



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

STANDING COMMITTEE ON EDUCATION, EMPLOYMENT AND  
WORKPLACE RELATIONS

ESTIMATES

**(Budget Estimates)**

TUESDAY, 3 JUNE 2008

CANBERRA

BY AUTHORITY OF THE SENATE



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

**Tuesday, 3 June 2008**

**Members:** Senator Marshall (*Chair*), Senator Watson (*Deputy Chair*), Senators Boyce, Crossin, Fisher, Sterle, Stott Despoja and Wortley

**Participating members:** Senators Abetz, Adams, Allison, Barnett, Bartlett, Bernardi, Birmingham, Mark Bishop, Boswell, Brandis, Bob Brown, George Campbell, Carol Brown, Bushby, Chapman, Colbeck, Jacinta Collins, Coonan, Cormann, Eggleston, Ellison, Fielding, Fierravanti-Wells, Fifield, Forshaw, Heffernan, Hogg, Humphries, Hurley, Hutchins, Johnston, Joyce, Kemp, Kirk, Lightfoot, Lundy, Ian Macdonald, Sandy Macdonald, McEwen, McGauran, McLucas, Mason, Milne, Minchin, Moore, Murray, Nash, Nettle, O'Brien, Parry, Patterson, Payne, Polley, Ronaldson, Scullion, Siewert, Stephens, Troeth, Trood and Webber

**Senators in attendance:** Senators Abetz, Boyce, Crossin, Fierravanti-Wells, Fisher, Hutchins, Marshall, Parry, Sterle, Watson and Wortley

**Committee met at 9 am**

**EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS PORTFOLIO**

Consideration resumed from 2 June 2008

**In Attendance**

Senator Wong, Minister for Climate Change and Water

**Department of Education, Employment and Workplace Relations**

**Portfolio overview and major corporate issues**

**Cross Portfolio**

Ms Lisa Paul, Secretary

Mr Finn Pratt, Acting Associate Secretary

Dr Wendy Jarvie, Deputy Secretary

Mr Grahame Cook, Deputy Secretary

Mr Bill Burmester, Deputy Secretary

Mr Jim Davidson, Deputy Secretary

Ms Malisa Golightly, Deputy Secretary

Mr Graham Carters, Deputy Secretary

Mr John Kovacic, Acting Deputy Secretary

Mr Craig Storen, Chief Finance Officer and Group Manager, Finance Group

Mr George Kriz, Chief Lawyer and Group Manager Procurement, Legal, Investigations and Procurement Group

Mr Jeremy O'Sullivan, General Counsel and Group Manager Investigations, Legal, Investigations and Procurement Group

Mr Brien Armstrong, Branch Manager, Internal Audit Group

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Ms Margaret Pearce, Group Manager, People, Parliamentary and Communications Group  
Mr Brian Quade, Branch Manager, Parliamentary Branch, People, Parliamentary and Communications Group  
Ms Kristina Hopkins, Branch Manager, People Team, People, Parliamentary and Communications Group  
Mr Bob Bennett, Branch Manager, Remuneration Taskforce, People, Parliamentary and Communications Group  
Ms Chris Silk, Branch Manager, Remuneration Taskforce, People, Parliamentary and Communications Group  
Ms Mary Balzary, Branch Manager, Communications Branch, People, Parliamentary and Communications  
Ms Robyn Kingston, Group Manager, Network Operations and Delivery Services Group

**Employment**

Ms Lisa Paul, Secretary  
Ms Malisa Golightly, Deputy Secretary  
Ms Margaret Kidd, Group Manager, Employment Business Services Group  
Mr Stephen Moore, Group Manager, Employment Systems Group  
Ms Marsha Milliken, Group Manager, Income Support Payments Group  
Ms Jo Caldwell, Group Manager, Intensive Support Group  
Dr Alison Morehead, Group Manager, Job Search Support Group  
Mr Tony Waslin, Group Manager, Specialist Services Group  
Ms Sharon Stuart, Branch Manager, Disability Employment Services Branch, Specialist Services Group  
Mr Ali Jalayer, Branch Manager, Employment Pathways Branch, Specialist Services Group  
Mr Michael Hynes, Acting Branch Manager, Vocational Rehabilitation Taskforce, Specialist Services Group

**Workplace Relations**

Ms Lisa Paul, Secretary  
Mr Finn Pratt, Acting Associate Secretary  
Mr John Kovacic, Acting Deputy Secretary  
Ms Sandra Parker, Group Manager, Workplace Relations Policy Group  
Ms Natalie James, Chief Counsel, Workplace Relations Legal Group  
Mr David De Silva, Branch Manager, Coordination Branch, Workplace Relations Legal Group  
Mr David Bohn, Branch Manager, Safety Net Branch, Workplace Relations Legal Group  
Mr Peter Cully, Branch Manager, Termination, Building, Organisations and Dispute Settlement Branch, Workplace Relations Legal Group  
Ms Elen Perdikogiannis, Branch Manager, Bargaining and Coverage Branch, Workplace Relations Legal Group  
Mr Michael Maynard, Group Manager, Workplace Relations Implementation Group  
Mr Tom Fisher, Group Manager, Office of the Australian Safety and Compensation Council; and Federal Safety Commissioner, Office of the Federal Safety Commissioner

**Workforce Participation**

Ms Lisa Paul, Secretary  
Mr Graham Carters, Deputy Secretary  
Mr Barry Sandison, Group Manager, Working Age Policy Group  
Ms Sharon Rose, Assistant Secretary, Disability and Mature Age Policy Branch, Working Age Policy Group  
Ms Robyn Shannon, Assistant Secretary, Parent and Youth Policy Branch, Working Age Policy Group  
Ms Stephanie Bennett, Assistant Secretary, Employment Policy Branch, Working Age Policy Group  
Mr Bob Harvey, Group Manager, Indigenous Employment and Business Group  
Ms Mary-Anne Sakkara, Branch Manager, Future Directions Branch, Indigenous Employment and Business Group  
Mr Michael Manthorpe, Group Manager, Labour Market Strategies Group  
Mr Ivan Neville, Branch Manager, Labour Supply and Skills, Labour Market Strategies Group  
Dr Paul Volker, Assistant Secretary, Evaluation and Programme Performance Branch, Research and Evaluation Group  
Mr Scott Matheson, Assistant Secretary, Research and Data Analysis Branch, Research and Evaluation Group  
Ms Sue Beitz, Secretariat, Skills Australia

**Comcare**

Mr Martin Dolan, Acting Chief Executive Officer  
Mr Steve Kibble, Acting Deputy Chief Executive Officer

**Workplace Authority**

Ms Barbara Bennett, Director  
Ms Penny Weir, Head of Corporate  
Ms Jo Major, General Manager, Fairness Test, Assessment and Strategy  
Ms Helen Bull, General Manager, Fairness Test, Policy and Assessment  
Ms Lily Viertmann, Chief Financial Officer  
Mr Graham Tanton, General Manager, Business Services

**Workplace Ombudsman**

Mr Nicholas Wilson, Workplace Ombudsman  
Mr Alfred Bongi, Deputy Workplace Ombudsman  
Mr Michael Campbell, Executive Director, External Affairs Branch  
Mr Leigh Johns, Chief Counsel  
Ms Sue Kearns, Executive Director, People Development  
Mr Mark Scully, Chief Financial Officer  
Mr Bill Loizides, Executive Director, Field Operations

**Australian Building and Construction Commission**

The Hon John Lloyd, Australian Building and Construction Commissioner  
Mr Nigel Hadgkiss, Deputy Commissioner, Operations  
Mr Ross Dalgleish, Deputy Commissioner, Legal

Ms Heather Hausler, Assistant Commissioner Corporate

Mr John Casey, Chief Financial Officer

**Australian Industrial Registry**

Mr Doug Williams, Industrial Registrar and Chief Executive

Mr Terry Nassios, General Manager, Statutory Services

Mr Dennis Mihelyi, Chief Financial Officer

**Australian Fair Pay Commission**

Ms Jennifer Taylor, Director, Australian Fair Pay Commission Secretariat

**CHAIR (Senator Marshall)**—The committee is continuing the examination of the Education, Employment and Workplace Relations portfolio, beginning with Comcare. Copies of yesterday's opening statement setting out the procedural requirements of the estimates process are available from the secretariat. I remind agencies that the committee has fixed Friday, 1 August 2008 as the date for return of answers to questions on notice. I remind participants that oral evidence and documents in estimates proceedings are part of the public record. I welcome the Minister representing the Minister for Education, Employment and Workplace Relations, Senator the Hon. Penny Wong; the Acting CEO of Comcare, Mr Martin Dolan, and other officers; as well as observers to this public hearing. Minister, would you like to make an opening statement?

