'allegations'.

**Senator CASH:** I was about to say 'allegations'. I was literally about to say 'allegations'.

**Senator Watt:** We should always be careful about airing allegations in public, I think.

**Senator CASH:** Related to this complaint is the allegation that money was expended by Mr Oliver—for example, \$440 at the RM Williams store in Chermside, Queensland, and \$800 at Myer. Minister, if it is unauthorised expenditure by Mr Oliver on behalf of this union, do you consider that to be inappropriate?

**Senator Watt:** I'm not going to comment on allegations.

**Senator CASH:** Do you consider, though, the misuse of union members' funds—

**Senator Watt:** You're alleging that, and you've got a history of alleging things that aren't true.

**CHAIR:** Senator Cash, I appreciate that you can take a line of questioning, but I'm very mindful that they are allegations and also that they're under investigation, as you have alleged. We're not aware of that, but that's what you have alleged. I'm very mindful that, in light of the fact that you're suggesting that these matters or allegations are under investigation, they should be treated as allegations. I also think that there's a question as to the appropriateness of the line of questioning, in light of the fact that there's an investigation underway, if there actually is.

**Senator Watt:** Chair, could I make the point that yesterday, in a different committee, we dealt with matters that were the subject of allegations. I provided a private briefing to that committee about those allegations so that they were not aired in an open hearing, out of respect for the investigations that were underway. That's a slightly different approach to what Senator Cash is pursuing now. It's a matter for her how she decides to run her politics, I guess.

**Senator CASH:** I've just got three more questions in relation to this particular line of questioning.

**CHAIR:** Senator Cash, in light of the fact that there is no suggestion that people are aware of the allegations and the state of play of any investigation, I'm of a mind that we suspend for a moment, to have a conversation amongst the members of the committee.

**Senator CASH:** I've literally got three more questions, and they've got nothing to do with the allegations themselves; they're about the transfer of powers.

**CHAIR:** Thank you.

**Senator CASH:** Discussion was had at the last estimates in relation to the minister's office and whether it is able to look at particular cases and comment on whether they should be pursued, and whether the department has a role in talking about whether cases should be pursued. In terms of the transfer of powers, does the minister have any functions in determining what is or is not transferred over to the department, or is it an automatic transfer?

**Mr Breen:** It's the latter case.

**Senator CASH:** It's automatic; so everything does get transferred.

**Mr Breen:** Yes.

**Senator CASH:** That concludes all the questions I have in relation to that. Could I now go to consultation in relation to the last tranche of industrial relations legislation that went through, and also the announcement by Minister Burke at the National Press Club—I think it was a fortnight ago—about the government's plan to consult on the upcoming tranches of IR legislation. Just going back to the original round of consultation, did the department receive any correspondence or any feedback, whether verbal or written, from any groups that were unhappy with the previous round of consultation?

**Ms James:** We've seen expressed publicly—and, I am sure, privately—some concerns about time frames from a number of stakeholders. This was a process where there were some imperatives around the legislative time frame. I would also note that workplace relations rarely sees universal acclaim or even comfort on the substance or form of consultation. Certainly, we've seen some concerns about time frames and a desire for more time to comment on things. I'll take on notice whether we've received anything formal. I would also note that the minister, in his Press Club speech, acknowledged the challenges of needing to provide this balance. He noted the number of amendments to the bill that he made in the House as a result of consultation. He said that we benefit

from listening to people who are opposed to us, as well as those who agree with us. Certainly, in this next round, we're dealing with some more complex and structural issues, and he has stated that we will be taking more time on, and probably a more targeted approach to, the various measures that he foreshadowed in that Press Club speech.

**Senator CASH:** Again, on the previous round of consultation, could you take on notice to inform us of whether any correspondence was received in relation to feedback on the consultation process.

**Ms James:** Yes.

**Senator CASH:** In terms of the concerns—you are right; they have been raised publicly and we've all read them—what were they in relation to the department's consultation process? You've mentioned that it was the speed of it and the complexity of the legislation. What other concerns, if any, were raised?

**Ms James:** I would look to take that on notice, because a lot of different people have had a lot of different conversations with stakeholders and partners in relation to this process.

**Senator CASH:** Is there a general theme that's been raised?

**Ms James:** I think speed is probably the key one, as I've already mentioned. I also have received feedback directly from a number of stakeholders thanking us for, in what was a very intensive process, the degree of time that the department's officials gave, the fact that they met with anyone and everyone who asked to be met with and the fact that there was a lot of follow-up. I think we should mention both sides. I would take on notice anything more than that, because I'd be going off my memory. Mr Hehir might have something to add.

**Mr Hehir:** Some of the concerns were about the timing for seeing the draft legislation. Again, I think that goes to speed. While I have only worked in this area for approximately five years, I've done two or three of these processes now. In actual fact, the consultation time frames, when the draft legislation was provided, were very similar in both of them. Regarding getting time to look at that draft legislation, in all three of my experiences the time frame has been similar, within days of each other, in terms of its introduction to parliament. There's a piece there about how we provide as much certainty and information and, frankly, get consultation occurring as early as possible, recognising that, as a department, we don't share draft legislation prior to government decision-making.

**Senator CASH:** There is a process.

**Mr Hehir:** We follow those processes carefully.

**Senator CASH:** The concerns were raised publicly, so they are not something that people aren't aware of. Regarding the concerns that were raised and the concerns that you've articulated today that you have had discussions with stakeholders about, are you going to address those concerns in relation to the next round of consultations? They have been announced and you will go through that consultation process shortly. Are you going to address them, to ensure that there is, for want of a better phrase, more and better consultation with stakeholders?

**Ms James:** I think the minister foreshadowed in his Press Club speech that we would be doing just that: that we would be taking a longer period of time; and that the legislation we're talking about is slated for spring introduction. We started it last week or the week before; I can't remember.

**Mr Hehir:** On 8 February, following the minister's announcement at the Press Club, we commenced discussions and consultation. In fact, on a number of these measures, we had already commenced the consultation process. For example, if I were to say 'same job, same pay', I think we've met with over 30 organisations already. That was occurring last year.

**Senator CASH:** I do want to get onto the next round of consultation but, in relation to the previous consultation process, can you remind me whether, before the official COIL process, participants were provided with anything in writing around the proposals being considered, as opposed to just the generic paper?

**Mr Hehir:** There was a range of processes. The consultation started prior to the Jobs and Skills Summit, in which we wrote to a number of stakeholders and asked them for their input on a range of issues; I think we've answered the question in saying that a number of organisations and individuals provided that. There was then the Jobs and Skills Summit and the agreed outcomes from that. At the summit it was announced that we would commence consultations as soon as possible after that, so we commenced those. So we are working against a frame of submissions already provided: the outcomes from the Jobs and Skills Summit and the government's known election commitments. Then, to kick off the process, we started by asking a series of questions focused on trying to tease out some of the issues raised in the outcomes of the Jobs and Skills Summit and particular parties' views. Quite early in the process, parties asked if they could have those questions in writing in advance of the meetings, and of course we agreed to that; we just asked that they be kept confidential.

**Senator CASH:** In terms of the proposals that ultimately found themselves in the legislation—I know the legislation is completely separate; that goes through the COIL process, et cetera—were participants provided with anything in writing so that they could comment on them?

**Mr Hehir:** The frameworks for the discussions were set by two prior pieces of work, including the outcomes from the summit. The summit outcomes included looking at any unnecessary restrictions on single- or multi-employer bargaining, so that was a clear framing for the questions. Was it clear in my mind that there was a proposal around potentially going to multi-employer bargaining? Yes, it was very clear. In terms of the questions, they asked about the particular range of bargaining frameworks within the act already and focused on whether they were suitable or not. Do I think it was clear that we were talking about multi-enterprise bargaining? Yes. Do I think it was clear that we were looking at each of those measures? Yes.

**Senator CASH:** I'll jump forward now to where we are. The consultation, as you said, commenced on 8 February. A number of people have made inquiries of me and, obviously, I can't answer them because I'm not the government. In the minister's National Press Club speech he referred to the two tranches of workplace relations, one in the first half of the year and one in the second. The queries that are being asked are: are the consultation processes separate for the first tranche and then for the second tranche, or are they being held concurrently? There seems to be confusion in terms of what that process is going forward.

**Mrs Wallbank:** That's a good question. I haven't had that question, which is interesting, because I have my name on most things to do with consultations; I get lots of calls. The way that it's being run is that the first round of consultation, which is occurring right now, is for the measures that are going forward in the first part of the year.

**Senator CASH:** Could you take me through those measures?

**Mrs Wallbank:** Yes. There are seven of those measures and they are: inserting a right to superannuation in the National Employment Standards; reforming the four-yearly review of superannuation default fund provisions; clarifying the application of Fair Work Act protections to temporary migrant workers; providing stronger access to unpaid parental leave so that families can share work and care responsibilities; clarifying that when a workplace determination comes into effect the enterprise agreement will no longer operate; making pay deductions for authorised purposes and an easier process for workers and businesses; and the last one, providing casual workers in the black coal mining industry with the same access to long service leave entitlements as their permanent counterparts.

**Senator CASH:** So consultation has commenced on that tranche?

**Mrs Wallbank:** That's correct.

**Senator CASH:** In terms of the second tranche, when is consultation commencing on that?

**Mrs Wallbank:** Just to finish off the first tranche, because that's coming up now, we have sent out letters to a number of stakeholders, seeking or inviting written feedback, if they wish to do that.

**Senator CASH:** Are you able to give the committee a copy of the letter that has been sent out and a list of the stakeholders that it has been sent out to? I'm happy for you to take that on notice.

**Ms J Anderson:** We can take that on notice.

**Mrs Wallbank:** Yes. So that's happening. Also, the department is meeting with several stakeholders to talk through those seven measures.

**Senator CASH:** Again, the same question: are you able to provide a list of the stakeholders that the department has met with and will meet with?

**Mrs Wallbank:** There is a discrete, specific consultation process. So that's those measures; we're talking to people about those. Then, separately, there is the second tranche, if you want to put it that way, so the measures that will be considered for interaction in the second part of the year; that was set out in the Press Club speech. Also, as Mr Hehir has just mentioned, some of the consultation on those more complex measures has started—so things like 'same job, same pay'. But, similar to the process we're going through now, there will be a specific set of consultations to go through all the measures that are being considered for that process.

**Senator CASH:** When do you anticipate that will formally commence? I understand that the consultation has already commenced on some, but what about the formal consultation process for the second tranche?

**Mrs Wallbank:** Yes, shortly.

**Senator CASH:** I love 'shortly'.

**Ms James:** The ones we've started are more complex and go to more structural and, arguably, longstanding issues in the system—the minister would say—'closing the loopholes'. The team has sensibly chosen to start having those conversations earlier. That is not to be dismissive of the complexity of the others, but these are issues that we know—'same job, same pay' and employee-like; that is the shorthand that is used to describe them—have been on people's minds, so we wanted to get going early on that late last year.

**Senator CASH:** I will continue the line of questioning on consultation when we return after lunch.

**Senator WATERS:** Thanks for joining us today. I would like some answers in relation to the implementation of recommendation 49 of the Jenkins *Respect@Work* report regarding working women's centres. At the last estimates we discussed the working women's centres, and you advised that consultation was about to begin on designing a national network of working women's centres, as per recommendation 49. Where is that at?

**Ms Mathews:** Consultation has commenced. We have had a first round of formal consultation with a wide number of stakeholders; I am happy to run through the list, if that would be useful. That was more open-ended consultation, seeking a variety of views on what a national service delivery would look like and what a governance and funding model might look like. We have received that feedback and we anticipate a second round of consultation in the near future with a specific proposal that we would seek views on.

**Senator WATERS:** You have a second round of consultation coming up?

**Ms Mathews:** In the near future. We are looking to develop a proposed model, which we would seek feedback on before putting a model to government for consideration.

**Senator WATERS:** Whom have you consulted in that first round and whom are you intending to consult in the second round, once you have a proposed model?

**Ms James:** I'll get my colleague.

**Mrs Yanchenko:** I have two lists for you. One has every single stakeholder, and I'm happy to otherwise group them up for you. We met with the existing working women's centres; the state and territory offices for women or their equivalents; unions, so both the ACTU and the state and territory trades and labour councils; community legal services, including CLCs Australia, the Women's Legal Services Australia and National Legal Aid; and the national women's alliances, so Harmony Alliance, National Women's Safety Alliance and YWCA Canberra. We also met with stakeholders across the federal government and with their counterparts in the states and territories.

**Senator WATERS:** Who will you speak to for the second round?

**Mrs Yanchenko:** On that second round, we are looking at speaking with the same group of stakeholders again.

**Senator WATERS:** Have you developed a process, operational models or minimum standards to identify which organisations will receive funding, or is that what you are doing in this second round?

**Ms Mathews:** That will form the second round of discussions. We will have a proposed model on how centres would be funded, and that will be the subject of consultation. But we have also had some principles from the start which would form the basis of both consultations.

**Senator WATERS:** Have you modified the principles? Has anything changed after the first round of consultation, whether that be the principles or your preferred model?

**Mrs Yanchenko:** Yes. We have obviously received a broad range of feedback in the first round, and we are considering where that feedback can be adopted in a model moving forward. I am not in a position at the moment to say whether that has changed—that's a matter for the government—but we have absolutely heard the feedback that has been presented to us.

**Senator WATERS:** In the brief time we have left, would you mind letting me know the main points of that feedback?

**Mrs Yanchenko:** Certainly. Some of the things we discussed with stakeholders were whether a national coordinating or umbrella body would be appropriate, though keeping in mind that we wanted to make sure that as much money was available for frontline service delivery as possible; who should provide the funding and whether that should be direct from the Commonwealth or via, say, the states and territories; and how we should allocate funding. That would be, for example, if it were appropriate for every jurisdiction to receive a sort of base-level funding, with a top-up based on various factors to do with need. Another example would be how the working women's centres appropriately fit in with the ecosystem, if you like, of services in this space, so thinking about their role with respect to other services: should they just provide the front-line service delivery after an incident has taken place, or should they look at preventive activities as well?

**Senator WATERS:** That's useful; thank you. Has the decision been taken yet to guarantee funding for the existing working women's centres?

**Mrs Yanchenko:** Existing centres have funding secured from the Commonwealth up until the end of calendar year 2024, but further decisions about the funding we are consulting on at the moment are still a matter for government.

**Senator WATERS:** Does that roll into the decision about the new shape of the potential national working women's centres?

**Mrs Yanchenko:** Yes, that's right.

**Senator WATERS:** Can you remind me about the funding? Is that the \$24 million?

**Mrs Yanchenko:** The funding from the election commitment is \$32 million over four years, which equates to \$8 million over each year.

**Senator WATERS:** And that is until the end of 2024?

**Mrs Yanchenko:** It's ongoing funding, as per the election commitment.

**Senator WATERS:** It's ongoing, but it's also going to be revised at the end of 2024, I understand?

**Mrs Yanchenko:** Perhaps I'm not being clear. The three existing centres already have funding secured through other mechanisms until the end of calendar year 2024, and separately we're consulting on recommendation 49 funding which equates to \$8 million per year ongoing, and that's where we're consulting at the moment.

**Senator WATERS:** Thank you. Thanks for your time.

**CHAIR:** We'll now suspend and we'll return with outcome 3 and workplace relations.

#### **Proceedings suspended from 13:15 to 14:16**

**CHAIR:** We'll recommence outcome 3.

**Senator CASH:** I just need to ask some questions in relation to the consultation. It started in relation to the first tranche. It will commence in relation to the second tranche shortly. Just in terms of the groups that are being consulted with—I think I've asked you to provide me on notice who they are. Are the groups expected to be the same groups? Are they going to expand? If someone says, 'I'd love to be part of the consultation process; is that going to be possible for me?', is that something that you can accommodate?

**Mr Hehir:** Certainly we anticipate that all the key stakeholders will be engaged as well, but we're also identifying stakeholders for particular areas. So we're not just relying on the usual stakeholders; we're thinking broadly about who else could be consulted. I think the practice we had last time, and I might pass to Angela for this bit, was that if anyone wants to, want to, we're very happy, and we met with a number of individual corporates, for example, who wanted to talk about their views on it. I'll pass to Angela for the actual mechanics.

**Mrs Wallbank:** Probably the simple way of looking at it is we're starting with the list of everyone we consulted with last time and then expanding on it, and of course, if anyone in particular wants to meet with us, we will, definitely accommodate that.

**Senator CASH:** The reason I ask is that a number of people have contacted me saying they weren't part of it last time; 'How do I become part of the next round of consultation?'. In particular because in the second tranche, depending on the nature of your organisation, something may affect you, something actually may be completely irrelevant to you. So if they did want to actually put themselves forward to participate in the consultation process, how do they do that?

**Mrs Wallbank:** They could call me—

**Senator CASH:** Do not give everyone your number—a generic email address at best.

**Mrs Wallbank:** Don't worry, I'm not about to read out my number. Yes, we do have an email address at dewr.gov.au. But we also have wrconsultations@dewr.gov.au. That will come to me and my team and we can organise consultations that way.

**Senator CASH:** Thank you for that. Once I've reviewed the *Hansard* I might put some additional questions on notice just in relation to the process itself. But that's all I have in relation to the consultation process itself. Could I now jump to a different topic: the recent announcement of the appointment of the new president of the Fair Work Commission. Ms James, can you just take me through what the appointment process was?

**Ms James:** I'll ask Mr Hehir to do that.

**Mr Hehir:** Normally the process we follow is that we look at the act and identify whether a person meets the qualification requirements within the act. But I might pass to Mr Breen for more detail.

**Senator CASH:** What I'm interested in in particular is: was this a merit based selection process? Was it merely a cabinet appointment? Which actual process was followed? Was a merit based selection process undertaken and then a list of candidates was provided to the minister to choose from, et cetera?

**Mr Hehir:** There's no requirement in the act for a merit based process. It's a process where the minimum requirements are set out. My memory, and Adrian might correct me on this, is the president and vice president have certain requirements in terms of the qualifications, et cetera. Deputy presidents have a different one and commissioners have a third set. I'd note that President Hatcher had previously been a VP, so probably had already been determined to meet those requirements.

**Senator CASH:** Who else could have been determined to meet those requirements just in terms of the criteria themselves? In fact, if you have the criteria, it would be great if you could read them out.

**Mr Breen:** Certainly, Senator, for you to play along. The requirements for a president or a vice president are that the nominee is or has been a judge of a court created by the parliament or has knowledge or experience in a workplace relevant area.

**Senator CASH:** Sorry—knowledge or experience in a relevant industrial relations area?

**Mr Breen:** Workplace relations, business, industry, commerce—and the same requirements for both the president and the vice president.

**Senator CASH:** In terms of the process, did the department, or did the government request the department, to put together a list of qualified people?

**Ms James:** That's not something we did in this case, Senator. That's not something we were asked to do.

**Senator CASH:** Minister, given the government's commitments in particular to the review of public sector board appointments et cetera—the comments by Minister Gallagher in her speech of, I think, 5 February this month:

This is really in the culture of 'jobs for mates'. We want to change the appointments—really important appointments across the APS often well paid as well—that require that people actually get appointed for what they know, not who they know...

Is there a reason why the government or the minister did not ask the department to put together a list of qualified persons to consider?

**Senator Watt:** Are you suggesting that the incoming President Hatcher is not a meritorious appointment?

**Senator CASH:** I am asking you a question. Given the comments of the government about selection processes and your alleged commitment to integrity and transparency, what was the reason that the minister did not request a list of candidates to choose from?

**Senator Watt:** Before I answer that, I assume you're aware that now President Hatcher SC had been a vice president of the Fair Work Commission since 2013 and was the acting president after the president retired, and obviously has a long and distinguished legal career. Neither you nor I were ever made senior counsel, Senator Cash, but Mr Hatcher was. And to answer your question, the minister had a strong view that the President of the Fair Work Commission should be an existing member of the commission with considerable seniority and experience. And I would put it to you that someone who was the vice president of the Fair Work Commission for 10 years and was the acting president of the commission is someone with considerable seniority and experience.

**Senator CASH:** Minister Watt, I am not going to dispute whether the president who has now been appointed is qualified. He is clearly qualified for the position. What I am interrogating is that the government speaks on one side of its mouth in relation to criticising the former government about the way it appointed people. You then state that you want to be transparent in your process, and I'm trying to work out how that transparency did not involve a list of persons qualified to do the job. But to go to your words 'the minister's view was'—so, in other words, the minister made the appointment. That's all I need to know.

**Senator Watt:** Well, it's a matter of public record.

**Senator CASH:** The minister made the appointment.

**Senator Watt:** It's a little hard to take you seriously on this, Senator Cash, when as the Attorney-General you appointed six former Liberal ministers, MPs and staffers to the AAT just before the election. And that's before we go back to your other record.

**Senator CASH:** Minister Watt, I'm not going to get into a slugging match with you. We actually could go serve to serve on this, quite frankly.

**Senator Watt:** I don't think anyone could possibly compete with your government's record on the AAT.

**Senator CASH:** This is your appointment. There was no process other than that the minister determined that the person was qualified—and they were; I'm not going to argue with that. Ms James, what then happened? Did the department provide a brief to the minister? Was the department asked to actually provide any information to the minister in relation to this, prepare a brief for cabinet on the appointment?

**Mr Breen:** That is the case. Information was provided to the minister to support the progress of that appointment.

**Senator CASH:** Did that mean that the department made inquiries into the background of the particular person?

**Mr Breen:** There's a range of processes and checks that are undertaken as part of consideration that come before cabinet and other processes. Those processes were undertaken in the normal way.

**Senator Watt:** Senator Cash, I can also add that I'm advised that the minister consulted with the department, businesses and unions before making the appointment.

**Senator CASH:** Could I have a list of people consulted with?

**Senator Watt:** I don't have that. I'm happy to provide you with whatever extra information I can.

**Senator CASH:** You've just been advised by the secretary that the minister consulted with the department, businesses and unions. You've decided to put that on the record. So my request is: in relation to the statement on the information the secretary just gave you, is it possible, please, to get a list of who was consulted with?

**Senator Watt:** I'm happy to provide you with information that supports my statement. I might also point out that Mr Innes Willox, the head of the Ai Group national employer association—I'm not sure if you saw his statement on 9 February:

Ai Group welcomes the appointment of Adam Hatcher as President of the Fair Work Commission...His deep experience, work ethic and legal intellect are respected by all corners.

Again, Senator Cash, I'm not sure that I've seen anyone say that about you or me, but they said it about Mr Hatcher.

We are sure that he will continue to make a strong contribution in his new role and look forward to engaging with him. We wish him well.

So that's the head of one of the peak employer groups of the country seeming to be pretty strongly in support of that appointment.

**Senator CASH:** And again, do you hear me criticising whether the Fair Work Commission president is actually qualified for the role?

**Senator Watt:** I think you're only asking those questions because you're trying to do so.

**CHAIR:** You're very defensive, Senator.

**Senator Watt:** No—I don't know Mr Hatcher, but everything I've seen about him makes him look like an extremely strong appointee.

**Senator CASH:** Are you aware, or was this raised with the minister, that Mr Hatcher, along with his extensive resume, and he has an extensive resume, ran for the Labor preselection and was in fact preselected as the Labor candidate for McKellar?

**Senator Watt:** No, I was not aware of that.

**Senator CASH:** Was that raised as part of the due diligence process in relation to Mr Hatcher?

**Senator Watt:** I don't know the answer to that.

**Senator CASH:** Could you take that on notice for me?

**Senator Watt:** Sure

**Senator CASH:** Ms James, did you raise this with the minister?

**Ms James:** Not that specifically, no.

**Senator CASH:** When you say 'not that specifically'—what did you raise with the minister?

**Ms James:** We discussed Vice President Hatcher as an obvious candidate for the role, noting that he's an experienced and eminent senior member of the commission. I think I recall discussing, noting Minister Burke's principles, as Minister Watt just espoused, that he was looking to appoint a senior person from the commission, that the field of potential candidates when taking into account those principles is quite small and known. And so

that was the nature of our discussion. The due diligence process that goes into the details of people's CVs and their activities in the past is something that is dealt with as a matter of course in our appointments area. Mr Breen might wish to elaborate on that, noting that all of these activities inform a cabinet-in-confidence appointments process, so we might be a little circumspect about the specifics around the details provided to cabinet in relation to this appointment.

**Mr Breen:** As the secretary intimated, a number of things are looked at in terms of that preparation of documentation for these sorts of considerations before cabinet. They might go into questions around criminal offences or bankruptcy and these kinds of things. It's a well-established process. I'm not aware of political backgrounds being part of that per se; it's more that other category of things that might be relevant.

**Senator CASH:** Minister, can you confirm whether Minister Burke was aware that Mr Hatcher was in fact a former Labor candidate for Mackellar?

**Senator Watt:** I can't confirm that, no.

**Senator CASH:** Could you confirm?

**Senator Watt:** Sure.

**Senator CASH:** Thank you very much.

**Senator Watt:** I can also confirm that he'd been the vice president of the Fair Work Commission for 10 years and I would have thought his merit is beyond doubt.

**Senator CASH:** Again, I'm not disputing the merit. I'm disputing the government spruiking from the highest rooftop in relation to the way it is going to undertake appointments going forward. This, as you know, is a question about process. I am not disputing the qualifications of the field.

**Senator Watt:** What we've said is that we, unlike your government, which had a revolving door of Liberal appointees stacked into the AAT, some of which you did as the Attorney-General—unlike that practice—we're appointing people on merit. And I would have thought that someone who'd been the vice president of the Fair Work Commission, the acting president, a senior counsel, pretty much demonstrates their merit. It's a bit different to some of the appointees that you used to appoint.

**Senator CASH:** You keep mentioning an association with the Liberal Party as enough to ensure it is clearly an appointment based on not on merit. What I am asking here and pointing out is that, despite your protestations, you have chosen—or the minister, because we've actually determined this was a recommendation of the minister, who had his own views. Despite the government statements, in particular prior to the election and post the election, as to how these processes would work—this is, and I think you would agree, given both of our backgrounds, one of the most important positions in the country. So we've established that, despite his qualifications, he is a former Labor Party candidate. To be a Labor Party candidate, is it a requirement to be a member of the Labor Party?

**Senator Watt:** When do you say he was the candidate?

**Senator CASH:** 1990 is my understanding.

**Senator Watt:** On my math, 33 years ago—

**Senator CASH:** An association with a particular political party can continue.

**Senator Watt:** You're asking me what the rules of the Australian Labor Party were 33 years ago. I'm sorry but I'm not that good.

**Senator CASH:** That's fine. I will ask you, then: was he a member of the Australian Labor Party back in 1990? Again, this goes to process. You continually mention the mere fact that there's a connection to the Liberal Party is enough to knock you out.

**Senator Watt:** What I'm saying is that seemed to be the merit criterion for appointments by you and your former government, whereas what we've got here—

**Senator CASH:** I'm not going to engage in a slanging match with you.

**Senator Watt:** is someone who was the vice president of the Fair Work Commission appointed to the presidency. I would have thought there's a pretty big difference, and I think most people would see that.

**Senator CASH:** Given it was raised in the media post his appointment, were you or was the minister aware that now President Hatcher has a very close relative who was actually the chief of staff to Minister Burke from July 2019 until July 2022?

**Senator Watt:** No, I was not aware of that.

**Senator CASH:** Was Minister Burke aware of that? Can you take that on notice?

**Senator Watt:** I'm happy to take that on notice.

**Senator CASH:** Was the department aware of any close association with now President Hatcher of a former staff member of Minister Burke's office between July 2019 and July 2022?

**Ms James:** Senator I wasn't aware of that and I'm not sure that it I would have seen it to be relevant.

**Senator CASH:** I'm just asking if the department was aware.

**Ms James:** I appreciate that. We'll take it on notice, because I can speak for myself but obviously there are other people involved in the process.

**Senator CASH:** Just in terms of disclosures of conflicts of interest in terms of appointments, and governments do have those processes in place for obvious reasons, did Minister Burke excuse himself from cabinet when recommending the appointment—or in fact if he recommended it, we've got a problem—or did he ever raise that a former staff member of his, a very recent former staff member, was in fact closely related to his appointment?

**Senator Watt:** I don't talk about what happens in cabinet, and nor have any ministers ever, but I'm not really sure what conflict of interest you're suggesting occurred here.

**Senator CASH:** I'm asking questions about the process of—

**Senator Watt:** You're alleging that there was a conflict.

**Senator CASH:** No, I'm asking questions about the process.

**Senator Watt:** You're asking whether a conflict of interest was ever declared. I don't know what conflict of interest would have needed to be declared.

**Senator CASH:** I think you and I both know what a conflict of interest is.

**Senator Watt:** What does closely related mean? Third cousin or step-nephew?

**Senator CASH:** From the media, my understanding is the allegation was that it was his sister. That is my understanding from the media reporting.

**Senator Watt:** Mr Hatcher's sister.

**Senator CASH:** Yes, that is my understanding from the media reporting.

**Senator Watt:** That's the first I've heard of it.

**Senator CASH:** That's fine. I don't have an issue with that at all. That's the first you've heard of it. Did the department ever have the minister raise this with the department?

**Ms James:** We'll take that on notice, Senator.

**Senator CASH:** You don't know whether that was raised?

**Ms James:** I think I've already answered. I think that's very comparable to the earlier question you just put to me.

**Senator CASH:** Okay. I may have to come back to this, Chair, but I think my time is up according to the instruction.

**Senator Watt:** Can I just point out that you've launched a bit of a character assassination on the new president of the Fair Work Commission and—was it his sister?

**Senator CASH:** That is the media reporting. And, Minister Watt, no, I have not. I have asked questions in relation to the process. I have not disputed the qualifications of the now commissioner. My point is, every time you open your mouth in relation to an appointment, the mere association with a political party to you says it must not be merit based.

**Senator Watt:** No. I asked you many questions about your political appointments to the AAT and other bodies that you were responsible for. And the issue there was that I could never understand what other meritorious criteria this stream of Liberal Party members, staffers, donors—whereas what we're talking about here is someone who's been the vice president of the Fair Work Commission for 10 years.

**Senator CASH:** Just so that I'm not besmirching previous appointments, the majority were actually qualified legal practitioners.

**Senator Watt:** You are well aware that a number of the people you appointed, the AAT were not—

**Senator O'SULLIVAN:** Minister, there are multiple deputies. There are two vice presidents. And yet there's only been one that's been—

**Senator Watt:** Well, there's only one that can be chosen; there's only one that can be appointed. You can't have co-presidents.

**Senator O'SULLIVAN:** But there's no selection. That's the point.

**Senator Watt:** You seem to have an issue with someone who the Ai Group, one of the peak employer groups in the country, said has deep experience, work ethic and legal intellect that is respected by all corners.

**Senator O'SULLIVAN:** I'm not disputing that.

**Senator CASH:** Again, Senator Watt, you are verballing us. That, as you and I both know, is not the issue being raised. The issue is statements made by the government prior to the election and statements made by government ministers post the election in relation to the integrity and transparency of government appointments. We have established that this was a ministerial appointment by Minister Burke. Only one person was considered and, despite their qualifications, they are a former Labor Party candidate and they are related to a former adviser in Minister Burke's office. I am merely going to the process.

**Senator Watt:** So you support his appointment but you don't like the way it happened?

**Senator CASH:** Again, the good news for me is I'm on this side of the table. Chair, how much time do I have left?

**CHAIR:** I'll be frank with you: I am enjoying this banter, so I should really stop it and pass it on to somebody else and we'll come back to you.

**Senator GROGAN:** Just to qualify a few points here, Mr Adam Hatcher was announced on 9 February this year following a 10-year stint at the commission, yes?

**Senator Watt:** That's certainly the advice I've got, Senator Grogan, but the officials might be able to elaborate.

**Senator GROGAN:** What was the minister looking for? There's been a lot of conversation, and my understanding, and I'd like some confirmation, is that the minister has been looking for a rebalance of the commission but also looking for the kinds of skills that can bring forward the agenda that was clearly put forward at the election and then legislated last year, the first elements. Can you just step us through what that rebalance would look like? Why is Hatcher the right president and what is the rebalance of the commission? What is the purpose?

**Senator Watt:** I'd probably separate those two points. My understanding from the advice I've received is that when it came to appointing now President Hatcher, as I said earlier, the minister had a strong view that the president of the Fair Work Commission—as Senator Cash, acknowledges, a very important role—should be an existing member of the commission with considerable seniority and experience. And it's a long time since I've appeared in the Fair Work Commission, but I don't think that there'd be many people with more seniority and experience than one of the vice presidents of the Fair Work Commission, especially someone who'd been in the role for 10 years. And I think it's not surprising that appointment was welcomed by the Ai Group given that, as again I'm told, the minister consulted with business groups and unions before making the appointment.

When it comes to rebalancing the commission, as a separate issue, I think it's a matter of public record that the former government shamelessly stacked the Fair Work Commission with people from an employer background. Of course there should be people from an employer background on the Fair Work Commission. But I would have thought most people accept that workers and their unions deserve an equal voice at the table, but that's not what happened under the former government. Of the 27 appointments the former government made to the Fair Work Commission, 25 came from an employer background. And what that means is that if you look at the current membership of the Fair Work Commission, you see that around 75 per cent of the commission's current members have an employer background. Now, I don't think that anyone could argue that is a level playing field or balanced. So for that reason, it is the government's intention to rebalance the commission and make sure that it genuinely is an independent umpire rather than an umpire that always favours the same side or always comes from the same side.

**Senator GROGAN:** A very good point, Minister, thank you. There are quite alarming figures there: 75 per cent weighted towards employers.

**Senator Watt:** I was surprised myself.

**Senator GROGAN:** I'm keen to understand a little more about what the gender balance might be at the Fair Work Commission. What does that look like?

**Senator Watt:** I don't know if I've got those figures, but the department might.

**Mr Breen:** We might have to take that on notice, Senator. I'll look through the papers as we go.

**Senator Watt:** Sorry, I think I might have that. I understand that of the 40 current members of the Fair Work Commission, there are 16 women, so obviously below 50 per cent.

**Senator GROGAN:** And it is 75 per cent employer weighted. You have talked us through a bit about the significant number of people who've been placed on the Fair Work Commission who are either ex-MPs or ex Liberal staffers. Would you say that those appointments have turned out to be particularly effective?

**Senator Watt:** Well, I think there's been some notable behaviour from some of the appointees to the Fair Work Commission by the former government. I think some of these have been discussed at this committee previously. Mr Boyce, who placed scantily clad figurines and a life-sized cut-out of Donald Trump in his chambers, installed security cameras in his chambers without the consent of the Fair Work Commission. There was another commissioner who called mandatory vaccinations medical apartheid and has had to undertake professional conduct training, been excluded from appeal cases and disqualified herself from workplace job cases on grounds of bias. And then of course there's former Liberal minister Sophie Mirabella, and that doesn't really need any explanation, although she did once say that John Howard's Work Choices was 'big but fair' and 'significant and necessary'. I would have thought that's not exactly the kind of balanced view that people would be looking for in the Fair Work Commission, but apparently that was what you needed under the former government.