**Senator Wong**—No, thank you, Chair.

**CHAIR**—Mr Dolan, do you have an opening statement?

**Mr Dolan**—No.

**CHAIR**—In that case, we will move to questions. Are there questions for Comcare? There appear to be no questions for Comcare. I am sorry that the committee has wasted your time, Mr Dolan. I had asked members of the committee to advise the chair in advance if there were no questions for any of the agencies so that we could spare you the trouble and the expense of coming before the committee for nothing. It appears our best endeavours to achieve that have been wasted. Thank you for your attendance and please accept my apologies on behalf of the committee.

**Proceedings suspended from 9.03 am to 9.09 am**

**Workplace Authority**

**CHAIR**—The committee will recommence with questions of the Workplace Authority. Ms Bennett, welcome.

**Senator FISHER**—Can you talk me through your understanding of the budget implications for the Workplace Authority.

**Ms B Bennett**—Is there a particular aspect?

**Senator FISHER**—Let us start with the *Agreement making and the no-disadvantage test policy guide*, dated April 2008. What has been your agency's involvement in the preparation of that guide?

**Ms B Bennett**—We prepared the policy guide. It is my responsibility to release it, so the decision to provide that information and assistance publicly is within the responsibility of the Workplace Authority.

**Senator FISHER**—When did you start preparing it?

**Ms B Bennett**—We commenced passage of the legislation when that was available.

**Senator FISHER**—When was that?

**Ms Bull**—We commenced working on it about the time it was introduced into parliament. That was the first time we saw the legislation.

**Ms B Bennett**—It was mid-March.

**Senator FISHER**—Was that of this year?

**Ms B Bennett**—Yes.

**Senator FISHER**—What was the process for that? Who prepared the original document? Did it have its genesis in your organisation?

**Ms B Bennett**—Yes, staff in the Workplace Authority were responsible for the preparation of the guide.

**Senator FISHER**—Okay, so walk me through the process. It started in March.

**Ms B Bennett**—We had the draft legislation that was before the parliament. We looked at the requirements of the legislation, we developed a framework that operationalised and took into account the type of information and guidance that employers, employees and their representative organisations would need.

**Senator FISHER**—How did you take that into account? What was your process?

**Ms B Bennett**—They would want to know what sort of factors we took into account in lodging and what a valid lodgement was.

**Senator FISHER**—How do you know they wanted to know that? Did you have a process to establish that?

**Ms B Bennett**—We had previous experience and we drew on our previous experience.

**Senator FISHER**—Keep going, please.

**Ms B Bennett**—Then drafts were prepared, circulated and discussed.

**Senator FISHER**—Internally? This was in the Workplace Authority?

**Ms B Bennett**—Yes, we had a steering committee established to manage the new arrangements. It covered a whole array of areas, not just the policy guide. It also covered changes that were made to training for staff, to scripts for call centres, to IT systems, to the development of new forms and to information that would go out on our websites. Those sorts of issues were under the auspices of the steering committee, and there was a subcommittee with the primary responsibility for the development of the policy guide. Numerous drafts were presented to me which we discussed and refined. On 24 April the policy guide was complete and made available on our website to assist in agreement making.

**Senator FISHER**—When you say you had a steering committee, who was on it? Was it an internal one?

**Ms B Bennett**—It was internal.

**Senator FISHER**—Did you have any external consultations in the development of the guide?

**Ms B Bennett**—Yesterday, in questions to the department, John Kovacic also explained that we had lots of discussions and drew on the advice and expertise of DEEWR, who had drafted the legislation. So when there were technical bits that we were finalising how to operationalise, we sought advice and input from them.

**Senator FISHER**—When did you do that?

**Ms B Bennett**—That was an iterative process over the time from when we started to the time that it was finished.

**Senator FISHER**—So when was the first time that you consulted with DEEWR in the process?

**Ms B Bennett**—I do not recall. It was obviously a week or two after we had a first draft and then it went backwards and forwards. Sometimes it was not whole drafts but issues about how would you interpret this, what wording might work or what is the best way to capture that? It was an ongoing drawing on their expertise, with our own internal legal people and staff.

**Senator FISHER**—How did the guide come about?

**Ms B Bennett**—There had been a policy guide for the fairness test. There had been policy guides by the former Office of the Employment Advocate when they then applied the no disadvantage test.

**Senator FISHER**—Were they policy guides or implementation guides?

**Ms B Bennett**—It is obviously to our benefit, and to employers and employees benefit, if there is as much information out there as possible to assist in agreement making so that people know what their requirements are, what forms need to be lodged, what information needs to be provided and what matters the Workplace Authority will take into account when determining that an agreement meets the requirements of the legislation. Broadly, those are the issues that we cover. Also, we have more detailed information on our website. Staff in our contact centres are also trained to be able to assist people on where to get information that they need in the process of agreement making. Across the agency we provide information, support and advice on the requirements of the legislation. This is one aspect of articulating what you need to do to get an agreement to pass the no disadvantage test.

**Senator FISHER**—As the Workplace Authority Director, did you feel the guide was an important thing to be done?

**Ms B Bennett**—It is also important for our own staff, because they need to be trained to ensure consistency and transparency in the decision making. This forms the first level of business rules and training that are given to make sure that our people are making decisions in the way that matches up with the information that we are telling people on what they need to provide to us and what the process is.

**Senator FISHER**—Did you decide to develop the guide because your predecessor organisation, as it were, had one?

**Ms B Bennett**—I do not think that was the predetermining factor. It was more in line with what sort of information we should provide to parties to agreement making and what was the best way to provide it, and this was one of the tools that we thought was a good way of doing that.

**Senator FISHER**—You have indicated that you consulted with DEEWR about the content of the guide itself and I will go back to that later, but did you have discussions with them about the creation of the guide in the first place?

**Ms B Bennett**—No, that was my decision.

**Senator FISHER**—Did you have discussions with the minister's office about whether or not there should be a guide?

**Ms B Bennett**—No. I decided there was a guide.

**Senator FISHER**—In table 2.1, on page 286, of the budget papers it appears to me that, when I look in particular at the budget provision, there is a reduction of some \$27 million in terms of funding for the Workplace Authority in the next financial year and a reduction in staffing numbers from 730 to just under 700. What implications is that going to have for the authority?

**Ms B Bennett**—The total Workplace Authority budget is actually on page 284. The Workplace Authority's budget was adjusted at the additional estimates process last financial year. So our budget was already clear with us in February this year. On the establishment of the Workplace Authority on 1 July—which, as you are aware, came together with a number of organisations—\$84.4 million was transferred from the Office of the Employment Advocate. Functions were transferred from the then department of workplace relations to the authority—\$45.53 million. In addition to that, money was notionally allocated to the Workplace Authority to undertake the fairness test.

**Senator FISHER**—How much money was that?

**Ms B Bennett**—The sum of \$75.7 million was announced in the 2007—sorry, I will have to ask the chief financial officer. While she is getting that information on the total new measure, the Workplace Authority's budget was reduced by \$30 million at that point. For this financial year, 2007-08, we reduced our budget by \$30 million. That has formed a new base and that has not been altered in this budget.

**Senator FISHER**—Nonetheless, you have had a \$30 million reduction. That \$30 million reduction is broadly consistent, in any event, with the table on page 286, which clearly indicates you will also have a reduction in staffing numbers. What will this mean for the services that you will be delivering?

**Ms B Bennett**—Since the passage of the Forward with Fairness legislation the Workplace Authority has a different role. We had a large number of staff whose responsibility was the promotion of and assistance to employers for the development of AWAs. That role no longer exists, so that was one area where a saving was made. We have moved many of those staff into other areas of the Workplace Authority to do the work.

**Senator FISHER**—The job of those staff was to promote workplace agreements?

**Ms B Bennett**—AWAs specifically.

**Senator FISHER**—You have moved those staff. Do you perform any promotional activity in respect of workplace agreements at large?

**Ms B Bennett**—We provide an array of assistance and advice to employers, but we certainly do not have people going out and helping employers make agreements.

**Senator FISHER**—To the extent that you had a team promoting AWAs and you now have—

**Senator Wong**—The evidence, if I caught it, was not just promoting; I think it was ‘assisting and developing’.

**Senator FISHER**—To the extent that you had a team assisting in the development of Australian workplace agreements and to the extent that you now have a function that is about promoting workplace agreements, what is the difference between the two? Can you spell it out for me? You have gone to a part of it, which is that you no longer have staff actively going out and assisting businesses to reach AWAs. Is that the only difference?