**Senator GROGAN:** It's great to hear that balance is being redressed and it's great to hear that Mr Hatcher has been appointed to that position. Obviously there's a lot to be done in this space. With the secure jobs, better pay act passing the parliament last December, can the department or you, Minister, step us through what role the commission is going to play in the expanded powers and jurisdiction that they will now have?

**Senator Watt:** Why don't I start, Senator Grogan, and then get the officials to fill in the detail. I've omitted to note that all three of those commissioners were not just appointees of the former government; they were appointees of then Minister Cash. I'm sure she remembered that. As a result of the new legislation that was passed late last year, despite the opposition's opposition, the secure jobs better pay bill, the Fair Work Commission has been provided with enhanced powers in a range of sectors. It's probably best if I get the officials to go through the detail of that.

**Ms Sheehan:** There are a number of areas where the commission will have a role in implementing the secure jobs, better pay act. Key functions that were conferred on the commission would relate to the establishment of two new expert panels, one in relation to pay equity and the other in relation to the care and community sector. So they established new expert panels and funding was provided to the commission for additional members to undertake that work. We have officials that can go through the detail of those further if you'd like. There are also functions in relation to enterprise bargaining, assisting parties with that process. For example, at the moment the commission is preparing a statement of principles to set out what bargaining parties essentially need to do to reach genuine agreement when they're in the bargaining process. There are a range of reforms in that act, ranging from gender equity issues to enterprise bargaining.

**Senator GROGAN:** I guess what I'm really looking for is what the significant changes are from where the commission was to where the commission needs to be and what the critical elements are that are different?

**Mr Hehir:** I will take that at a high level and we will see if Ms Sheehan's colleagues can join us as well. One of the major focuses that came through, and Ms Sheehan's referred to part of this, is a very strong focus on gender equity. The panels that Ms Sheehan referred to are specifically tasked with looking at sectors—one of them is looking at sectors where women are a significant part, the majority part of the workforce in terms of the care sector. You will have seen recently that there's been an interim decision from the Fair Work Commission in relation to one of the care sectors, the aged care sector, recommending a 15 per cent increase in their remuneration. In addition to that, there are also changes made to how the commission considers fair work or work of equal value, and indeed how it undertakes its work value processes. All of that was a very strong focus on trying to improve pay and outcomes for women more broadly. In addition to that there were changes around sexual harassment that were included under the responsibility of the Fair Work Commission. So there is quite a strong focus on that. In addition to that, there were changes in relation to secure work. That was included within the objects of the act. So that's now a factor that the commission will look at in terms of a range of its decisions. So there was a focus on secure work and trying to improve the processes the commission uses to influence that, but also a very strong focus on gender. I might see if Mr Manning has anything to add.

**Mr Manning:** In addition to the areas outlined by Ms Sheehan and Mr Hehir, the commission now has a role in relation to resolving disputes around requests for flexible work, so they can be arbitrated in the commission. Also—I think there was an amendment moved during the debate—there is a similar role in relation to disputes

around unpaid parental leave and extensions of that as well. In addition to the members that Ms Sheehan outlined, there were two members appointed to undertake that prohibition on sexual harassment jurisdiction—

**Mr Hehir:** Funded, not appointed.

**Mr Manning:** Sorry, funded. And there were also some in relation to assisting small business in relation to bargaining. Those were funded as well.

**Mr Hehir:** There were a range of other measures. Probably one of the more significant changes was an increase in arbitration and also a change in how participants who are seeking to undertake industrial action—the processes they have to follow. As part of that, rather than just allowing industrial action ballots to occur, the participants are now required to front the bench to actually see whether the bench can mediate a non-industrial-action outcome. And if you don't show, you can't participate in the industrial action. So there's been a range of measures put in place—arbitration in a number of places, as well as the very strong gender and secure jobs focus.

**Senator GROGAN:** Thank you. I think it's good to have on the record the elements of that change, because it does really play into the need to rebalance the commission in terms of the integrity of the institution into the future.

**CHAIR:** I will just indicate that 3.1, other workplace support, will probably go until at least the afternoon tea break and probably afterwards. I will now go to Senator Pocock.

**Senator Watt:** Very briefly—sorry to interrupt. In answer to some of the issues Senator Cash was raising, I've been advised that Minister Burke has previously put some information on the record about Mr Hatcher. Given Senator Cash has queried and suggested that there's some kind of conflict of interest here, I thought it might be worth my putting this on the record here as well. I'm advised that Mr Hatcher is the brother of a former staff member of Minister Burke. He wasn't then the minister. That staff member no longer works for Mr Burke. Mr Hatcher and Mr Burke have never had a conversation with each other prior to Mr Burke becoming the minister, although it's quite possible they would have met at some point. Of course if there hadn't been a change of government the vacancy of the president would have gone to someone from the employer side, given that those are the only people who ever got appointed by the former government. When Minister Burke consulted business organisations about this vacancy they agreed that if it was going to become someone from an employee background then Mr Hatcher was the pre-eminent candidate. Mr Burke took a view that the presidency should not go to an outsider, someone outside the commission, and should be someone already senior within the commission. And as I've said several times, Mr Hatcher was the vice president. I understand that's already been in the media but it might assist Senator Cash to understand that background.

**CHAIR:** Thank you. I've had a few disagreements with Australian Industry Group and I know that they have disagreements with the Labor Party on a regular basis. They have independently made a series of comments on the public record about endorsing Mr Hatcher as an appropriate and transparent and independent voice in the commission. So hopefully that brings the matter to an end.

**Senator BARBARA POCOCK:** I find the drawing out of family relationships in relation to the appointment a mystery. You could infer absolutely nothing about my politics or my family's politics from my relationships with my siblings. We're all very different. I think the expectation in public services is that you behave ethically and keep what needs to be in one box separate from another. So thanks for clarifying that, but it is mysterious to me. It is good to see everybody on the other side of the big industrial relations flurry at the end of last year—good to see you all still standing. I wanted to ask some questions about the appointment processes for the other panels and the new commissioners and where that process is up to.

**Ms Sheehan:** There was a public expression of interest process that was advertised on 21 December seeking expressions of interest for commissioners, deputy commissioners and vice presidents and including the expert panel members. That closed on 20 January. Those expressions of interest that were received are currently under consideration.

**Senator BARBARA POCOCK:** And how many appointments do you expect to make, or is that hard to pick, given that some will be part time?

**Mr Hehir:** Sorry to be technical. The appointments are technically made by the Governor-General, or the government, if you prefer. So normally the role the department plays is to assess the names against the criteria set out in the act. Then we would follow normal processes to support a decision through to cabinet. So we can talk about generalities without necessarily talking about the detail of the process, given that it actually has to go through.

**Senator BARBARA POCOCK:** I understand that. How many appointments are you looking at?

**Mr Hehir:** I think the advice I've provided to this committee before is that there were approximately 44 funded positions prior to the additional positions funded in the last budget. The additional positions funded in the last budget would bring that to 52. With a number of retirements, we're probably looking in excess of 10.

**Senator BARBARA POCOCK:** Ten or so new appointments?

**Mr Hehir:** That would be my current—

**Senator BARBARA POCOCK:** And do you expect to shift the gender balance overall on the appointments, if you're at 40 per cent at the moment?

**Mr Hehir:** That would be up to the government.

**Senator BARBARA POCOCK:** It's not a priority in the process?

**Mr Hehir:** We look at the criteria set out in the act. At this point, there is no requirement in the act for any particular factors outside of the qualifications set out in the relevant section. So it's not our role. Whether the minister or the government has set a view about that, I'm not aware.

**Senator BARBARA POCOCK:** Have you given thought to the way in which the two specialty panels, pay equity and care and community work, will operate? Will they initiate inquiries on their own effort or will they be responding to a particular query? How will their work evolve?

**Mr Breen:** That would primarily be a matter for the Fair Work Commission in terms of how those panels operate. That's the key aspect. There's a range of powers and functions set out in the legislation, but subject to that.

**Mr Hehir:** That's correct. However, funding was also provided to enable an amount of research. So we'd certainly anticipate, given the processes the commission have used, that they would undertake research and that they would use the panels to examine the outcome of that research. We also anticipate that there would be applications, so there'd be both a reactive and a proactive—

**Senator BARBARA POCOCK:** So you anticipate that perhaps the government might itself initiate reviews of classification structures or the equity of pay in the care sector, for example?

**Mr Hehir:** We'd probably expect more proponents to do that rather than the government. The government would participate if invited; that would be the normal process. But we'd anticipate that the proponents would come forward and seek to initiate an action within the commission.

**Ms James:** Senator, the new Fair Work Commission president, who we've just been talking about at length, will no doubt have views about how to go about fulfilling these new and important functions the government has bestowed upon them. The Fair Work Commission is actually giving evidence after us and so you may wish to ask them about what administrative things they've put in place to prepare for this, because that, I think, would give you a good indication of their plans, of the sort of work program that they expect.

**Senator BARBARA POCOCK:** Thank you, I will do that.

**Mr Manning:** They have put out a statement.

**Ms T Williams:** They have put out a statement. Then acting President Hatcher put out a statement on 3 February just outlining how they would look at matters currently on foot in terms of the new requirements of the expert panel and also saying that they'll be looking to engage in a research project on occupational segregation and gender undervaluation, which will help contribute towards the identification of priority industries and occupations and underpin any future review of awards and support the commission's ongoing capacity to determine equal remuneration and work value matters.

**Senator BARBARA POCOCK:** Thank you. Sorry, I missed that statement. I want to come to research underway in the department looking to a second tranche of workplace relations legislation, girding your loins for that. Can you fill me in on what kind of research or policy work the department has underway or has undertaken to inform the second IR bill scheduled for the latter part of the year? I'm thinking of regulation of the gig economy, reducing wage theft, reducing use of casuals, reducing use of labour hire or any other elements of legislation, all of which were part of Labor Party policy.

**Mr Manning:** Generally speaking, Senator, for those matters, many of which—perhaps nearly all of the ones you mentioned—are election commitments, the department has given advice to the minister on how to implement them. Some of them would have also been subject to consideration by cabinet in terms of options and relative prioritisation. So that work is ongoing. For some of them, as was touched on earlier, we did commence general rounds of consultations. For example, with the employee-like and some of the related measures in relation to unfair contracts and the road transport industry, we have conducted consultations. We've consulted about 60

people or organisations in relation to employee-like, and there was a roundtable on road safety that about 24 people or organisations participated in. There's a bit of overlap between those two. They are very much general consultations to understand people's perspectives on the issues—for example, what types of relationships should be or could be subject to regulation? If so, what types of entitlements? How should the Fair Work Commission, if it was given that jurisdiction, deal with it? So, as I say, it is very general, ahead of us giving the minister some more advice and proceeding with that second round of consultation which we touched on earlier today. The government's still resolving the form and exact timing of that. Likewise with same job, same pay, we've done a round of consultations in the latter part of last year, I think consulting just under 40, from memory 39, organisations and individuals from, as you would imagine, employers, employer peaks, unions, union peaks, academics and some government as well. Again, that was on how that might work and what are some of the issues and practical impacts of that policy that we should be aware of in giving advice to government, so things like exactly what relationships—the typical triangular labour hire or outsourcing or workforce contracting. Again, what entitlements should be captured? Is it pay or is it a broader range of entitlements? Again, how should any jurisdiction in the Fair Work Commission work, with everything from a range of quite broad principles based ones to a more confined jurisdiction? As you'd imagine, you're getting a range of views when you're talking to that many people—and also the best way that dispute resolution could work in that case. So we've done that in relation to those two which I'm responsible for. And there's work ongoing as well on that.

**Mr Hehir:** There's also been extensive consultation around labour hire, including quite extensive consultation with the states and territories around their models and their views around harmonised versus national. In relation to some things, we've also looked at legislation that exists in other jurisdictions. Same job, same pay—there's a model in the UK that we've looked at. It does get hard in some areas of industrial relations, given our unique system and lack of a counterfactual to test things against. So the consultation is trying to draw that out. We'll have a look at how we do problem statements and try to draw out more from the consultation process. That has the potential to involve more formal papers or things like that where appropriate. So we're just having a look at trying to think about what we can pull together that will enable the greater level of consultation that the minister referred to.

**Senator BARBARA POCOCK:** Are you saying you will put out an options paper in relation to these matters so that there can be a broader—

**Mr Hehir:** We're having a look at the possibility of that. That's not a definite; that's just something that we're considering whether we get the—

**Mr Manning:** We're looking at tailoring our approach. For example, going back to those two examples I spoke of earlier, if you're looking at employee-like or the gig economy, how you get to the people working in the gig economy is an issue that will inform how you go about consultation. With same job, same pay, you have more certain actors, if you like, in relation to it, so you might have a different approach. But we still don't have final decisions on the approach for those or others.

**Senator BARBARA POCOCK:** I recently had the opportunity to visit Amazon as part of our work for the work and care select committee, and I just wonder if you've met with companies like that or their workers. They have 1,300 workers on the edge, so-called self-employed gig workers working under conditions that are very surprising in a modern economy. Are you having a close look at those perspectives from both the point of view of—

**Mr Manning:** It goes to what I was just saying. Amazon Flex has been in some of the meetings that we've had, along with a range of other gig platforms. And one of the things we're thinking about how best to do at the moment, for example through surveys et cetera, is to get the views of people working for the platforms. There are a whole range of platforms, a whole range of different business models et cetera. And they're all very keen to engage with us to explain the difference as part of us understanding the practical impact. But getting to the people who are working for the platforms is something we're working through how best to do as well.

**Senator BARBARA POCOCK:** And what about the question of casuals and how to regulate to contain casual work to genuinely intermittent, seasonal or occasional work? What sorts of options are you looking at there?

**Mr Manning:** I think the government's election commitment was to legislate an objective definition of a casual employee to provide a clearer pathway to permanent work. And so, as you would imagine, as part of that we're looking at the definition of casual and how it might best work and giving advice to government on that, but also how a conversion process might practically work, noting that if you do change the definition, then the conversion process you've got at the moment isn't necessarily fit for purpose.

**Senator BARBARA POCOCK:** Hardly anyone uses it.

**Mr Manning:** But you'd also be changing it. If you look at the former definition of casual, then the current conversion process, which is very much set at a certain period of time, is not necessarily fit for purpose for that. So we're working through all of those issues and we'll give advice to government.

**Senator BARBARA POCOCK:** Are you looking at, for example, narrowing the gap between the conditions of permanents and casuals to reduce the incentive to employers to employ people casually—for example, by paying casual sick leave?

**Mr Hehir:** That would be a matter for the Fair Work Commission. The Fair Work Commission sets the terms for casuals. The loading that's in place for casuals is intended to cover a range of the entitlements they don't receive because of their casual nature. That would be a matter for parties to bring before the commission if they would like to do that. That's one process. The second process, which was an election commitment from the government, was to look at portability of entitlements schemes to see whether something like that would work. The majority of states and territories have portable long service leave schemes for some industries, and the Commonwealth itself has a coal long service leave scheme, which means that coalminers can move between mines and not lose their long service leave entitlement. The commitment from the government is to examine the potential for a portable leave scheme of some type. So there's a specific process you can do within the commission, but there's also the examination of a portable scheme.

**Senator BARBARA POCOCK:** But there's nothing to stop the government making a request to the commission to consider ensuring that the 25 per cent of Australian workers who are casual get access to paid sick leave, in the way that the government makes other requests to the commission to consider issues and consider solutions.

**Mr Manning:** Our focus in advising the government to date has been on how best to implement their election commitment in relation to the definition and the pathway. As Mr Hehir said earlier, the government hasn't made decisions about what it wants to do in this space yet. That's the point of some of the consultation. But clearly I would imagine that during those consultations some parties will suggest that there are other ways of achieving that objective.

**Mr Hehir:** And of course, we're aware of the Victorian government's legislation as well. We are monitoring that and we're keeping an eye on things. But there are two clear processes at the moment. You can go to the commission—and we would anticipate, given the inclusion of secure jobs into the objectives of the Fair Work Act, that parties will look to go to the commission to have them do their work. That was the logic behind the government inserting the secure jobs set—

**Mr Manning:** And to close the circle and come back to your point, there is of course the family and domestic violence leave change, which is extended to casuals.

**Senator BARBARA POCOCK:** A wonderful precedent. My time is running out but I just can't help myself. I'm so glad you're consulting researchers, because there is a body of evidence out there which says, for example, that casual loading in no way compensates for everything that casual workers give up—most importantly, of course, job security but also holidays, sick leave and all the other forms of leave and conditions that they miss. And the question of portability is interesting, given the proportion of casuals that are ongoing casuals employed for many years. Accumulation of leave through portability will not be meaningful to them. They need leave in their existing job for sickness.

**Mr Hehir:** I suppose the concept behind the portable scheme is that it applies in an existing job whether you're long term or whether you change jobs. It just becomes a mechanism where the company pays into a scheme rather than paying the worker for that thing directly.

**Senator BARBARA POCOCK:** Yes, I'm not speaking against it. Thank you for all of that information.

**Senator CASH:** Can I ask some questions in relation to the National Construction Industry Forum. On the department's website there's an information page that doesn't give me much information, hence my questions. Can you just remind me: when was the announcement made in relation to the establishment of the National Construction Industry Forum?

**Mr Hehir:** My recollection is that it was an outcome of the Jobs and Skills Summit.

**Senator CASH:** But the minister then announced it?

**Mr Hehir:** I think they announced the outcomes of the Jobs and Skills Summit. It was one of the outcomes there.

**Senator CASH:** Secretary, were you aware of the establishment of the National Construction Industry Forum prior to its announcement?

**Ms James:** No.

**Senator CASH:** Was anyone in the department aware of the establishment of the National Construction Industry Forum prior to its announcement?

**Mr Hehir:** Certainly not pre announcement, no. We were certainly aware that conversations were occurring about how to get changes happening in the industry.

**Senator CASH:** But not the announcement as such and the fact that—okay. Ms James, when did you find out about the establishment of the National Construction Industry Forum? When it was announced?

**Ms James:** Senator, my recollection is that it came out of the jobs summit discussion. I seem to remember the other Senator Pocock made some points from the floor and a number of other people built on that. That's my recollection.

**Senator CASH:** When did you actually find out about it? You heard about the announcement when it was being made? You were advised about it?

**Ms James:** Around the time of the Jobs and Skills Summit.

**Senator CASH:** In terms of the consultation that the department has had with the minister since the announcement was made, because obviously stakeholders are very interested in what this body is going to look like, what consultation has the department had with the minister or his office in relation to the National Construction Industry Forum?

**Ms J Anderson:** Senator, I might just refer you to the question on notice that we provided, SQ22-001074. We probably can't provide a lot more information than is contained in that one. It says:

In line with common practice, the Department ... has had a range of discussions with the Minister and his office regarding the National Construction Industry Forum.

**Senator CASH:** Can I just ask—again it's because stakeholders obviously themselves are very interested. In terms of the composition of the forum, is that still being worked on? Have groups been decided? Are people allowed to give input into it?

**Ms J Anderson:** The membership of the forum has been legislated through the—

**Senator CASH:** So it is settled; there's no additional—

**Ms J Anderson:** The structure itself is contained in the secure jobs, better pay act. It consists of the chair, which will be the Minister for Employment and Workplace Relations. There will be other ministers: the Minister for Infrastructure, Transport, Regional Development and Local Government and also the Minister for Industry and Science. And then there will be other members appointed by Minister Burke. The minister must appoint one or more members with experience representing employees in the building construction industry, an equal number of members with experience representing employers in the industry, at least one member with experience representing contractors in the industry and one member with experience in small to medium-size enterprises in the residential building sector. And then the minister has broad discretion to appoint other members.

**Senator CASH:** In terms of the make-up of those appointments, what's the process to identify who's going to fall within each of those categories? Are people able to put their hand up and say, 'I'd like to be part of it'? Is there going to be an expression-of-interest process?

**Ms J Anderson:** We're still finalising those details.

**Senator CASH:** When do you think you'll finalise them by?

**Ms J Anderson:** Am I allowed to say 'shortly'?

**Senator CASH:** I do like the word 'shortly', as we all know. I'm not going to ask you to define it. That would be unfair.

**Ms J Anderson:** They're coming along.

**Senator CASH:** It's fine. In terms of the time line for actually standing up the forum—

**Mr Hehir:** Sorry, I just want to clarify. My recollection is that the forum doesn't actually commence until June.

**Senator CASH:** No, that was exactly—the forum itself doesn't commence until June, so I do understand that the work is ongoing. It's just getting an idea of exactly what work is being undertaken.

**Mr Hehir:** Sorry, I need to correct: it's 1 July.

**Senator CASH:** I thought I read 30 June as well; so that's 1 July. In terms of resourcing for the forum, has any money been set aside or been committed for the resourcing of—we'll call it the National Construction Industry Forum?

**Mr Hehir:** Not at this point.

**Senator CASH:** Minister, is the government going to provide it with resources? Not in terms of how much funding you're going to allocate, but what are the resources that are going to be provided to it so it can undertake its incredibly important work?

**Senator Watt:** Based on what the department just said, being that no specific resources have been allocated, then I'm imagining that it would be funded through the general resources of the department. But if the department knows something different, perhaps they could add.

**Senator CASH:** Is that what's going to happen: it will be funded through the general resources of the department? You'll allocate money to—

**Mr Hehir:** That's my understanding.

**Senator Watt:** You'd obviously be aware, Senator Cash, having been a minister, that's a pretty common—

**Senator CASH:** I'm just literally trying to establish if there is going to be a budget announcement in relation to it—but that is how the funding is going to—

**Senator Watt:** Even if I did think there was a budget announcement coming, of course I couldn't announce it.

**Senator CASH:** I know that; it's just to get the general idea of how it's actually going to be funded. Just in terms of the forum itself, in terms of the role of the ABCC, the transition obviously to the other body, and then the National Construction Industry Forum, how is this going to differ in terms of the main differences between the functions of the forum? The forum is merely an advisory body, is it?

**Mr Hehir:** Yes, the forum is an advisory body. My recollection is that the areas that were likely to be covered by the forum were quite broad and very different in nature to the functions and roles of the former ABCC. A large part of the conversation at the Jobs and Skills Summit had actually focused on trying to improve health and safety and improve the industry's reputation in terms of engagement and employment of women. In one sense, it's more cultural than regulatory.

**Senator CASH:** Going back to the appointment process and those who are actually going to be represented on the forum, I understand that you still are working through that, but would there be a formal EOI process in terms of people being able to put up their hand and say, 'I actually do have expertise in this area'?

**Ms J Anderson:** We are yet to decide on the process. But obviously we've had representation to us as well about interest in the forum, particularly directly following the jobs summit.

**Senator CASH:** Is there anything that would disqualify you from being able to sit on the forum?

**Mr Hehir:** There's nothing in the legislation that distinguishes who can't sit on it. There's more about the representative nature of the forum members.

**Senator CASH:** In the industry obviously there have been a number of issues over a very long period of time. One of the issues that is consistently raised with me is in particular treatment of women in the industry. And the concern that is raised is there are a number, unfortunately—and they are prominent union officials—who clearly are involved in the building industry but they have been subject to the legal process and found to have breached it in terms of bullying, harassment, et cetera, mistreatment. Minister, I hope the government will take that into account in terms of the types of person that it will appoint to the forum.

**Senator Watt:** I'm sure that the government will take into account the suitability of appointees. And I know your interest is only in relation to union officials, but—

**Senator CASH:** Not at all; it's actually broadly.

**Senator Watt:** You've only mentioned union officials.

**Senator CASH:** It just happens that people have raised the issue of the union officials with me.

**Senator Watt:** That's because you don't speak to union officials. We would have concerns—

**Senator CASH:** The ones I have never used nice language to me. It's unfortunate.

**Senator Watt:** Well, maybe you should speak to some other union officials, because some of the finest individuals I've met in this country are union officials. They go into work every day to help working people get better pay and secure jobs. And I'd be very happy to introduce you to some of them.

**Senator CASH:** Unfortunately some of the concerns that have been raised with me are in relation to the bullying, harassment and mistreatment of, in particular, women.

**CHAIR:** I should say, and I have some enjoyment in saying this: Senator Cash and I do have quite regular conversations at various times—

**Senator CASH:** We do.

**CHAIR:** but when I was a union official we never had any conversations. I did reach out on numerous occasions when I was a union official—

**Senator CASH:** That is wrong.

**CHAIR:** Even though I had spoken to just about every other opposition workplace relations minister and IR minister over well over two decades.

**Senator Watt:** Well, Senator Sheldon, I think it was Senator Cash's loss that she didn't have an opportunity to speak to you.

**Senator GROGAN:** It could have changed her entire perspective.

**Senator Watt:** He's a very persuasive individual. But seriously, I've answered questions of this nature in question time, Senator Cash. Our government doesn't think that there is any place for aggressive, bullying-type behaviour on worksites, whether it be from employers or employees. And I think it would just be helpful if you acknowledged that those issues unfortunately arise in relation to both employers and employees at times. I note that you only ever talk about them happening amongst union officials.

**Senator CASH:** Can I just turn now to another issue that is being consistently raised, and that's the changes in terms of security of payments. I know we did discuss that at the last estimates, but again this is now becoming an ongoing issue in terms of what is actually going to happen. What is now going to be the situation? I know last time we discussed that it would be very much left up to the states and territories in terms of who might go after an issue of security of payments. But is there any thought in terms of establishing again a body that can actually undertake this important work, but at the Commonwealth level for Commonwealth funded projects?

**Ms J Anderson:** The department is working with a range of other departments to look into this particular issue. It's also something that may well be on the agenda of the forum, but the department is actually actively working with a range of the relevant departments, such as the Department of Finance, the department of industry and the Treasury, on this particular issue.

**Senator CASH:** Could I ask some quick questions in relation to multi-employer bargaining. In terms of the department undertaking the monitoring of collective bargaining behaviour or issues through different industries et cetera, is that the industry policy team, just from memory?

**Mr Cain:** I have an industry engagement team.

**Senator CASH:** And you undertake the monitoring?

**Mr Cain:** That's correct.

**Senator CASH:** In terms of, again, issues that continue to be raised, are you aware from your monitoring whether certain unions are pushing for multi-employer agreements already, and in particular in which industries?

**Mr Cain:** Senator, we have been having some discussions recently, or trying to have discussions, with stakeholders. Given that the multi-employer bargaining provisions haven't yet commenced, won't commence until mid-year, we're not aware of any pushes at this point for multi-employer bargaining.

**Senator CASH:** I know that we discussed at length last time in relation to the communication process on the new laws, in particular with small businesses. Can you take me through what you've done to date to ensure businesses across Australia, but in particular small businesses—not just in relation to multi-employer bargaining, because there are other parts of the legislation that affect them—actually are aware of the changes and understand their obligations?

**Ms J Anderson:** Senator, you may be aware that in the budget the government provided \$7.9 million—

**Senator CASH:** We discussed that last time, yes.

**Ms J Anderson:** to the Fair Work Commission. The Fair Work Commission can probably take you through some of it in more detail.

**Senator CASH:** But from the department's perspective?

**Ms J Anderson:** At this point it is now up to the commission in terms of its role to actually assist small business. That's what the money is going to: it's going to the commission to undertake that work.

**Senator CASH:** I understand that the commission's here later on. But what's the guidance that the department has given? You did the consultation. You spoke to COSBOA. The legislation has gone through. Just in terms of the guidance that the department has given to the commission in terms of how they need to reach all of these businesses across Australia who actually do have new obligations but when I speak to them, and we all speak to so many of them, wouldn't know that the legislation—and, to be fair to them, there is no reason they should know; they're running their business. But once you raise it with them, they actually become really concerned.

**Ms J Anderson:** Again, it will be up to the commission—when the commission appears. I am aware that, for example, they have a small business reference group that they utilise to get out to business, so it will be their role to support small business through their guidance material.

**Senator CASH:** Are you monitoring that role at all as the department?

**Ms J Anderson:** We have regular catch-up meetings with all agencies, including the commission, so we would get advised. But we certainly can't direct the commission in terms of how it undertakes its business.

**Senator CASH:** I absolutely understand that. My concern is, though, and again we discussed this last time, the legislation has gone through. You do now have businesses across Australia who, as I said, when you raise it with them, literally go blank and yet they may well be affected by the change in laws. I just get concerned that—yes, money has been allocated to the commission, but the department itself also communicates with small business. And I'm interested to know from the department's perspective what you're actually doing to ensure that these businesses understand they now have new legal obligations, because there are penalties associated with potentially breaching them.

**Mr Hehir:** In terms of the bargaining side of it, I think there are penalties associated with the bargaining measures. So we think that's appropriate for the Fair Work Commission. Of course, the Fair Work Ombudsman has the responsibility for communicating with employers and employees more broadly, particularly where there have been changes that might include penalties. I'd need to check the figures, but my understanding is that their ombudsman got some funding as well. So we would anticipate that they would do that as part of their regular ongoing communication about workplace responsibility on both employers and employees. As you know, they've also got a specific small business line that people can dial in on. And they've also got other mechanisms where people can get written advice around what their obligations are. So there are a range of measures within both the Fair Work Ombudsman and the Fair Work Commission which are about reaching out. I know the Fair Work Ombudsman has regular engagement with business peaks, in particular small business peaks, both ACCI and COSBOA, and engages quite broadly with them on messaging and what should be there. So it might be appropriate to put that question to both the Fair Work Ombudsman and the Fair Work Commission—recognising, of course, that for the single-interest bargaining measure businesses with fewer than 20 employees were excluded from that. For the revamped multi-employer bargaining stream—

**Senator CASH:** They do have that capacity to be drawn in.

**Mr Hehir:** No, multi—

**Senator CASH:** Not the multi-employer bargaining—the other stream.

**Mr Hehir:** What used to be called the low-pay stream, the supported bargaining stream. They can be drawn in there, but that actually requires a formal decision of the Fair Work Commission and a process to get there.

**Senator CASH:** On that—and this is again something that small businesses raise—in the event that they are called into the bargaining process and they have no ability to get, unfortunately, representation or advice, where can they actually go to within the department to say, 'Well, what do I need to do now?'

**Mr Hehir:** There was also specific funding provided to the Fair Work Commission to help small business through the bargaining process. So they can be supported by the Fair Work Commission in terms of what the process is.

**Ms J Anderson:** That is part of the \$7.9 million. The Fair Work Commission also has a range of existing programs available to support not just small businesses but employers generally and employees to bargain as well. I'm sure the commission can provide you more details on those. But there are also those existing functions of the commission to support any business or workers, to provide them with further information about the process and assistance as needed.

**Senator CASH:** I know I've only got a few minutes left before we go to another senator, and then we'll come back to another line of questioning. We discussed this particular matter at the last estimates hearing. It was in relation to the settlement of what is referred to as the Lendlease matter between the ABCC and the CFMMEU. What was the department's role in the settlement itself? Did you have any discussions with the ABCC? Did you

have any discussions with the Attorney-General's office, with the minister's office, in relation to the actual settlement?

**Ms Godden:** We had minimal involvement with the settlement process. The ABCC provided us with a courtesy copy of the settlement notice. That was provided by the department to the minister's office. That was provided for information as there were no decision points for the Minister for Employment and Workplace Relations.

**Senator CASH:** On 8 August 2022, there was an email from OLSC to the industrial relations group in relation to the submission to the Attorney-General. Is that the document you're referring to?

**Ms Godden:** No. The document I'm referring to, the settlement documents were provided to us on 29 July 2022. They were provided to the minister's office on 29 July 2022 as well. On 3 August the Office of Legal Services Coordination contacted the workplace relations legal division—my branch within that division—to inquire whether we wanted oversight or to provide input into the submission to the Attorney-General on the settlement request. We responded that we were happy to have input into the submission. Subsequently on 8 August we offered to provide input on recent changes to the building code or the workplace relations aspects of the case. Later on 8 August, the Office of Legal Services Coordination thanked us for our offer of assistance. They were very polite. They didn't require what we were offering. So in the end, we knew that the settlement request had been made. There were no decision points for our minister. We were happy to provide information on the WR aspects of the case. However, that was not required and no information was required. The department was subsequently informed of the settlement outcome on 14 September. That was to my policy colleagues, who then forwarded that to me and other officers in the department. As you may have seen, there was also a briefing minute on the same day which contained the same information—very similar information.

**Senator CASH:** Ms James, were you kept informed of this process and the settlement in terms of any reporting back to you?

**Ms James:** No, Senator.

**Senator CASH:** You were aware of the matter though?

**Ms James:** I don't know that I was, Senator. I wouldn't necessarily expect to be aware of a matter like this though.

**Senator CASH:** Did you have any discussions with Mr Burke or his office in relation to the matter or the settlement?

**Ms James:** I was not aware of it, so no.

**Senator ROBERTS:** At the last Senate estimates, we established that an enterprise agreement cannot remove the minimum statutory protections of a modern award, nor can an enterprise agreement remove the entitlements provided by the Fair Work Act and the National Employment Standards. So, given the above, how can the Fair Work Commission explain the existence of the following current enterprise agreements for the black coal mining industry? Each of the following agreements enables the removal of the protections and entitlements that I've just mentioned, and this list is far from inclusive. They allow the employment of casual mine workers where the where the award expressed—

**CHAIR:** Senator Roberts, my apologies. I spoke to you briefly but I wasn't clear that we still haven't got to the Fair Work Commission yet. I think that was where you wanted to put those questions. My apologies, I was unclear when we spoke before. So we'll hold fire on that, if that's okay, until the Fair Work Commission comes.

**Senator BARBARA POCOCK:** I might be in the same category. My question is about the government position in relation to the minimum wage. It's coming up. Do you want me to save that for the Fair Work Commission?

**Mr Hehir:** That wouldn't be a Fair Work Commission discussion either. The minister has been clear that the government's going through its processes in relation to determining its position on the minimum wage. That's the only public statement that's available at this point.

**Senator BARBARA POCOCK:** Minister, given that your government was elected by saying it would keep wages in line with inflation to ensure real wages don't go backwards, inflation has gone from five per cent to 7.8 per cent. Would you be making a submission as a government to the Fair Work Commission in support of a minimum wage rise to stay in line with inflation?

**Senator Watt:** As Mr Hehir said, I'm not really in a position to go into what the government submission will be, because that's still being determined. But, as you've heard many of us say, we're very conscious that Australians are doing it tough at the moment because of high levels of inflation. Fortunately since the election, as

I'm sure you know, nominal wages have been rising faster than we've seen in this country for a long time. But of course, inflation is at a level that is still beyond that. We're very conscious of that, and I'm sure that'll be one of the things that inform our position.

**Senator BARBARA POCOCK:** I heard the secretary to the Treasury this morning in the economics estimates hearing saying that certainly wages have picked up but they are well short of even five per cent levels of inflation. So we're looking at quite significant cuts in real wages if the government submission is less than the 7.8 per cent. 'Watch this space' is what you're saying to me, but your policy is very clear: don't let workers fall behind.

**Senator Watt:** Yes. I can't really say more at this point about what our position will be, but you've heard us all talk about getting wages moving again. We do want wages to get moving, and I'm sure that will be reflected in the submission. I did notice in preparing for this that there are some interesting figures starting to come through the commission about the wages growth that's being delivered through agreements that are being lodged with the commission. Of course one of the big problems with the former system was that it discouraged bargaining. You'd know the figures about the collapse of enterprise bargaining. That was really contributing to wages falling. Fortunately, again since the election, we are seeing more agreements reached, more agreements lodged with the commission, and they are delivering higher wages than we've seen before as well. So that's an encouraging trend too. It's still not at the inflation level—I don't want to pretend that it is—but it's heading in the right direction.

**Senator GROGAN:** With respect to the former government's intervention in the WorkPac v Rossato case, can you confirm the legal expenses that were covered by the taxpayer for that intervention in both the federal and the High Court appeals?

**Ms Sheehan:** The total spend for the WorkPac v Rossato case, the Commonwealth's intervention, was \$672,422.28, which includes counsel fees.

**Senator GROGAN:** I don't know if you have had a look, but the donation return from WorkPac indicates that they have contributed a significant amount of money to the Liberal Party. Are you aware of that?

**Ms James:** Senator, that's not something that we would be aware of or indeed be considering, I think, in these matters, noting that the government makes decisions to intervene in these matters.

**Senator GROGAN:** Would you have a date for that—what was the date when the former government decided to intervene—and where the decision was made?

**Ms James:** Ms Sheehan will try to find it. I will note that we're talking about a former government and a former department.

**Ms Sheehan:** I don't have in front of me the decision to intervene. We would be able to find that fairly readily though, so could likely come back to you.

**Senator GROGAN:** That would be great. We might leave that and I can come back to that afterwards.

**Senator LIDDLE:** I have a question in relation to casual employment. Can you confirm for me that the measures the former coalition government successfully legislated as part of the IR omnibus bill now provide a definition of casual employment to ensure employers are confident of their obligations and employees are paid accordingly?

**Mr Still:** I only just caught your question. If it was whether there's a definition of casual in the act, the answer to that is yes.

**Senator LIDDLE:** In extending universal casual conversion rights to all casual employees, what are the criteria a casual employee needs to meet to be offered conversion to full-time or part-time permanent work?

**Mr Still:** Senator, I don't have the provisions still in front of me, but broadly a casual needs to have been employed for 12 months with a regular pattern of employment over that period.

**Ms T Williams:** The current casual conversion provisions in the National Employment Standards provide that after 12 months of employment, employees who have worked a regular pattern within the last six months should receive an offer of full-time or part-time employment or the reasons why that has not been offered, or if they work for a small business employer will be able to request conversion.

**Senator LIDDLE:** Are you able to confirm that there are around 600,000 people who were casuals who didn't have such rights but do now?

**Ms T Williams:** Senator, I think what you're referring to is that prior to the legislated casual conversion process, the Fair Work Commission did have a casual conversion model clause which the legislated process in the National Employment Standards is based on. So there are a proportion of employees in the workforce that are not covered by a modern award: they're award and agreement free. But of course the National Employment Standards

apply to all national system employees. And so I think at the time the department did some calculations that was around the number.

**Senator LIDDLE:** Can you confirm for me that until now these rights were not part of the Fair Work Act as introduced or amended by the previous Labor government, and this is now the first time the Fair Work Act provides those rights?

**Mr Still:** Senator that's correct.

**Senator LIDDLE:** Can you confirm for me that the measures the former government successfully legislated as part of that omnibus bill, which Labor and the Greens voted against, ensures up to \$39 billion double-dip liability risk will no longer be hanging over employers?

**Mr Still:** Senator, the legislation introduced a statutory offsetting provision that provides that where a casual loading has been paid, it can be offset against the entitlements that would have accrued from permanent employment. That was intended to avoid the possibility of significant liabilities for employers.

**Senator Watt:** Senator Liddle, can I just add a bit of further information on this? I'm saying this having been involved in that debate and having worked on this issue for a number of years now. One of the weaknesses in the legislation that was passed by the former government on this point was that the decision as to whether someone was designated casual or permanent still rested with the employer. And in terms of the ability to convert from casual to permanent, of course what was provided was effectively a right to request conversion. And if the employer refused, then my recollection is that the only way an employee could challenge that decision was to go to the Federal Court, which of course is a very expensive court to run an action in, rather than, say, the Fair Work Commission or one of the more cost-effective ways of seeking redress. So it's some of those weaknesses with what was done as a supposed fix by the former government that have motivated this government to go further.

**Senator LIDDLE:** I just want to get clear on what you're saying, in my understanding. What you're suggesting is that with the regular component of that, the onus was really on the employer to demonstrate that, not the employee—or the other way round?

**Senator Watt:** Certainly there was a lot of debate.

**Senator LIDDLE:** There was a chance for the employee to explain the regular component of that.

**Senator Watt:** There was a lot of debate about this at the time and you'll be surprised to hear that there were different views about what this legislation meant. But there was a very strong concern that the way the legislation was drafted still effectively left the decision with an employer to determine whether someone was a casual or not, even though an objective look at that employee's work practices, the hours they work, the regularity, that kind of stuff, might still indicate that they were permanent—but that the employer would still have the ability to designate that person as a casual. That was the concern. There were views to the contrary; I concede that. But there was a very serious concern that it actually wouldn't solve the problem. And that's one of the reasons that the now government made a commitment to change that definition and put in law, put in legislation, what had always been understood to be the objective test of whether someone's a casual or not.

**Senator LIDDLE:** But one of the strengths of that legislation was around reducing the risk of insolvency in terms of costs that businesses weren't expecting that they would have.

**Senator Watt:** This is the double-dipping point. Again, there were different views about that. Certainly there were some employer groups who—there were some pretty wild claims made, actually, by some employer groups about what the cost of that double-dipping risk, as they called it, would be. There were some employer groups saying it was going to be in the billions of dollars, when what they were doing was effectively counting every possible casual employee in the country in every possible industry and assuming that they all would become permanent. And even the advocates of this change were saying that what was achieved through some of those court decisions, like the Rossato decision and others, that this legislation then effectively overturned—what was achieved was that it was really focused on people who were working the same rosters week after week, year after year. In the coalmining industry and it had become a really big practice of coalminers being engaged by a mining company through a labour hire firm, working the same hours week after week, year after year. Any objective observer would say, 'That's a permanent employee.' But there was a loophole that was being exploited that allowed those types of people to be categorised as casual. In coming up with this figure about what it would cost and the threat of insolvency, some of those employer groups were counting retail shop assistants or people working at Macca's who might work 10 hours one week, 20 hours the next, and they're clearly casuals. The issue was about people who were working the same roster every week for every year and still being called casuals. So the risk was never as great as what was being claimed.

**Senator LIDDLE:** But the casual conversion provisions were never intended to force people who wanted to be casuals and remain as casuals to change.

**Senator Watt:** No, and I recognise there are some people who prefer casual work for the flexibility it gives them. But again, in the mining industry—and I've spent a lot of time with people who've had to go through this—what was happening was that coalminers were being engaged through a labour hire firm to work at a coal mine. You know how ordinarily a casual worker gets a loading, an extra payment in recognition that they're not getting annual leave, sick leave, things like that. What was happening all too often was that these casual labour hire coalminers were not even being paid the same hourly rate as the permanent people they were working with. Even after the casual loading that they were receiving as a casual, they weren't getting the same hourly rate and they were missing out on the leave benefits.

**Senator LIDDLE:** I respect the example you gave me. It's a very specific type of casual that you're talking about. There are a whole range of different types of casual employment.

**Senator Watt:** Yes. It was actually the union that represents coalminers that ran those cases that got court decisions that recognised that those types of casuals who were working the same roster week after week, year after year actually weren't casuals and were just being ripped off. And the issue then was that the former government legislated—and I know you weren't in parliament at that time, Senator Liddle, so I'm not having a go at you—to knock over those court decisions. And the effect of that was that those people remained as casuals.

**Senator LIDDLE:** Are you able to provide a summary of that decision of the High Court, seven-zero, in relation to the double-dipping?

**Ms James:** We'll take that on notice. It was a very well reported case. There would be a number of write-ups on it, no doubt, but we can certainly take on notice providing you a summary. I would say that the minister has shown excellent detailed recollection of those proceedings, and if he'd like to come and work with Martin, that would be great—if he'd like a job.

**Senator Watt:** It's an issue I've had a particular interest in. Being the duty senator for then opposition in Central Queensland, I spent a lot of time in coalmining regions and met a lot of coalminers who were affected by this.

**Senator LIDDLE:** On 4 August 2021, the now Minister for Employment and Workplace Relations, Tony Burke, after the Rossato decision committed Labor to reintroduce the confusion and uncertainty that was facing business, saying:

A Labor government will overturn the government scheme...

Could you please walk us through the devastating impact this would have on businesses if they were to be once again exposed to a \$39 billion liability?

**Senator Watt:** I know you've got to ask the question, Senator Liddle but, again, I don't think there's any truth to the dollar figure that was put around that by some of the employer groups. As I said to you before, it assumed that every kid working at Macca's, their part-time job working 10 hours one week, 20 hours the next, all became permanents. It assumed that every shop assistant became a permanent. And that was never going to happen. The court case that legislation responded to, as you said, was about a very narrow type of casual. And some of the employer groups, for reasons of their own, tried to argue that it was going to mean that every casual was going to become permanent. And that was never the case.

**Ms James:** Senator, this measure that you are referring to is one of the matters that are subject to this tranche of legislation that's coming in spring that's the subject of more consultation. I think we'd all agree it's not anyone's intention to wreak devastation on anyone or anything. Certainly we'll be very much listening to stakeholders' views about how to get the balance right in implementing that election policy.

**Senator LIDDLE:** In terms of the consultation, am I to understand that you're actually working on looking at this?

**Mr Hehir:** This is an election commitment from the government. It is an area where we will consult in terms of hearing from the various parties their views about the particular processes that could be put in place. I think the area where there's more guidance from the election commitment is to return to an objective test. Prior to, I think, the WorkPac and Skene decision—the WorkPac and Skene decision actually utilised what was then understood to be the common law. There had been no legislation in place. Then the government of the day legislated a definition of what a casual was and then included a range of other factors with it which you've talked about in your questions. So we will consult with the parties, we'll hear their views and we'll put advice to government.

**Senator LIDDLE:** In terms of the legislation, have you started drafting it? Are you doing the consultations first, or afterwards?

**Mr Hehir:** This is an area we will consult on. We had already, I think, done a degree of consultation last year. It is one of those ones that we would put in a more complex basket, so we didn't end up pursuing it last year, but it's still part of the government's election commitment. So, yes, we'll continue to consult on it is probably the better phrasing.

**Senator LIDDLE:** So the consultation is still to be had. What about—

**Mr Hehir:** We had quite a bit of consultation last year. We'll do more this year.

**Senator LIDDLE:** Are you talking about the summit, or are you talking about specific to this?

**Mr Hehir:** Specific to that.

**Senator LIDDLE:** Has any employee organisation been in contact with the minister or his office in pushing to repeal this legislation, Minister?

**Senator Watt:** I think it's well known that prior to the election, and no doubt since, there's a range of unions who would like to see the law that we've just been talking about changed, because it does go against what's always been understood to be the legal definition of a casual, which was the absence of a firm advance commitment as to the duration of the employee's employment or the days or hours the employees will work. That's complicated legal jargon for someone not having the certainty from one week to the next as to how many hours they're going to get. So I think it's completely well known that unions have raised this with the minister. They've raised it with me. I'm sure they've raised it with a number of politicians and I suspect they used to try to raise it with Minister Cash when she was the minister.

**Senator LIDDLE:** On your example, the coal industry, I did work in the hospitality industry, managing around 1,000 people as the head of HR, and there were a lot of people in there that actually appreciated and wanted to be casual workers.

**Senator Watt:** We've certainly never said that we intend to eliminate casual labour, because we recognise that there are some circumstances where that's what works and that's what everyone wants, including workers. Similarly we've never said that we would abolish labour hire altogether, because there are situations where an employer needs a surge workforce for a short period of time but doesn't necessarily need those people forever. The problem is that the way the system has developed, unfortunately there are some employers who are abusing the system and are hiring people for long periods of time, literally years, as labour hire employees, or hiring people who work the same hours week after week, year after year, as casuals. I don't think that any Australian thinks that's fair. That's not what casual employment is and that's not what labour hire was created for. But I recognise that there are industries where work is genuinely casual and that's how people want it.

**CHAIR:** We'll now break, if you can come back. I'm hoping that we'll get to the Fair Work Commission at five. To speed things up, we won't require the workers compensation payments, 3.2. But if 3.1, workplace support, can come back, we'll see you again at 4.20.

#### Proceedings suspended from 16:07 to 16:24

**CHAIR:** We will resume on outcome 3, workplace support.

**Senator CASH:** I have a line of questioning in relation to the Productivity Commission report on Australia's lagging maritime industry. They've now handed down their final report, which is, as per the Productivity Commission, an extensive report. Chapters 8 and 9 specifically are dedicated to workplace and workforce related issues relevant, obviously, to the department. Has the department undertaken an analysis yet of the report, in particular chapters 8 and 9?

**Ms J Anderson:** Senator, I'll take you to a question on notice again. We did provide a response to that very question, SQ22-001195. I can read that.

**Senator CASH:** Would you mind?

**Ms J Anderson:** The answer to that specific question was:

The department undertook an initial analysis of the findings, recommendations and information requests contained in Chapters 8 and 9 of the Productivity Commission's draft report into Australia's Maritime Logistics System. The analysis formed advice to the Government on the report and possible policy options to address the issues raised. As these issues are under consideration by the Government it would not be appropriate to provide it at this time.

**Senator CASH:** And I suppose that if we jump to today and I ask the same question, 'Can the department provide an analysis to the committee', the answer would be the same? There's been no change?

**Ms J Anderson:** That's correct.

**Senator CASH:** On the ports reform and the issues obviously addressed in the Productivity Commission review, has the minister met with any of the port operators to discuss the recommendations?

**Senator Watt:** I would have to take that on notice.

**Senator CASH:** Ms James, are you aware if the minister has met with any of the actual port operators to discuss the recommendations?

**Ms James:** I'm not aware of that.

**Senator CASH:** That's fine. And thank you, Minister Watt—if you wouldn't mind taking that on notice. Has the minister met with any of the maritime unions to discuss the recommendations?

**Senator Watt:** Again, I'd need to take that on notice.

**Senator CASH:** Thank you. Ms James, are you aware if the minister's met with any of the maritime unions to discuss the recommendations?

**Ms James:** I am not.

**Senator CASH:** Has the department formally commenced any discussions with either the relevant employers or unions in relation to the recommendations?

**Ms J Anderson:** No.

**Senator CASH:** Will the department be commencing discussions in relation to the recommendations, just to get feedback on them from the relevant employers and unions?

**Mr Hehir:** I suspect that we'll wait for the outcome of the government's response.

**Senator CASH:** When does the government intend on responding to the ports review or the Productivity Commission report, Minister?

**Senator Watt:** Shortly.

**Senator CASH:** Seriously? I'm not going to be as nice to you. What do you mean by shortly?

**Senator Watt:** Why don't I take that on notice?

**Senator CASH:** Yes, if you wouldn't mind, that's great. Obviously, there's a body of work being undertaken by the department in relation to the recommendations that were made by the Productivity Commission. I'm going to place a whole lot of questions on notice because I do know the time and we do obviously want to get to the Fair Work Commission. Chair, in the interests of time, there is going to be a substantial body of questions placed on notice. I will say that upfront. I'm happy to move on to the Fair Work Commission.

**CHAIR:** Thanks, Senator Cash.

### Fair Work Commission

[16:31]

**CHAIR:** We now have representatives from the Fair Work Commission. Mr Furlong, do you wish to make an opening statement?

**Mr Furlong:** Good afternoon. No, thank you.

**CHAIR:** Thanks for joining us. Senator Cash.

**Senator CASH:** I will first just ask some brief questions in relation to the Fair Work Commission and the minimum wage submission. In terms of the process of the annual minimum wage review, in previous years the timetable for the annual minimum wage review would encompass the due date for submissions, and it and the forward plan of hearings would normally be released by the Fair Work Commission around this time. Has that occurred yet?

**Mr Furlong:** I'll ask Ms Leggett to assist you with that question.

**Senator CASH:** Thank you, Ms Leggett.

**Ms Leggett:** To clarify the question: are you seeking to confirm whether the timetable for the annual wage review has been confirmed?

**Senator CASH:** Yes.

**Ms Leggett:** Yes, it has been.

**Senator CASH:** Can you take me through the timetable?

**Ms Leggett:** Sure. The timetable was confirmed in a statement on 4 November, but it was updated on 13 December to take into account directions on how the expert panel would deal with an issue involving copied state awards. The timetable, in essence, from here is: 17 February will be the closing date for lodging submissions dealing with copied state awards, 3 March will be the closing date for lodging reply submissions dealing with state awards and there will also be a mention on 10 March. Then, moving in terms of the lodging of submissions more generally for the annual wage review, that will be on 31 March 2023. The closing date for lodging reply submissions and any submissions relating to data or research would be 28 April. Final consultations—I won't take you through it all.

**Senator CASH:** I just want to get it on the record. For people who don't know where to go to, it would assist.

**Ms Leggett:** Of course. The 5th of May will be the closing date for expressions of interest in taking part in consultations. The 12th of May 2023 is the closing date for lodging supplementary submissions relating to data or research published after 28 April and/or post budget submissions, and 17 May 2023 is for final consultations.

**Senator CASH:** Perfect. Thank you very much. I want to turn now to the transfer of the responsibilities of the Registered Organisations Commission to the Fair Work Commission. You're obviously becoming responsible for the management and oversight of registered organisations. I know that you've previously had this role as well. Just in terms of the work that's being done to transfer everything that they are doing over to you—the investigations, corporate knowledge et cetera—can you just take me through what the process is and how it's occurring?

**Mr Furlong:** Certainly. There is a significant amount of work that's already taken place in relation to preparing for the movement of the rest of the organisation functions to the commission. As you'd be aware, the amendments will commence on 6 March, which was proclaimed recently. A steering group has been established to manage the transfer.

**Senator CASH:** Did you say a steering group?

**Mr Furlong:** A steering group, yes, to manage the transfer. It includes officers of the Fair Work Commission, the Registered Organisations Commission and the Fair Work Ombudsman.

**Senator CASH:** The Fair Work Ombudsman as well?

**Mr Furlong:** Yes.

**Senator CASH:** Okay.

**Mr Furlong:** All existing staff will transfer to the commission, save for the Registered Organisations Commission, as you traversed earlier today. We're in the process of establishing a new branch within the FWC, which will be called the Registered Organisations, Governance and Advice Branch.

**Senator CASH:** You're going to establish that, are you?

**Mr Furlong:** Yes. And they'll move across on the date. But everything you'd expect to occur is occurring in terms of steering groups or working groups, case management and website content. I've communicated with all the registered organisations. I've communicated with the peaks and all of the auditors as well. So there's a lot of work is going on in the communications side of it as well.

**Senator CASH:** In terms of the actual procedure to hand over, you're satisfied that it's well and truly on its way for when the official function does start?

**Mr Furlong:** I am; yes.

**Senator CASH:** Just in terms of the transfer of the staff, we spoke to the department this morning in relation to this. It is anticipated that all the staff, subject to obviously them making their own decisions, will come over. Are there any thoughts about whether or not any will be made redundant?

**Mr Furlong:** Certainly not from my position or perspective. As you know, resources follow function, and that is what I'm expecting to occur in this case.

**Senator CASH:** You said that you're speaking with registered organisations. Just in terms of the communication with registered organisations—the good news is you've got the list of registered organisations—what is that communication that you're having with them?

**Mr Furlong:** There are a number of channels. We issued a media release once we found out the date of proclamation. I wrote to each of the branches, divisions, national offices and all the registered auditors in the last couple of weeks, just to let them know the date and to also let them know that any obligations that they have currently will continue.

**Senator CASH:** Good, okay.

**Mr Furlong:** There's a big piece of work around the annual reports that are due at the end of March, and I wanted to ensure that, from the perspective of the orgs that have the obligations under the RO act, it's consistent and that they are aware not only of the transition but also of my expectation, which is that they do comply with those obligations.

**Senator CASH:** Technically, as you say, there are the same obligations. The functions are going to be the same. So one would hope that they are all aware that there is no period of time where—

**Mr Furlong:** Yes. There are some extended provisions, and the EM goes into it, under the secure jobs better pay act, in performing the functions. It provides some guidance to me in exercising powers. I must also seek to embed within organisations a culture of good governance and voluntary compliance with the law. That will, obviously, go to the monitoring and the conduct of the ROs, to ensure democratic functioning and control of those organisations.

**Senator CASH:** Just in terms of the correspondence that you've had with the registered organisations across the board, I'm assuming there's nothing confidential in them. Are you able to provide copies to the committee on notice so that we can see what you've set out to them?

**Mr Furlong:** Yes.

**Senator CASH:** In terms of registered organisations that may actually have a query, is there somewhere they can go?

**Mr Furlong:** As you're aware, there are significant reforms that are going to have an impact under the secure jobs, better pay act, so we have a dedicated page on our website where people can provide feedback. There are contact details on the correspondence. In addition, I've written to the peaks as well—the ACTU, the ACCI and the Ai Group—and we're in the process of establishing a high-level steering group with them that I will chair. I'm looking to have a meeting next week.

**Senator CASH:** Excellent. In terms of the day-to-day responsibilities and roles et cetera that the team at the ROC currently have and that the team, when they transfer over to you, will have, are there any differences between their current roles and responsibilities and what their roles and responsibilities will be when the function is actually transferred?

**Mr Furlong:** Largely, they are very, very similar.

**Senator CASH:** I know you're going to hate me for asking what 'Largely, they are very, very similar' means.

**Mr Furlong:** The secure jobs, better pay act provided me with additional enforcement options, and they are the enforcement options, or instruments, that you would expect of a contemporary full-service regulator. They include infringement notices and enforceable undertakings. That will be available for each of the contraventions. The department is still working through the regs on this. Where there are civil—and I'm not too sure about the criminal—penalty provisions associated with conduct of registered organisations, infringement notices and enforceable undertakings will be available as additional enforcement options.

**Senator CASH:** Minister, in terms of the regulations—and Mr Furlong said that the department is still working through them—when do you believe those regulations will be tabled?

**Senator Watt:** Again, I'd have to take that on notice.

**Senator CASH:** If you wouldn't mind, that would be greatly appreciated. Mr Furlong, in terms of the progress of the regulations, when do you anticipate that they would be tabled?

**Mr Furlong:** We work really closely with the department, so there's ongoing engagement. I'm very thankful that the department recently consulted with us about the use of infringement notices and enforceable undertakings. I expect it to be in the very near future.

**Senator CASH:** Thank you for that. In terms of the responsibilities of registered organisations themselves, can you confirm there were no changes from the responsibilities that they currently have to what the new legislation has?

**Mr Furlong:** Apart from what I've indicated about the explanatory memorandum, they are consistent.

**Senator CASH:** They are consistent?

**Mr Furlong:** Yes.

**Senator CASH:** In terms of current investigations being undertaken by the ROC, can you take me through what the process is and what discussions you're currently having? You've set out, obviously, the steering committee. Can you take me through that process so that we get a better understanding of that?

**Mr Furlong:** I've looked into this recently, and the transitional provisions allow for those investigations, inquiries and prosecutions to move across.

**Senator CASH:** Is that in total?

**Mr Furlong:** Yes.

**Senator CASH:** So, if something is being investigated, it moves across.

**Mr Furlong:** Yes.

**Senator CASH:** If there is an inquiry into something, it moves across. So it's not dependent on a current investigation taking place. Basically, the case load itself will move across—yes?

**Mr Furlong:** All the information, all the evidence, that has been gathered in each of those inquiries and investigations that is held by the Registered Organisations Commission will come to me. There was another power that was provided in the secure jobs, better pay act that permitted me to require the Registered Organisations Commissioner to provide me with any information. I've exercised that power, and I have no evidence to the contrary that every request we've made for access to information has been provided.

In terms of the transition, I spent the first half of my working life as a regulator. I worked at the Interim Building Industry Taskforce and the Building Taskforce, and I've worked at the Fair Work Ombudsman as a senior investigator. I understand the regime and I currently exercise a lot of powers in relation to registered organisations, particularly around rules and entry permits.

I'm catching up with an executive director at the ROC next Monday for an operational handover. This is a very comfortable space for me to be working in. Next Monday I've got a meeting with Chris Enright to go through each of ROC's operational matters to ensure that I'm across each of those investigations.

**Senator CASH:** I appreciate you saying that. In terms of the caseload moving over, when we had a discussion with the Fair Work Ombudsman at the last estimates—and in no way will I be verballing them—it was to the effect that, it wasn't actually a transfer of functions to them of the ABCC, like ROCs is to you, because the functions don't necessarily transfer. It is a different role. One of the issues was in terms of the cases that transferred over. The Fair Work Ombudsman would then analyse the case and make a decision as to whether or not to continue with that particular case.

In terms of the investigations that are currently underway with the Registered Organisations Commission, and I appreciate the case load picks up and moves over. Do you have any role or capacity within the Fair Work Commission to undertake a review and say, 'Yes, that was being pursued but we're actually not going to continue with that. That is an inquiry, but actually we're not going to continue with that.'

**Mr Furlong:** Those powers or those responsibilities ultimately rest with me. So I'll look at it on a case-by-case basis.

**Senator CASH:** So that review will be undertaken?

**Mr Furlong:** It will.

**Senator CASH:** In terms of a time frame, and in particular for, say, any investigations or cases, how quickly will you make those decisions?

**Mr Furlong:** It's hard to talk in the abstract. I need to look at the evidence. As I said, I was an inspector. I will look at the evidence and make those determinations. Just to repeat, my first concern is to make sure that on the transition that registered organisations understand their rights and their obligations under the RO Act, and there is a seamless transition from their perspective, including meeting all of the obligations about annual returns by the end of March.

I meet with the ROC staff every Friday to give them a briefing and to have a conversation about any concerns they may have.

**Senator CASH:** You know the end date. Has the transition of staff actually started occurring?

**Mr Furlong:** The answer to that question is yes. The conversations are well advanced. For instance, last Friday, at the weekly meeting with all of the ROC staff, our director of people and culture and our executive director of enabling services attended that and took a lot of questions around terms and conditions of employment and things of that nature—things that you'd expect public servants who are going through a change to ask. I care very deeply about the staff, and I want to make sure that, from their perspective, we deal with any of those concerns as quickly as we possibly can. From that perspective we are trying our best.

**Senator CASH:** Can you just remind me of the current funding and the funding that comes over to you?

**Mr Furlong:** The funding for the balance of this financial year—with an expected commencement date of 1 February—as appropriated in the budget is \$3.743 million, and for 23-24 it's \$7.5 million. In term of the ASL, 29.4 ASL.

**Senator CASH:** Is that the total case load of ASL currently at the ROC?

**Mr Furlong:** Yes. It is. And the overall total funding for the AES over the four years is \$26.517 million.

**CHAIR:** Senator Cash, if you've got just a couple more—

**Senator CASH:** Is that all right? I do note Senator Roberts has come in. Just very quickly, in terms of the potential discontinuance of an investigation which is being conducted currently by the ROC with transfers over to you, I accept that you can make that decision—obviously it's within your purview—but will there be any public visibility as to the reasoning for why the case is discontinued? In particular, the complaints have been made, confidentially or not confidentially, so will there be any public visibility in terms of the expectations of those who have made complaints, regardless of what that complaint is, and how it's been managed under the new body?

**Mr Furlong:** It's hard to talk in the abstract about it, and, without knowing the substance of those inquiries or those investigations, it's very—

**Senator CASH:** No, I do appreciate that. Can I perhaps put it this way: in the event that you personally or the team make a decision to discontinue an investigation, will you provide public reasons for the decision?

**Mr Furlong:** As a regulator, I intend to operate in an open and transparent manner. Certainly you could ask me questions in the next round of Senate estimates, but, without knowing and without making any of those decisions, I don't have at the moment any intention—

**Senator CASH:** No, I understand what you're saying there.

**Mr Furlong:** to conclude any of those investigations.

**Senator CASH:** Obviously, we will pursue it at the next Senate estimates. In terms of the staff, though—because obviously it's always a transfer; it doesn't matter who you are, it's still a transfer—do any of the staff need to move to a new physical location?

**Mr Furlong:** Yes.

**Senator CASH:** Will any of the staff be forced to move interstate?

**Mr Furlong:** No.

**Senator CASH:** So if a staff member says, 'I am based in X. I can't or I do not want to move to another state,' they will be given that option of remaining in their current location? I know that that has been a concern for some.

**Mr Furlong:** Absolutely. We at the commission pride ourselves on being very flexible in where our staff work. Good people are good people; it doesn't matter where they are.

**Senator CASH:** Thank you for that. I may have a few more questions but I'm more than happy to—

**CHAIR:** Thank you. Senator Roberts.

**Senator ROBERTS:** Thank you again for being here today. We've got the right people this time. At the last Senate estimates, we established that an enterprise agreement cannot remove the minimum statutory protections of a modern award, nor can an enterprise agreement remove the entitlements provided by the Fair Work Act and the National Employment Standards. My first question is: given the above, how can the Fair Work Commission explain the existence of the following current enterprise agreements for the black coal mining industry? You might have to take it on notice as I've got a long list to read out. Each of the following agreements enables the removal of the protections and entitlements that I've just mentioned, and this list is far from all-inclusive—there are many others. They allow the employment of casual mine workers where the award expressly prohibits this employment type and on rosters that exceed the maximum working hours as set out in the NES—National Employment Standards.

The agreements are: TESA Group—Enterprise Agreement 2022, TESA Group Pty Ltd WA Coal Greenfields Enterprise Agreement 2022, PIMS Mining Pty Ltd North Goonyella Enterprise Agreement 2022, Chandler Macleod—Queensland Black Coal Mining Agreement 2020, Protech Queensland Coal Agreement 2021, Mining Pro Services Enterprise Agreement 2021, WorkPac Coal Mining Agreement 2019, FES Coal Pty Ltd Greenfield Agreement 2018, Chandler Macleod Northern District of NSW Black Coal Mining Agreement 2015 and Chandler Macleod Gunnedah Basin Coal Mining Agreement 2014. These are just 10 of the agreements we've identified so far. I'll go back to my question now that the list is over. Given the above, the preservation of standards, how can the Fair Work Commission explain the existence of these current enterprise agreements for the black coal mining industry?

**Mr Furlong:** I might start and then hand over to Ms Leggett for some further information. Every agreement, every application that's made to the commission undergoes a significant triage or checklist of our especially skilled staff. That information is then provided to a member of the commission who exercises the power about whether or not to approve those enterprise agreements. When the BOOT is applied, the test time is the date that the application is made, and the members who made those decisions obviously determined that those employees and prospective employees were better off overall under those enterprise agreements than they would have been under the modern award.

**Senator ROBERTS:** But that's not the case from our understanding of the analysis of the agreements. Some of the agreements go back to 2015 and some of them were put in place after people had started on the award, when the award specifically says you cannot have casuals on production.

**Mr Furlong:** I'll try as hard as I can to be helpful here, Senator, but I can't comment on the decisions made by independent statutory office holders at the commission, the members. What I can say is that those members were satisfied that the agreements provided terms and conditions that were better off overall than the modern award that underpin them. The older agreements you're referring to, the Chandler Macleod one—

**Senator ROBERTS:** 2015.

**Mr Furlong:** 2015. A party to those agreements—because they've past their nominal expiry date—can make an application to the commission for those agreements to be terminated. The more recent agreements there are appeal rights there as well if parties to those agreements believe that they have an issue with that decision, if they believe that a member has misinterpreted their functions in relation to approving the agreement.

**Senator ROBERTS:** The miners are telling us some of the hours are way above award requirements and the NES, and they haven't been compensated for it. So the same company that started people illegally under the award and casuals then made an enterprise agreement. I'd like to know how these came about?

**Mr Furlong:** The decisions are all available on our website, including any considerations that the members who approved those agreements went to in making their ultimate decision to approve those instruments.

**Senator ROBERTS:** It looks pretty rife, doesn't it? Ten we've found, and there are many others.

**Mr Furlong:** I can't agree with your characterisation there. What I can say is—I'll just repeat—that, if an agreement is past its nominal expiry date, a party to that agreement can make an application to have it terminated. In which case, they would revert back to the underlying instrument, which may be the modern award. If it's more recent, then an aggrieved person can lodge an application for an appeal of that decision in the first instance.

**Senator ROBERTS:** If the award specifically states you cannot be employed as a casual on production, that doesn't matter?

**Ms Leggett:** It is possible for an enterprise agreement to have classifications that are not included within a modern award, and that includes for particular types of casual workers. In that circumstance where, for example, the modern award doesn't contain a casual provision for a particular type of worker, then they undertake an assessment when approving the enterprise agreement, if it has, for example, a casual provision within it to take into account the loading rates and whether overall in that agreement employees covered would be better off overall.

**Senator ROBERTS:** I take you back to my opening comment and what we had confirmed at last Senate estimates: we established that an enterprise agreement cannot remove the minimum statutory protections of a modern award nor can an enterprise agreement remove the entitlements provided by the Fair Work Act and the National Employment Standards, and these enterprise agreements we believe have.

**Mr Furlong:** To that I'll just have to repeat my previous responses.

**Senator ROBERTS:** What is the Fair Work Commission going to do about it?

**Mr Furlong:** The answer to the question remains that, if there's an aggrieved party to one of those agreements, particularly the ones that have passed their nominal expiry date, they can make an application to the commission to have that agreement terminated.

**Senator ROBERTS:** With Chandler Macleod's enterprise agreement for 2015 and 2014, how would the Fair Work Commission have checked the process?

**Mr Furlong:** The reasons for the approval of that agreement will be outlined in the decision of the member who approved that agreement. Now, as you indicated, it's an agreement from 2015. I haven't looked at that decision.

**Senator ROBERTS:** I wouldn't expect you to.

**Mr Furlong:** I would be very happy to provide that decision on notice. It will be on our website as well. It will be very accessible.