**Ms B Bennett**—I am sorry; I do not quite understand the question. The legislation requires that we provide information and advice to the parties in agreement-making. We do that through having almost 300 people who work in our contact centre who are skilled and trained. We have quite a well-developed website. We have a set of information and tools that are segmented: what does it mean to be a young person; what is in particular industries. In our agreement-making, when an agreement is lodged, we have people within the assessment areas that have expertise in particular industries who will talk employers and employees through issues about agreement-making via the contact centre. So there is a level of advice and support. We do not have people who go out and help employers make AWAs anymore. That is one of the functions—

**Senator FISHER**—That is no longer being performed?

**Ms B Bennett**—No.

**Senator FISHER**—What is another function that is no longer being performed? You said that is one of the functions.

**Ms B Bennett**—The \$30 million was able to be offered as a savings. The Workplace Authority was established on 1 July. The start-up period is always a slower expenditure period for a new agency, in my experience. We had an underspend. We rationalised some of our state presence because of the changing nature of processing and the type of work that we had. We reduced some staff in some areas that were no longer needed. We have cancelled several minor capital works projects. We have cancelled some future investment in IT projects. We have also relied on the natural attrition of any organisation, consistent with the public service. That has allowed us to deliver within budget this year. We will do the same for next year.

**Senator FISHER**—You indicated before that workplace agreement-making visitations were one function you were no longer performing. Are there other functions you are no longer performing? ‘One’ implies there are others, and I am interested in that.

**Ms B Bennett**—There were activities that were specifically related to AWAs that obviously we do not need to do, such as particular fact sheets and information that was on the website. We no longer administer some of the questions that you asked about yesterday or look after the EAP program. Those are the sorts of activities which we do not do and which were very focused on AWAs.

**Senator FISHER**—Do you do those same functions for workplace agreements at large—for collective agreements and ITEAs?

**Ms B Bennett**—No. As I said, our focus at the Workplace Authority in relation to agreement-making now is information and advice, not promoting and marketing.

**Senator FISHER**—From what you have said, though, it is information and advice; it is not promoting and marketing—

**Ms B Bennett**—Or individual development assistance.

**Senator FISHER**—That is right: or individual assistance. Given that your agency is the agency for workplace agreement-making, if your organisation is providing information and advice, do you know of any government organisation that is doing promotion and marketing of workplace agreement-making as a choice for workplace agreements? Do you know of any government organisation that is promoting workplace agreement-making if your organisation is not?

**Senator Wong**—Could we be clear what you are asking? I assume you are not asking about Australian workplace agreements, given Ms Bennett's evidence and given the government's position.

**Senator FISHER**—I am asking about the workplace agreements that are able to be made under the current Workplace Relations Act, because my understanding is collective agreements, ITEAs—

**Senator Wong**—ITEAs.

**Senator FISHER**—I think we all know what ITEAs are.

**Senator Wong**—Yes. So your question of Ms Bennett is what promotional activity is undertaken in respect of ITEAs. Is that the question?

**Senator FISHER**—I thought my question was quite clear.

**Senator Wong**—I do not know that it was.

**Senator FISHER**—Ms Bennett indicated that her organisation was providing information and advice in relation to workplace agreement making.

**Senator Wong**—Well, no, actually—and I have picked you up on this a number of times—I think her evidence was words to the effect of assisting in the development of Australian workplace agreements.

**Senator FISHER**—She has used several descriptions of—

**Senator Wong**—No, no. That is important because that, to my way of thinking, implies a different level of, I suppose, work that is required.

**Senator FISHER**—Indeed it does, which is why I am continuing to ask the question, Senator, and I think I am entitled to it.

**Senator Wong**—Well, I do not understand the question. Ms Bennett might understand the question but I do not understand the question.

**CHAIR**—Senator Fisher, if you could just re-ask your question, we will see if Ms Bennett is able to answer it. It needs to be about her department. I actually thought you were then asking Ms Bennett's view of what other departments may be doing and I am not sure that that is appropriate.

**Senator FISHER**—My subsequent question was indeed about that, Chair, and that may not be appropriate.

**CHAIR**—Okay, ask your question and we will endeavour to assist you in achieving an answer.

**Senator FISHER**—Let us clarify the situation, Ms Bennett. Your agency has responsibilities in respect of what sort of workplace agreements?

**Ms B Bennett**—In regard to assessing agreements and the application of the no-disadvantage test, we are responsible for all agreements, and that includes collective agreements, union collective agreements, employer collective agreements, greenfield agreements, ITEAs for new employees and ITEAs for existing employees—and I make that distinction because those types of agreements all have different arrangements. That involves about just over a third of the agency staff.

**Senator FISHER**—Sorry, what does?

**Ms B Bennett**—The processing and assessment of agreements involves just on 300 people in the organisation.

**Senator FISHER**—A third, did you say?

**Ms B Bennett**—I think it is more than a third. It is 300. We have a very large contact centre on a single telephone number where we have trained and skilled staff that can answer questions that go to what is an appropriate pay rate, or general questions that people ask such as can they be asked to work on weekends, or 'I am an apprentice. What should my rate of pay be' or 'this has happened in the workplace'. We receive about 4,000 phone calls—it goes up and down; it has reached a peak of 5½ thousand.

**CHAIR**—Over what period is that? Is that 4,000 per week?

**Ms B Bennett**—That is 4,000 per day of people ringing up just to ask questions about what is happening in their workplace. There is 218 staff working in the contact centre. We then have some 50 staff that work in an area called—

**Senator FISHER**—Sorry, is that 15 or 50?

**Ms B Bennett**—50 staff that work in an area called knowledge management. Their primary role is about advising about pay scales. When pay decisions are made the Workplace Authority translates those into pay scale summaries. We produce about 430 and they are printed—or are available—on our website.

**Senator FISHER**—430 pay scales?

**Ms B Bennett**—430 summaries are provided on our website. Any other pay scale summary that is required in relation to the other 3,000 awards is done on a case-by-case basis as requested through the authority. The remaining staff in our organisation look after people, finance, business, business improvement, IT and me.

**Senator FISHER**—So you are corporate management people, I suppose?

**Ms B Bennett**—And executive.

**Senator FISHER**—What is the balance?

**Ms B Bennett**—Twenty-six in Information and Communications; 18 in Human Resources; 18 in our information stats and managing of Senate estimates, the government reporting requirements; 11 in Finance; nine in Business Services; six in Business Improvement; and four in Executive and Support.

**Senator FIERRAVANTI-WELLS**—If I could just ask one question while we are on that. If I understood your evidence correctly, you said that the Workplace Authority's role now is to provide assistance in relation to a whole range of agreements and you listed those types of agreements. If I understood correctly you made some comments earlier about your previous role and that a component of what you were doing involved the promotion of AWAs. So, in other words, part of your work in the past consisted of promotion work?

**Ms B Bennett**—I will clarify that. What I was explaining was the source of funding, in answer to Senator Fisher's question on budget cuts. I was explaining that the OEA functions, staff and budget were transferred into the Workplace Authority. I was trying to bring clarity by explaining that the OEA had a primary role in promoting and assisting. They did not have an advertising budget. I want to be clear: they did not do marketing in that sense. They had staff who physically went out and helped employers make AWAs and answered questions. Those functions were transferred to the Workplace Authority. In the first seven months of the establishment of the Workplace Authority, following the introduction of the fairness test, those functions were not continued, as we were working out what to do. Now, with the change that has come through with Forward with Fairness, it is very clear that we have a different focus and responsibility. The question—which, if I recall correctly, was: how were the savings derived or how were we able to deliver within the new budget framework?—went to those staff, and that is what started the questions.

**Senator FIERRAVANTI-WELLS**—Can I just follow on with one other question. Do you envisage that now there will be some promotional aspect to the work that you do—

**Ms B Bennett**—We have no money—

**Senator FIERRAVANTI-WELLS**—in relation to some of the agreements that you now look after?

**Ms B Bennett**—Perhaps I need to ask you what you interpret as being promotion work?

**Senator FIERRAVANTI-WELLS**—In relation to the previous agreements and the sort of work that, as you said, you were going out there proactively promoting, if I can put it in that

term, do you envisage a role similar to that with the new sorts of agreements that you are going to be looking after?

**Ms B Bennett**—No, we have developed good tools and information. People know the phone number—as I said, to illustrate it with the number of calls that we receive, they know where to go to get information and advice. We have thousands of hits on the website every day and we feel that that information is there for parties to be able to now do what is required under the legislation.