**Senator ROBERTS:** Could you provide the decisions of all 10 on notice, please?

**Mr Furlong:** Certainly. They're all available on our website, each of those documents.

**Senator ROBERTS:** Yes; I'd like to get them on notice. On question 2, Chair, I will have to read something out here so that they're explained.

**CHAIR:** That's mighty fine; go ahead.

**Senator ROBERTS:** With respect to each of the 10 enterprise agreements, could you please provide the following for each of the agreements, on notice, of course: firstly, the enterprise agreement submission application forms, along with the worked roster and actual hours that will be worked by all employees covered by these enterprise agreements and the weekly pay for each classification on the worked rostered hours. Please provide all calculations and breakdowns in dollar figures for all entitlements the casual loading covers and the dollar value of the casual loading per week. Secondly, please provide the calculations for the same roster worked and all hours worked for the employees if employed under the Black Coal Mining Industry Award, and all classifications with all award entitlements, penalties and shift loadings applied, and the dollar value of six weeks' annual leave and leave loading. Thirdly, if you don't know what the hours and work roster is for the mine site these employees will be working at this time, could you please provide this on notice. Please provide the tender application for the contract and a copy of the contract at the mine between the mine owner-operator and the labour-hire company providing these services to the mine.

**Mr Furlong:** I can certainly take that on notice. Just to temper your expectations, I think there are some classes of documentation that we may not have.

**Senator ROBERTS:** Could you explain that when you take it on notice, in your reply?

**Mr Furlong:** Yes.

**Senator BARBARA POCOCK:** Thank you for being here. We heard this morning that there are around 10 new appointments to be made to the commission, with retirements and new panels being formed and so on. I wonder if you could give us an update on when you expect those appointments to be made.

**Mr Furlong:** Appointments are a matter for government. Routinely I won't be advised of the timing of those appointments, because they are made by the Governor-General on the recommendation of the government. In terms of what we've resourced for and our current member number, there have been a couple of recent retirements. We currently have 39 primary appointments. We are funded, following the secure jobs, better pay act, for 52 members. There are 13 vacancies at the moment.

**Senator BARBARA POCOCK:** Okay. You're better informed than your predecessor. You can't give us the timing, in which case you can't tell us when the new panels begin to operate?

**Mr Furlong:** The legislation commences for the expert panels you're referring to, on 6 March. We certainly aren't flat-footed in terms of the implementation. There are a number of things that have already occurred. I might hand over to Ms Leggett to provide a bit of further information on this. Recently Deputy President O'Neill was appointed as the national practice leader. We're undertaking an audit of existing award matters to determine which ones might require an expert panel.

The first stage of our research program was announced by the statement issued by the president on 3 February. We've got a copy here, and I'm happy to table that for you. You've got it, okay.

**Senator BARBARA POCOCK:** But I think it would be good to table it.

**Mr Furlong:** It is on occupational segregation and gender undervaluation, and it'll expand on the issues raised in the former president's statement on occupational segregation and gender undervaluation, which Justice Iain Ross issued on 4 November.

In addition to that, there are the things you'd expect us to prepare. There are changes in forms so that we can receive the applications. We've just finalised the consultation and confirmed a restructure of one of our branches to accommodate this to ensure that we have the specialised skills on the administrative side to support the expert panels, and I'll ask Ms Leggett to speak more on that. We haven't commenced recruitment yet, but we are very soon to recruit a director, a very senior staff member, to oversee that area. Then we're looking to establish a dedicated section on our website, and we are using and will continue to use a lot of our channels through research, as you're aware, subscriber emails and other channels to communicate. I will hand over to Ms Leggett.

**Senator BARBARA POCOCK:** As you hand over, can you give us the name of the new section that you're establishing?

**Ms Leggett:** We're currently deciding the name of the new section. It will have 'pay equity' in it, though.

To add to the points the general manager made, in relation to the research program and in relation to the proposed initial projects, it's anticipated that research will contribute to the identification of priority occupations and industries that are affected by gender pay equity issues, underpin any future review of awards and support the commission's ongoing capacity to determine equal remuneration and work value matters. We'll have further details about the research program announced in due course. As the general manager mentioned, we have also undertaken some restructuring within my branch, the Tribunal Support Branch, in order to ensure that we have the specialist skills that are needed. We will have a separate economic analysis team that will provide specialist economic analysis skills that can support the work of the expert panels and a new section that will have additional expertise to assist with that. We will shortly be advertising a director position for that.

**Senator BARBARA POCOCK:** Thank you, that's very helpful. On the research that you're undertaking, for example, on gender segregation and undervaluation, are you doing it in-house or putting it out to others? I'm just curious.

**Ms Leggett:** That's still to be determined. We should have more to announce in relation to that.

**Senator BARBARA POCOCK:** I note in the document you referred to, which I think would be usefully tabled, that the expert panels are delineated, three of them. I wonder if you could make a little clearer exactly how they will work alongside each other. The first, on pay equity, seems straightforward, but please clarify because there's a lot of overlap in the wording.

**Ms Leggett:** Certainly. In terms of the statement, step 3 for the formation of the three panels, that in essence reflects the legislation and how it characterises the need for the composition of the particular panels. The first panel, as you mentioned, is an expert panel for pay equity. That panel will consider the making of determinations under section 157(2) of the Fair Work Act, which is basically a determination varying a modern award minimum wages for work value reasons, other than for any matter the president considers might relate to the care and community sector, as that would need to be formed by a separate expert panel for the care and community sector. That goes on to the second expert panel. If there is a work value matter that is determined to be for the care and community sector that will need to be constituted by a separate expert panel, and that expert panel will need to have a certain composition: for example, members with relevant care and community sector expertise. Separately, an expert panel would need to be formed for the care and community sector if there was a need to make, revoke or vary a modern award for any other reason, so not just involving work value means. That would need to be formed if it involved the care and community sector.

**Senator BARBARA POCOCK:** No doubt it will become clearer as it operates. My last question is in relation to insecure work as it's now an object of the act to reduce insecure work. What work do you have underway looking at the options to do that, given the commission has very deep experience in decision-making on ways to deal successfully and unsuccessfully with casual work? I wonder where your thinking is on that and any work you have underway.

**Mr Furlong:** I might start and then hand over to Ms Leggett. In terms of insecure work, my understanding is that it's been used for the annual wage review. It formed part of the modern awards objective, section 134, but also the minimum wage objective as well. It will be considered as part of this annual wage review. In terms of insecure work, if we are looking at casuals and disputes around casual conversions—you're aware of the NES and the casual conversion. We deal with disputes around casual conversion, and, while there are still reasonably low numbers there, we do assist employers and employees with those issues.

**Senator BARBARA POCOCK:** I'm wondering if you're doing any thinking beyond that. It seems that the use of the casual conversion is very low because of the pay penalty that sits as a consequence of shifting for many casuals. I'm wondering whether there are other mechanisms that you are considering, for example, a redefinition of the term 'casual'. Is there no research on that question or not any options you're looking at?

**Ms Leggett:** No specific research that I can recall. But I would reiterate what the general manager mentioned in relation to the relevance of the addition into the object provisions. The president confirmed in his statement in December that parties should address the new objects in their submissions to the annual wage review, for example. To that extent, that will be a relevant consideration in the forthcoming annual wage review.

**Senator RENNICK:** I want to talk about a couple of decisions made by the fair work commissioners, whereby they have ruled that the COVID-19 vaccines are safe and effective. They've ruled that in the CFMMEU

v Mt Arthur Coal case. I'd also like to raise the issue of the Coopers Brewery case, where Fair Work Commission Deputy President Colman basically said that we can rely on the ATAGI advice because:

... ATAGI is an expert body whose role is to provide evidence-based advice on the administration of vaccines to the Commonwealth ... ATAGI's status as an expert body that provides advice to government and the public cannot seriously be doubted and indeed the applicants did not seek to impugn that status.

ATAGI came out a number of times and said, initially, that the vaccines did stop transmission and were safe and effective. The evidence from the FDA—as early as December 2020 they are on record saying that there is not enough data available to make a determination about how long the vaccine will provide protection, nor is there evidence that the vaccine prevents transmission of SARS-CoV from person to person. That was on record in December 2020.

My question to you is this. These rulings made by the Fair Work Commission are clearly wrong. They've relied on misinformation or whatever. I accept that they were probably taking the advice of ATAGI. What rights do these people who've lost cases based on this incorrect information have in terms of getting recourse to their unjust decisions?

**Mr Furlong:** As you're aware, we've traversed this a number of times at previous estimates, and a lot of the evidence is now on the public record, including through several questions on notice, a couple of them being EEC-AE22-046 and SQ22-001088. What I've said at previous estimates, but also in those QONs, is that it's not the commission's role to provide advice on vaccination requirements. We received a significant number of applications to deal with disputes but also about termination of employment of cases under general protections and unfair dismissals, mainly about vaccination related issues and whether or not the employers in those circumstances had provided lawful direction to the employees. Those cases were resolved through the commission in the normal course—

**Senator RENNICK:** So is there or isn't there any recourse for these employees?

**Mr Furlong:** There is. They make an application to the Fair Work Commission, if they believe that they've been unfairly dismissed, to have their dismissal dealt with.

**Senator RENNICK:** Again, can they appeal these decisions?

**Mr Furlong:** Yes, they can.

**Senator RENNICK:** And the process for that is to go back to the Fair Work Commission and ask for an appeal?

**Mr Furlong:** It may assist, and I might ask Ms Scarlett to provide some further information, if you like, but in terms of the case management of unfair dismissal cases, it's our largest case type, by volume, each year. An application is made by a former employee, they're case managed and then they go to a staff conciliator. The vast majority of those cases are resolved through staff conciliation. If either party is unhappy with the terms, or if they can't reach an agreement through that conciliation process, then they can have the matter dealt with by a member who can arbitrate the matter. They can draw evidence, they can ask for any documentation, they can take sworn evidence and then they will apply the law and then they will—

**Senator RENNICK:** So they can appeal that decision? I just wanted to know.

**Mr Furlong:** Yes, and there's a decision that is issued. I haven't checked it recently, but while we were dealing with a lot of these cases, there was a section on our website that provided information around those decisions. But, if a party to those decisions is unhappy, then there are appeal rights as well.

**Senator RENNICK:** Thank you. There's this higher level issue, though, that I have of the commissioner saying that you cannot question government bureaucrats. I thought the Fair Work Commission was supposed to be an independent body, and that they should've been looking at the applicant's scientific experts, as well, not saying, 'It's the government advice; we have to take it without question.' What's the point of having an independent umpire if they're just going to roll over and go along with government advice without question?

**Mr Furlong:** It's been a long time since I read the Mt Arthur Coal decision, so I can't talk to that.

**Senator RENNICK:** That was the Coopers Brewery one, where he said, 'ATAGI are the experts; you can't question them.'

**Mr Furlong:** What I can say is that it appears that the full bench, in that decision, which was issued on 3 December 2021, outlined the reasons for their decision in—

**Senator RENNICK:** That's fine, but there's the issue here that you have a fair work commissioner who has basically said, 'We're not going to question the government.' They're meant to be independent. It would seem to me that they weren't independent when they came to this decision, and I think that's an issue. So, as senators and

representatives of the people, how do we go about calling into question whether or not this fair work commissioner is held accountable? Or is it another case of another independent body where they have no accountability whatsoever?

**Mr Furlong:** Decisions of members of the commission and the reasons for those decisions are published on the website. They're open to public scrutiny and they must stand on their merits. Members of the commission, as you rightly point out, are independent statutory office holders who form those decisions having regard to the individual facts of each matter. They deal with the cases that are before them. They make decisions based within the statutory framework—

**Senator RENNICK:** I realise that, but how do we hold them to account? I think the commissioners are there until they're 65, aren't they?

**Mr Furlong:** Yes.

**Senator RENNICK:** I'm not sure what you have to do to remove them or whatever, but to me, where they make clearly incorrect decisions, or fail to show impartiality—the issue here is that they haven't shown impartiality—how do we go about holding these people to account?

**Mr Furlong:** There are the appeal mechanisms, and I've outlined this in questions on notice as well. If there's an aggrieved party to a decision of a member, then they can make an application to have the matter dealt with, in the first instance, by a full bench of the commission. If they're still unsatisfied, then they can appeal to higher courts in higher jurisdictions.

**Senator RENNICK:** Okay. Tell me this. If we can't hold Commissioner Colman to account for his impartiality, how was it then that Lyndall Dean was removed from hearing vaccination cases? Why was it that Iain Ross was able to remove her from making decisions in regard to vaccine cases but we can't do anything about these other commissioners, some of whom are on record as mocking the unvaccinated? Why is it one set of rules for one commissioner and another set of rules for another commissioner?

**Mr Furlong:** The circumstances of those cases, I think, are very different. It's been a long time since I've looked at those. I gave evidence—and it's all on the public record—about the Kimber decision that you're referring to. Deputy President Dean issued, I think—and it has been quite a long time—a dissenting decision in relation to that. It is on the public record, in terms of what the former president in relation to that and the conduct of Deputy President Dean.

**Senator RENNICK:** Sorry, but how can we hold the president of the Fair Work Commission to account? Can we ask him to appear at these Senate hearings?

**Mr Furlong:** It is very uncommon. This was a previous regime as well, and he's a former president of the commission.

**Senator RENNICK:** I realise he's the former president, but he's also the architect, in Paul Keating's words, of superannuation, so mandates are a big thing for some of these people. The RBA governor appeared this morning, and that's an independent body. The ABC's independent. So the question is: can we get the president of the Fair Work Commission, or the former president of the Fair Work Commission, to come here and explain the reasons for his decisions and the decisions of his commissioners who, in my view, have clearly failed to display impartiality when making decisions?

**Mr Furlong:** The reasons for the sanctions in relation to Deputy President Dean were outlined clearly in my evidence. I made a statement in relation to this at the time, following the Kimber decision.

**Senator RENNICK:** Was that your decision or the president's decision?

**Mr Furlong:** I was aware. It was the president's decision. There's a member code of conduct that provides guidance. I'm happy to table a copy of it; it's a public document. It provides members—

**CHAIR:** I appreciate that, and Senator Rennick has a few more minutes to keep asking questions. But, as to that previous response to questions on notice and the previous advice you gave, I appreciate it already is in the public record, but you could reissue those. I'm just mindful that there a number of people that will be listening in on this, and it may well make it easier for people to be able to find those documents and make their assessments on the basis of those responses as well. I didn't mean to cut you off, Senator Rennick; it was just to assist.

**Senator RENNICK:** Thanks, Chair. I appreciate that.

**Mr Furlong:** There's a member code of conduct. It's a voluntary code. It's made by the president in consultation with members of the commission. It provides guidance to members on a number of things, but mainly their conduct in exercising their functions and in the upholding of the office as well. The former president made an assessment at that point—and you'll see it in the documentation that we table—that the member code of

conduct may not have been complied with at that time. As I said, there is a lot of information on the public record that I think will satisfy you, Senator.

**Senator RENNICK:** I'll finish off on this question. Mr Nathan Necovski went to the Fair Work Commission, and, as part of the mandates, he had to get a vaccine and was injured after the vaccine. He was given an exemption from getting further vaccines because he was severely incapacitated. He then went to the Fair Work Commission, who actually said that the dismissal was unfair, but they gave him a measly \$2,175 in compensation. Do you think that's something that is fair to the Australian workers? This guy did the right thing. He got a vaccine, was incapacitated and lost his job. The Fair Work Commission actually ruled in his favour and said it was an unfair dismissal, but the compensation was just over \$2,000. How is \$2,000 going to compensate someone who (a) has lost his job and (b) has been severely injured, with possibly lifelong consequences, from the vaccine?

**Mr Furlong:** It may help if I just describe my role at the commission. I hold a statutory office that's responsible for the administrative side of the organisation. I'm responsible for providing—

**Senator RENNICK:** So you're responsible for the administration. How do I get these commissioners who are making such callous rulings to be held accountable to the parliament and to the people?

**Mr Furlong:** In many ways, they're quasi-judicial officers. In many ways, they're akin to judges. They're independent statutory office holders. They make decisions in accordance with the Fair Work Act, which provides them with the guidance—obviously, under case law as well—to assist them in their decision-making.

**Senator RENNICK:** My question is to you, Minister, and I'm happy for you to correct me here. Is the government looking at setting up some sort of judicial review commission similar to ICAC but for judges, whereby judges can be held to account for their performance? I think that's been discussed, but I'm not up to speed with it.

**Senator Watt:** I have a vague recollection of a judicial commission being committed to. I think I'm right in saying that, but that really would be something for Attorney-General's estimates.

**Senator RENNICK:** Yes, sure. Is that something we could look at—bringing the Fair Work commissioners under that judicial commission so that they're held accountable for these callous decisions? I know you can't answer that, but—

**Senator Watt:** Yes, I wouldn't want to comment on something that's outside this portfolio.

**Senator RENNICK:** Okay. Thanks for your time.

**CHAIR:** Senator Cash.

**Senator CASH:** Mr Furlong, could I go through the changes that were legislated last year in relation to the industrial relations regime. In the first instance, can we go through the communications that the Fair Work Commission is having in particular with those people affected and employers who want to properly understand either what their new obligations are or what their new obligations will be. I believe that, during the committee hearing for the government's IR reform, you said the commission would be providing advice or supportive materials for businesses to understand the changes, as well as explaining those changes and what they will mean in the context of dealing with the Fair Work Commission et cetera. Can you tell me what you've done since that statement in relation to the communications, in particular with employers who do actually want to understand what their obligations are?

**Mr Furlong:** Specifically in relation to the bargaining provisions or just more generally?

**Senator CASH:** Generally. I've got a section on bargaining which I'll ask separately, so perhaps answer generally here.

**Mr Furlong:** The president's statement—and I'll table this as well—from 8 December, I think, provided some guidance on our strategy for the implementation of each of the reforms. There are a significant number of reforms that impact on us. He indicated that one of the key elements of this is that the experience of the users will be a common thread in the development and the design of all of our services. Following on from that, I understand that the people in the organisations who have the obligations and the rights under the systems are often best placed, or very well placed, to inform how policies should be implemented in operational organisations like the Fair Work Commission. It's not just well-meaning public servants in ivory towers making decisions; we engage very deeply on an ongoing basis with everyone who has and who will ultimately have obligations and rights under these new schemes. Co-design is at the centre. It's a common thread in all of our activities. What we do will be fit for purpose, and it will be practical.

Each of the reforms are different. We're doing things in relation to implementing recommendation 28 of the *Respect@Work* report, which is about a new jurisdiction for the Fair Work Commission to deal with complaints

about sexual harassment. The work that we're doing there in the implementation is different to the work that we're doing in other reforms. Are you happy for me to talk about that recommendation?

**Senator CASH:** If you wouldn't mind, please.

**Mr Furlong:** In terms of prohibiting sexual harassment in connection with work, we've established a reference group for the implementation. Some of the members of that working group are: the ACTU; the Ai Group; the Sex Discrimination Commissioner, Commissioner Jenkins; the National Women's Safety Alliance; Migrant Workers Centre; and reps from small business, including our reference group.

**Senator CASH:** Who are the reps from small business?

**Mr Furlong:** I'll have to take that on notice, there's a number. The Ai Group is also represented on this working group. My understanding is that it's meeting tomorrow. There are other organisations, like Blue Knot Foundation, who'll be able to provide us with guidance and assistance in ensuring that whatever practices and processes we have in place are trauma informed. The last thing we want to do is retraumatise the parties—the victims—who come before us, seeking our assistance in these matters. I presented at the Respect@Work Council last week. I'm a core member—

**Senator CASH:** Yes, I know that as well. Thank you.

**Mr Furlong:** There are plain-language materials on our website. We're training up our workplace advice service partners—about 90 of Australia's leading providers of legal advice. This is about 5,000 sessions per year. For info line and subscriber emails we have over 330 active subscriptions, with about 30,000 active subscribers. There's a new e-learning module about sexual harassment we released recently, which we think makes a really meaningful contribution. There are active case management practices that we've put in place, in addition to working with the Fair Work Ombudsman and updating bench books. We're also looking at a train-the-trainer program there as well.

Now, specifically about small business—

**Senator CASH:** Yes.

**Mr Furlong:** We have a small business reference group that we engage with, and—

**Senator CASH:** And you'll get me who's on it so I can understand the representation?

**Mr Furlong:** There are multiple working groups working across each of the reforms. As I was saying, we want to make sure that each of our activities for the implementation is specific to the needs of each jurisdiction. It's not one size fits all. The Respect@Work provisions are different to what we're doing with bargaining to ensure that we get it right ahead of the time frames. I can go through some information about what we're doing.

**Senator CASH:** Just also in terms of the work that has been done by the commission to update employers across the board to understand the changes in their obligations—obviously, you have a very large database: how have you communicated with the employers? Again, I'm focusing on employers because they have new obligations that they must discharge.

**Mr Furlong:** Yes. There are a number of things here. Yesterday, we published a list of zombie agreements—

**Senator CASH:** I saw that on your website. I was going to ask what you're actually doing to communicate with those employers who are part of a finished zombie agreement, to ensure that they and their employees know that a different game is in town now?

**Mr Furlong:** There are a number of different things that we are doing here. I'll ask Ms Leggett to provide some of the detail on this. As you are aware, that list was published yesterday; there are 101,000 agreements on it. We'll only go into a little bit of detail about whether or not each of those agreements actually covers employees, if they're operational or are active. But on what we're doing: firstly, there's the President's statement on a LinkedIn post. We have over 13,000 subscribers, and it's been reposted many times as well. We have access to information on our website, written in plain language to assist as well. We will engage with our small business reference group, which has members of COSBOA and several of the major employer associations. Mr Billson is also represented in that cohort as well.

**Senator CASH:** The Small Business and Family Enterprise Ombudsman, yes.

**Mr Furlong:** There are many—

**Senator CASH:** Different avenues that you utilise.

**Mr Furlong:** In addition to that, as you're aware, the Fair Work Ombudsman has the primary responsibility for providing education, advice and assistance about the Fair Work Act.

**Senator CASH:** Have you been working with the Fair Work Ombudsman to ensure that there is that consistency in the information that's being provided, and that you both know what each other is doing?

**Mr Furlong:** Absolutely. It happens at every level—at the officer level. For instance: with the list that we published yesterday, there was ongoing consultation between us and the Fair Work Ombudsman to make sure that we are consistent in our messaging. The last thing we want to do is confuse. We are working collaboratively and closely together as well, as you'd expect us to be working.

**Senator CASH:** Are any concerns being raised with you by employers in relation to how they may comply with their obligations?

**Mr Furlong:** I personally have not received any complaints or concerns.

**Senator CASH:** Not so much complaints—concerns.

**Mr Furlong:** Yes. I personally have not received those concerns. But bear in mind the first tranche has commenced, the next tranche of reforms commence on 6 March, there's a further set that commences in June and then the zombie agreements terminate, I think, on 6 December this year. There are a couple of other reforms that commence at that same time, so we're at the start of that journey. I can talk to you ad nauseam about the services and the service offering we're going to put in place to support small businesses, mid-sized businesses and employees bargain going forward—and not just to bargain and be able to access the system in the new streams of bargaining but to bargain better as well.

**Senator CASH:** Yes.

**Mr Furlong:** It's about relationships, and so we want to do our part in ensuring that, when people come to the bargaining table, it's as cooperative and harmonious as it can possibly be to bring about better outcomes for those workplaces.

**Senator CASH:** One of the issues that we pursued at length during the committee hearing into the industrial relations legislation and then in the actual Senate is the multi-employer bargaining. The new industrial relations changes do give the Fair Work Commission a range of new powers. Could you just take me through what those powers are?

**Mr Furlong:** I might hand to Ms Scarlett to provide some—

**Senator CASH:** Yes. Thank you.

**Ms Scarlett:** You'll appreciate that there are three new streams of bargaining, and so the powers differ between those.

**Senator CASH:** Yes.

**Ms Scarlett:** Broadly, the commission will be able to deal with applications for supported bargaining authorisations and single-interest employer authorisations. We will be providing bargaining assistance to parties involved in supported wage matters. If a supported bargaining authorisation or single-interest employer authorisation is made, the commission then has the power to deal with applications to add or remove employers from that authorisation. If the commission can deal with bargaining disputes and, in respect of some of those streams, make intractable bargaining declarations if bargaining falls down. There are a range, depending on the stream—

**Senator CASH:** Depending on the stream that you're in, there are different—

**Ms Scarlett:** That's right.

**Senator CASH:** The reforms have passed, and, yes, I understand some have commenced and some haven't, but the commission has turned its mind to the role it will have to play, obviously. In terms of issues that continue to get raised with me, such as we actually need additional information—the information wasn't necessarily given through the committee process or the Senate in-committee process either. For example, section 216DC of the bill says:

When the FWC must approve a variation of a single interest employer agreement to add employer and employees

Can I get you to confirm who can make an application under section 216DA and section 216 DB of the bill.

**Ms Scarlett:** Yes. Just bear with me.

**CHAIR:** Senator Cash, I'm mindful we have the Fair Work Ombudsman as well, but you may have a list of questions you still wish to ask here. Have you got a rough estimate of how much time?

**Senator CASH:** Half-past six.

**CHAIR:** It is pushing the friendship!

**Senator CASH:** It is, I know!

**CHAIR:** We'll plough on. So we won't be doing the Fair Work Ombudsman until after dinner.

**Ms Scarlett:** An application under 216DA can be made by the employer and agreed with the employees to be covered, and an application under 216DB can be made by an employee organisation that's a bargaining representative.

**Senator CASH:** To make an application, how many people are required?

**Ms Scarlett:** My understanding, and I may need to confirm this on notice, is that it's only one.

**Senator CASH:** Yes. That was my understanding as well. If you would like to confirm it, I'm more than happy for you to do that, but that was my understanding. Does it require employees and employers to both agree?

**Ms Scarlett:** If it's a 216DA application, yes; if it's a 216DB application, no.

**Senator CASH:** Take me through the difference between 216DA and 216DB.

**Ms Scarlett:** A 216DA application is essentially where the employer and employees agree to the variation. A 216DB application is where there isn't necessarily consent by the employer to the variation; it's being made by the bargaining representative.

**Senator CASH:** What's the process that then happens?

**Ms Scarlett:** From a case-management perspective?

**Senator CASH:** Yes.

**Ms Scarlett:** That's something that the commission is still working through. I wouldn't be able to comment on that at this stage.

**Senator CASH:** When you say the commission's still working through it, what is the process whereby you're working through this at the moment? Are you engaging with stakeholders? Are you seeking feedback?

**Ms Scarlett:** We will be publishing an implementation report at some point to seek feedback on the process.

**Senator CASH:** What is the implementation report meant to do? You say you'll be publishing it—and I will ask you when you anticipate you'll be publishing it—but what do you see the implementation report as being?

**Ms Scarlett:** We'll be seeking feedback on aspects such as application forms that will be needed, or changes there, and any procedural rule amendments that are required, and we'll be seeking feedback on the case-management process as well.

**Senator CASH:** Is all of this going to be undertaken before the commencement of the new sections?

**Mr Furlong:** Yes, it will.

**Senator CASH:** I just want to make sure.

**Mr Furlong:** It hasn't been released yet, to my knowledge, but it's within the coming week. As an example, we're releasing an implementation plan about recommendation 28 of the *Respect@Work* report, and we'll be very happy to provide a copy of that. That will give you a good sense of what we will be doing with these other provisions.

**Senator CASH:** This is something that's new for employers, unions and employees; it's new legislation. Obviously, you're working through it with the implementation plan, seeking the feedback et cetera, and you will publish that. One of the questions that continues to be asked about the new legislation, in particular by people who've never been a part of, say, the enterprise bargaining process before, is: when would an employer be compelled to bargain? We're talking about the multi-employer bargaining stream now, obviously. Will you be, or are you, providing examples to employers, employees et cetera so that they actually understand this process and what's going to happen, and employers can look at it and go, 'Yes, I know it's happening'?

**Mr Furlong:** There'll certainly be some guidance material, but, as you know, we can't traverse areas that may end up being the subject of cases before the commission, which will provide further guidance in relation to these matters.

**Senator CASH:** Can you say that again? I missed that.

**Mr Furlong:** While we're very happy to provide you with general information about how we're going to implement the reforms, with things that provide the guidance we have to be careful that we don't stray into matters that may end up being the consideration of full benches of the commission.

**Senator CASH:** I understand that. When you say there'll be guidance to employers, in particular those who have not been part of the bargaining process previously, what do you anticipate that guidance looking like?

**Mr Furlong:** For example, I'll just take you to the statement of principles that's provided—

**Senator CASH:** Which is on the website. Is that the one that you're asking for feedback on?

**Mr Furlong:** That's right, yes. Ms Leggett may want to add to this, but the president issued a statement requesting—and there's heavy involvement by small business in that, in the consultation there—

**Senator CASH:** I'm sorry to jump in, but when we say 'heavy involvement' by small business I'm assuming it's not just COSBOA?

**Mr Furlong:** No.

**Senator CASH:** It's broader than COSBOA?

**Mr Furlong:** It is.

**Senator CASH:** Can I get you to provide the list of small businesses who are actually—

**Mr Furlong:** Absolutely. We are very happy to take that on notice. Obviously, the interests of small businesses will be represented by their representatives. Ai Group and ACCI have been consulted as well, obviously, in addition to COSBOA.

**CHAIR:** I just have a supplementary question. Does that include the Transport Workers' Union, which is the largest small-business organisation in the country?

**Mr Furlong:** I don't have the president's statements in front of me, but there are two statements that have been issued on this. My understanding is that the initial one sought feedback and the timetable for consultation. I think it was, from memory, Ai Group who sought an extension of the time frame, which the president subsequently provided. Chair, I don't have an answer to that question. I'm happy to take it on notice.

**CHAIR:** Could you take it on notice? I'm sure Senator Cash would be asking about them as well.

**Senator CASH:** I was actually going to ask about the owner-drivers who are not necessarily represented by the TWU. I hope that you're actually consulting with them.

**Senator Watt:** Some are, actually.

**Senator CASH:** We digress. A little moment between Senator Sheldon and I.

**CHAIR:** There are close to 15,000 that are, Senator Cash.

**Senator CASH:** Mr Furlong, that was very naughty of Senator Sheldon and myself! Please continue talking about the guidance.

**Mr Furlong:** This goes to the statement of principles, which were fundamental to bargaining moving forward. The discussion paper, a significant document, was published recently—I think it was last week. It's an open document—anyone can provide feedback on it. It's available, and we genuinely want to engage with anyone who has any sorts of questions.

**Senator CASH:** I'm assume that by being available, you also disseminated it on your database?

**Mr Furlong:** Absolutely, yes. It's available on our website, as well as being published.

**Senator CASH:** Thank you. In relation to 216DA and 216DB and those questions, I very much do appreciate the answers. I understand that guidance has been undertaken and feedback is being sought. Again, these are the questions that you will know were asked during the committee stage and during questioning in the Senate when the bill was going through. But the answer that I continued to get verbatim from the minister at the table or in the Senate at the time, regardless of who they were, was, 'That is a matter for the Fair Work Commission.' That's the good news for you. The bad news is that I'm now going to ask you about it, though. This is really becoming an issue now when I go out there and talk to people. They genuinely want to know and just want some guidance in terms of: 'Could I be in? Could I be out? How could I be in? How could I be out?'

Under the section 'common interest' it lists three conditions for identifying a potential common interest: geographical location, the regulatory regime and the nature of the enterprise. One of the questions that's asked continually is: can you confirm that to satisfy the common interest test you actually don't need to satisfy all three factors?

**Mr Furlong:** Unfortunately, Senator, I can't provide an answer to that question. The reason is that it's something that I imagine is likely to be considered by members of the commission in matters before them and, as you're aware, my role is largely administrative. I can talk to you about resources and implementation strategies or plans, caseloads and things of that nature. But I can't talk to you about interpreting in the law and how those provisions may be interpreted by members of the tribunal.

**Senator CASH:** Minister, you were obviously, as you know, one of the ministers at the table or in the Senate at the time when I asked a number of these questions, and the answer often was, 'That will be a matter for the Fair Work Commission.' The problem I now have is that, in being a matter for the Fair Work Commission and Mr Furlong, I appreciate, can't actually interpret what the law may or may not be, there does not yet seem to be any further guidance in terms of the common interest test, the three factors and whether or not you need to satisfy all three factors, two factors or one factor in relation to the common interest. Given, obviously, a number of weeks—going on for two months—have now passed since the legislation was passed, has the government given any further consideration to that to provide guidance?

**Senator Watt:** No, not that I'm aware of. I remember that there were a number of matters that I said would be a matter for the commission when we were having the debate. What that means—and what I meant—is that that will need to be interpreted by commission members. The government, in general terms, doesn't intend to provide information or an opinion on those matters that I said would be left to the commission to decide. Again, Senator Cash, as I pointed out during the debate, that's not an uncommon approach. Parliament passes laws but leaves a variety of things to be interpreted and decided by courts, by tribunals, and that's exactly what we're doing here as well.

**Senator CASH:** The issue I have with that, though, is there is just no guidance at all other than a statement in relation to the common interest, but you're unable to provide guidance, not even to the Fair Work Commission, in terms of: do you need to satisfy all three elements? This is something that, if you recall, we explored in detail. Does 'geographical' mean I'm in Western Australia and therefore I'm actually out of the geographical location of the eastern states? I talk to businesses, as you know, who are actually really struggling with this all the time, and they're seeking that further guidance. Really what I'm hearing—and I don't want to verbal you; I do just want to confirm this—is that there is no further guidance, other than what we got through the Senate, if I went to the *Hansard*. You admit you said it's a matter for the Fair Work Commission and I accept the answer given by Mr Furlong, so ultimately what we're saying in relation to the common interest is we are not going to get that guidance until a case is brought before the commission and the commission makes its own interpretation of the legislation.

**Senator Watt:** I have confidence that employers, employees and unions and peak employer groups will be able to operate within the system that's been designed. Clearly, when making its decisions, the commission will take into account the objectives of the legislation. That will influence how they interpret those new clauses, just as they will use those objectives to interpret other clauses as well.

**Senator CASH:** Again, the issue that I have with that is that it's great for you to be able to sit in Parliament House in Canberra and say that, but it doesn't actually reflect the reality on the ground. The reality of the feedback that was given and continues to be given throughout the process of leading up to and the passing of this legislation is that there is still no further guidance to employers who are asking very genuine questions. They actually don't want to do the wrong thing; they want to understand what their rights and obligations are. They actually want to know, if they're a mining company in Western Australia—and you would have seen there are potentially issues now in terms of companies in Western Australia who have been approached for the first time by unions to bargain—'Okay, I'm bargaining here in Western Australia, that's one thing, but do I now have a common interest with a company in New South Wales that is in the mining industry?' There is no further guidance yet, other than the government has confidence. That probably doesn't actually provide businesses out there with confidence.

**Senator Watt:** I remember giving very comprehensive answers in the debate on the bill, and frankly I don't think that anything we say will convince you of this, Senator Cash. You opposed the bill—

**Senator CASH:** It is not about convincing me, Minister Watt. Over 50 times during the debate you or a minister at the table—and I acknowledge that it wasn't always you—responded with, 'That is a matter for the Fair Work Commission'. Honestly, I couldn't believe it myself when we started counting, and others were counting too. The Fair Work Commission is here, and we're asking questions—and I've got a whole list to go through in terms of further guidance. It doesn't provide businesses out there, in particular, with confidence. Absolutely no further guidance can be given even to employees who are asking, 'Would we be linked into a common interest?'

**Senator Watt:** I don't have the legislation in front of me and I don't have the *Hansard* of the debate that we had in the parliament, but my recollection is that the legislation set out what the common interest test is, set out the types of criteria, if you like, that need to be satisfied to qualify for it. I also remember in the debate ruling out a number of propositions that you put to me and setting out the need for similar industries, or whatever the exact terminology was. I can't remember the exact wording of the legislation, but it was along those lines. I think people are capable of interpreting that and coming to agreements.

**Senator CASH:** People are capable of interpreting it!

**Senator Watt:** I have more faith in people than you.

**Senator CASH:** You can't interpret it yourself. That is the issue I have.

**Senator Watt:** But I'm not—

**Senator CASH:** You were asked questions throughout a committee process. You were unable to answer the questions, but you have confidence that businesses and employees are able to answer what are very complex questions that you admit, as does Mr Furlong, will probably end up being determined by way of a case—

**CHAIR:** I'll just make a suggestion. The minister has been trying to answer that same question on a number of occasions, and I appreciate that the senator is trying to make a point, but can you give the minister a chance to fully answer the question. If you want to repeat the question again, that's up to you, but, if the minister could answer the question uninterrupted, then, by all means, continue your line of questioning.

**Senator Watt:** Senator Cash, I know that the answers I'm giving you don't satisfy you, but you and I have both practised as industrial relations lawyers albeit on different sides of the table—much as we are here. You've been a minister for industrial relations, and both of us know that the Fair Work Act, as with many pieces of legislation, doesn't seek to be prescriptive to explain every possible circumstance or to provide every bit of guidance to employers, to employees. There are a host of matters in the Fair Work Act that are left to the judgement of the Fair Work Commission, just as in other legislation there are a host of matters that are left to courts to determine. So it's not as if this is the first time that the Fair Work Act has contained provisions that leave matters to be determined by the commission. It has always been thus. It was that way when you were the minister, it was that way when the minister before you was the minister, and it will probably always remain that way. So the legislation provides the framework for employers, employees and unions to operate within. They will get on and reach agreements, hopefully, because that's what this is all about. Where matters are in doubt, they will be determined by the commission, as has always been the case.

**Senator O'SULLIVAN:** If you're that employer who's trying to work out whether you're in or out, whether you've got to enter into this common interest, is it that, as Senator Cash was saying, a case would have to be there first? It's a bit chicken or egg: how do you determine if there hasn't already been something determined? In the case where maybe there had been a case that had already gone through, the employer would have to go onto the Fair Work Commission's website, look up a case, try to determine from reading a previous case whether or not they're—

**Senator Watt:** Senator O'Sullivan—

**Senator O'SULLIVAN:** Why is there not just some sort of guidance?

**Senator Watt:** The officials can correct me if I'm wrong here, but my recollection is that the Fair Work Act that was in place before these amendments were passed, so the Fair Work Act that existed under your government, provided for common interest bargaining in certain situations. It didn't seem to be a problem then. It's only a problem now. That guidance wasn't provided to employers before either.

**Senator O'SULLIVAN:** There's been a very significant shift and change.

**Senator CASH:** You have fundamentally changed the way this occurs.

**CHAIR:** I think Mr Furlong was going to add something to the question asked by Senator O'Sullivan, and then I'll come back to you, Senator Cash.

**Mr Furlong:** There are a couple of things that I would like to add here. The first is around the assumption of the case law. While I don't have the dates in front of me, when the repeal of the four-yearly review and other measures act commenced it provided discretion for the commissioner and commission members to overlook minor procedural errors or issues in enterprise agreement making. The full bench of the commission was constituted and dealt with those provisions to provide guidance certainly within weeks of those provisions commencing. Members across the tribunal were then provided with that guidance. This goes to your question. They won't have to dig through a decision. We have guidance materials, bench books and a lot of information on our website that will assist laypeople but also practitioners in workplace relations to determine what a common interest may be. So we have skill and experience in dealing with these sorts of legislative reforms quickly and providing that guidance within sort of weeks if—

**Senator CASH:** a decision is made.

**Mr Furlong:** Exactly.

**Senator CASH:** This is no reflection on you, Mr Furlong, I assure you. You are going to be implementing the government's legislation. But that therein lies the issue. The case has been heard, a decision has been made and guidance has been issued. I accept that. As I said, this is no reflection on you at all. The issue is in the lead-up.

As I go around the country and talk to businesses—and I know Senator Liddle and Senator O'Sullivan do—I'm told that at the moment they are expending huge amounts of money trying to work through what is the common interest. Could it be geographical location? Could it be the regulatory regime? Could it be the nature of the enterprise? In terms of geographical location, what if we were two kilometres away, five kilometres away or one kilometre away? As I said, what if we were within the same industry but in a completely different part of Australia? The issue of local governments has come up. Do I have a common interest if I'm in the same local government area? That is the actual issue. It's the step beforehand.

Again I accept that if I ask any of these questions—and I could go back to *Hansard* and table all the questions that I asked during the committee stage of this bill—I think the answer will be, 'It is a matter for the Fair Work Commission.' That will be given again by the minister. And then for you there is no guidance at this point in time until a case is heard and decided.

**Mr Furlong:** That's my understanding.

**Senator CASH:** Yet again this is no reflection on you.

**Senator O'SULLIVAN:** There would have to be lots of different permeations.

**Senator Watt:** Senator O'Sullivan, if you have a look at the Fair Work Act—and I'm sure you have at different times to a degree—almost every provision of the Fair Work Act—and it's a big act—is open to interpretation. That's how legislation works. I accept that there may be some employers who are concerned about this. I can assure you that there are a lot of employees who are very excited about potentially getting a pay rise for the first time in a long time. I know, because they have been in media reports, that there are many employers who are looking forward to taking part in this bargaining process, especially when they can band together with other employers and not have the hassle of coming up with agreements with their own individual employees.

The point is that, while there are employers, as you say, who are concerned, there are many provisions in the Fair Work Act that aren't properly defined. The unfair dismissal provisions set out the types of things that can amount to unfair dismissal. They are not precisely defined; it's left to the Fair Work Commission to determine exactly what the words mean. That's how legislation works. That's why we have courts. That's why we have tribunals. So we're never going to have a situation where a piece of legislation and the words of the legislation are going to cover off on every possible circumstance. That just will not ever happen. If we had that we wouldn't need courts and we wouldn't need tribunals—

**CHAIR:** We wouldn't need high courts, would we, minister?

**Senator Watt:** We wouldn't need the High Court.

**Senator CASH:** I hope you're not thinking of going all the way there—

**Senator Watt:** We certainly wouldn't need the Privy Council! But that's just—

**Senator CASH:** That's a different debate.

**Senator Watt:** Yes. You're not going to bring that back are you?

**Senator CASH:** Well, you're in government, that's up to you! We got into—

**Senator Watt:** I understand the point you're making, but—

**Senator CASH:** Yes. But from my point of view, it's just disappointing that there's no further guidance. But I understand that we're at a stalemate and we're not going to proceed any further, so I won't go through every single question that I have in relation to that.

I'll turn to a separate matter. There was a provision under the former government of \$5.2 million in funding to the Fair Work Commission for regtech solution. Obviously, this is something that I would hope is actually going to make it so much easier for everybody to do business. Quite frankly, I really was enthusiastic about the work that was being undertaken in this regard. This is particularly in relation to the application programming interface for the Fair Work Commission's modern awards pay database. I know you have an announcement on your website, and I don't know if that's in relation to this area, but this is, in the first instance, for those who are actually thinking, 'What is an API—an application programming interface—for the Fair Work Commission's modern award database?' Can I just get you to take us through what that investment was and how the funding is being utilised?

**Mr Furlong:** Certainly. I'm very pleased to say that the API will be released in the coming weeks. For those who haven't dealt with an API before, it's an application programming interface. We have a modern award pay database that calculates all the rates of pay in each of the modern awards, and all the penalty rates. The API makes it available to connect with other software providers and it makes it machine consumable. So payroll

companies, the Fair Work Ombudsman, the ATO and Single Touch Payroll will be able to access it. For the first time ever, every rate of pay in every award will be available to be connected via this API between our system, entrepreneurs and whoever else who wants to integrate with this system. The benefit of it, obviously, is that it provides certainty about those rates.

We have developed it—

**Senator CASH:** I, personally, found this absolutely fascinating. As I said, it's not the answer to every problem but you're actually starting to head in the right direction in enabling employers and employees to have an understanding of what the correct rate of pay is. Can you just take us through how it actually works and how you got to the interface?

**Mr Furlong:** A number of years ago we started an internal project to develop a system that would digitise and automate the calculations for the annual wage review, and we were successful in implementing that system. Then we thought that we wanted to democratise it, that we wanted to provide this data to everyone. In 2023 it should be machine consumable, so we thought that the next step here was to engage a service provider. We engaged Microsoft to develop the application programming interface for us.

It was one of those things, like a lot of the stuff that we do at the commission, where we go out to users and find out how they want to use it. So we went to the peak bodies of digital service providers in Australia and New Zealand to assist us in the development of the requirements for this application programming interface and so it meets their needs. We fully expect that there are going to be reasonable terms of use and things of that nature. But we hope for, and expect—and the communications we've had indicate—a significant demand for it. Ultimately, while it's not a function of the commission, it's our responsibility to provide the rates of pay—and not just current rates of pay, but historical. It goes back, and you'll see that over time we'll continue to add to the database and that it'll contain every rate of pay back to whatever the statute of limitations is, and probably beyond that. We are hoping that digital entrepreneurs at the API will look at this and then they will start to—

**Senator O'SULLIVAN:** Does that mean that, as awards are updated, it pushes that through to their payroll systems?

**Senator CASH:** Does it automatically update?

**Mr Furlong:** Yes, that's the case. In the most recent annual wage review, a series of increases came in incrementally over, I think, a several-month period. This API will push the rates. Once there has been an update to the MAP database and it pushes to the API, then whoever has access to it will have access to that information. There'll be no more calculations.

**Senator CASH:** Exactly. Instead of doing this 20 different times to try to work out: 'Do I; don't I? What level: A, B, C or D; 1, 2 or 3?' that will actually end up doing it all for you.

**Mr Furlong:** It won't do the analysis. It won't tell you that, if you are working on a Saturday—that's beyond the functions.

**Senator CASH:** At the moment. But, as you said, you're hoping that someone will see it and say—

**Mr Furlong:** There's an opportunity there.

**Senator CASH:** Yes. Take me through, then, from an employer and an employee perspective, once the system goes live, how you are going to tell me—so that people out there know. Are all awards on it? Is it limited to certain industries in the first instance? And, if you wouldn't mind, take me through the process of how I utilise the system.

**Mr Furlong:** Ms Leggett is the project sponsor.

**Ms Leggett:** In terms of it including all modern awards, yes, it will include all modern awards, and their associated pay rates. Essentially, though, the API is a tool to access the database, which is already currently available. That's available to the public, and that database includes, of course, employers and employees. For example, when you look across all the modern awards, it includes it being calculated around 70,000 discrete rates. So the API is going to be the digital gateway that will enable it to connect with software products so they're not having to cut and paste those rates and put them into the software product.

In terms of how it may benefit employers and employees, we understand that a number of small business providers rely on payroll service providers to receive the rates of pay that they need to provide to their employees, so those software providers will be able to have access to that API, and, from that, small business will have access.

**Senator CASH:** In terms of communicating with businesses, this, as I said, was something that I was really interested in when we were in government, and I know Ben Morton was very, very interested in that whole

regtech solution et cetera, what it can actually do and what it will ultimately be capable of going forward. Can you give me an understanding of how I become aware of this—particularly for small businesses?

**Ms Leggett:** Certainly. Information about the API will be available on our website. We have a very large subscriber user base, as the general manager mentioned; we will go out in relation to that. In relation to those who will be using the API, we will have targeted education about how you can utilise the API, but we have targeted education more generally available about the modern awards pay database as well.

**Senator CASH:** Thank you. I think Senator O'Sullivan has some questions now.

**Senator O'SULLIVAN:** Mr Furlong, I have a couple of questions in relation to multi-employer bargaining. One of the apparent proponents of it, that was lauded by the government at the time of introducing the bill and through the committee process, and, indeed, as it was going through parliament, was the Council of Small Business Organisations Australia, COSBOA. They're lauded as a group able to talk on such issues as the process of the Fair Work Commission. In matters that are before the Fair Work Commission, is it possible for registered industrial organisations to intervene in matters, and would that be correct?

**Mr Furlong:** I will ask Ms Scarlett to assist you, Senator.

**Ms Scarlett:** I might need to take that on notice in respect of the new provisions and how that would work.

**Senator CASH:** Can I just work through that as well. So registered industrial organisations are currently able to intervene in matters?

**Ms Scarlett:** Again, I would need to take that on notice.

**Senator O'SULLIVAN:** My understanding was that they could. So, in matters where the organisation is not a registered industrial organisation, they are generally unable to intervene in matters before the commission—is that correct?

**Ms Scarlett:** Again, I'm happy to take all these questions on notice.

**Senator O'SULLIVAN:** Okay. I've got quite a few in relation to this. It's difficult to not be able to have them answered here. The Council of Small Business Organisations of Australia, COSBOA—are they a registered industrial organisation under the Fair Work Act, to your knowledge? Is COSBOA registered?

**Mr Furlong:** Are they a registered organisation under the registered organisations act? I'd have to check that. I need to take that on notice. I'm not sure if they are a registered organisation for the purposes of the Fair Work Act.

**Senator O'SULLIVAN:** So the assertions that employers would be able to engage them and get support, is that correct? Is that something that employers would be able to rely on?

**Mr Furlong:** There are many elements to this, including if an employee nominates a bargaining representative. I don't think there necessarily needs to be a registered organisation to assume that role. There are different streams of bargaining and there are different requirements under the Fair Work Act depending on the particular matters about whether or not ROs or others have standing to appear before the commission or represent the interests of others before the commission. I'm sorry if that's not particularly helpful, but it is very circumstantial.

**Senator O'SULLIVAN:** I have quite a number of questions here that go to this. You can't answer, you will have to take it on notice. I'm trying to assemble my thoughts here. Are you aware of whether COSBOA has ever been involved in representation of an employer before the commission before?

**Mr Furlong:** The commission deals with approximately 33,000 to 34,000 applications every year. I provide the facilities and the systems that enable those applications to come in and be processed, I don't have that level of granularity as to who may have appeared or participated or represented others. I would have to take it on notice.

**Senator O'SULLIVAN:** Would I be right in assuming, then, that they're not an organisation that is regularly involved in intervening in in cases? Because otherwise you would probably know. They wouldn't just be one of a few out of the 30-odd thousand you mentioned. If they were more prominent it would have piqued your interest—you would know?

**Mr Furlong:** I don't think I would necessarily assume that that would have been the case. We work closely with COSBOA. In terms of the applications before the commission, we deal with between four and five thousand enterprise agreement applications a year. I'm not aware of who is a party to those agreements. We work closely with COSBOA. I'm a regular participant at their monthly forums, so there's lots of engagement with COSBOA. Whether or not they participate in proceedings or are advising their members in proceedings that come before the commission about individual rights based matters or collective matters, that is where I have to take the question on notice.

**Senator O'SULLIVAN:** Would you be familiar at all with their financial and technical capacity to intervene or assist parties before the commission?

**Mr Furlong:** No.

**Senator O'SULLIVAN:** You're not familiar with whether or not they could take up that role and whether they've got that capacity?

**Mr Furlong:** Ms Scarlett may want to provide some further information here, but if there's an unfair dismissal application that is brought, it's reasonable and it's common for employers to bring in a representative or support person to assist them in those proceedings, even conciliations. The conciliations are conducted in confidence, and that's why I'm a little bit hesitant to provide—are they regular? Generally, 15,000 unfair dismissal applications come before the commission every year. I'm not aware of who's been advising the employers or if COSBOA indeed offer that service to employers to assist them with unfair dismissal applications.

**Senator CASH:** Can I jump in? Ms Scarlett, I just want to understand—you said you'd take the question on notice, and you also said, 'I just need to see how the intervention interacts with the changes that have gone through.' I just wanted to confirm, because I've got a line of questioning if that is what you meant.

**Ms Scarlett:** My understanding was that the question was directed to intervention in respect of the multi-employer bargaining provisions.

**Senator CASH:** That's what I was going to ask. Can you take us through what the changes to the intervention are going to be in relation to multi-employer bargaining?

**Ms Scarlett:** I'm happy to take that on notice—

**Senator CASH:** You don't know that now?

**Ms Scarlett:** in respect of registered organisations. That's right.

**Senator CASH:** That's fine. I wasn't sure if you'd misunderstood the question. That's fine.

**Ms Scarlett:** Thank you for clarifying.

**Senator O'SULLIVAN:** Further to what you were saying, Mr Furlong, could another party not provide consent for them or any organisation to intervene under the changes?

**Mr Furlong:** Yes, they can. They can raise those objections with the conciliator or the member if it's before a member of the tribunal.

**Senator O'SULLIVAN:** That would mean they're denied the ability to represent someone in a hypothetical matter as well?

**Mr Furlong:** The member who is presiding over matters that go before them—parties need to seek permission to be represented, and the member will then apply their discretion in whether or not someone can be represented by a certain provider of those services.

**Senator O'SULLIVAN:** Sorry, could you speak up?

**Mr Furlong:** If a party wants to be represented in a proceeding before a member of the tribunal, they need to seek permission to represent a party, and that is dealt with as a procedural matter before members of the tribunal. So it's members applying their discretion on a case-by-case basis.

**Senator O'SULLIVAN:** Minister, does your government not trumpet the fact that this organisation, COSBOA, had struck a deal with the union movement to bring on multi-employer bargaining, but can't actually represent any business in front of the Fair Work Commission, and nor does it have the ability to do so?

**Senator Watt:** I can't remember exactly what was said around the time of the Jobs and Skills Summit, but I certainly remember COSBOA playing a constructive role and being complimented by the government for doing so.

**Senator O'SULLIVAN:** But the government has also said that COSBOA will be able to provide support to employers, but we don't know whether or not they can, based on the evidence we've heard, or the lack of evidence.

**Senator Watt:** I think they absolutely can provide support to employers in the form of advice and other forms of support.

**Senator O'SULLIVAN:** Are you providing them with additional resources to be able do that?

**Senator Watt:** I'm not aware of any plan from the government to provide any party with additional resources to help them do their job. I'm not aware of the government planning to provide unions with extra funding to help them advise their members on the bill, or employer groups. But it's the ordinary course of business for peak

business groups to provide advice to their members, just as it's a core business of unions to provide advice to their members.

**Senator O'SULLIVAN:** I think you'd have to agree that, traditionally, COSBOA have been providing advice at more of a macro level rather than getting involved in individual cases.

**Senator Watt:** I don't know enough about COSBOA to know exactly how they operate, but I know enough to know that they provide advice to their members on matters of law, matters of policy.

**CHAIR:** I will shortly release the Fair Work Commission, but I just want to read something onto *Hansard* and make a copy available to the committee as I'm speaking. It's addressed to me, as the Chair of the Education and Employment Legislation Committee, and also to the acting committee secretary here. It reads:

Dear Senator Sheldon,

**Statement from Mr Wayne McLean, President of the United Firefighters Union Queensland**

In relation to allegations made by Senator Michaelia Cash against Mr John Oliver in Senate Estimates today, I would like to make the following statement:

In September 2019, I resigned from the United Firefighters Union (UFUA) and so did all of the UFUA Qld Branch Officials, including Mr Oliver.

Those officials and I remained officials of the United Firefighters Union Queensland (UFUQ).

A Court appointed Administrator took control to reconstitute the UFUQ Qld Branch and the Qld Officials and the UFUQ no longer had any connection with the UFUA.

The Administrator asked the Union about previous credit card expenditure relating to the UFUA Branch. Those expenses were explained, and it was confirmed that they were all within the Union's policy.

The Administrator did not take the matter further.

The UFUQ through its solicitors have, since the resignations, been in regular communication with the ROC. The UFUQ has, to the extent it was requested to assist the ROC in dealing with issues relating to the UFUA, voluntarily done so. It will continue to do so.

The union has not been informed of any investigation having been commenced into these matters by the ROC.

If Senator Cash had any integrity, she would make the same statement she made in estimates today outside parliament, where she is not protected by parliamentary privilege.

Yours sincerely,

Mr Wayne McLean

President

UFUQ

I just draw your attention to the fact that many of the people on union executive boards are volunteers. In this case these are volunteers that are literally at the moment fighting fires and dealing with emergencies in Queensland. I appreciate that Mr Oliver is a full-time official who also is a firefighter from that industry and does a lot of coordination work in connection with emergency services. It's critically important, when allegations are made here, that they're properly investigated. I'm putting this on the record. I also bring it to the attention of Senator Cash. I would hope that at some given point Senator Cash would make a further comment about those individuals concerned.

**Senator Watt:** Did you want to withdraw those allegations, Senator Cash?

**Senator CASH:** Not at this point in time, no.

**Senator Watt:** Just to clarify, Senator Sheldon: the union are saying that they are not, to their knowledge, under investigation in the way that Senator Cash was alleging earlier today?

**CHAIR:** Not only are they saying that they are not under investigation, as was alleged by Senator Cash, but they are saying that all the matters that were referred to by Senator Cash are matters that should have been dealt with previously, arising out of the changes in the branch structure. They had an administrator appointed by the courts, which was appropriate, and they cooperated with them and encouraged that. They've kept in regular contact with the Registered Organisations Commission to make sure that they've been on the right track, and they have not been informed by the Registered Organisations Commission that they are an investigation. There is no other evidence before this inquiry except assertions by Senator Cash to the contrary to the statement that has been put out.

**Senator Watt:** Let's hope Senator Cash hasn't been making false allegations.

**CHAIR:** I now table this letter for the committee.

**Proceedings suspended from 18:30 to 19:31**  
**Fair Work Ombudsman**

**CHAIR:** I now call representatives from the Fair Work Ombudsman. Ms Parker, do you wish to make an opening statement?

**Ms Parker:** No, thank you.

**CHAIR:** Thank you. We'll go straight into questions I have and then to the coalition. These are some questions regarding the University of Melbourne and the Fair Work Ombudsman action. With reference to the Fair Work Ombudsman's action against the University of Melbourne for serious contraventions of the Fair Work Act, you said:

The FWO alleges that the University expressly, tacitly or impliedly authorised the contraventions because of a corporate culture involving the use of marking benchmarks ... a number of specific senior leaders in the Faculty knew of the benchmarking practices and that they resulted in employees not being paid for all time spent marking.

Can you elaborate at all on the role of the corporate culture and senior leadership in this case?

**Ms Parker:** Certainly, but I note that we have put it in front of the court, so we are careful about talking about allegations rather than what is proven. What we have observed across the university sector in general seems to be a culture of certain behaviour, and in this case we are alleging there were issues around how casual academics were paid. We're alleging that records were not being kept correctly. We're alleging that staff were working more hours than they were being paid for and that that was tacitly approved or encouraged by the university. We consider this to be a serious contravention; hence, we are seeking higher penalties than we would normally.

**Ms Volzke:** To add to that: across the university sector, there did seem to be a culture of divesting responsibility for payments, recording of ours et cetera without central regulation and oversight of payment methods as well.

**Ms Parker:** Yes. We've talked about this before at estimates. There is a series of governance problems across the university sector. Certainly we have been really surprised about the extent of it. It appears to be systemic. There are issues across most universities, and we are really encouraging them to address the issues, do payroll audits and make sure they are not breaching their enterprise agreements. That would be issue No. 1, and we consider that to be a really serious issue. A breach of an enterprise agreement you've negotiated and entered into and had approval for is, to me, very serious indeed. So we're working with the universities. It hasn't been easy. There has been passive resistance. That might be the way of describing it. It is not all of them, but certainly there is a culture of wanting us to leave them alone for them to work out their own issues. We feel—certainly I feel—that the only way to get deterrence and attention to this matter across the universities is to take someone to court.

**CHAIR:** The extensive underpayments in the university sector have invariably involved casual staff. In the Fair Work Ombudsman's view, is there a connection between underpayments and casual employment?

**Ms Parker:** I think it's absolutely fair to say that casual workers are, by their very nature, insecure or in more precarious employment. It stands to reason that they're not in a position of power, so casuals across the board, not just in the university sector, are going to be more vulnerable. They tend to be—not necessarily in the university case—younger workers. They're often migrant workers doing casual jobs. The priority sectors that we set cover mostly sectors where there are a lot of casual workers, so I think it's fair to say that it's certainly an issue. It's not the only factor that makes a worker vulnerable, obviously, but it's one of them. Others are being migrant workers or young workers, having a non-English speaking background—those kinds of areas always create difficulties for workers, and they're reluctant to come forward. They're reluctant to raise issues because, of course, they can be let go very easily.

**CHAIR:** On that point: I'm more talking about the media understanding of casual employment and migrant workers and the pressure on young workers. What's particularly striking in this instance is what would be considered highly educated, highly experienced, knowledgeable individuals that, because of the nature of their work, tend not to be in their younger years—not juniors. They are in further into maturity in both the unemployment sense and the personal sense. They've had experiences in most circumstances and, from my observation, across various work roles. So they are highly educated, highly experienced, mature individuals, but the thing they have in common with those migrant workers and those young workers is their casual and precarious work, which is a defining factor of what I would describe—I am putting words into your mouth, and you may comment on it the way you see fit. They also hold that casual experience that means that they are in precarious work. They are also vulnerable because of the nature of casual work. There are potential threats in some circumstances such as shown in evidence I have received in previous inquiries, including potential demotion, non-promotion and non-re-engagement, even though in some circumstances they had been there for many years,

carrying out employment in similar roles, particularly in the same university. Are there any observations that strike you in this particular instance on the nature of those workers?

**Ms Parker:** I agree with everything you've said. What is interesting in other sectors too—it's probably worth mentioning—I think I've said before in these hearings when I came into this role 4½ years ago there was a general view the corporate sector was able to look after itself, had payroll people and was highly sophisticated. The idea that they'd be systematically underpaying workers was something we weren't really cognisant of. Then over the first year of my appointment the issue of wage theft started to be raised in a range of forums, and out of the woodwork seemed to come all these underpayments from corporate sector employers and universities as well. I don't know; I think it surprised a lot of people. I'd say there are some fairly sophisticated operators in those companies too, not necessarily employing as many casuals. But it is an area where it still needs a lot of attention, and there's certainly no shortage of work for my agency.

**CHAIR:** Thank you for that. How widespread is the use of marking benchmarks that result in underpayments at Melbourne university?

**Ms Parker:** We're seeing it commonly across the universities. I'm not saying by any means this is deliberate. In some cases, conversations we've had with the universities have been that it seems a logical thing to set a price for an essay, for example, rather than manage how long people are spending marking. I'll give you an example. Rather than using it as a performance management opportunity, it's much easier to say, 'I'll pay you this much to mark a level 1 essay,' for example. There's some logic in it, but the fact of the matter is if they want to do that they need to go to the Fair Work Commission and get agreement that that's how they'll pay people. That requires them to negotiate with unions to say that's the best way to do this in this sector, and they haven't done that. They've done agreements that say you'll pay on the basis of hours worked, and it's not how they've been paying. I'm not saying it's deliberate; it seems to be some people have thought that's a logical thing to do, and they've done it.

As Ms Volzke said, they haven't centralised. They haven't had assurance. Their councils and boards haven't been asking questions about it. They haven't sought assurance that things are being done properly. I doubt many of their councils have been saying, 'How are we going with our enterprise agreement? Are we complying with it?' I'm hoping we're really bringing that to their attention, and I expect nearly all of them are asking those questions now and, where they're finding issues, are trying to address it. But it's very slow, it's pretty frustrating and it's taking up a lot of our time.

**CHAIR:** What action will Fair Work Ombudsman be taking in the coming year as part of the university sector being one of its top priorities? What's the approach to the university sector being one of the top priorities into the immediate future?

**Ms Parker:** You're asking if it is a priority?

**CHAIR:** What actions is the Fair Work Ombudsman planning on taking on that?

**Ms Parker:** We've been working within the agency to take a strategic approach to this issue. As you would've seen, that includes working with the peak bodies within the university sector and talking to them about the need to come forward, audit their payroll, talk to their staff, talk to unions et cetera and then if they find issues come and talk to us, and I have set out our compliance and enforcement policy, which takes a proportionate approach. In other words, if you come to us and you are completely open, you talk to us and you tell us how you're going to fix it and work it all out, then you are more likely to end up at the lower level. You may end up with a letter of caution. You may end up with no underpayments. You may find none. In our policy we then say if people have extensive issues that go back many years, if they're not willing necessarily to cooperate, then we can use higher level enforcement outcomes, and that's what we have been doing.

A couple of the universities have offered us enforceable undertakings and cooperated well. There's not a lot of public value in our taking them court, because they're doing the right thing. We get audit reports from them for the next three years. They have to fix their payroll and show us they've done so. They have to apologise to their staff. They have to get their payroll systems fixed and addressed into the future. So there are different ways we approach it, but I've set that out quite clearly to them and to the peak bodies and have had a positive response. As I said, it's still frustrating because it's taking longer than it should. Where some universities have had what we consider to be serious issues, where we want to send a strong deterrence message to the sector, not just the universities, we will take them to court, and we have done so; hence Melbourne university is in court on two different matters.

**CHAIR:** There is some degree of competition between the universities on some courses in prestige. It would seem that if universities are able to cut corners and offer potentially a more competitive rate on courses, that could

be a deciding factor for people entering into a course at a particular university. So this what certainly appears to be wage theft could also give an advantage from one university to another, couldn't it?

**Ms Parker:** One of the things that's happening at the moment that you may be aware of is the Australian Universities Accord, which is looking at the university sector as a whole. We've spoken with the representatives on the accord, and we have discussed this issue as one of the things we believe should be in that accord. There should be a requirement that they are paying their staff properly, that there's no breaching of enterprise agreements and that they are setting an example, if you like. As you've said, higher level organisations should be highly educated et cetera. The accord representatives were very positive about that and were very concerned about the issue, so there are ways of bringing this to attention. We've also been working with TEQSA, who qualify the universities. We've been using other methods. I've met with the department of education to talk through the issues. We have been trying to raise this across a whole range of areas to bring attention to it and to just address it and move on, and we're confident universities are trying to address the issues; it's just taking a long time.

**CHAIR:** I'm very mindful that casual labour in most industries, including in the university sector, usually have low unionisation, and I'm very mindful in this sector, as in others, that when that occurs there's more opportunity for exploitation or more disadvantage in trying to get matters dealt with. I just want to say the Fair Work Ombudsman consistently pursuing this matter has been a positive thing but also say quite personally how outraged I am. I've been coming here now for 3½ years now as a senator. We've been going to these hearings, and you've been giving regular answers to the questions various senators have asked about the performance of Fair Work Ombudsman in the university sector. So there has been an informative, engaged approach by the Fair Work Ombudsman, which I congratulate you for. But to find this reckless approach from this, and I'm aware of other universities, to their staff says there's still an imbalance in the whole system. Prosecution helps, but the imbalance still stays. Again, thank you for your hard work and to the rest of the team.

**Senator CASH:** I will also echo Senator Sheldon's comments: thank you for your hard work and everything you do. I didn't realise it'd now been almost five years in the role. We went through a number of issues in relation to the transfer of the functions from the ABCC to the FWO at the last estimates, and obviously it was a work in progress. The legislation had only just passed, and the ABCC itself didn't formally end until 6 February. So I'll work through the *Hansard* from the previous estimates just to get you to update issues as they arise. But, in the first, instance, I had asked you at that time what meetings you'd had with either the minister or the minister's office in relation to the transfer of the functions. And you said, 'No, we've been working with the department.' In terms of meetings with the minister or the minister's office since that time in relation to the transfer of the functions to the Fair Work Ombudsman, have there been any meetings with the minister or his office?

**Ms Parker:** We haven't met with the minister or his office about the transfer of the ABCC or the partial transfer of ABCC functions. It's been made clear to me that we are to be treated as very much independent. There will be no interference in that regard from the minister or his office. He's made that quite clear to us.

**Senator CASH:** We talked through the transfer of the cases to the Fair Work Ombudsman. I know, when you go to your website now, you have a section on who to contact about current ABCC matters. It says: 'If you have a current matter that is being investigated by the ABCC, you will be advised when it has been transferred to us. Until then, you can continue to discuss your matter with your current ABCC contact officer.' Is that the situation at this point in time?

**Ms Volzke:** That's in relation to investigations that might have been on foot, and Mr O'Shea can talk about that. As for the litigations that transferred, that obviously occurred, as you know, the day after royal assent, so that's dealt with separately. Indeed, if I recall, I think on that website there was mention of litigation separately, litigation on foot.

**Senator CASH:** So this is in relation to current matters that are being investigated. How many matters fall within this particular category? I would like to know how many have been transferred to the FWO, and, in terms of discussing the matter with your current ABCC contact officer, how does that actually work?

**Mr O'Shea:** To answer your first question, there were 31 active wage underpayment matters that transferred, at the time of the transfer, from the ABCC to the Fair Work Ombudsman. I'm not sure of what our website currently says or whether or not you're on a screenshot from a previous version.

**Senator CASH:** No. I've literally logged into your website.

**Mr O'Shea:** Great. So that advice was probably produced in the lead-up transfer, I would imagine, to ensure that all active participants to a matter were sent a letter to let them know that, even though they may have heard about the transfer, they would be maintaining their same contact. What I imagine has happened, in the first

instance, since the transfer has happened, is that would have been updated with those people who are parties to the investigation, to give them a new contact, if you like, a new Fair Work inspector.

**Senator CASH:** Right, so the website has not been updated?

**Mr O'Shea:** Can I take that on notice? I'm not sure.

**Senator CASH:** I literally googled it—the Fair Work Ombudsman, important information for the building and construction industry, updated 9 November, and then you scroll down. It's only because all the links also don't work.