**CHAIR**—So there are no TV commercials in that, Ms Bennett?

**Senator FIERRAVANTI-WELLS**—We will be keeping an eye on that, Senator Marshall, which was the object of my question.

**CHAIR**—No?

**Ms B Bennett**—No.

**Senator FISHER**—Your organisation is now largely focused on processing and assessing the suite of workplace agreements that you described earlier, providing advice in relation thereto, through your contact centre, and providing summaries of pay scale advice to inform people as they develop workplace agreements, through your knowledge management centre. Is that correct?

**Ms B Bennett**—Yes.

**Senator FISHER**—You have a clear process and assessing role and you have a clear advisory role. Do you deal with any other government body that promotes or markets workplace agreements and the suite of workplace agreements for which your agency is responsible?

**Ms B Bennett**—No, Senator.

**Senator FISHER**—The difficulty I have is that the government has promoted, as part of its core progressing of Forward with Fairness, workplace agreements at large as a key part of retaining flexibility and productivity in the Australian workplace. I am concerned that there does not seem to be in your organisation any promotion of workplace agreement-making as a choice in industrial instruments that are available to workplaces to provide clear guidance as to their terms and conditions. I understand that is beyond that for which you are funded, in fact. What does the legislation say about your job? I am sorry—what does the legislation say about the authority's role?

**Ms B Bennett**—Actually, there is a specific role for me as the director in the legislation. It relates to those activities that we are doing—to provide information advice and assistance, to process agreements. It is set out on page 283 of the PBS in 1.1. I think that is a pretty accurate description of my legislative responsibilities.

**Senator FISHER**—That being so, it certainly does not suggest that you should have any promotional role. It is a question for the government as to how they can say that workplace agreements remain a clear choice for Australia's workplaces when there is no longer a clear promotion of them as an alternative tool. I want to ask about agreement making and the work that the agency is doing. Ms Bennett, can you give the committee a rundown on your

processing rates for workplace agreements at the moment. I am going to ask you for some statistics.

**Ms B Bennett**—We are running two arrangements at the moment. We are finalising agreements that were lodged with the Workplace Authority under the Fairness Test arrangements and we are processing agreements that have come under the no disadvantage test. I will turn to the Fairness Test in the first instance. As at the end of May, which includes the last day on which agreements could be lodged under the Fairness Test—which was 11 April—337,101 agreements had been lodged for assessment under the Fairness Test. As at 31 May, 121,324—

**Senator FISHER**—Do you have a document that you can provide to the committee?

**Ms B Bennett**—Certainly. I do not have it with me but I can set those figures out. It is in script. They are my own briefing notes and observations.

**CHAIR**—Ms Bennett, these questions will be asked at every estimates. It is probably a good idea to bring that in tabular form each time. We can then have it in front of us and ask questions about the detail.

**Senator FISHER**—In precise terms.

**CHAIR**—That is an idea for the future.

**Senator FISHER**—I think last time you were able to get some tables photocopied as we were here. Are you not able to do that?

**Ms B Bennett**—Last time we provided information to you which related to the last statistical release, in February. This time I came prepared with information as at 31 May, because there were questions about what progress there would have been between the stats being made available and the weeks after estimates. I can certainly provide this information in a tabular form after estimates.

**Senator FISHER**—Let's go to the processing of old agreements and the backlog.

**Senator Wong**—You asked Ms Bennett a question about both sets. You are being given data about the first set. Do you not want the data about the second?

**Senator FISHER**—Yes, I do.

**CHAIR**—Ms Bennett has indicated she will provide all of that in tabular form at the end.

**Senator Wong**—I just wondered if you wanted it now. You have two sets of information.

**Senator FISHER**—Let's continue with what we are getting at the moment and then I will come back to the question I just asked.

**Ms B Bennett**—There are 121,324 agreements under the fairness test that require finalisation, and that means in most cases these are back with—

**Senator FISHER**—Sorry. Earlier when we had the discussion about tabling numbers, you were part way through giving me some numbers. Following the minister's interjection, I have agreed we should continue with that process, if you do not mind. I think you got to 1 May.

**Ms B Bennett**—As at 31 May, 215,777 of these agreements had been finalised. The fairness test did not apply to 38,296 of them.

**Senator FISHER**—Meaning?

**Ms B Bennett**—They were over the threshold of \$75,000 or they were in areas where there was no award. There were 136,200 that passed the fairness test; 25,138 passed following a variation; 16,143 had failed and therefore ceased to operate. That means that we have 121,324 to finalise.

**Senator FISHER**—They would be not unfairly described as a backlog, would they?

**Ms B Bennett**—Well, they are there.

**Senator FISHER**—That is right. That is it, and that is the sum total as of the moment—

**Ms B Bennett**—As at 31 May.

**Senator FISHER**—of agreements that are awaiting processing as at 31 May.

**Ms B Bennett**—I should point out they are not awaiting processing; it was the finalising. Many of these have been processed. They are with employers either to provide more information or to make a variation and tell us what changes they are going to make to meet the fairness test.

**Senator FISHER**—So what is the average length of time to approve an agreement?

**Ms B Bennett**—Under the fairness test arrangements, if all the information is provided it is returned to the employer and employee, confirming its passage, within about 30 days. When the information—

**Senator FISHER**—So if the first shot works it is 30 days.

**Ms B Bennett**—If the first shot works. If we have to return to the employer to receive information—such as on classification, nature of the work, span of hours or rosters—that will stretch it out until the employer is able to provide that information to us.

**Senator FISHER**—What does that mean?

**Ms B Bennett**—Some employers take a long time to provide that.

**Senator FISHER**—Are you putting time limits on employers?

**Ms B Bennett**—Yes, we are. Then, following the receipt of that information and assessment—

**Senator FISHER**—And what do you do with those time limits? Do you police them? Do you rigidly enforce them? Are they guidance only? How do you manage them?

**Ms B Bennett**—We have a lot of people that make lots of phone calls and send out lots of letters.

**Senator FISHER**—How do you manage the process in a transparent way?

**Ms B Bennett**—All agreements that come into the Workplace Authority are tracked and the contact with the employer and the letters are all tracked so that we can find on our computer system at any point in time where it is at, what phone call may have been received or why there is a delay. There is a point, obviously, in any large processing job where we draw a line, and if the information is not provided by the employer we make an assessment on what

the pay should have been. We advise the employer and the employee that it did not pass and we say that now our assessment is that back pay is due.

**Senator FISHER**—You say that it takes about 30 days to finalise an agreement—

**Ms B Bennett**—A fairness test agreement.

**Senator FISHER**—a fairness test agreement, where there are essentially no outstanding issues in terms of the employer. That is in respect of fairness test agreements. Tell me about the other.

**Ms B Bennett**—As at 31 May, 16,757 agreements had been lodged under the no disadvantage test. Of these, 4,542 have been finalised and 3,627 were returned to employers because they were not valid. The remaining are being actioned and processed.

**Senator FISHER**—The remainder is?

**Ms B Bennett**—About 8,000 are being actioned at the moment.

**Senator FISHER**—We are part-way through this. Under the fairness test, we have some 120,000 agreements waiting for finalisation. Under the no disadvantage test, we have some 8,000 agreements waiting for finalisation. Is that right?

**Ms B Bennett**—Yes.

**Senator FISHER**—Getting back to the fairness test—you indicated that it takes, on average, 30 days to process agreements when you have all the information at hand and the agreement is able to be passed.

**Ms B Bennett**—Or failed.

**Senator FISHER**—Or failed. Do you have a breakdown of that 30-day turnaround in respect of those where it is a one-exchange agreement between you and the employer? Can we call it a one-exchange agreement? You can give me some other words that you are happy with that you use in house. I am sure you have some. And do you have a breakdown of the 30-day average in respect of individual agreements and collective agreements?

**Ms B Bennett**—I have just been advised our systems would not be able to make that breakdown. We will take it on notice and see what information we have got. I can tell you how many of those agreements that are lodged are collective agreements and how many were AWAs. We released that at the end of March. I can give that figure at the end of March and the stats—

**Senator FISHER**—Of those that fall into the 30-day turnaround?

**Ms B Bennett**—No. I do not think that our systems allow us to say how many agreements were processed and the type of agreement within 30 days.

**Senator FISHER**—All right. I raised the 30-day limit because you gave it in answer to a question. Let us now go to the balance of fairness test agreements that you are bringing to finalisation one way or another. We have dealt in part with the one-exchange category. What is your average turnaround time for bringing to finalisation the balance of workplace agreements that you are assessing under the fairness test at the moment?