**Mr O'Shea:** Senator, I have just had it confirmed that we have written to all participants in those investigations and provided them with updated Fair Work—

**Senator CASH:** Thank you. Brilliant; that's what I needed to understand. In relation to the litigation then, how many cases were transferred from the ABCC to the Fair Work Ombudsman? Ms Volzke, I think you said 'all of them, after royal assent'?

**Ms Volzke:** Correct. There were 41 matters in court that transferred on 7 December and two matters in which the ABCC had either intervened or was making submissions in relation to the Fair Work Commission.

**Senator CASH:** In terms of the discussion we had last time, I think there were 31 matters on foot then, and it is now 41.

**Ms Volzke:** Yes.

**Ms Parker:** There were 31 underpayment matters as well.

**Senator CASH:** Yes. On top of—

**Ms Volzke:** But they're not in court yet.

**Senator CASH:** No. That's separate to what we were talking about here.

**Ms Parker:** The 31 was the number for wage underpayment.

**Ms Volzke:** And 41 matters are subject to court proceedings.

**Senator CASH:** In court, yes. In terms of the analysis you were going to do of the cases that you referred to at the last estimates, can you take me through the process there and what cases have been analysed? Can you provide a list of the cases, on notice?

**Ms Parker:** Sure.

**Ms Volzke:** Senator, what I can probably tell you—and I think we spoke about it last time—is that each of those matters would go through the case assessment process, as set out in our compliance and enforcement policy. You'll see there on page 3 that we say: 'Before any investigation or inquiry is commenced, a case assessment process is undertaken to determine, amongst other things, jurisdiction, and whether the use of the investigative powers is in the public interest' et cetera, and whether it's an 'efficient, effective and ethical use of public resources'. That case assessment process is something that continues through the life of any investigation and subsequent proceeding. That applies in relation to matters that we have dealt with primarily at the Fair Work Ombudsman, but also matters that transferred by way of litigation as well. As we spoke about at the last estimates, the secure jobs, better pay act provided that all of the litigation transferred to us, and then it would be incumbent on us to undertake that case assessment process.

**Senator CASH:** Correct. In terms of the 41 matters, has the case assessment process in the first instance started for each one?

**Ms Volzke:** It certainly has, and, in addition to those 41 matters, I think we've got about 164 matters on the go at the moment in the Fair Work Ombudsman.

**Senator CASH:** That are separate to those—

**Ms Volzke:** At the moment all of them, including the 41—it's 164. What I would say is that that case assessment/review process is something that we undertake. It's the matter management that we have with all of our matters, where we continue, as the matter goes along, to assess the sufficiency of evidence and other matters that might affect how we might take that forward. Certainly, that's occurred in relation to all of those 41 matters. We've got a great team of lawyers who are doing that work, and certainly that has been occurring.

**Senator CASH:** You and I were having a discussion about this at the last estimates, and one of the questions I asked you was:

If there were any cases that had been brought in relation to a function that was not transferring over, what would happen to that?

And the answer you provided was:

I have to be honest: I haven't looked closely at the provisions yet—  
we're talking about another period of time, obviously—

It's been busy. But my understanding is that all of those matters transfer, including those that perhaps might, for example, have been started under the BCIIIP Act.

Is that exactly what's happened?

**Ms Volzke:** Yes, indeed. For example, in one of those matters, I think it's the Constitution Place matter, a decision has been handed down, and that related to unlawful picketing allegations under the BCIIIP Act. That matter was concluded, with a decision handed down on 17 January.

**Ms Parker:** But with the Fair Work Ombudsman substitute.

**Senator CASH:** I've got that. That was actually one of the cases I was going to look at. That's the most recent decision?

**Ms Volzke:** I can perhaps say to you that, as of today, with the 41 matters that transferred over, 37 of those matters remain on foot in the court.

**Senator CASH:** And what's the status of the other four?

**Ms Volzke:** I'm happy to take you to those and then the two Fair Work Commission matters.

**Senator CASH:** Just their status.

**Ms Volzke:** They're still ongoing. There are 37 in the courts still ongoing and the two Fair Work Commission matters.

**Senator CASH:** One of the Fair Work Commission matters that you just referred to was where the decision involved unlawful picketing. That was something that we discussed last time, in terms of the transfer function. That was something that was brought, as we have discussed then and now, under the BCIIIP Act. My understanding is that, in terms of the exact provision, there is no equivalent in terms of the same type of proceedings under the Fair Work Act?

**Ms Volzke:** That's correct.

**Ms Parker:** For new matters. Yes.

**Senator CASH:** For new matters going forward?

**Ms Volzke:** What we can do in the Fair Work Ombudsman is investigate conduct that often can occur, in addition to picketing. It might be misrepresentation, coercion et cetera. But you're right, there is no—

**Ms Parker:** There's no picketing provision.

**Senator CASH:** There's no direct provision. Regarding the analysis that we have spoken about tonight and that we spoke about last time, in terms of decisions to not continue with cases on foot, have any decisions been made to date not to continue with—once the analysis has been done—a case that has been on foot?

**Ms Volzke:** Just one.

**Senator CASH:** Just one?

**Ms Volzke:** Yes.

**Senator CASH:** Can I ask which one that was?

**Ms Volzke:** Yes, that was the Flinders University health and medical research building project.

**Senator CASH:** Do you publish the rationale? How does that actually work?

**Ms Volzke:** Just briefly, that matter was commenced on 25 March 2022 in the Adelaide Registry of the Federal Court. We discontinued that matter on 19 January 2023. Essentially that matter related to a particular CFMMEU union official allegedly contravening section 500 of the Fair Work Act, which is improper conduct by a permit holder. The substance of those allegations related to inappropriate comments directed at a female worker at a particular site.

That matter transferred to us, obviously on 7 December, but before that occurred there were discussions on foot between the ABCC and the alleged victim that she didn't want the proceedings to go ahead or to participate in those proceedings. There were some without prejudice conversations that I can't provide any more detail of. If you want more I'd probably have to take that on notice and consider what we might be able to provide. But subsequently what happened is, with the transfer to the Fair Work Ombudsman, we considered that matter in accordance with the case assessment process. But also, we were contacted again by the alleged victim, through

her legal representative, confirming that she did not want the proceedings to continue. So, adopting the victim-centric approach consistent with the AHRC *Respect at work* report, we deemed it appropriate in that case to discontinue.

**Senator CASH:** Okay. If I've got any further questions in relation to that I'll put them on notice.

**Ms Volzke:** Of course.

**Senator CASH:** In relation to other cases where you do the case analysis and you don't proceed with it, do you make those decisions public?

**Ms Volzke:** Consistent with our media policy, we usually do publish an outcome once a matter is concluded. We did in this instance, but we only published a minimal amount of material because of the sensitive nature of it.

**Senator CASH:** That one I completely understand.

**Ms Volzke:** But more broadly, yes, we would.  
**Senator CASH:** In terms in particular of the additional matters that you've taken on, how much funding transferred over from the ABCC to you in relation to the additional workload?

**Ms Parker:** We received \$69.9 million over four years and 80 ASL, average staffing level, for the transfer of those functions, noting it wasn't all of the ABCC functions that transferred.

**Senator CASH:** We discussed that, as you said, last time. I know we also discussed this last time, but that was then and this is now and it's now been officially transferred. In terms of the staffing, can you remind me: how many staff were at the ABCC?

**Ms Parker:** In total?

**Senator CASH:** In total.

**Ms Parker:** I don't have that because again they had all the other functions as well, the code and the security of payments and so on. We'd have to get that for you, but we don't have it.

**Senator CASH:** That's fine. How many of the staff transferred over to the Fair Work Ombudsman?

**Ms Parker:** From the ABCC?

**Senator CASH:** Yes.

**Ms Parker:** I think we covered that last time.

**Mr O'Shea:** It was 616.

**Senator CASH:** We talked about it last time, but obviously time has now elapsed since then, and there were ongoing discussions.

**Ms Volzke:** I might be able to provide the detail going to your previous question. We had understood that, of the ABCC's total appropriation for '22-23 of just over \$35 million and 162 ASL, it dedicated approximately 45.5 ASL plus associated labour costs of \$5.4 million to investigating Fair Work Act contraventions. On top of that—

**Senator CASH:** My time is up, but I will continue my line of questioning after the next senator.

**Senator WATERS:** I've got some questions about the paid DV leave scheme, family and domestic violence leave scheme. I understand that you were given \$2.2 million in the October budget to assist small businesses to implement the scheme.

**Ms Parker:** Yes

**Senator WATERS:** Can you update me on what's been done so far?

**Ms Parker:** Yes, certainly. We were allocated \$2.2 million and two ASL for supporting small businesses to understand and implement 10 days of paid family and domestic violence leave. Quite a lot of work has been done, and I might ask Ms Hannah to talk about that because she's been really focused on it.

**Ms Hannah:** We have been working really closely with DEWR, the department who is running the consultation process with stakeholders, to develop a really comprehensive suite of tools and resources to support the introduction of paid leave. This content is housed on our website. It's built on the existing resources that we developed for unpaid leave. We published it on 10 November and updated it on 1 February. It's got information for businesses about how to prepare for applying the leave, pay slip requirements, evidence requirements and how to access leave. We've got a fact sheet for workers, which has an example of how to go about applying for leave and what that will look like on the pay slip. We have also updated our employer guide, so we've improved referral pathways and included some more referral phone numbers. We've updated two of our online learning courses, our course about holding difficult conversations in the workplace and also our record and pay slip courses.

As I said, we did that in consultation with the department as part of their consultation process with stakeholders. We have promoted that new content through our newsletters to subscribers. We've got around 500,000 subscribers who subscribe to various different newsletters that we have, and in December and January we wrote newsletters on this issue. We've just completed a paid social media advertising campaign as well to promote those resources. We're now engaging with stakeholders, looking at feedback. Have we hit the mark? Are there any gaps in information? The next tranche is due in August, so we'll use those insights to update our information as we need to.

**Senator WATERS:** That sounds good so far. What has the feedback been like?

**Ms Hannah:** It's been pretty positive. Because they were basically co-designed with stakeholders, they've really been hitting the mark and we've been getting really good feedback.

**Senator WATERS:** Okay. In particular on the payroll, I know you said you've updated both the courses and I think you said there was another fact sheet or how-to about payslips. Have you developed any specific guidance on how to ensure that payslips can approve the leave but without breaching confidentiality?

**Ms Hannah:** Yes, there's very detailed guidance on the website that outlines that, including some examples of what they would look like.

**Senator WATERS:** Lovely. And are you confident that small businesses will be ready to roll out the leave entitlements by 1 August this year?

**Ms Hannah:** There's still quite a bit of work to do. We're in the process of reviewing the information that we've got and talking to stakeholders through the DEWR process about what other additional tools and resources we should be developing. And, again, we'll launch those tools about a month out and then we'll promote them through our usual channels. So, there's definitely work to do.

**Senator WATERS:** Okay. I want to move now to the new positive duty obligations. I presume it's you, Ms Hannah, who looks after that. Have you started receiving requests for advice about the implications of the positive duty obligations yet?

**Ms Hannah:** That's Ms Volzke.

**Senator WATERS:** Great! I'm also interested in the division of labour between yourself and the AHRC on who does what in providing advice about those new obligations.

**Ms Volzke:** Senator, as you would be aware, the positive duty started on 13 December 2022. I know that the AHRC is in an intense startup phase there to make sure, when the regulatory powers start on 13 December this year, that employers and PCBUs obviously feel prepared for that change.

We are working with them and the FWC and also other regulators in this space, particularly work health and safety, to make sure that our overlapping regulatory responsibilities are as easy as possible to navigate for people who might be affected in that space. We had our first interagency group meeting about a week ago, establishing protocols across each of the agencies so that we can work together to make sure that, in rolling out these new responsibilities, people are as supported as they can be.

**Senator WATERS:** Okay. Have you divvied up who does what essentially in terms of responding to requests for advice or any sort of education campaign? And what's your role in that, or the ombudsman's role?

**Ms Volzke:** In a sense this is not dissimilar to some of the other sorts of inquiries that we often get through our info line in relation to discrimination complaints, for example. Often what we will do, as a first point of call, is refer that person off to a suitable agency. It might be the FWC—obviously they're going to have the new stop sexual harassment order jurisdiction; the AHRC obviously as well; in some cases, it might also be a work health and safety regulator.

The other thing that we're really keen to do, and certainly we've had initial discussions with the AHRC and the FWC already, is look at establishing return referral mechanisms on how we might be able to partner with those agencies to ensure that appropriate cases might be referred to us for investigation. That's not to say that, as we've spoken about previously, every matter that comes through us is assessed through that compliance and enforcement policy. Also, being able to partner with agencies in this space means that hopefully we'll be able to get those referrals happening so that we can target our powers most effectively.

**Senator WATERS:** Okay. Are you assuming that you will hear mostly from complainants, or are you expecting to hear from employers about what is the scope of their obligation and how can they meet it?

**Ms Parker:** It's more likely to be from employees I would think. Businesses are working out what they need to do, there's no question about that, but that will taper off after a while and then there will be more inquiries about what people's rights are and whether we can help them to apply those or enforce them if needed.

**Senator WATERS:** Okay. So, who's taking charge of the education task for employers so that they're across what their new obligations are? Is that you or someone else?

**Ms Volzke:** I think it's the AHRC who's—the positive duty is obviously in the Sex Discrimination Act. I would say we're the second line of defence, but we're certainly all working together to make sure that the information is as seamless as possible.

**Senator WATERS:** Okay.

**Ms Parker:** And they can obviously enforce as well. They're able to now issue compliance notices on employers. We've been working with them around that because we've been issuing compliance notices for a very long time, so we're providing that kind of assistance. And they can do inquiries as well into discrimination or unlawful discrimination. They've got a new role and so it's really important that we work together on that, as you say, so that people aren't confused and so they know where they can go to for help.

**Senator WATERS:** Thank you. I look forward to seeing more of the updates and the preparation as it goes ahead. And thanks for your detailed information as well.

**Senator RENNICK:** Hi guys, how are you going?

**Ms Parker:** Very well, thank you.

**Senator RENNICK:** I want to follow up on some questions I placed earlier to the Fair Work guys, but maybe you're the better person to ask. I want to follow up on some of the Fair Work Commission rulings against employees who have been injured by the vaccine and what recourse they have on these decisions. I'll just run you through a couple of examples and then I'll let you answer the question.

In one decision, the Coopers Brewery case, the judge, Commissioner Colman, ruled that ATAGI's status as an expert body that provides advice to the government and the public cannot seriously be doubted. I would raise an issue of impartiality there. I believe that the Fair Work Commission should look at both sets of experts; they shouldn't just default to take the government's point of view.

I would like to also give another example—there have been a few examples—of one guy who was forced to get the vaccine. He was injured. A specialist then ruled he couldn't get any more vaccines. Because he couldn't get a second vaccine, he lost his job. The Fair Work Commission then ruled that the dismissal was unfair and awarded him \$2,175 in compensation—which, quite frankly, if you've been injured by a vaccine to the extent that you can't work and you've lost your job, that sounds pretty callous. So, for people who are not satisfied with the Fair Work Commission with regard to their rulings, what steps can they take to try to remedy those rulings?

**Ms Parker:** There are obviously appeal mechanisms they can take. They can ask to have the decision reviewed by the Fair Work Commission or through a court.

**Senator RENNICK:** Do they come to the Fair Work Ombudsman?

**Ms Parker:** No, not for a review of a Fair Work Commission decision. That would have to go through—they're a tribunal; they're independent to us. They go back to the tribunal, or they could go to a court and seek a review of that decision.

**Senator RENNICK:** Okay, so what's the point of the Fair Work Ombudsman if—

**Ms Parker:** With regard to issues around vaccines? We obviously provide advice to the community around what requirements there are about being at work and so on. We provide that advice, taking account of public health orders. During the worst of the COVID pandemic various states put out various public health orders. You'll recall sometimes it was people won't go to work; they'll work from home; they need to be vaccinated. We relied very much on state health orders there; we don't issue health orders. I'd also say that we don't provide guidance on whether a specific employer is able to require an employee to be vaccinated. We make it clear that these issues are complex, and at the time, when we were asked about this during COVID, we talked about there being a whole range of different circumstances. Different states and territories had different public health orders because some had really big outbreaks. Everyone was locked down in Victoria, for example, for a long time. Others didn't have that. So it was very much state by state in terms of approach. So there are legal issues that come around that because of the case-by-case nature of that, and it may not be what you want to hear, but we advise employers to get their own legal advice if they're going to require vaccinations in the workplace. We advised that an employer can only require an employee to be vaccinated where there's a specific law, out of a state or territory public health order, that is requiring a vaccination: where a requirement is permitted by an enterprise agreement, another registered agreement or an employment contract, or where it would be lawful and reasonable for an employer to give their employees a direction to be vaccinated. That had to be on a case-by-case basis, depending on the nature

of the work, the likelihood of someone getting infected and so on. We consulted, at the time, with industry groups. We consulted with government agencies. So it's not a black-and-white answer.

**Senator RENNICK:** No, I accept that. Now that the emergency orders have been lifted, does that change the level of risk incurred by the employer in mandating vaccines, if the employee was to be injured? If they are forcing—for example, Rebel Sport and some of these industries that employ young people. The Doherty Institute said as far back as August 2021 that they don't need to get vaccinated, because it won't make any difference to the transmission where the risk of injury from COVID is very low. As we well know with young males, for example, they have a risk of myocarditis. Are the employers now at risk in light of the fact that state emergency orders have been lifted?

**Ms Parker:** Again, it is case-by-case, and you have described the nuance with some of this; hence, we don't provide legal advice. Ultimately we, obviously, help to regulate the workforce, but, when it comes to a decision of what the law absolutely requires, it does require the Fair Work Commission or a court. We can't make those kinds of determinations. We can provide general advice, which is what we do. Where people are saying they want more definitive, absolute advice, we would refer them to get legal advice.

**Senator RENNICK:** In a case where an employer has relied on ATAGI and ATAGI has given misleading information, who's liable then, ATAGI or the employer?

**Ms Parker:** That's a good question. It's a complex question.

**Ms Volzke:** I think that goes to government advice. Obviously, as Ms Parker said, our function is to provide general advice to the community to inform decisions around everything to do with vaccination, including whether or not someone can be lawfully required. At the time of the height of the pandemic, we published information that set out four tiers of categories that could assist employers and employees to work together to work out when it might be appropriate to require someone to be vaccinated. Things have moved on a bit since then and, obviously, COVID has become more endemic in the community. But I think the particular question that you're asking is perhaps something that would be better asked of the department of health—

**Senator RENNICK:** Don't worry, I'm lining them up tomorrow.

**Ms Volzke:** Okay

**Senator RENNICK:** Thank you.

**Senator CASH:** I will continue the line of questioning I was focusing on and pick up on the staff. My understanding was that you took on 16 staff from the ABCC.

**Ms Parker:** Correct, yes.

**Senator CASH:** I go back to the *Hansard* from the last estimates. We were talking through staff, and I think you said you'd been on a recruitment drive. How many from their legal team did you take on?

**Ms Parker:** We took four.

**Senator CASH:** I think it was two last time. So it ended up being four?

**Ms Parker:** Yes. Just to summarise, we took four staff to legal, four to Large Corporates and Industrial Compliance Group, five to Compliance and Enforcement Group, one to Policy and Communication and two to corporate. So they were in a range of roles. And I would say that the ABCC staff all had the opportunity to apply for roles in the Fair Work Ombudsman, and quite a number of them took other opportunities, or they didn't seek a transfer to our agency. We, obviously, assessed the ones that were interested in coming over, but there was some delay while legislation was passed et cetera, and we did want to wait until it was legislated before we made offers, and of course by then everybody knew what was happening. So staff obviously could take opportunities and move elsewhere, and that's perfectly acceptable and reasonable.

**Senator CASH:** In fact, the evidence Mr Campbell gave last time was:

We sought expressions of interest from staff at the ABCC to join the organisation. As you heard last night it's a section 26 process, therefore both parties have to want the transfer to occur. ... We've then taken steps to activate those expressions of interest where we can. As you heard last night, a lot of ABCC staff have already taken up opportunities elsewhere—

to almost quote you, Ms Parker—

which is completely fine and you'd expect them to exercise those. But we've so far secured 16 people.

After that period of time, obviously, no additional people transferred over to the Fair Work Ombudsman?

**Ms Parker:** No.

**Senator CASH:** In terms of the section 26 process, how many applied, in addition to the 16, who obviously weren't a fit for you or who you determined that you didn't want? How many additional ones applied but didn't actually get a role at the Fair Work Ombudsman?

**Ms Parker:** Mr Campbell can answer that. I'd say, too, that some of those staff were working in areas that were not transferring.

**Senator CASH:** Yes. We discussed that last time as well.

**Ms Parker:** Yes. So they weren't necessarily going to have the skills that we require. I'll ask Mr Campbell to answer that.

**Mr Campbell:** Sure. Can I have that question again, just so I can be really clear with my response.

**Senator CASH:** Sure. At the last estimates—and, again, the number hasn't changed—16 of the staff transferred over. It was a section 26 transfer, so both parties had to agree. How many applied via the section 26 process to come over to the Fair Work Ombudsman from the ABCC but ultimately, for whatever reason, weren't actually taken into the Fair Work Ombudsman?

**Mr Campbell:** I think the way to look at it is that we identified where staff weren't suitable. There were six people that were identified through that process as not suitable for roles in the Fair Work Ombudsman, so they weren't offered a section 26 transfer.

**Senator CASH:** Last time we spoke about whether or not, considering they wanted to continue in the Public Service, despite the fact that they were not deemed suitable, for whatever reason, for the Fair Work Ombudsman, there might be an opportunity to go elsewhere. Were they given that opportunity to apply elsewhere?

**Mr Campbell:** Yes, absolutely. They were all ultimately able to secure an outcome one way or another, whether it was through a voluntary redundancy process or a transfer to another organisation. They may well have gotten a section 26 to another Commonwealth organisation, I should say.

**Ms Parker:** A number of agencies were quite keen to grab them before we had been funded for them, so some of them went quite quickly.

**Mr Campbell:** Martin Hehir talked tonight about how they took some. Comcare did. A-G's did.

**Senator CASH:** You mentioned redundancies. Do you know how many were made redundant?

**Ms Parker:** Are you asking about staff who were made redundant or who volunteered?

**Senator CASH:** I was going to ask—forced or voluntary.

**Mr Campbell:** There were 47 voluntary redundancies and 21 involuntary redundancies.

**Ms Parker:** They will be where the function disappeared, so there's no longer a role.

**Senator CASH:** Last time, we had a conversation in relation to the number of inspectors.

**Ms Parker:** Yes.

**Senator CASH:** You gave evidence that there are 194 inspectors but you also have 61 lawyers who work in partnership with them. We established that the majority of inspectors are actually female. The question I put to you was:

Will you increase the number of inspectors as a result of assuming the functions of the ABCC?

**Ms Parker:** Yes.

**Senator CASH:** By how many?

**Mr Scully:** We haven't determined the number yet, but I'm expecting that it'll be in the order of 40, I think.

Can I just confirm: how many additional inspectors have you now taken on?

**Ms Parker:** We have at the moment, in the group we're calling large corporates and industrial compliance—it's a combination of roles there—18 Fair Work inspectors. Twelve of those are in our large corporates area and six are in industrial compliance. We're recruiting more over the coming months.

**Senator CASH:** Just to go back there, Mr Scully said:

We haven't determined the number yet, but I'm expecting that it'll be in the order of 40, I think.

What's the expectation as at today that you will recruit?

**Ms Parker:** So how many more are we going to recruit?

**Senator CASH:** Correct.

**Mr O'Shea:** Of the 80 ASL we were provided for in terms of funding, we have allocated, in terms of ASL, 57 to join the inspectorate, 15 to legal and the remaining ASL to various other supporting teams across the agency. So 57 out of the 80 ASL will eventually join the inspectorate.

**Senator CASH:** In terms of the status of that, how many have you actually taken on board at this point in time?

**Mr O'Shea:** I would like to take on notice the exact amount but my estimation would be around 16 or 17. We currently have an active recruitment round at the moment, which has been incredibly popular—several hundred applications. We're currently shortlisting that, and that will feed the majority of the remainder of inspector positions.

**Senator CASH:** There were internal discussions the department was having about the allocation of the additional funding that had come in to you, as to what parts of the organisation the funding would be directed to. That's what you were referring to?

**Mr O'Shea:** That's right. That's the 57, the 15 and the others.

**Senator CASH:** Understood. There was also a conversation in relation to site inspections—that the ABCC had KPIs in relation to site inspections:

Senator CASH: How many individuals are likely to visit the construction sites?

Ms Parker: It's difficult to say. We will be enforcing compliance with the Fair Work Act in the commercial building and construction industry as we do other sectors. In line with the policy, we will be treating the sector the same as other sectors. We will assess each matter, as I outlined earlier, in line with our compliance and enforcement policy.

In terms of the site visits, you gave evidence that you have discretion around proactive site visits. Has any further work been done in relation to how site visits will be undertaken, how many site visits will be undertaken, when they'll be undertaken and under what circumstances they'll be undertaken?

**Ms Parker:** Our inspectors do fieldwork. That includes site inspections where we are undertaking an investigation to gather information or evidence, where our inspectors are serving notices or where they might be conducting audits as part of a campaign. By a campaign it could be sending people out to a particular sector in a particular town on a certain day to audit a whole range of workplaces. They can also undertake site inspections of more complex matters like suspected unlawful industrial action. That's just one of the tools our inspectors use when assessing a request for assistance. It's not an automatic thing that we will go and do a site visit. We don't respond to requests by going on site to assess the situation; we may, but we seek evidence from parties and from other sources to assess a request. Often that is a phone call or an email discussion; all that work goes on, rather than doing a site visit. Where there is a matter that comes through media or through parliamentary business, we do not automatically send a Fair Work inspector to do a site visit. Noting the ABCC had KPIs for visits—

**Senator CASH:** Correct—and that's what we discussed last time.

**Ms Parker:** We don't have that, and we won't have that. We will treat the sector the same as other sectors, which means it may occur as part of an investigation but it'll be on the basis of responding or going and looking at something because we've received intelligence that there's a problem. But it's not a visiting-to-change-culture kind of visit that the ABCC was doing. Our inspectors will assess a whole range of information before they decide the approach, and the approach will be decided on the basis of our compliance and enforcement policy. If that policy sets out the extent of the issue, whether there are certain workers involved, what the public interest is in taking the approach—Ms Volzke went through some of that in relation to our corporates; we have a very clear policy there.

When issues arise—and there has been media in the last few days—we respond by seeking information and finding out more, but we don't arm up and go out to sites necessarily. It is a slightly different approach to the ABCC, but it is in line with our other work and what we've done in other sectors. We've had other sectors that have required site visits, not just building and construction; we have always had residential building and construction for example, and there are sites there as well. Our inspectors can go in if they reasonably believe the Fair Work Act or an instrument is happening there, in the premises, and if they believe there are records or documents that need to be collected in regard to an investigation. There's a whole range of activity. We talked last time, I believe, about, first of all, assessing the issue and getting information but also assessing risk.

**Senator CASH:** That is my next line of questioning; you've anticipated it.

**Ms Parker:** We need to take risk very carefully into account. We do a risk assessment for each of these issues—again, more complex, non-routine, may require a site visit but may not. All those are done on a case-by-case basis, and none of them are going to be the same. We have a process which we work through with managers, with our systems. We work through where it is, what it is et cetera. If we are going to do a site visit, do we need

more than one person? Does there need to be an emergency exit plan? What are the OH&S implications? Do we need to alert other OH&S organisations? If we think there's going to be risk, we will make a decision about whether it's safe for our staff to go in there.

**Senator CASH:** That was a line of questioning we pursued in the last estimates, in particular in relation to female inspectors, given the nature of much of the issues the ABCC had dealt with in relation to harassment on site.

**Ms Parker:** We did speak to our female inspectors, and they did say they feel very capable of managing just as well as the men. I just thought I'd point that out.

**Senator CASH:** I have no doubt they do; I wouldn't expect anything otherwise. We also talked about risk assessment et cetera, and you stated:

So the answer to your question is yes, risk assessment and determination of additional training that we will need to provide our inspectors.

Can you take me through the additional training?

**Ms Parker:** We talked about that last time—the fact that we do induction training. Right across the board—and we cover all sectors, as you know—all our inspectors undertake induction training and on-the-job training. They shadow inspection teams, if they're new. They do technical training in the workplace relations legislation. They do formal training such as investigations. They do a certificate IV of government investigation, sometimes a diploma. Sometimes they do corporate training modules around security risk management and record keeping. Then there's additional training or professional development based on them as individuals. Then there's a range of other training such as the broader assisting with dealing with difficult situations and conflict management; that is things like risk assessment around difficult workplace participant behaviour.

I would say that our staff, unfortunately across the board, are often subjected to threats and quite poor behaviour, and this has not been confined to any particular sector over the years. So, we also have a workshop around building inspector confidence, building rapport, applying persuasion and improving compliance—all those sorts of things—training for leaders on building resilient teams. We also have security policies and training relating to personnel security incidents and how to refer matters to state and federal police where we need to. And we've been meeting with work health and safety regulators—

**Senator CASH:** At a state and territory level?

**Ms Parker:** Yes, state and territory. I'm meeting with the Heads of Workplace Safety Authorities this month. We've also been talking to them individually. We've spoken to the AFP about the appropriate way to refer when we need to refer and what they see as their role in workplace relations. We've also discussed these with stakeholders when we've met them—MBA, CFMMEU. We've met the stakeholders and we've talked through some of these issues with them as well. We've also spoken to the ABCC about the training they provided before the transfer occurred.

**Senator CASH:** Is that something that you'll look at taking up in terms of the type of training they gave their inspectors?

**Ms Parker:** Yes, potentially. One of the things I've been doing when I've met with stakeholders is to say to them that we're aware of the training the ABCC did and to ask them whether they're aware of any other training that you would say was—

**Senator CASH:** Relevant or required—

**Ms Parker:** relevant to this sector, because it's a new sector for us. With some of that, they'll come back to us. We've asked them to advise us if they know of things that would be helpful. And I've asked the CFMMEU as well as the ACTU, and I've asked MBA and Civil Construction the same question: What would you advise that we might find useful? They train their own people, too, of course, as in workers get trained as well. So, there's quite a lot that we do. Again, it's not new in the sense that we have site inspections in other areas as well.

**Senator ROBERTS:** You'd be aware of the Rossato High Court decision. Has that Rossato High Court decision stopped the Fair Work Ombudsman from seeking statutory award and National Employment Standards entitlements that are owed to employees who have not been paid those lawful entitlements? Has it stopped your work in pursuing them?

**Ms Volzke:** Obviously we look at every request for assistance that comes through to make sure each employee who comes to us gets their lawful entitlements.

**Senator ROBERTS:** So, the Rossato High Court decision hasn't stopped you from pursuing these claims?

**Ms Volzke:** The Rossato decision, as you will recall, inserted the statutory definition of 'casual' as well as the casual conversion mechanism for those who don't have one in their award as well as the statutory offset mechanism.

**Senator ROBERTS:** I ask this because at the last Senate estimates the Fair Work Commission stated very clearly that statutory award and National Employment Standards entitlements cannot be removed by enterprise agreements or employment contracts. We established at last Senate estimates that an employer's ABN number is very important in order to identify the actual employer. It is extremely important for payroll tax purposes and compulsory employer superannuation payments. Is the Fair Work Ombudsman investigating any employer ABN issues? And have you asked the ATO for any documents to clarify the employer and ABN in those cases?

**Ms Volzke:** In these forums we obviously don't like to talk about particular investigations, but I can say that we are broadly looking at that issue and also partnering with the ATO in relation to a specific case example at the moment. Obviously because of the very strict secrecy laws that the ATO has it is taking a bit of time. But yes, I can confirm that we are looking at those broad issues.

**Senator ROBERTS:** Thank you. How long has it taken in the past to get information about employees and their PAYG summaries to crosscheck the employer ABN on those employees' pay slips that are involved in the dispute about underpayment of statutory award and NES entitlements? Does it take a long time?

**Ms Volzke:** As I said, the information that we get when we have any investigation will obviously be informed first and foremost by the information that we'll get from the affected employee and then obviously usually we'll also speak to the would-be employer as well. We get that information, assess that, see if there are any evidentiary gaps and then go to other regulators, including the ATO, to see if they've also got information that may assist in determining the veracity or otherwise of particular documentation that we've been provided with.

**Senator ROBERTS:** So it shouldn't take too long, but I recognise it would be highly variable.

**Ms Volzke:** As I have mentioned previously, the secrecy provisions around taxation information do make it quite difficult and sometimes can take a while. Often we'll actually have to get the consent of the particular employee involved and then provide that consent to the ATO for them to provide that information to us.

**Senator ROBERTS:** If that consent is readily available from the employee making the complaint then it shouldn't take too long.

**Ms Volzke:** Look, I wouldn't—

**Senator ROBERTS:** I'm not trying to pin you down.

**Ms Volzke:** Look, understood, but it's still a process.

**Senator ROBERTS:** Does the Fair Work Ombudsman use court decisions that emphatically show who a true employer is? Are you aware of any major relevant court decisions from 2017 that have been provided to you, Mr Ronson or one of your Fair Work Ombudsman investigators?

**Ms Volzke:** Again, we're very happy to talk outside this forum about a particular case. All I would say is that a court decision applies to whoever the parties are in that particular case. That doesn't necessarily mean or translate that for another employee perhaps who might be in similar circumstances that the exact same outcome might apply. It will still require us to independently look at the circumstances of that employment and form a view about the identity of the employer, for example.

**Senator ROBERTS:** Okay, but if it's the same employee then there would be proof of that employer's ABN and the employment status? If the court decision was that way—

**Ms Volzke:** Potentially if it was the same employee and if that court was looking at the exact same issue, I would have to look at those particular circumstances closely. Again, as I said, I'm very happy to discuss any particular matter.

**Senator ROBERTS:** I understand that a fair work investigator was provided with a copy of the court decision involving the same employee who's trying to establish a employment relationship, and that was in *CFMEU v Hunter Valley Energy Coal*.

**Ms Volzke:** Yes, Senator.

**Senator ROBERTS:** I ask this because it would easily cut down waiting time or wasting time. This is my last question. When a person's weekly wage is wrong and they're underpaid so is their compulsory super employer contribution and, in the case of the coal industry, their coal long service leave contribution as well. They all flow on, don't they?

**Ms Parker:** That's right.

**Senator ROBERTS:** Could I take you up on that offer to come and discuss that case?

**Ms Volzke:** Of course, Senator.

**Senator ROBERTS:** Thank you very much.

**Senator LIDDLE:** Having run several small businesses over a number of years I know that getting good business advice is a real relief. I just want to ask you about the Employer Advisory Service that was funded for four years by the coalition. Can you give me a little bit of detail about how that's going?