**Ms B Bennett**—Under the fairness test, we are averaging between 5,000 and 7,000 a week. That depends on the nature of the agreements and the flow of the returning of information to employers. Our estimation, which we have said before and on the record, is that within five to six months all agreements under the fairness test will be completed and finalised.

**Senator FISHER**—What is your average time for processing those agreements?

**Ms B Bennett**—We do not have figures on how long it takes an individual assessor to assess an agreement. We have some workflow information that will show that—

**Senator FISHER**—But you know the date of lodgement and you know the date of finalisation.

**Ms B Bennett**—That is an input and output; that is not an assessment of how many man hours or staffing hours it takes to process an agreement, which was the question that you asked. How many people—

**Senator FISHER**—No, that was not, actually, but that would be my subsequent questions—or one of my subsequent questions. My question is: how long is a workplace sitting waiting before it knows the outcome of its workplace agreement? So what is the average length of time that it takes for a workplace agreement to be assessed under the fairness test, other than those that you have categorised as the 30-day turnaround? Tell me the figures as you will and then we will talk about them, but at the moment I am just trying to get the figures.

**Ms B Bennett**—I do not have those figures with me. I can take that on notice, but I do not think we will be able to provide that to you. The reason that we cannot provide it to you, Senator Fisher, is that there are numerous milestones of information that are provided by the employer or sought by the Workplace Authority, including the legislation at that point in time and allowed variations. They then get reassessed depending on what changes there are and what the employer provides. So the assessment process can be, if the agreement does not pass or there is insufficient information, quite a long journey.

**Senator FISHER**—I am interested in the length of that journey.

**Ms B Bennett**—We will take that question on notice and see if we are able to give you information in relation to how long the longest journey takes or the average time of that journey. But we do not have it with us—

**Senator FISHER**—Ms Bennett, I would have thought that you would be wanting to assess that information. I would have thought that you would want to be able to reassure Australian workplaces that you have the resources to deal with the processing of workplace agreements.

**CHAIR**—Senator Fisher, Ms Bennett can only answer what she knows and what she can. She has offered to take that question on notice. It is a very broad question, and I am sure that Ms Bennett will provide to you on notice as much of that detail as she possibly can.

**Senator FISHER**—Thank you, Chair. I have not finished with asking about the time that it is taking, so may I continue?

**CHAIR**—That is all right, as long as you do not keep asking the same question that has been taken on notice.

**Senator FISHER**—No, I am going to move to a slightly different one, which may assist Ms Bennett in providing the information or, then again, may not—but, until I ask the question, I know not. Ms Bennett, on my question about the length of time between lodgement of an agreement and finalisation, you have given an indication of 30 days in respect of exchange agreements under the fairness test. If it assists you, I would be happy to also get or instead get the figures that show the average time taken between lodgement and finalisation of fairness test agreements across the board, without differentiating between the 30-day turnaround and others. Do you have those figures available?

**Ms B Bennett**—I do not have them with me, but we can take that on notice.

**Senator FISHER**—In that case, I ask both questions on notice: the first one with a differentiation between the 30-day turnaround and the balance; and the second, an overall average in respect of the fairness test. I would also like you to take on notice whether you are able to differentiate between collective agreements and other in respect of those average processing times, in the sense of the time period between lodgement and finalisation. In respect of the no disadvantage test—

**CHAIR**—If you are going to leave the fairness test now, I have a couple of questions on the fairness test.

**Senator FISHER**—Sure, Chair. I may come back to it.

**CHAIR**—Does the agency quantify the cost to business caused by the delays in processing workplace agreements under the fairness test and the creation of the backlog of over 100,000 agreements?

**Ms B Bennett**—No, we have not conducted any work that tells us that.

**CHAIR**—Did you get any feedback from business about what those costs were?

**Ms B Bennett**—We certainly have anecdotal information which says that where there had been a long processing time, particularly in the retrospective introduction of the legislation, employers were concerned by the impact on their business of delays in processing to make good any pay that was owed.

**CHAIR**—Can you quantify the number of complaints you got in that respect?

**Ms B Bennett**—No, we do not collect that information.

**CHAIR**—Did the agency quantify the cost to business of the delay between the announcement of the fairness test and when the Workplace Authority could commence processing agreements, which was only after the passage of the relevant legislation?

**Ms B Bennett**—No. We are aware that between 8 May, when it was announced that the fairness test would be introduced, and 1 July, when the legislation came into effect, we had about 55,000 workplace agreements on the books. I think it would be fair to conclude that most of those did not meet the requirements of the fairness test, nor did they provide accurate information, and therefore they took a very long time to process. In fact, an estimate is that of

those 55,000 agreements that were made only about 45,000 passed the fairness test without a variation being made or not applying.

**CHAIR**—Are there any other questions around the fairness test at this point?

**Senator FIERRAVANTI-WELLS**—I was going to ask Ms Bennett if any of those variations at times could have been minor.

**Ms B Bennett**—Variations for the fairness test mainly relate to increasing the hourly rate.

**Senator FIERRAVANTI-WELLS**—So the figure is not reflective of the actual issue. One has to look at the nature of those variations to get the proper assessment of what they were. Simply trumpeting X number of agreements—

**Ms B Bennett**—It is indicative that at the time people did not know what the requirements of the fairness test were—in the delay between applying it for those that were on hand on 8 May and the requirements that were not known until 1 July. It is understandable that people did not know what they were required to provide or what the commitments were. There were some months when people with agreements did not know where they were.

**CHAIR**—Could you clarify those figures for me again. You said that, during that period where the fairness test was, in effect, applied retrospectively once the legislation had been passed, most of those then failed the fairness test.

**Ms B Bennett**—For 15 per cent it did not apply because of the threshold. I do not have precise figures. Of that 55,000, an estimated 45 per cent passed the fairness test, 20 per cent passed after making a variation and 20 per cent ceased to operate.

**CHAIR**—Thank you. Senator Boyce, let's go to you.

**Senator BOYCE**—My questions are more general. Earlier you spoke about taking 4,000 calls a day. What number of those calls would be seeking information around industrial relations matters rather than being specifically related to agreements?

**Ms B Bennett**—General industrial relations matters such as wages and conditions?

**Senator BOYCE**—Yes.

**Ms B Bennett**—Our daily average number of phone calls under the broad classification of 'wages and conditions' is about 3,000.

**Senator BOYCE**—So the bulk of the inquiries you are getting are about things like 'Should I be getting overtime?' and 'Is \$10.22 an hour the right rate?'

**Ms B Bennett**—Yes. We get calls on 'What is my rate as a second-year apprentice?' and 'What should I get for working on Saturdays?' and 'What is the leave loading?' All those sorts of issues come under wages and conditions.

**Senator BOYCE**—Do you consider it to be within your mandate to look at those in inquiries?

**Ms B Bennett**—Yes.

**Senator BOYCE**—What I am getting at is that the Workplace Ombudsman also provides a large amount of information, so I am trying to see the separation between the two. I am sure it is very clear to you, but is it very clear to the employees and employers of Australia?

**Ms B Bennett**—We have a good relationship with the Workplace Ombudsman. Sometimes people come through our phone number and we are able to refer them to the ombudsman if it is clearly within their ambit—and the ombudsman will refer calls to us if they are more in the nature of an inquiry rather than somebody clearly wanting a matter to be investigated.

**Senator BOYCE**—How many of those 3,000 calls you take a day would be referred to the ombudsman?

**Ms B Bennett**—I can provide that information but only on a monthly basis.

**Senator BOYCE**—That is all right. I presume there are about 80,000 calls a month.

**Ms B Bennett**—For March and April 2008 we referred 1,350 calls to the ombudsman. These were calls that came to us but should have been dealt with by him.

**Senator BOYCE**—There were 1,350 phone calls in a two-month period?

**Ms B Bennett**—No. From January 2008 to April 2008 about 1,350 calls per month were referred to the ombudsman.

**Senator BOYCE**—Am I right in assuming that you take about 80,000 calls a month?

**Ms B Bennett**—Yes. Obviously we refer them on and it is up to them to pursue it. So I am not locking the ombudsman in by saying they receive those direct referrals from us. We tell people they should talk to the ombudsman; we refer them on.

**Senator BOYCE**—It seems that some potential overlap between the two organisations might be developing.

**Ms B Bennett**—We also refer telephone callers to the ABCC, Centrelink, the Taxation Office, Workers Compensation, Trade Recognition Australia, state agencies and the AIRC. There are a number of agencies, and people use us to find out where to go. I would not draw the conclusion that there is an overlap.