**Ms Parker:** The Employer Advisory Service is going well. We've had a real increase in demand. It's a strong demand, and we're receiving fairly clear indications that the service offering is being well received. That is supported by customer survey results. We conducted a survey in March-April last year, and the satisfaction rating was 87 per cent, and 92 per cent of respondents said they would access the Employer Advisory Service again, and 85 per cent of respondents had shared the advice they received with their employees. We are attracting key audiences. Microbusinesses, with fewer than five employees, are around half of the customers, and small businesses hiring a first employee are around nine per cent. They're asking questions about award coverage mostly and then how to classify employees, what the pay rate is and so on, the things you would expect. They're asking questions around how to correctly apply allowances and meal breaks and requesting general information around new staff, penalty rates, parental leave, pay rates. They're music to our ears. We want people to be asking those questions and getting them right. Provision of that written advice has been, as I said, really well received, and we're trying to get the information out really quickly. We respond within one to five days for more than half of them. It provides an opportunity for education as well. We can refer people to check our website, which is updated pretty much every day with new information, and they can give us feedback on whether it's working for them, whether it's accessible. We're really positive about it.

**Senator LIDDLE:** I understand that it was a \$12.9 million commitment over four years. When did you actually get started on it? When was that service actually available to people?

**Ms Parker:** We got the budget from 2021. In terms of actual first requests going out the door—

**Ms Volzke:** It went live on 1 July 2021. As at 31 December 2022, we'd had more than 2,700 pieces of written advice go out. A focus at the moment—going back to something that Senator Waters raised—is FDV for small business. That's a particular area that we'll be focusing on in the coming months.

**Senator LIDDLE:** You mentioned 2,700 pieces of written advice, but people can also pick up the phone and go online and talk to you. What's the totality of people that have contacted that service to just ask for something as simple as, 'What's the BOOT test? I've read it but I don't understand it,' to—

**Ms Volzke:** The types of request?

**Senator LIDDLE:** I just want to know how many in total.

**Ms Volzke:** People can submit an online form for the Employer Advisory Service, but they can also come in via our info line in the small business—

**Senator LIDDLE:** Priority line?

**Ms Volzke:** Yes. The thing is, as you pointed out, if it's a reasonably simple request, often that can just be answered by our front-line info line providers, but, with the Employer Advisory Service, particularly if the employer wants that written technical advice about a particular issue, then they can be funnelled through to that service.

**Senator LIDDLE:** If people get on the phone or the internet, they want advice really quickly. What's the timing of your turnaround and responsiveness to those inquiries?

**Ms Parker:** As I said, more than half of them are within one to five business days of the request being made. Other ones that require a bit more comprehensive research and background advice are around six to 15 days. Very few take longer than that, but some do take longer if they're really complex. But the bulk of them are done pretty quickly. And we are in communication back and forth through that time as well.

**Senator LIDDLE:** Given the communication that goes on for you to give your advice, what happens if they take that advice and it doesn't work out quite right, if something goes wrong?

**Ms Parker:** If they use it exactly as we advise—noting that, obviously, we can't always check that they do that—we stand by our advice. We would say to them, 'You can rely on our advice.' But, of course, there's a proviso with that. They need to follow our advice, so it's tricky sometimes with some of that.

**Senator LIDDLE:** You mentioned microbusinesses and small businesses. Can you tell me a little bit about the kinds of industries? Or is there a cluster? Do you divide your statistics? We know that women are taking small

businesses in greater numbers, and people of all ages; do you break down your data into who's actually ringing up for this type of service?

**Ms Parker:** We can tell you the sectors and the types of sectors, as well.

**Ms Volzke:** Yes, I think that's right. I'd probably have to take that other data on notice but, as for the industries, it's construction; other services—professional, scientific and technical services; health care; and social assistance who are the top users of that service.

**Senator LIDDLE:** How do you report the feedback that you get from these successes? Is it in your annual report or do you have to do other reporting?

**Ms Volzke:** We do include material in our annual report, and I think we also give regular reports to the minister's office through the department.

**Senator LIDDLE:** I guess this is more for the minister. You've heard how helpful that is to businesses; is it likely that you're going to commit to continuing that particular program?

**Senator Watt:** I suspect that's probably subject to the budget. So I can't—

**Senator LIDDLE:** Good answer—very predictable!

**Ms Volzke:** Senator, I'll just going back to the point that you raised earlier as well. When we've had a client come and access that service, and they've used and relied on that advice, we haven't actually had a case come back with a subsequent compliance outcome required in relation to that business which has come for that advice.

**Senator Watt:** Sorry, Senator Liddle, that little exchange has just reminded me: I want to correct something that I said just before the break. Senator O'Sullivan, you might recall, was asking questions about COSBOA and the role they might play around advice. I think my comments were that I wasn't aware of any decision being made to provide funding to COSBOA or other bodies to provide advice.

**Senator CASH:** Correct—you did, yes.

**Senator Watt:** Over the dinner break I was advised that in fact there was an allocation in the October budget to employer associations and unions to assist with training and education regarding some of the changes that came out of last year's bill. My understanding is that the bodies that received funding were the ACTU, the BCA, ACCI, AI Group and COSBOA, but if that's not correct I'll come back on notice. Sorry for giving not quite correct information there before.

**Senator LIDDLE:** I just want to talk to you about the results of the work that you're doing in tackling underpayment issues. Have you, for instance, recovered increased amounts of underpayments for workers this financial year to date, compared with the last?

**Ms Parker:** For recoveries?

**Senator LIDDLE:** Yes.

**Ms Parker:** Last financial year, 2021-22, we recovered \$532 million through requests for assistance, disputes, investigations, large corporates and so on. That's money back to workers: 384,805 workers back paid in that time. In terms of the year before—can anyone help me? I haven't got the annual report and I believe it was there. Quite a lot more than last, the year before.

**Senator LIDDLE:** Than last year.

**Ms Parker:** I'm just getting last year's annual figures. I've only got in front of me 2021-22. In 2020-21, \$148,374,054, compared to the \$532,326,100.

**Senator LIDDLE:** Are you able to explain that significant difference in general terms?

**Ms Parker:** We've had significant recoveries through our assurance work with large corporate sector underpayments. But we have also been issuing significantly more compliance notices, which employers need to pay back any underpayments they have made. And with the \$532 million recoveries, some of the very large corporate matters that we have taken to court include large companies such as Woolworths and Coles and other organisations with large numbers of workers. Some of the underpayments go back 10 years, and they have been recovering those through us, making sure they get it right and are paying back the money they owe. Those have grown significantly.

**Senator LIDDLE:** I just want to clarify for my own understanding—is the \$532 million recovered by the FWO, or is that recovered through the courts?

**Ms Parker:** The courts have a role as well, obviously, when we take a matter to court. But the role that we play is we investigate all reports of underpayment and we then make sure that they are getting the assessment of

the underpayment right. So we check; we do audits of their payroll; we require copies of any audits they are doing with external firms. They might use one of the big four or others to do their assessment of their underpayment. Our role as the regulator, the role that we have taken on, is to ensure that is done correctly and, where it's incorrect, if we need to take them to court or otherwise require them to perhaps offer an enforceable undertaking; but basically to get it right and pay the money back. Our work in that area has significantly increased.

**Senator LIDDLE:** Can you talk to me about the sham contractor unit you have set up? How that has been going?

**Ms Parker:** Certainly. Sham contracting is a priority of ours. We have a number of those. We use a range of methods to detect sham contracting—anonymous reports, intelligence gathering and so on. There are a range of things that we do and we have taken a number of matters to court. We have had 34 matters in the courts around sham contracting and we have secured over \$3.63 million in penalties against businesses around sham contracting. We have also done significant work on education. Our website has tailored information. We have resources around educating businesses and workers on their rights and a whole range of material on the difference between sham contracting where it intersects with independent contracting relationships and so on.

We are probably focused on sham in four sectors: transport, health care, cleaning and support services. We've also completed up to 31 December last year 757 disputes around sham contracting. We have recovered \$528,000 in entitlements for 121 workers and issued 118 compliance notices. As you say, we were allocated money for a unit, and that's what the unit does. It has 11 inspectors. It does enforcement activities. We are doing work in the transport industry, recently investigating removalists and vehicle relocation workers. So the work is ongoing.

**Senator LIDDLE:** So we have gone from the scammers and the shamers too. I want to talk about people who might be more vulnerable, such as migrant workers, and what work you have done in identifying people who are migrant workers that have been supported by the ombudsman.

**Ms Parker:** The work we have been doing with migrant workers? Let me just find that. Again, migrant workers are an enduring priority for us. It's a vulnerable worker focus, and visa holders are obviously a key cohort in that regard. We prioritise education and engagement activities with migrant workers and we work with communities so that they understand their entitlements and how they can come to us to get assistance when the entitlements aren't received. Where they aren't being received we take a pretty firm approach. We put a higher priority on that because we see these workers as particularly unable to assist themselves, so they need our help.

We also work closely with the community and stakeholders. We encourage them to give us intelligence, to give us information, to provide us with evidence if they can, about any underpayment or exploitation going on that impacts migrant workers. And of course there is a lot of work going on across government. We work with Home Affairs and Border Force, we work with the department, DEWR, and Foreign Affairs and Trade around the Pacific Australia Labour Mobility Scheme, making sure those workers receive their entitlements and understand their rights.

We have recently done a submission into the review of the migration system. The review is underway. We put in a submission in December. The reporting will be early this year, as I understand it. We talked about our role and about the context for migrant work, concern about migrant workers and the challenges that we face and others face in helping to protect groups of people who often don't want to come forward and tell us they have got a problem. They are fearful. They are nervous about authority sometimes, and they are in fear of having their visa cancelled and perhaps being deported. There are other things that go on such as having relationships with employers with a view to try and get permanency. Exploitation can occur there.

We keep visa holder data, for example, but we think it is underrepresented in terms of the data because we don't ask people to tell us what their visa status is. They often don't want to, so we don't specifically require it. We don't say 'You need to tell us what sort of visa you are on' because they often don't want to. We want them to come forward. Visa holders, migrant workers, are probably around four per cent of the workforce, but they do account for 26 per cent of our litigations, 65 per cent of court ordered penalties and 18 per cent of our anonymous reports. So they are significantly overrepresented in terms of the numbers that are coming forward to us.

**Senator LIDDLE:** I heard you talk about them being an enduring priority and I was wondering about the proportion of litigation dispute resolution that related to migrant workers. You have just explained visa holders. Do you actually have the number or proportion of work that relates to that group that would be identified as vulnerable for a whole range of reasons?

**Ms Parker:** In terms of compliance and enforcement, 'vulnerable' is a difficult one to define. Most of the workers who are being underpaid you could say are vulnerable. Not all, but there is a vulnerability just in the fact that you are being underpaid. There are obviously categories that we particularly single out: the young, the

migrant worker, the non-English speaking background workers. We have talked about insecure work or those who are less likely to have ongoing work so therefore they are less likely to come forward to seek help.

**Senator LIDDLE:** Thank you very much.

**CHAIR:** Thank you very much. We have concluded. We will suspend while we're waiting for our next witnesses.

### Proceedings suspended from 21:11 to 21:17

#### Safe Work Australia

**CHAIR:** We will now recommence. We have Safe Work Australia and now Senator Grogan.

**Senator GROGAN:** Welcome. Thank you for your patience. I'd like to ask a few questions about exposure to silica at work. I wonder if you could just step me through your sense of what the current regulatory arrangements are and whether they're sufficient.

**Ms Baxter:** In the work health and safety sphere, as you're aware, there is a Model Work Health and Safety Act, which we at Safe Work Australia are responsible for maintaining, and that includes preparing amendments—well, not preparing them. The Parliamentary Counsels Committee does that. We work with our members to settle positions in relation to certain aspects. The model work health and safety laws provide for the health and safety of all workers, both from physical risks and hazards and from psychosocial risks and hazards. That includes exposure to silica. There's a primary duty on what are called PCBUs—persons conducting a business or undertaking—and they must, so far as is reasonably practicable, look out for the health and safety of their workers. That would include ensuring that their workers are not exposed to, for instance, unsafe levels of respirable crystalline silica—RCS. It would mean that, as far as possible, the PCBU must eliminate the hazard of respirable crystalline silica and, if it can't be eliminated, the PCBU must, as far as possible, put in place other controls that would make the worker safe when working with that product. Dr Newton can probably talk in more detail about what we're doing, if you'd like to hear about that. But the second part of your question—

**Senator GROGAN:** I would, but I'm kind of keen to understand: there seems to be a lot more publicity about it and a lot more attention to this issue. Is that because it's ticking up? Have we seen an increase?

**Ms Baxter:** Yes, there's a general consensus that there has been an increase in, particularly, cases of accelerated silicosis, which can occur in a much shorter time frame than cases of silicosis. There was a National Dust Disease Taskforce, run out of the department of health, and a number of recommendations were made as a result of that task force. But we in Safe Work Australia have been working on a number of measures as well, including advancing some of the recommendations from that task force.

**Senator GROGAN:** Can you step me through those measures?

**Ms Baxter:** I'll hand over to Dr Newton to take you through those.

**Dr Newton:** In addition to a number of pieces of work that we've undertaken in the last couple of years which I can also describe to you, we have recently finalised a decision regulation impact statement which looks at regulatory and non-regulatory options to manage the risks of exposure to respirable crystalline silica at work. We've submitted that decision RIS, as it's called, to ministers for their decision on what preferred options they'd like us to take forward.

**Senator GROGAN:** So that's the work you're doing around this issue.

**Dr Newton:** Also, prior to that, in 2019, we halved the workplace exposure standard for respirable crystalline silica from 0.1 to 0.05 milligrams per metre cubed, in order to provide better protection for workers against that hazard. We've also undertaken some education and awareness activities. We completed an educational awareness campaign last year called 'Clean Air. Clear Lungs.' We've also developed a guide, which is for all silica-containing materials, and a specific model code of practice for workers handling engineered stone.

**Senator GROGAN:** Thank you. That's very helpful. Ms Baxter, what other sorts of issues are you finding at this point in time that are significant issues in the work health and safety space?

**Ms Baxter:** Issues to do with psychosocial health are significant for us, and, in the last couple of years, we have developed regulations dealing with psychosocial health, which have been picked up by a number of the jurisdictions. We've developed and prepared guidance material in relation to psychosocial health and work. So it's the whole suite of things, from regulatory material downwards. That's been a big focus of ours.

The occupational lung disease that Dr Newton spoke about—in particular, as to respirable crystalline silica—has been a significant issue for us. We've also undertaken work in relation to gig workers; we've prepared some guidance in relation to gig workers. At this stage, that's contained to delivery rider gig workers, but we're

examining the field and having a look at what further work we might propose to our members for them to take a decision on.

**Senator GROGAN:** For gig workers, what are the big issues in terms of workplace safety?

**Ms Baxter:** I think they're the issues that have been spoken about at length in the media and also by some of the agencies that have appeared today and in previous estimates hearings. There are issues around: 'What is the relationship of the gig worker to, for instance, the platform?' That's a significant issue. For us, from the work health and safety perspective, that's actually a non-event, because all workers are covered by work health and safety laws. The work health and safety laws also extend to covering others in a workplace. So the critical point for us is: is there a workplace? And of course there can be mobile workplaces. So these people who are delivery riders or drivers are covered for work health and safety purposes.

**Senator GROGAN:** It's still a workplace—yes.

**Ms Baxter:** Yes.

**Senator GROGAN:** Are there any other issues that you think are of significance in Australian workplaces at the moment?

**Ms Baxter:** Certainly. There are many issues. The emergence of flexible working arrangements being more prevalent than they were pre COVID, and some of the issues that they may bring in terms of work health and safety risks for workers working at home—both physical and psychosocial, because of potential detachment from work; that's a significant issue for us. Things like automated technology and artificial intelligence are areas that we're also looking at and thinking about what needs to happen. The circular economy is another area that we're looking at to see whether or not we need to develop some further information.

I'll just give you an example: solar panel installers. You have people working at heights if they're installing on a roof. You have people working in confined spaces if they're crawling around in your roof space. You potentially have people working in heat or extreme cold, depending on when the installation might take place. So that's one of the areas that we're looking at. In relation to that area, though, pretty much what we've discovered, from looking across the whole range of materials that have been developed by Safe Work Australia, is that we have codes of practice and guidance material, and in some cases regulations, that cover things like working at heights and working in confined spaces—that type of thing. The question in our minds is whether we need to knit all of that together to focus specifically on an industry and provide that information in a more tailored manner—I suppose much as we did during COVID, when our website had a range of drop-down menus and you could select what industry you worked in, whether you were a worker or an employer, what you needed to do and that type of thing.

**Senator GROGAN:** Great. Thank you very much. I appreciate it. That's very helpful.

**Senator RENNICK:** Hi, guys. How are you going?

**Ms Baxter:** Well, thank you.

**Senator RENNICK:** My question is: what role does Safe Work play in regard to vaccine advice from employers to employees?

**Ms Baxter:** Thank you, Senator. You might recall that under the previous government it was agreed by National Cabinet that Safe Work Australia would be a central hub of information for workers and employers in relation to COVID-19. We were very careful, though, because we're not medical experts. So we were very careful to make sure that any information we were putting up—for instance, about vaccines—was credible scientific information, and of course the source for us was the federal government and what their science was saying. You can understand why we, as a federal government agency, did that.

**Senator RENNICK:** Sure. Did you read the TGA's Australian public assessment report for the Pfizer COVID vaccine when it was released in January 2021?

**Ms Baxter:** I didn't personally, but I'm sure either Dr Newton or some of her staff would have gone through that document.

**Senator RENNICK:** So you're familiar with the fact that general disorders were six times as high in the vaccinated group, musculoskeletal and connective tissue disorders were three times as high, nervous system disorders were three times as high, infections and infestations were the same, and gastrointestinal disorders were almost two times as high as in the placebo group. So the vaccine group had the higher rate. Are you familiar with that? The adverse events were much higher in the vaccine group.

**Dr Newton:** We are familiar with that yes. But our role is not to provide specific advice on whether vaccinations should or should not occur and what kind of vaccination anyone should receive. We were linking to

the public health advice that was available at the time and the advice of the Australian Health Protection Principal Committee. As Ms Baxter mentioned earlier, there is a duty for all PCBUs, persons conducting a business or undertaking, to eliminate or minimise risks so far as is reasonably practicable. So we provided some advice on how, in doing so, they could undertake a risk assessment and what they should consider in their risk assessment and what kinds of control measures they might wish to consider implementing in their workplace to fulfil their duties under the act with respect to COVID-19.

**Senator RENNICK:** I'm glad you mentioned that, because I did my company directors course and we were taught all about the risk matrix whereby you have to recognise all the risks in the firm. So were you aware that in this report there was a great deal of missing information? It did not include use in pregnancy or while breastfeeding; use in immunocompromised patients; use in frail patients with comorbidities; use in patients with autoimmune or inflammatory disorders; or interaction with other vaccines. So safety concerns were missing for pregnancy, breastfeeding, frail patients and interaction with other vaccines. The identified risk was anaphylaxis. I don't think I ever heard anyone highlight those risks when they were giving health advice. All you ever got was 'safe and effective'. I know from the industry that I'm in—not that I've been a financial planner—that, if you're selling financial products or whatever, you always have to highlight the risks. So did Safe Work Australia ever highlight these risks to the employers so they knew what they were doing?

**Ms Baxter:** Just to clarify, Safe Work Australia never provided any health advice; that's not our role. We are not experts in that area. As I indicated, we linked and referred interested people to probably the federal department of health website. Those documents you're quoting from are publicly available documents that people could have looked at. We weren't making any calls at Safe Work Australia on whether a vaccination was safe or efficacious or what; that's not our role. It was not our role in providing COVID-19 information guidance to workers and employers.

**Senator RENNICK:** But you just said you were a central point for all that information, didn't you?

**Ms Baxter:** For workers and employers in relation to work health and safety, yes.

**Senator RENNICK:** Yes, sure. So did you put any of these like the Australian public assessment or, probably even more importantly, the non-clinical evaluation report up on your website so that people could read them?

**Ms Baxter:** We would have linked to the department of health website, where those documents can be found, yes.

**Senator RENNICK:** These were on the TGA website. They took a great deal of searching and, to be honest with you, the TGA actually didn't release a lot of this information. I've just got a recently unredacted copy of the non-clinical evaluation report and one of the things that was originally hidden was the fact that this vaccine was made from what they call codon optimisation that increased the expression of the spike protein, so this was a stronger vaccine; it wasn't a weaker vaccine.

**Ms Baxter:** Just to clarify, the only access to information we had from the health community from the department of health, which would include the TGA, would have been publicly available information; we had no special inside knowledge.

**Senator RENNICK:** Yes, and that is the problem: a lot of the stuff that was relevant to safety was redacted by the TGA. I guess, if you were a doctor and you had looked at this, I would have thought people would have raised the issue of why is so much information related to health being redacted by the Australian government health department?

**Ms Baxter:** I think that could be a line of questioning that the Therapeutic Goods Administration might be able to assist you with.

**Senator RENNICK:** I have run it by the TGA many times but, unfortunately, Mr Skerritt—Professor Skerritt, as he likes to call himself—is very evasive and, unfortunately, that has flowed on through to other departments as well. But thank you for your time tonight.

**CHAIR:** Thank you very much for your time and we will now go to the Coal Mining Industry (Long Service Leave Funding) Corporation.

#### **Coal Mining Industry (Long Service Leave Funding) Corporation**

[21:32]

**CHAIR:** Do you have an opening statement?

**Ms Perks:** No thanks, Chair.

**Senator ROBERTS:** Thank you, Ms Perks, for coming. Thank you, Minister, for sticking around

**Senator Watt:** I wouldn't miss it.

**Senator ROBERTS:** How long have you been employed by coal mining long service leave?

**Ms Perks:** I have been directly employed by the entity from 1 January 2017.

**Senator ROBERTS:** How long have you been indirectly employed?

**Ms Baxter:** I'm not sure of your question.

**Senator ROBERTS:** You said you have been directly employed—

**Ms Perks:** As an employee of the corporation, since 1 January 2017.

**Senator ROBERTS:** How long have you been working with, or for, or at coal long service leave?

**Ms Perks:** I was previously employed by the administrator, who was engaged by the corporation under contract to operate the administration services. I was employed by that entity specifically for this contract to administer coal long service leave from 2014.

**Senator ROBERTS:** My first question relates to questions on notice number 57, 2022-23 from budget estimates October-November 2022, when I asked you about the Ai Group report called *Significant Workplace Relations Issues Report*. I would like to table this so everyone can follow along. I have the cover and two pages of the report.

**CHAIR:** Go ahead, Senator Roberts.

**Senator ROBERTS:** Quoting from the third paragraph down on page 8 of that report from Ai Group, the Coal Mining Industry (Long Service Leave Funding) Corporation is pursuing costly claims against a large number of employers including Ai Group members which provide maintenance which provide maintenance service to clients in the coalmining industry.' Was the number of companies being pursued by your Coal LSL about 260 in 2014?

**Ms Perks:** I have the date of the report. It was before my employment started, which was in September 2014. I have the report and I have access to the letter. I haven't been able to obtain the list of 260 that is referenced in the report, so I can't answer that question.

**Senator ROBERTS:** We will come back to that. Given the issues I have raised over many years now with Coal LSL, the KPMG review which occurred recently identified many issues with Coal LSL. This review was ordered by the former government's Attorney-General, Senator Cash. Coal LSL and the Attorney-General then accepted all recommendations from that review. Based on that and other factors and evidence in past Senate estimates, I have the following questions. Could you please provide me with the names of all 260 companies identified in 2014 that were covered by Coal LSL's scheme that Coal LSL identified to the Ai Group? Could you provide that?

**Ms Perks:** Can I just respond to that. Back in 2014, yes, the report did refer to 260 noncomplying employers that were known at that point. What I can confirm is we have onboarded more than 1,000 new employers into the scheme since that date, and I can confirm we still have a known list of 85 unregistered noncomplying employers. I have the list of 85. It will be challenging to find the list of 260 but, when we know we have onboarded more than 1,000 new employers into the system, I think it would be fair to assume that a number of the 260 have come into this game. But it would also be fair to assume there is a number of the 260 that still remain unregistered and non-compliant and are on our list of regulation.

**Senator ROBERTS:** Can you make an effort to try and get those 260, please?

**Ms Perks:** I will take that on notice.

**Senator ROBERTS:** In your answer to a question on notice No. 57 2022-23, you responded with the following:

Coal LSL insourced its operations in 2017. We have been unable to locate the 2014 correspondence referred to. We have contacted the legal firm engaged by Coal LSL during the period to find out if they undertook this work and if they have access to the correspondence in their archives.

Let's go into detail on that very short answer to the significant workplace issues as identified by both the corporation and the Ai Group. Who was the legal firm employed by Coal LSL to review this maladministration of the fund and how much did it cost? Given the volume of this work, they would not have done it for free, and I imagine they would have been a significant cost to engage the services of this legal firm. This may well have been disclosed in Coal LSL's yearly report for that financial year and it should have been raised as a significant issue in that same report. I will repeat my question. Who was the legal firm engaged by Coal LSL to review this maladministration of the fund and how much did it cost?

**Ms Perks:** There are two parts to that question, I am hearing. The legal firm that has been our primary legal firm during that period of implementation of the new legislation from 2011 and the issue we are talking about here in 2014 is that implementation of the amendment act in 2011. Ashurst Australia is the legal firm. They were our primary advisors back then, and worked with the corporation on the compliance activities and implementation of the change in legislation in 2011.

**Senator ROBERTS:** They started in 2011; how long were they with the Coal LSL corporation?

**Ms Perks:** They are still one of our legal firms.

**Senator ROBERTS:** How many legal firms do you have?

**Ms Perks:** We are working with three legal firms currently on regulatory activities.

**Senator ROBERTS:** Why three?

**Ms Perks:** Capacity, skills—

**Senator ROBERTS:** Capacity, okay. Did your inquiries identify if the law firm undertook the work to locate the 2014 correspondence, and what was the outcome of that?

**Ms Perks:** We have confirmation from Ashurst of the letter to Coal LSL that was received by Ai Group, dated 25 March 2014. I have a copy of that letter. I have a copy of a letter dated 24 March 2014 which was sent from Ai Group to Minister Abetz. I also have a copy of the correspondence from the minister back to Ai Group, dated 1 May 2014. I have the correspondence referred to on those three dates.

**Senator ROBERTS:** Could I get a copy of those on notice?

**Ms Perks:** Yes.

**Senator ROBERTS:** Why did Coal LSL insource its operations in 2017?

**Ms Perks:** It was a decision of the board in 2017. What I can confirm is that a process of assessment of continuing to administer the Coal Long Service Leave scheme through a third-party arrangement. It was also assessed as to whether it would be the more appropriate path going forward to insource the operations. There was a significant change in compliance activities with the PGPA act that was putting a lot more obligations on the entity, and I understand the board considered that compliance obligation that was on the entity, and the decision was to insource the operations.

**Senator ROBERTS:** Was the board not satisfied with the compliance from 2011 onwards?

**Ms Perks:** No, they were recognising the change in the environment. There were a lot of changes in the external environment. I wasn't part of that board decision, so I don't think it's appropriate that I talk to the board discussion further.

**Senator ROBERTS:** On your LinkedIn profile, which I'll table—it's a public document—it says under your experience:

Coalmining Industry (Long Service Leave Funding) Corporation

8 years 6 months

I don't know what year this was. Under that it lists 'Chief Executive Officer, January 2017 to the present'. Still under 'coalmining industry long service leave' it lists:

BOD, ARCC, Investments, NOM and Regulation sub-committees

That was from September 2014 to the present, which is when you started working with Coal LSL. It then states:

Working closely with the Board of Directors, Audit, Risk and Compliance Committee, Investments, Nomination and Remuneration sub-committee ...

You had involvement with key governance functions.

**Ms Perks:** In my role as CEO, it is a key function to report to the subcommittees.

**Senator ROBERTS:** Before 2017—when you became CEO—when you were working with Coal LSL but not as an employee, you were doing those roles. You were working closely on prominent, absolutely crucial governance functions.

**Ms Perks:** The corporation outsourced all its functions. It didn't have any direct employees in that period.

**Senator ROBERTS:** Yes, but you're saying here that you were:

Working closely with the Board of Directors, Audit, Risk and Compliance Committee, Investments, Nomination and Remuneration ...

That covers just about everything at Coal LSL, so you were involved in everything.

**Ms Perks:** I was the operations manager. I'm not sure of the relevance of the LinkedIn profile.

**Senator ROBERTS:** Did you take part in the decision to insource?

**Ms Perks:** No, it was a board decision.

**Senator ROBERTS:** Did you take part in advising the board? I ask that because you said you were working closely with the board and you were working closely with the audit, risk and compliance committee and with the investments and nomination and remuneration committee? It would seem to me that you were intimately involved with Coal LSL then, even though you were only operations—

**Ms Perks:** I was the operations manager. I'm not sure of the question.

**Senator ROBERTS:** I'll clarify it then. These are your words: 'Working closely with the board of directors, with the audit, risk and compliance committee, with investments, nomination and remuneration committee ...' You were working closely with them, so you would have been advising them.

**Ms Perks:** I was accountable. I had accountability through the subcommittees to update the members of the committee on the performance of the administration, which covered governance requirements, the investment portfolio and remuneration obligations. So, yes, my role as operations manager was broad. Part of that role was to report to the subcommittees and the board on the performance of the contract as it was being managed under that third-party arrangement.

**Senator ROBERTS:** Did you enter into any conversations with any of those key committees or the board leading to the insourcing in 2017?

**Ms Perks:** It was a board decision.

**Senator ROBERTS:** No, no. That's not what I asked. I'm asking to clarify my previous question. Did you discuss with anyone on those committees or on the board the decision to insource or advise them on your thoughts about the insourcing at 2017?

**Ms Perks:** They sought my thoughts, yes.

**Senator ROBERTS:** Thank you. I'd like to quote from the Coal LSL annual report of 2015. I'd like to table that. On page 10, under 'Professional assistance to the corporation', this is what the annual report says:

Following the establishment of the Corporation in 1992, Directors made the decision that to contract the administration of the Fund would be more cost-effective than maintaining its own administration.

They have likewise contracted professional services in the areas of Legal Counsel, Internal Auditing, Actuarial Services—  
et cetera. You can see that there. The report further states:

The Corporation does not employ any staff.

Under 'Administration' on page 5, the report lists various relationships there with Mine Wealth and Wellbeing Services. Were you connected with them at all?

**Ms Perks:** What was the date, Senator?

**Senator ROBERTS:** This is in the annual report of 2015.

**Ms Perks:** Yes, I was employed by Mine Wealth & Wellbeing's AUSCOAL Services. They were the entity that had the administration contract during that period.

**Senator ROBERTS:** So you were a direct employee of them, indirectly working for Coal LSL?

**Senator Watt:** Senator Roberts, I've been listening to your questions. You're obviously putting a range of questions to Ms Perks that seem to be questioning something she's done or some role she's had. Is there something that you want to put to Ms Perks?

**Senator ROBERTS:** I'm very concerned about the governance. When I first raised these issues, people just laughed. Then it became very serious, and the former Attorney-General acted on that. In terms of the key area of problems at Coal LSL, there were many, many shortcomings—serious shortcomings and financial shortcomings. The governance was singled out as really needing attention.

**Senator Watt:** Are you alleging that Ms Perks has done the wrong thing or something?

**Senator ROBERTS:** I asked about the 206—we'll get to it, Senator Watt. Did your Coal LSL duties fall under the scope of any of your responsibilities in these roles? How were you an employee of Coal LSL at that time when the annual report states the corporation does not employ any staff? Your LinkedIn profile says you were you were an employee.

**Ms Perks:** I was a direct employee of the corporation from 1 January 2017.

**Senator ROBERTS:** Were you at any time employed by AUSCOAL or Mine Super?

**Ms Perks:** I was employed by AUSCOAL Services, who was the administrator under a third-party contract to provide the administration services to Coal Mining Industry (Long Service Leave Funding) Corporation.

**Senator ROBERTS:** When were you employed by them?

**Ms Perks:** From September 2014 until 31 December 2016.

**Senator ROBERTS:** So you were employed by two companies?

**Ms Perks:** No. I don't know how else to explain it: I was employed by Coal Mining Industry (Long Service Leave Funding) Corporation from 1 January 2017.

**Senator ROBERTS:** But you were employed in 2014 until 2017 by Mine Wealth and Wellbeing Services. That's formerly AUSCOAL.

**Ms Perks:** Yes, AUSCOAL Services Pty Ltd.

**Senator ROBERTS:** So they changed their name—okay, thank you. AUSCOAL—Mine Super—is jointly owned: 50 per cent by the CFMMEU, 25 per cent by the Queensland minerals council and 25 per cent by the NSW Minerals Council. Is this correct?

**Ms Perks:** I'm not associated with the entity.

**Senator ROBERTS:** The CFMMEU, in turn, signed off on all the enterprise agreements in the Hunter Valley?

**Ms Perks:** I don't have visibility of that.

**Senator ROBERTS:** No. There was a very closed group here that kept all the records, but we can't get access to the records.

**Senator Watt:** I don't know if that's really something Ms Perks can answer. She can speak for the organisation she's here to represent, but I don't think she can speak for other organisations.

**Senator ROBERTS:** Who was carrying out the day-to-day operations and functions of the corporation during this period?

**Ms Perks:** Which period, Senator?

**Senator ROBERTS:** 2015 to 2017.

**Ms Perks:** The secretary was Mr Ross Hamilton. His role was to fulfil more of the governance side and adhere to statutory obligations, such as annual report. My role was to manage the operations, which was to ensure that the administration function for Coal Long Service Leave was met in line with the contract that was in place.

**Senator ROBERTS:** So the answer to my question—who was carrying out the day to day operations of functions of the corporation—is you?

**Ms Perks:** It was my role to manage the operations team.

**Senator ROBERTS:** For example: who dealt with the employer monthly levy contributions; answering questions from coal mining industry employees with issues from their accounts; reimbursements and refunds to employers; and the collection and documentation of levies at the time?

**Ms Perks:** That was under the administration contract.

**Senator ROBERTS:** That was you. So you carried out all those functions?

**Ms Perks:** Our team did.

**Senator ROBERTS:** Who checked the—sorry?

**Ms Perks:** We had a team.

**Senator ROBERTS:** You were overseeing that team. Who checked the data input?

**Ms Perks:** I can't—

**Senator Watt:** Again, did you say this was back in 2015?

**Senator ROBERTS:** Yes.

**Senator Watt:** I'm not really sure that it's reasonable to expect—

**Senator ROBERTS:** We have people in the Hunter Valley who are underpaid and running short of money in terms of payment. That's what I'm trying to find out.