**Senator BOYCE**—So it is a case of picking a 13 number and letting them point you in the right direction?

**Ms B Bennett**—We have a real person answering the phone!

**Senator BOYCE**—That might be your problem! Since you have mentioned that, could you give us the average monthly figures for the other referrals that you do?

**Ms B Bennett**—I can provide that. I think that also answers your other question about conditions, referrals, rights, termination of employment and workplace agreements.

**Senator BOYCE**—Thank you. How has the change to legislation affected your working relationship with the Workplace Ombudsman?

**Ms B Bennett**—Our working relationship with the Workplace Ombudsman is set out in the memorandum of understanding. We are in the process of renewing those arrangements at the moment to reflect the new legislation. That provides a structural arrangement between us. It is very early days for us to determine the impact on referrals, but we do know that because of the change in the legislation, where many classes of agreement are not in operation until it has passed the no disadvantage test, there will be no back pay owed to employees. There will be fewer referrals proportionately to follow up on whether back pay is owed.

**Senator BOYCE**—Would you be able to characterise the types of changes that you are currently discussing under this memorandum of understanding? I am not asking for what you are actually going to say, but what are the subject areas?

**Ms B Bennett**—They are timeliness of the referral of information, shared access to the system, templates.

**Senator BOYCE**—What do you mean by ‘shared access’—access to each other’s systems?

**Ms B Bennett**—If a matter is being investigated, we have to share information with the Workplace Ombudsman about where it is progressing so that they can track where it is at.

**Ms Major**—We have a number of systems. One of the systems is a repository of all agreements that have been lodged with us, and we allow the Workplace Ombudsman access to that system so that they can check whether or not an agreement has been lodged, whether or not it has actually been tested and what the outcome of that test may be. If they require additional information they work through one of our officers to provide that information.

**Senator BOYCE**—What type of additional information are you talking about?

**Ms Major**—It might go to the actual nature of the agreement—whether or not additional information was provided by the employer when the agreement was launched and those sorts of issues.

**Senator FISHER**—In the teams of people that Ms Bennett indicated to me before exist within the authority, where are the people who liaise with the Workplace Ombudsman in respect of complaints that have been made to the Workplace Ombudsman, in response to which they come to you seeking information?

**Ms Major**—They reside within my area, the strategic area.

**Senator FISHER**—They are in the strategic area. So I have a processing and assessing area, a contact centre, a knowledge management area and a corporate area.

**Ms B Bennett**—The total number that I gave you about agreements included—

**Senator FISHER**—The 300?

**Ms B Bennett**—The 300 are split between Ms Bull, who does agreements and policy, and Ms Major, who does agreements and strategy.

**Senator FISHER**—Okay.

**Senator BOYCE**—I would like to follow up on a couple of referral rates. I am interested to see that the greatest referral outside your own system appears to be for external legal advice. Can you explain why that is?

**Ms Bull**—As I understand from the contact centre, those referrals are where someone may ring the contact centre with quite complex issues in disputes, issues with the employer or issues with interpretation of the legislation. The contact centre is not held up to provide legal advice, so in those cases we would suggest to the caller that they need to seek their own legal advice. They track those sorts of recommendations.

**Senator BOYCE**—Employees?

**Ms Bull**—It could be employees, it could be employers, it could be bargaining agents, it could be unions and it could be industry associations. There is a whole range. For example, we have a hotline on independent contractors. People may ask whether they are an employee or a contractor, and we will give general advice about the sorts of things that distinguish whether they are an employee or a contractor. But, if the caller wants to go into very detailed information about their particular circumstance, it really is not the role of the Workplace Authority to make a judgement on that, so we would suggest that they seek advice.

**Senator BOYCE**—And they have obviously chosen to call you rather than the tax office to ascertain this?

**Ms Bull**—There are some referrals to the tax office as well.

**CHAIR**—‘We’re from the government; we’re here to help.’

**Senator FIERRAVANTI-WELLS**—Or ‘We’re from the tax office and we really want to help you.’

**CHAIR**—Just while we are on the referrals, what do you mean by ‘state departments’?

**Ms Bull**—For example, it could be a state government employee who has rung asking for advice. As they do not fall within the federal workplace relations, which falls within our range of responsibilities, we would refer them to the state industrial relations departments.

**CHAIR**—I am interested in the potential overlap, because you have workers compensation and OH&S, which is of course in nearly all cases—apart from Comcare employees—covered by Comcare. Is there some overlap, or are you able to take out occupational health and safety?

**Ms Bull**—If it is clearly about workers comp or OH&S it would go into that category. If it is other state matters, primarily, as I understand it, where it relates to the state industrial relations arena, it would go into those categories.

**Senator BOYCE**—The other column I was not able to find a minute ago related to the ombudsman. There has been a significant increase in referrals to the ombudsman. Can you tell me about that?

**Ms Bull**—No.

**Ms B Bennett**—That is just the nature of the calls.

**Senator WORTLEY**—Ms Bennett, for each financial year, can you tell us how much has been spent on public relations activities and other promotional activities, including EAP, for the successive Work Choices advertising campaigns?

**Ms B Bennett**—The Workplace Authority is in its first financial year of operations. We only started on 1 July last year. No money was spent on marketing campaigns from the Workplace Authority.

**CHAIR**—Didn’t your authority have its genesis in the department? The department actually referred a whole range of issues to say, ‘While this was part of the department’s responsibility, all that was transferred’—in your case—‘to the Workplace Authority’. It is the same answer with some of the other departments. In fact, they gave us some assurances—I know Senator Fisher was pursuing this rigorously last night—that these matters would be able to be answered by the agencies.

**Ms B Bennett**—Perhaps there is some confusion. I was watching yesterday's hearings.

**CHAIR**—Good.

**Ms B Bennett**—There were questions asked about the EAP which I can answer. Your question went to marketing and advertisements, and I think that that was answered by the department, in that they had paid for that.

**Senator WORTLEY**—Okay, we will move specifically to the EAP. Just going back, though, what were you saying about from July to December?

**Ms B Bennett**—This is our first financial year of operation. You asked for previous funding years, but this is our first year of operation.

**CHAIR**—Again, the department was very clear that it did not want to answer questions in respect of EAP for previous years, given that that whole section from within the department moved to come under your control. It was very clear, I thought, but correct me if I am wrong.

**Ms B Bennett**—I do have the information about the EAP in previous years.

**CHAIR**—You do?

**Ms B Bennett**—Yes.

**CHAIR**—I thought you were going to say that you—

**Senator WORTLEY**—Specifically on the EAP, how much was spent through the waves of the program and who were the major recipients of funds?

**Ms B Bennett**—As the chair has pointed out, this money and the arrangements were transferred to the Workplace Authority on its establishment on 1 July. There were three phases—technically four, but one was called phase 2 extension. Phase 1, from March to June 2006, had 17 providers and was \$8.338 million. I will be able to provide you a table of who got what money and components of that. Phase 2, from September to December 2006, was \$10.006 million. Phase 2 extension, from January to March 2007, was \$4.163 million. Phase 3, from April to December 2007, was \$12.703 million. This gives a total of \$35.21 million over the phases.

**Senator WORTLEY**—Who were the major recipients of the funds and how were the applications assessed?

**Ms B Bennett**—I am not making a distinction between major and minor. Phase 3 was transferred with us and those providers that received money under the arrangement were the ACT & Regional Chamber of Commerce and Industry, Aged & Community Services Australia, Australian Chamber Alliance Pty Ltd, Australian Hotels Association, Australian Industry Group, Australian Medical Association, Australian Mines and Metals Association, Agribusiness Employers Federation, Australian Retailers Association, Clubs Australia, Council of Small Business of Australia, Electrical and Communications Association, Furnishing Industry Association of Australia, Housing Industry Association, Hotel Motel and Accommodation Association of Australia, Master Builders Australia Inc, National Electrical and Communications Association of Australia, National Farmers Federation, National Retail Association, The Pharmacy Guild of Australia, Printing Industries Association of Australia,

Recruitment and Consulting Services Association Ltd, Restaurant and Catering Australia, and the Victorian Automobile Chamber of Commerce.

**Senator WORTLEY**—How were the applications assessed?

**Ms B Bennett**—Under the program, employer associations received funding through an open tender and contractual arrangements.

**Senator WORTLEY**—What was the outcome of the evaluation? Is it continuing?

**Ms B Bennett**—No. The evaluation has been finalised. I can provide you a copy of that evaluation.

**Senator WORTLEY**—Thank you.

**CHAIR**—It might be useful to table that list of recipients too.

**Ms B Bennett**—It says here the valuation is being finalised. I will have to confirm that when I get back to the office. I will take that on notice.

**Senator WORTLEY**—What were the conditions of funding for the EAP? Was it to promote Work Choices?

**Ms B Bennett**—It was to undertake education activities in relation to Work Choices.

**Senator WORTLEY**—So it was to promote Work Choices?

**Senator FIERRAVANTI-WELLS**—Education and promotion are two different words.

**Senator STERLE**—What a long bow that is.

**Senator WORTLEY**—Ms Bennett, when you nod your head that is not recorded in *Hansard*. I will just ask that question again. It was to promote Work Choices? You nodded your head but you did not actually—

**Ms B Bennett**—Education activities in relation to Work Choices, including the development of information resources, guides, fact sheets, CD-ROMs and online training programs. Topics covered included agreement making, negotiations in the workplace, how to incorporate performance management, employer engagement, flexibility in employment and family friendly policies in the workplace.

**Senator WORTLEY**—Were the participants of the program provided with government approved material to use as part of it?

**Ms B Bennett**—I would have to take that on notice.

**Senator WORTLEY**—If you would, thank you. Also in relation to that question on notice, what was the cost to the Commonwealth in developing this material?

**Ms B Bennett**—I will take that on notice as well.

**Senator WORTLEY**—Earlier I asked about the amount of money that was spent on public relations activities and other promotional activities for the successive Work Choices advertising campaigns for each financial year. Is anyone else there able to answer that question?

**Ms B Bennett**—That was the beginning of the first question.

**Senator WORTLEY**—It was the beginning of the first question, but I thought that perhaps someone may have had that information.

**Ms B Bennett**—It was not conducted by us, the Workplace Authority. That would have to be referred to DEEWR, and I think they did actually answer it in yesterday's hearings. In my watching of it, they provided—

**CHAIR**—They answered in respect of what they paid. We are just interested in ensuring that maybe other agencies—

**Ms B Bennett**—No money came from the Workplace Authority for advertising relating to Work Choices or the Workplace Authority.

**CHAIR**—But there must have been some costs incurred by your agency in respect of the advertising, surely?

**Ms B Bennett**—My time, Senator.

**CHAIR**—Do you have a figure for that?

**Ms B Bennett**—I would have to take that on notice.

**CHAIR**—If you could provide that, thank you. With respect to the EAP, was that money just given to all those employer organisations that you mentioned or were they required to form a committee? Did they employ people to undertake those activities or did they just continue doing it as part of their own role?

**Ms B Bennett**—It was through an open tender, which had been conducted before this program was transferred over to us. There were criteria for that selection and what they were applying for. We can take that on notice and provide that information. I do not have it with me now.

**CHAIR**—I am trying to understand whether the money was simply given or whether they had to account for it. For example, if they were going to have a particular officer responsible for doing the promotional activities, would the organisation then say that this was a portion for their rent and this was a portion for phones et cetera?

**Ms B Bennett**—There would have been acquittal requirements that set out the differences between employee administration and event arrangements. We can also provide that on notice.

**CHAIR**—Among all those costs, I am particularly interested to know whether any rent was paid to the employer organisations as part of that project.

**Ms B Bennett**—I will have a look at it, but it is probably unlikely that we will be able to go into that. It would be bundled into some sort of broad administrative overhead charge rather than specifics about telephones and rent. It is unlikely that we would have that level of detail.

**CHAIR**—It was more that employer organisations would be given an amount to use for promotion?

**Ms B Bennett**—In accordance with what the contract was and these acquittal processes. As I said, we are doing the evaluation and there would have been acquittals—

**CHAIR**—And you are able to provide those things to the committee?

**Ms B Bennett**—We can certainly have a look at what the acquittal requirements were for that money.

**CHAIR**—Thank you. Was their role to also assist employers in the formation of AWAs? I just want to make the distinction between what you say is the education and the promotional role and the hands-on development.

**Ms B Bennett**—The information I have says: ‘Services delivered in phase 3 included a total of 1,297 public education events, workshops, clinics and seminars, with a total of 13,613 attendants. In addition, a greater component of activity was focused on providing tailored, individual assistance through 4,100 consultations with 6,042 participants.’

**CHAIR**—I could take it from that that people were actually tailoring AWAs for employers to use?

**Ms B Bennett**—Yes.

**CHAIR**—Do we know which agreements that were tailored by this program on behalf of employers actually went through the process of the fairness test?

**Ms B Bennett**—No.

**CHAIR**—The grant was providing for the tailoring, but we do not know how many consequently failed the fairness test?

**Ms B Bennett**—No.

**CHAIR**—Do we have samples of the sorts of agreements that this program was tailoring?

**Ms B Bennett**—Can we take that on notice?

**CHAIR**—Yes. Thank you.

**Senator FISHER**—In respect of the fairness test agreements, you indicated that you had some 121,000 awaiting processing—

**Ms B Bennett**—Finalising.

**Senator FISHER**—Sorry, I stand corrected—awaiting finalisation. You indicated that you would take on notice questions about average times, but I think you also made a referral to a period of time within which you would have those 121,000 agreements finalised. Can you restate that time frame, please?

**Ms B Bennett**—We are expecting that it would be five to six months.

**Senator FISHER**—From when?

**Ms B Bennett**—From 31 May.

**Senator FISHER**—Meaning, by when?

**Ms B Bennett**—Hopefully, November, but at the latest December.

**CHAIR**—Senator Fisher, we might now break for morning tea.

**Proceedings suspended from 10.30 am to 10.45 am**

**CHAIR**—Ms Bennett, I asked you a question earlier, which you agreed to take on notice, in respect of the Workplace Authority’s component of any cost to some advertising. On

reflection, I do not need to know the answer to that, so you do not need to take that question on notice.

**Ms B Bennett**—Thank you.

**Senator FISHER**—You have indicated that you expect the backlog of agreements awaiting finalisation under the fairness test to be finalised by the end of November this year.

**Ms B Bennett**—November or December.

**Senator FISHER**—In respect of those agreements awaiting finalisation, if an agreement is finalised to a rejection, what are the consequences?

**Ms B Bennett**—If an agreement is assessed to have not passed the fairness test, the employer and employees are advised and are given 14 days to make a variation—that is, a change in an hourly rate or reinstating what was then referred to as a protected award condition.

**Senator FISHER**—I will save you a bit of time. If you go through that entire process and you are not satisfied that the agreement passes the fairness test, what is the consequence? What do you do?

**Ms B Bennett**—I will ask Ms Major to answer this. This is after it has failed. They have not made a variation. They are then advised that it has failed and they are informed that they are to pay back pay. Ms Major can go through the time line.

**Ms Major**—If they initially fail and then lodge a variation and we are not satisfied that that variation then makes the agreement pass, they are notified that the agreement has failed and has ceased to operate and that any back pay and conditions have to be reinstated back to the date that the agreement was instituted. They are also advised at that point that we may refer the matter to the Workplace Ombudsman to ensure that back pay and conditions are reinstated.

**Senator FISHER**—What makes you decide whether or not you will refer a particular agreement's failure to the Workplace Ombudsman for investigation as opposed to simply notifying the employer that he or she must rectify in terms of back pay?

**Ms Major**—In all situations where we have identified that an agreement has ceased to operate, we notify the Workplace Ombudsman. It is a legislative requirement.

**Senator FISHER**—How many employees are waiting for back pay as a result of workplace agreements that have failed your test?

**Ms B Bennett**—We will have to take that on notice. As Ms Major explained, the process is that we advise them that they owe back pay. The letter has a section to tear off that the employer then sends to us to say that they have made good and paid back pay. That is still referred to the ombudsman to confirm that that occurred.

**Senator FISHER**—For whom to send it to the—

**Ms B Bennett**—They send it to the Workplace Authority. We will still refer those to the ombudsman so that they can follow-up and confirm that what the employer advised us was the case. They also follow-up those where we have heard nothing from the employer in relation to the back pay.

**Ms Major**—At this point in time, we are not notified by the Workplace Ombudsman whether or not back pay has in actual point of fact been made. Once we refer it to the Workplace Ombudsman, we leave it within their jurisdiction to follow up and ensure that that is actually back paid the correct amount.

**Senator FISHER**—In the dialogue that Ms Bennett indicated is occurring between the Workplace Authority and the Workplace Ombudsman, is that one of the issues that you are progressing with the Workplace Ombudsman? Why would it not be?