**Senator Watt:** And that's an absolutely worthwhile cause—

**Senator ROBERTS:** Thank you. I'm pleased you think it is. How many lawyers now work for Coal LSL?

**Ms Perks:** I'll take that on notice, Senator.

**Senator ROBERTS:** You're the chief executive officer of a small team—

**Ms Perks:** A large team.

**Senator ROBERTS:** and you can't tell me how many—

**Ms Perks:** If you're mindful of time I can get the number, or I can take it on notice and give you the exact number.

**Senator ROBERTS:** Could you give me the exact number and the names of the firms?

**Ms Perks:** Are you talking about our external firms or are you talking about our internal resources?

**Senator ROBERTS:** Both. Just give me the names of the externals, and how many you have internally.

**Ms Perks:** Yes.

**Senator ROBERTS:** Mr Simon Turner has just contacted Coal LSL to get his balance of hours. He was told he would be emailed in 24 to 48 hours. It's now seven years since being deemed totally and permanently disabled. He left the coal industry and has not been employed since 3 January 2016. Why has he not yet received his long service leave payment, and when will he receive it?

**Ms Perks:** There are two answers to that. I believe that he had a response within an hour, so that's great service from the team. Mr Turner's situation hasn't changed, sadly, since the last line of questioning over the last few years. Unless his situation changes, the legislation, which we conscientiously administer, says that he has no access to the long service leave. He's not met the qualifying service rules; he has no access to that entitlement that we hold. Should that change, he will be able to access that entitlement that we still hold for him. We're driven by the qualifying service rules, so that is the trigger event for someone to be able to access their long service leave.

**Senator ROBERTS:** Casuals make up a large part of the coalmining workforce in the Hunter Valley and in Central Queensland. Casuals often—I think 'often' is an appropriate word; I don't know for sure if it's a majority, but it's often—leave before they're eligible for long service leave. And they do not claim the employer's contributions, which amount to a lot of money for those people, because it takes eight years to be eligible. We've seen troubling inconsistencies in publicly available information that relate to widespread misreporting of how workers' long service leave entitlements were administered, but wage theft means that they've actually been stolen, and it's still not been resolved. What's happened to the money from the coalminers who were casuals and who have not been around for seven years? What's happened to that money?

**Ms Perks:** This has been a question that we've received several times, and I think this infographic which has been put on our website and attached to one of the questions is the best way to describe how the scheme works.

We collect a levy from the industry, which is a tax. That's appropriated through the Commonwealth and appropriated back to the scheme, where we invest the funds. It's a pooled fund. Long service leave accrues as hours. We record the entitlement for the employee in hours, and when that employee meets the provisions of long service leave—which, in our case, is staying in the industry for a period of eight years—they'll be able to access that entitlement that we hold. At that point, they'll be paid their entitlement from the employer, and then we'll reimburse the employer.

For employees across the whole industry who do not meet qualifying service rules—and, again, the legislation is very generous that you can have a break from the industry for up to eight years and still continue to have continuity of service. Should the employee have a break for more than eight years then that entitlement, yes, does break. The funds that have been collected by tax stay in the investment portfolio in the pooled fund. And they are used to continually assess what funds are required for the future, to pay out future liabilities. So answering your question in short with this infographic: it's a pooled fund, it's a tax we collect, and it stays in the fund.

**Senator ROBERTS:** Minister, with the previous government, in Senate estimates, we uncovered many questionable dealings within Coal LSL. We also uncovered the fact that casual mine workers accrue long service leave entitlements at a different rate from permanents, and they're paid out at a different rate than permanents. I think one of the recommendations, Ms Perks, was that that needs to be addressed with legislation. Is that correct?

**Ms Perks:** That is correct.

**Senator ROBERTS:** Minister, I'm just reminding you of that, because it needs to be done. As Senator Sheldon knows, casuals are getting the short end of the stick.

**Senator Watt:** I agree, and I think you know, Senator Roberts, that I've had quite a lot of contact with coalminers in Central Queensland—not so much in the Hunter Valley—about a range of issues flowing from

them being casual employees. I haven't really had any involvement in this particular issue, but the more general issue of casual coalminers missing out on entitlements and missing out on permanency is something I've been very active in.

**Senator ROBERTS:** I've raised it with Dan Repacholi, the member for Hunter, and with his predecessor, Joel Fitzgibbon. Neither have responded to me. The latter maligned me in public for raising it, and I've had serious concerns over a number of years about the Hunter Valley CFMMEU and some of their activities.

**Senator Watt:** I'm familiar. I realise you've been very committed to that.

**Senator ROBERTS:** They undermine miners in the Hunter Valley.

**Senator Watt:** I don't know whether you've already done this, but is it worth us arranging for Minister Burke's office to meet with you to talk about these issues or something like that?

**Senator ROBERTS:** I've already talked with one of Minister Burke's senior staff, and she promised to contact a number of miners in the Hunter Valley. To my knowledge, they got brief contact from Minister Burke's office but nothing concrete, nothing solid. One of the people from Minister Burke's office had to take leave not long after, so I don't know if that's been followed up on.

**Senator Watt:** As I said, I don't pretend to be an expert on this particular matter, but I've been pretty active in the issue of casualisation in general. You would be aware that we're intending to introduce legislation over the course of this year to address the issue of exploitation of casuals, including in the mining industry.

**Senator ROBERTS:** The Labor Party has been intending to do it since about 2018, I think.

**Senator Watt:** Well, we only won an election seven or eight months ago.

**Senator ROBERTS:** You could have introduced it. The thing is that we introduced it, and then all of a sudden just recently the Labor Party took an interest in it. We were told that it would be early this year. It's not; it's late this year. We'll watch.

**Senator Watt:** I look forward to your support on addressing the exploitation of casual workers generally, and it may be, I don't know—

**Senator ROBERTS:** Look forward to it? You should look back over the last three years.

**Senator Watt:** Well, we could have a debate about how One Nation has voted on legislation.

**Senator ROBERTS:** The only ones doing any work in that space, apart from in the coal sector, anyway.

**Senator Watt:** I hope that you do vote with us when we introduce legislation to address the exploitation of casuals. I don't know enough about this issue to know whether that on its own will be enough, but it's certainly about trying to fix the rorts that are being imposed on casual workers.

**Senator ROBERTS:** So long as it's also fixing the rorts within the CFMMEU in the Hunter, because that's been a key part for many, many years now. The Hunter Valley CFMMEU started labour hire business in the Hunter Valley. It started the use of casuals with honourable intent, and then within a very short period that became corrupt.

**Senator Watt:** I know that the Hunter Valley branch of the CFMMEU has a different view to you on those matters.

**Senator ROBERTS:** I'm happy to talk with you about that. Thank you very much, Chair.

**Senator Watt:** I've confirmed that Minister Burke's office is very happy to meet with you about these issues.

**Senator ROBERTS:** As I said, I want them to call, and they've said they will call miners in the Hunter Valley. I hope they give them a good hearing. We'll see what happens.

**Senator Watt:** I'm sure we can arrange something.

**CHAIR:** I'll just table the annual report from 2015. I appreciate the questions that were asked of Ms Perks with regard to this document. It actually does go to some personal details, and Ms Perks would prefer not to make it—

**Senator ROBERTS:** It's publicly available. It's on her LinkedIn profile.

**CHAIR:** I appreciate that. They are public documents, but I'm mindful that we always avoid trying to give details of—I appreciate that people can find certain things on the internet about all sorts of people, but we've always attempted not to put things on public record.

**Senator ROBERTS:** She's the author who put it out in the public.

**Senator O'SULLIVAN:** One of the unique features of LinkedIn, if I could add this, is that there is bit of a trail—that is, the author can see who has viewed that profile. Whereas, in this instance, if it appears in *Hansard* or through the record to the committee then that trail wouldn't necessarily be known. So I concur with you, Chair, with respect to that.

**Senator ROBERTS:** What was that?

**CHAIR:** If there has been a normal practice from the committee since I've been here, it's that we don't put matters that do link individuals into reports in the *Hansard* because it makes it easier for people to link through when they go to personal matters, even though, as we know, social media is broad, wide and all encompassing for many people. But we've attempted on numerous occasions both in certain inquiries and also on previous occasions at estimates not to de-identify individuals wherever possible, even though we know that there's capacity for people to find people. For that reason, I would suggest, in a similar vein—Senator O'Sullivan is agreeing with me. Also, I note that the questions you asked pertained to this document, and some of the details were also confirmed by Ms Perks, even though some of the inferences were different. I don't think it actually detract from or adds to the comments you made.

**Senator ROBERTS:** I'm happy with your decision.

**CHAIR:** Thank you for your time, Ms Perks. I know you work hard, and I appreciate the effort you are putting in. I'm also very mindful of the comments made by Minister Watt in dealing with this matter. We've all been dealing with it for some considerable time, and I, for one, am looking at it with a great deal interest to make sure casuals' rights are enforced and also given more currency in future legislation. We know that you have a responsibility to carry out your legislative and legal responsibilities. We'll carry out—hopefully, all of us together—our legislative responsibilities to fix some of what I consider to be wrongs as well.

**Senator ROBERTS:** As long as the solutions are simple and elegant and not highly complex and prescriptive.

#### Registered Organisations Commission

[22:06]

**CHAIR:** We will now go to the ROC. Is there a brief opening statement you would like to make at this very late hour?

**Mr Bielecki:** No, thank you.

**Senator GROGAN:** Mr Bielecki, your appointment was made in March 2022 to take effect in May 2022—is that correct?

**Mr Bielecki:** I was first appointed in 2017.

**Senator GROGAN:** But the extension to that contract?

**Mr Bielecki:** The extension was about six months ago. I don't remember the actual date. I can take that on notice. I just don't remember when it was. It should have been about March or April of last year.

**Senator GROGAN:** So in March or April of last year there was an extension of two years to your contract?

**Mr Bielecki:** Yes.

**Senator GROGAN:** That was immediately before the federal election, which occurred on 21 May.

**Mr Bielecki:** It was sometime before the election. Again, I don't remember the precise timing.

**Senator GROGAN:** Let's agree on March or April. I don't think we need the exact date. You would have been fully aware at that time that the Labor Party had a commitment to abolish the ROC.

**Mr Bielecki:** That's been a policy position of the ALP for several years.

**Senator GROGAN:** For a long time. So how appropriate do you think it is that a two-year extension was provided so close—obviously you have told us you can't remember the date—to the caretaker period and certainly close enough to the election? Did you have any sense of concern about the moral efficacy of that?

**Mr Bielecki:** No.

**Senator GROGAN:** Even though you knew that, if the ALP had won the election—which we did—that would then be a two-year period that would not occur?

**Mr Bielecki:** At that point it wasn't clear who would win the election. At that point the Registered Organisations Commission was an ongoing entity and at that point the government needed someone to be the Registered Organisations Commissioner. These questions are probably better addressed to the former government than to me.

**Senator GROGAN:** We are asking a bunch of people. I go then go to your termination payment because obviously, under the various rules, there's a formula for people in situations like yours, officeholders whose positions become terminated.

**Mr Bielecki:** Yes, there is a formula that has been put in place by the Commonwealth Remuneration Tribunal.

**Senator GROGAN:** Yes, it's used for all sorts of—

**Mr Bielecki:** It's for early loss of public office, and it's been in place for four or five years.

**Senator GROGAN:** What will your termination payment be? Are you aware?

**Mr Bielecki:** The formula is one-third of each month left on the contract. I don't know precisely what that will be. I have done some calculations; it might be in the order of \$127,000, something like that, gross.

**Senator GROGAN:** My 'back of the envelope' came up with \$130,000, so I think we're in the same ballpark. Do you feel that that is a good use of taxpayer funds?

**Senator CASH:** With all due respect, Chair, it is not up to Mr Bielecki to pass a comment in relation to that. It's a contractual process regardless of which government is in power. If a contract comes to an end, the remuneration tribunal—

**Senator GROGAN:** I'm well aware of that. For me it's about the process immediately before.

**Senator CASH:** Chair, the ROC has been abolished. There is now a process in place, but, to be fair to Mr Bielecki, it is an independent process. He didn't determine the process, the independent Remuneration Tribunal did.

**Senator GROGAN:** No, I know, I am asking about his experience of it.

**Senator CASH:** He hasn't had an experience of it yet. He's still got a short time to run.

**CHAIR:** I'm usually quite relaxed about how people interact, and I think Senator Grogan has got some final questions to ask. There is nothing improper about asking questions as long as it's done in a proper way. I'm very mindful that the questions were asked in the last round as well. We do give a lot of latitude to questions being asked.

**Senator GROGAN:** In terms of the extension to a contract, in your position, is there scope to choose a time frame? Is there a standard time frame? I believe there is a maximum of five years, so could that two-year extension have been four, for example?

**Mr Bielecki:** Four years, do you mean?

**Senator GROGAN:** The position you are in has a maximum of five years on each contract.

**Mr Bielecki:** Yes.

**Senator GROGAN:** You were given two years.

**Mr Bielecki:** Yes.

**Senator GROGAN:** Why two? Do you know?

**Mr Bielecki:** You would have to ask the minister at the time. That was the extension that was given to me.

**Senator GROGAN:** Yes, I just wonder if one year might have been more appropriate, to see who won the election and work through that process, or a shorter period of time.

**Mr Bielecki:** It's not up to me as to what the period of the extension is.

**Senator GROGAN:** Thank you.

**Senator CASH:** Mr Bielecki, on the website in relation to the ROC, it has a section where you can click on to upcoming changes to the regulator of registered organisations. It clearly sets out what those changes are going to be. Just so you know, I did speak to the Fair Work Commission this morning about the handover that's in place, and I understand there is a steering committee and that steering committee meets regularly to work through the transitional process. Is that correct?

**Mr Bielecki:** Yes, that's my understanding. I am not part of that committee. That work has been undertaken by my Executive Director, Mr Enright, on behalf of the ROC.

**Senator CASH:** Mr Enright, I do apologise, I will ask you the question: are you sitting on the steering committee?

**Mr Enright:** Yes.

**Senator CASH:** In terms of the work that the steering committee is doing, can you take us through that work?

**Mr Enright:** We've divided up all the issues that need to be dealt with in order to have a seamless transition from the ROC to the Fair Work Commission. The key goal is for all of the functions that the ROC is currently performing to be delivered from 6 March, which is day one. The key goal is for us to continue to deliver, to the very high standard we have been delivering, all of the functions that we have been delivering to the Fair Work Commission on 6 March. So we've got a range of subcommittees dealing with things like IT, people and culture—all of the things that are necessary for, in particular, our case management system and the transfer of staff. We've divided all of the issues that emerge when a group of people transition from one organisation to another into various subcommittees, and each week we're meeting and progressing each of the things that are necessary for a seamless transition to occur.

**Senator CASH:** Are all the staff from the ROC going to transition to the Fair Work Commission?

**Mr Enright:** All of the staff will be able to transition to the Fair Work Commission. As to whether they will, it's my expectation that they will. There's a process that's being used at the moment, which is a voluntary process, whereby people can transition to the Fair Work Commission. So the answer to your question is: I hope so, but it will be a matter—

**Senator CASH:** But if they choose not to—

**Mr Enright:** If they choose not to, that's a matter for the individual.

**Senator CASH:** Understood. But the expectation is that, if all the staff want to be, they'll be lifted up and placed into—

**Mr Enright:** Yes. Exactly, Senator.

**Senator CASH:** It was an interesting discussion with Mr Furlong today in terms of obligations et cetera, because there is no change in the obligations that a registered organisation owes, despite the transition—there's to be a seamless transition. On your website it says:

**What if I need help with my obligations?**

The ROC will continue to assist organisations, including to navigate through any period of change, to ensure each organisation can meet its obligations under the RO Act—

the registered organisations act. It goes on to confirm the ROC's employees will be transferring to the Fair Work Commission, et cetera. What work has been done to ensure organisations—because it is important; they have a statutory obligation and they don't want to breach a statutory obligation—understand what's happening and understand that there's no stopping in relation to their obligations, that they have to continue to meet them?

**Mr Enright:** This is a very significant piece of work for us. The commissioner, some months ago, wrote to every registered organisation giving some advanced warning about this—without knowing the date. The commission recently issued another letter—it may go out today, it may be tomorrow or it might have gone out yesterday—again explaining that all those obligations you talked about are continuing and that the ROC is available to assist any organisations who are unclear about any of that. We're getting responses from a lot of organisations. We're asking national secretaries to distribute those amongst their branches, to acknowledge that they've received it and to contact us. So we're very confident about the process. I engage with organisations on an almost daily basis, and this is a constant theme: 'What do you need? Do you understand?' We'll continue to communicate.

**Senator CASH:** In terms of the feedback you're getting from the engagement with the registered organisations, are they comfortable with the transition? Do they understand that their obligations continue et cetera?

**Mr Enright:** That's the feedback I've got so far.

**Senator CASH:** Good.

**Mr Enright:** People come and go from registered organisations. New people come and don't really understand. A couple of days ago I got a phone call from a person asking: 'Where do I now get my right-of-entry permit? What's changing with that?' So I had to explain that there are two regulators currently and they're being brought back into one but the obligations and responsibilities haven't changed at all.

**Senator CASH:** The section down the bottom says: 'What will happen with any ongoing matters my organisation has with ROC?' Can you take us through ongoing matters. What's the definition of an ongoing matter?

**Mr Enright:** Every organisation has a range of obligations—for example, every organisation has to lodge what's called an annual return by 31 March each year. That obligation will fall right on the cusp of this change. Every organisation has to lodge that report, which contains things like membership, any upcoming election—

those sorts of things. Some of those matters will be lodged with the ROC, and some will be lodged with the Fair Work Commission. What we're communicating is that the obligation doesn't change but that the regulator will on 6 March. Elections, for example, are another issue. If you asked me what a definition of an ongoing matter is, it's really any obligation that a registered organisation is dealing with the ROC on. Elections are one, annual returns are another and lodging financial reports is another. You might be aware, Senator, that our organisations have six different financial year endings.

**Senator CASH:** Yes.

**Mr Enright:** Many, many organisations lodge their financial reports at different times of the year. All of those are considered to be ongoing matters. It just depends on the timing of them as to whether they're lodged with the ROC or lodged with the Fair Work Commission. I keep saying this, and it's helpful for me to repeat it here: the obligation doesn't change, it's just that the address of the regulator changes as of 6 March.

**Senator CASH:** And that's actually an important point. The address of the regulator changes, so you are corresponding with registered organisations to ensure they do understand that the address is changing?

**Mr Enright:** Yes.

**Senator CASH:** I'm assuming you'll get a return email et cetera saying so. Is there going to be an on-forwarding process?

**Mr Enright:** All of that is part of our committee process. I've got to give credit to the general manager of the Fair Work Commission here. His key message has been the maintenance of high-level service delivery to registered organisations. His other key message has been supporting the ROC staff. But he's made it clear that his expectation is that the high-level service delivery to every registered organisation is maintained and is seamless. That's so we're dealing with those exact technical issues you're talking about, like the person emailing the ROC and not getting a response. They're not always simple, Senator, as you'd know.

**Senator CASH:** No, that's exactly—

**Mr Enright:** We are doing everything we can to make sure that, if a person tried to contact the ROC before 6 March, they'll have a process that that will continue. But as of 6 March, they'll either be redirected to the ROC, or there'll be some informative process to tell them, 'Here's the website,' and they'll be linked into some piece of information so that it's a seamless and high level of service with our key—

**Senator CASH:** You'll redirect them to the Fair Work Commission.

**Mr Bielecki:** And our 1300 number—

**Mr Enright:** As Mr Bielecki has just pointed out, we've got a 1300 number, which is very popular for contact, and we've taken that number with us. We're telling organisations, 'You will continue to use the same telephone number that you're ringing the ROC on today and, after 6 March, a person will talk to you from the Fair Work Commission.'

**Senator CASH:** In terms of investigations and inquiries, I understand those are the ongoing matters that the organisation may have with the Registered Organisations Commission. What's the process around investigations and inquiries?

**Mr Enright:** I think we've got four inquiries and one investigation currently on our website—

**Senator CASH:** That was a question I was going to ask. How many investigations do you currently have on hand? How many transfer over? How many inquiries do you currently have on hand? How many transfer over? What's the difference between the investigation and the inquiry?

**Mr Bielecki:** There are three current inquiries. One has gone up today, so that means—

**Senator CASH:** One has gone up today?

**Mr Bielecki:** One has gone onto the website, so that means there are four. My understanding—and Mr Enright will be able to elaborate—is that all of those inquiries which are undertaken under section 330 of the act will carry over to the Fair Work Commission. There's one current investigation which I also anticipate will be carried over, and there are two current pieces of litigation which should carry over.

**Senator CASH:** Where do you find that on your website?

**Mr Enright:** If you go to the website of the Registered Organisations Commission that you're on, Senator, across the top bar—are you on the home page?

**Senator CASH:** I see 'Running a Registered Organisation,' 'Find a Registered Organisation' and 'Decisions and Compliance.'

**Mr Enright:** Click on 'Decisions and Compliance'. Then you'll see 'Inquiries, Investigations and Litigation'. Click on that. There you'll find the list of the four current inquiries under section 330 and the one investigation under section 331. That doesn't take into account the significant number of protected disclosure matters that are under investigation.

**Senator CASH:** Take me through what a protected disclosure matter is.

**Mr Enright:** The act contains a protected disclosure or a whistleblower regime, and the ROC must investigate matters that qualify for protected disclosures. To qualify, a person has to be either an employee or an office holder or a former office holder of a registered organisation or a contractor—someone with a relationship with the organisation. If that person makes an allegation about an offence or a breach of the act, then the ROC has a statutory obligation to conduct an investigation within 90 days under the whistleblower regime. I have to point out that those provisions don't contain any compulsory powers or powers that would enable the ROC to require documents or interview people; they're all done by consent. The ROC has always got the opportunity, if evidence emerges, to convert a protected disclosure into another investigation with those powers.

**Senator CASH:** Right. What are the four inquiries in relation to, in terms of the breaches of the registered organisations act?

**Mr Enright:** The one that went up recently, the Community and Public Sector Union and the Western Australian Prison Officers Union branch, is a matter that relates to elections being conducted by that branch. The act requires elections to be conducted by the AEC.

**Senator CASH:** Understood.

**Mr Enright:** That's a matter that relates as well to provision of information about who office holders are and things of that kind.

**Senator CASH:** So you're merely enquiring into that matter at the moment.

**Mr Enright:** Yes.

**Senator CASH:** Understood.

**Mr Enright:** The Clay Brick and Paver Association of New South Wales relates to alleged noncompliance with record keeping and, specifically, membership record keeping. The Building Service Contractors Association is around alleged noncompliance with financial reporting, to do with financial reports that, in some cases, haven't been or might not have been lodged appropriately or on time—things of that kind.

The other inquiry relates to the CFMMEU, Mining and Energy Division, Queensland district branch. That's another compulsory inquiry. We conducted an investigation some time ago and brought legal proceedings. If the commissioner finds that various provisions of the act have been contravened, then the act requires that an inquiry be conducted within 12 months as to whether the organisation has fixed or remediated the problems that were identified earlier on.

**Senator CASH:** Understood.

**Mr Enright:** So they're the four inquiries, and the investigation relates to the Victorian No. 1 branch of the Health Services Union. That matter relates to the alleged misuse of funds by various officials, including a branch secretary.

**Senator CASH:** You've received some inquiries, investigations and then complaints that are not necessarily yet inquiries or investigations. What happens to complaints in terms of the transition over?

**Mr Enright:** All of the work of the ROC is transitioning to the Fair Work Commission, so I'm not sure what you actually mean by 'complaint'. Is it a whistleblower or a disclosure? I'm not sure exactly what you mean.

**Senator CASH:** I mean a complaint that's been lodged with the ROC in relation to an allegation that there has been a breach of the registered organisations act by a particular registered organisation, but it is not an investigation, obviously, or an inquiry.

**Mr Enright:** Every matter that's currently under review by the ROC or, as you've already mentioned, inquiries, investigations and protected disclosures—all of those matters—will transition to the Fair Work Commission as of 6 March.

**Senator CASH:** I raised some questions this morning which elicited a particular response from a union. Have you received a complaint from the United Firefighters Union of Australia?

**Mr Enright:** We've received—well, I could concede it to be a complaint, yes. I wouldn't say it is directly from the United—

**Senator CASH:** Sorry, it is in relation to; I didn't mean from.

**Mr Enright:** Yes.

**Senator CASH:** Yes, have you. When was that complaint received?

**Mr Enright:** We received a letter from the administrator of the Queensland branch of the UFUA in I think November 2022.

**Senator CASH:** When you say 'the administrator'—

**Mr Enright:** Yes.

**Senator CASH:** I don't understand what that means.

**Mr Enright:** This can get quite complicated, but I will try and simplify it as best I can. The federal Queensland branch of the UFUA—all of the office holders of that branch resigned in 2019.

**Senator CASH:** Which is actually what the statement that was read out states, yes, and they refer to an administrator as well.

**Mr Enright:** Yes. And, in January 2022, as a result of Federal Court proceedings, Mr Gavin Marshall was appointed the administrator of the Queensland branch of the UFUA.

**Senator CASH:** When you say 'Mr Gavin Marshall', the man who used to sit next to me?—not next to me; I was over there and he was over here.

**Mr Enright:** Yes, Senator.

**Senator CASH:** Okay. That just opened up a whole lot more questions for me. In terms of the statement that was read out to the Senate, it said, 'The administrator did not take the matter further.' Is that the same administrator, in Gavin Marshall?

**Mr Enright:** I don't know what you're reading from, Senator, but there's only been one administrator of that branch, that I'm aware of.

**Senator CASH:** It was a statement from the President of the United Firefighters Union of Queensland in relation to the issues that I raised this morning.

**Mr Enright:** I apologise; I missed the first bit—who made the statement?

**Senator CASH:** A Mr Wayne Mclean, the President of the United Firefighters Union in Queensland—this is a tabled document—in relation to what he says are allegations made by myself. And he confirms what you've now just said. In September 2019, he resigned from the United Firefighters Union Australia, as did all of the Queensland branch officials. Those officials remained, as he did, officials of the United Firefighters Union Queensland. A court appointed administrator took control. The administrator asked the union about previous credit card expenditure related to the UFUA branch. Those expenses were explained and it was confirmed that they were all within the union's policy. The administrator did not take the matter further. You're now saying, though, if I go back to the notes, that you have received a complaint from the administrator in relation to the federal branch of the union?

**Mr Enright:** Yes.

**Senator CASH:** Can I ask: what was the nature of the complaint?

**Mr Enright:** It's a matter that's under review, and it may be a matter that we have to look into in more detail. So I would be reluctant to go into any great detail. But, if I can summarise it this way: the administrator took over in I think February 2022 and conducted his own assessment of the previous branch's—one aspect, anyway—credit card expenditure, and the administrator has raised issues about the appropriateness of some of those credit card transactions.

**Senator CASH:** I did raise some of those allegations this morning that I have been made aware of, and that then elicited the response from Mr Maclean.

**Senator Watt:** I think what elicited the response from Mr Maclean was you alleging that there was an investigation underway.

**Senator CASH:** Can I just confirm, then, that it is in relation to the misuse, did you say, of a credit card?

**Mr Enright:** The administrator has some concerns about credit card use. I wouldn't put it any more than that at the present time, Senator. But I've got to say that both the UFUA federal office—and, just to make things clear, I think the person you're quoting from is now associated with the state branch.

**Senator CASH:** State—I understand, yes.

**Mr Enright:** We've been making inquiries, and we have a good relationship, of course, with the UFUA. Both the Queensland branch and the federal branch, at any time we have been making any inquiries, have certainly been cooperating with us and assisting us with the various inquiries along the way.

**Senator CASH:** Mr Enright, I do recall, when I sat on the other side of the table and questions were asked, you were prepared often to actually provide quiet a bit of detail in relation to matters.

**Mr Enright:** Sorry, 'were'?

**Senator CASH:** Is there a reason that you're not providing further information here?

**Mr Enright:** I will always try and avoid providing information about either matters that are current, ongoing or potentially in the near future. It's different talking about matters in the past. Unless those matters are already of a public nature—if they're on court transcripts or things of that kind. But we're very, very careful not to provide information publicly about current investigations and current inquiries, other than in a very broad sense.

**Senator CASH:** Can I confirm then, given the statement that was read out to the Senate, that the administrator, the administrator being Mr Gavin Marshall, has taken the issue that I raised further—that the Registered Organisations Commission has received a complaint from the administrator that relates to the potential misuse of a union credit card.

**Mr Enright:** Again, I would put it as the administrator having some concerns about some credit card expenditure, and that's a matter that's currently under review by my team.

**Senator CASH:** I might leave it there. I have a number of questions, though, that I do want to place on notice in relation to this matter, going forward. I have been given further information, but I'll place the questions on notice.

**CHAIR:** Senator, I think it's appropriate, in light of the questions being raised now on this matter—there are some supplementary questions I need to ask as well. We're confirming that there's no investigation or inquiry underway at this point.

**Mr Enright:** No. Some concerns have been raised, and we're reviewing those.

**CHAIR:** There has been no inappropriate behaviour found by the ROC?

**Mr Enright:** We're reviewing the concerns, and nothing beyond that.

**CHAIR:** Any matters that get raised with you are matters, obviously, that can be sometimes for a first opinion or a second opinion, rather than an assertion of wrongdoing. I'm not going to put words in your mouth. I've never tried to do that, and I think you've always made a point about redirecting my language, as you do with others. In my terms, if I understood correctly, you mentioned that a matter has been raised with you, but that doesn't imply that there is a problem with a matter or that someone is saying that, beyond a problem, there is actually a failing of performance.

**Mr Enright:** I agree with you entirely. I write letters quite regularly, particularly about protected disclosures, where a matter is raised and we'll look into it and there will be no breach of any kind, no misdeed of any kind, and we'll respond accordingly. If anyone thinks I've suggested that there's any wrongdoing, that's absolutely not what I'm suggesting at all.

**CHAIR:** I know myself, from previous organisations, just as a matter of due diligence I've made people aware of things that may be considered by other parties—a reassurance from what you've observed from another party. In this case, it's the ROC.

**Mr Enright:** Yes. That's true. People raise matters with us that they're not certain about, in some cases, and seek our advice. Again, there's nothing to be read into some matter being brought before the ROC until such time as it's assessed properly and some outcome is achieved.

**CHAIR:** Thank you.

**Senator Watt:** Chair, I just wonder whether Senator Cash might want to withdraw or reconsider the claim that she was making earlier today that there was a ROC investigation underway, because it would appear that that is not correct.

**Senator CASH:** No, Senator Watt. At all times I said 'allegations', and now the ROC has confirmed—

**Senator Watt:** Well, you didn't. Remember there was that time that I pointed out that you weren't saying 'allegations', and what I'm actually talking about is your repeated claims this morning that there was a ROC investigation underway. That would appear to be false.

**Senator CASH:** Senator Watt, you know the individuals concerned.

**Senator Watt:** I know some of the individuals concerned, including Gavin Marshall—

**Senator CASH:** Which individuals do you know?

**Senator Watt:** I know John Oliver, the state secretary. I know Wayne Mclean, the state president.

**Senator CASH:** Do you know Wayne Maclean, who provided the letter today?

**Senator Watt:** Do I know him?

**Senator CASH:** Yes.

**Senator Watt:** Yes, I do.

**Senator CASH:** You do?

**Senator Watt:** I wouldn't have had any contact with Wayne for probably two or three years.

**Senator CASH:** And what about contact with John Oliver?

**Senator Watt:** I met with John a couple of weeks ago about emergency management matters. Obviously, they're stakeholders on emergency management matters.

**Senator CASH:** I'll leave it there for now, but I will have questions to place on notice.

**Senator Watt:** So you're standing by your earlier claims that there's an investigation—

**Senator CASH:** Senator Watt, I get to ask the questions. I've been provided with information and I have the documents. I'll place further questions on notice.

**Senator Watt:** How did you get the documents?

**Senator CASH:** Chair—

**Senator Watt:** Don't you think that when you come in here and make allegations that aren't correct, that you owe it to people to correct the record? I corrected the record earlier today when there was something that I got wrong in relation to something Senator O'Sullivan asked. I just would have thought that's good conduct.

**Senator CASH:** Senator Watt, what we've managed to establish is that former senator Gavin Marshall, who I assume you know as well—

**Senator Watt:** I do.

**Senator CASH:** Yes, as a Queensland senator I would assume you know him. He has been appointed by the Federal Court of Australia as the administrator of the union. He has seen fit, based on the evidence that we have received today, to make a complaint to the Registered Organisations Commission as of, I think you said, November 2022, in relation to the potential misuse of a union credit card. I would have thought that was a serious matter, given that I don't think a former senator on your side in this place would actually raise such an issue—given he used to go into bat when I sat on that side of the table and raised such an issue—unless he had serious concerns.

**Senator Watt:** I guess that's up to the ROC to determine, isn't it, rather than you claiming that there are investigations underway when there aren't. But never let the truth get in the way of a good story, hey, Senator Cash?

**Senator CASH:** I'll place further questions on notice.

**CHAIR:** Thank you for those comments. As I understand it, there's no investigation or inquiry underway. There are matters that have been raised, and I understand that people raise issues from evidence on matters. They get a second opinion or a view to tick off. It's not an unusual practice for organisations to do that. Mr Enright outlined before that there have been a number of occasions and even just conversations—in a sense, casual conversations—with people ringing up and asking for advice on how matters should be dealt with. It's not an inappropriate or unusual thing for organisations to do with the ROC. And no inappropriate behaviour has been found, so I'll leave my observations at that.

However, I will put some questions on notice regarding the arrangement entered into, and I should not be the one who breaks—

**Senator CASH:** I have to say that I've been very good!

**CHAIR:** I'll put some questions on notice in regard to the NRA and their membership. I'm very mindful that I've got seconds to go, but the questions I'll send over are about the NRA matter—with regard to memberships now being concluded. I gather that the questions I raise would fall into another class of matters as that matter has now concluded, so comment can be made about the subject matter that we might send over?

**Mr Enright:** It's more likely, yes.

**CHAIR:** That's fine.

**Mr Enright:** Happy to do that, Senator.

**CHAIR:** Thank you. We will now adjourn. Thank you, senators. That concludes today's proceedings. The committee is due to recommence its examination of supplementary budget estimates on Thursday 16 February. I remind senators that written questions on notice should be received by close of business on Friday 3 March 2023. Answers to questions on notice should be returned by close of business on Friday 31 March 2023. I thank the minister, officers of the Department of Employment and Workplace Relations and all witnesses who have given evidence to the committee today. And thank you to Hansard and Broadcasting, and to the secretariat.

**Committee adjourned at 22:45**