**Ms Major**—The Workplace Ombudsman would then notify us whether or not back pay had been made?

**Senator FISHER**—That there be some system of tracking the consequences.

**Ms B Bennett**—Our responsibilities under the legislation cease at the point of making the decision and advising that back pay is owed. Under the legislation, it then moves to the ombudsman to uphold what is a legislative requirement to make good the pay.

**Senator FISHER**—Have you received complaints from employees awaiting back pay?

**Ms B Bennett**—From employees?

**Senator FISHER**—From employees wanting back pay. You have got some 140,000 agreements of both sorts in total that are awaiting finalisation. During that period, you have got some 120,000 awaiting finalisation under the fairness test, some 8,000 awaiting finalisation under the no disadvantage test and, as a result of that, you have workplaces in limbo for that period. Once you have progressed an agreement to finalisation, whether you be assessing it under the fairness test or the no disadvantage test, there is a clear and imminent possibility that matters may need to be rectified in the workplace, including by making back payment to employees. It is in everybody's interest to have workplace agreements brought to finalisation as soon as possible to minimise the length of time in which workplaces are in limbo and uncertain of their obligations—you know this. That then having been done, it is in everybody's interest, I would have thought, to bring to finalisation a process that sees to it that employees get their just entitlements.

**Ms B Bennett**—We agree entirely that it is important that that happen as quickly as possible. The legislation sets out some benchmarks and times that are viewed as reasonable for actions.

**Senator FISHER**—The legislation?

**Ms B Bennett**—The legislation sets out things like 14 days to make good to advise us what they are doing. In the earlier information that I referred you to, about calls to the ombudsman that we receive in the contact centre, I would assume that a number of those would be from employees who had received letters saying that they were owed back pay and who were following up on the progress of those matters. Logic would suggest that that would make up some of those calls.

**Senator FISHER**—How many matters have you referred to the Workplace Ombudsman, whether we are talking fairness test agreements or no disadvantage test agreements?

**Ms B Bennett**—As of 23 May, we had referred to the Workplace Ombudsman 11,759 agreements that had ceased to operate.

**Senator FISHER**—What other information do you have in respect of those referrals or the agreements that were the basis of the referrals? What time frame was that?

**Ms B Bennett**—That is from the operation from 1 July 2007 to 23 May 2008.

**Senator FISHER**—What information do you have about the agreements—the subject of those referrals?

**Ms B Bennett**—I am sorry; I do not understand.

**Senator FISHER**—What information do you have about the consequences of your referral of those agreements to the Workplace Ombudsman?

**Ms B Bennett**—Those agreements have ceased to operate. The employer may or may not have made back pay. The role of the Ombudsman is to either confirm that back pay was made or to pursue back pay if it has not been made.

**Senator FISHER**—Thank you. With respect to agreements that you are dealing with under the no disadvantage test, you have got some 8,000 awaiting finalisation—what is the length of time between lodgement and finalisation of agreements under the no disadvantage test?

**Ms B Bennett**—We are working on 20 working days.

**Senator FISHER**—That may well be your aim—what is the actual length of time?

**Ms B Bennett**—At this early stage of the process, once they have been lodged, they are being processed in 20 working days. They may be returned because they are invalid; it may be determined that the no disadvantage test does not apply to them; they may pass the no disadvantage test; they may require a variation, and then they pass after variation; or they may be returned to the employer because they did not pass, and then it is up to the employer and employee to decide what they are going to do next. So they are finalised within 20 working days of being received by us at this stage.

**Senator FISHER**—So, with respect to agreements under the fairness test, it is taking you an average of 30 days for the one-exchange ones; other than the one-exchange agreements, it is taking you something longer. You have taken a question on notice but, clearly, your answer to that question on notice must come back with the average length of time between lodgement of a fairness test agreement and finalisation being longer than 30 days. You have just indicated to me that the timing between lodgement and finalisation of a no disadvantage test agreement is 20 days. That is an interesting distinction in turnaround time. It means that for the new government's no disadvantage test agreements, you have got a 20 day average turnaround.

The previous government's fairness test agreements—if you want to put it quite simplistically, but appropriately: the approval system presided over now by the current government—are subject to some 30-days-plus turnaround period. That is an extra 30 per cent. How do you allocate your resources to finalising fairness test agreements versus finalising no disadvantage test agreements?

**Ms B Bennett**—The no disadvantage test agreements are able to be finalised in a shorter time frame for a number of reasons: (1) there are less of them—

**Senator FISHER**—‘Less of them’ is relative to the resources that you are dedicating to it—we will get to that in a minute. Thank you, Ms Bennett.

**Senator Wong**—Hang on, Senator, let her finish the reasons and then, if you want to have a go about them, obviously that is a matter for you.

**Ms B Bennett**—It was not retrospective. The requirements of the legislation came into effect on the day that we started processing, so we started with no backlog or confusion on what the requirements were. From day one, they were much more complete agreements than we received under the fairness test. There was a lot of information released by the government, through its own policy and public discussions, about the no disadvantage test. There was a clearer understanding from the outset—in my personal view—among the parties about what the requirements were. As I explained to you before, there was a pool of agreements that the fairness test had, before the legislation came into place. For a long time, those agreements were lacking core information which would have allowed quick processing. So, we have two things: we have got a smaller number, which are being dealt with by a dedicated team, and we have got the fact that the requirements and the obligations to pass the no disadvantage test were in place before the change of the legislation.

The third aspect is that many of the agreements are not in operation until they are passed. Under the fairness test, they were in operation, then we passed the agreement, then we considered if back pay was owed or changed arrangements. If those agreements that we have under the no disadvantage test do not pass, they are returned to the parties to start again, they are finalised and then they can relodge a new arrangement that passes.

**Senator FISHER**—Okay. What resources do you have dedicated, in terms of people power, to processing fairness test agreements versus no disadvantage test agreements?

**Ms B Bennett**—Approximately 35 staff are doing the no disadvantage test, and the remaining are doing fairness tests.

**Senator FISHER**—And what is the remaining?

**Ms B Bennett**—Well, it is from the 300.

**Senator FISHER**—Okay.

**Senator WATSON**—When you return an application that has failed, do you give them help and guidance as to where they have failed and what they need to do?

**Ms B Bennett**—Is this in the new arrangements under the no disadvantage test?

**Senator WATSON**—Well, any of the tests when they go back.

**Ms B Bennett**—There is a different answer for the two different tests. Under the fairness test there were only seven award conditions that provided for a benchmark. Those seven protected conditions, as they were referred to, were things that could, under that legislation, more clearly be allocated a monetary value. So information was provided for the fairness test that would say, ‘You need to increase an hourly rate at X,’ or, ‘You need to restore the protected award condition.’

In terms of the no disadvantage test, it is a global test, so we have to make an assessment against the reference instruments. We provide advice on what is missing or what is inadequately done, but it is up to the parties to go back and determine how that fits against the reference instrument. Many people do ring us and we talk them through what changes they might consider and then they come back to us with new arrangements, new proposals.

**CHAIR**—It would be interesting to know—and you may have done this work; if you have you can give me the answer—how many agreements actually pass the fairness test but then would not pass the NDT. Do you know that?

**Ms B Bennett**—It would mean reprocessing agreements that—

**CHAIR**—You have not done a sampling?

**Ms B Bennett**—We have not done a sample of this. At this stage we are just trying to get through as quickly as possible the 121,000 that we have and not create a backlog situation for the new ones that we have. But the logic that you are drawing, which says that there were only seven core versus the totality of an award, could conclude that there would be some that might not pass.

**CHAIR**—I ask because I thought it would be interesting on the basis that my understanding of what was actually happening with AWAs was that they were reducing to the minimum floor position. That was not in every case but it was in a lot of cases. I think that the evidence clearly demonstrated that. There is a new floor that has been raised and I would be interested to see whether what we have done is simply move people to the new floor or if the new no disadvantage test has actually enabled a much broader scope—for ITEAs, of course.

**Ms B Bennett**—The new floor is the whole of the reference instrument. In the cases of ITEAs—

**CHAIR**—By any measure it has to be higher.

**Ms B Bennett**—It has to be higher. In the case of ITEAs, that reference instrument is the collective agreement that may exist in the workplace or the award or the NAPSA. In terms of the collective agreement, it is the award or the NAPSA, and it is all elements of it, not just the seven conditions.

**CHAIR**—I will not ask you to do that work if you have not already done it.

**Ms B Bennett**—Thank you.

**Senator FISHER**—I understand from press at the time that Workplace Authority offices are going to be closed in South Australia, Tasmania and the Northern Territory at the end of the financial year. Is that right?

**Ms B Bennett**—On 26th of June. The offices in Tasmania and the Northern Territory are already closed.

**Senator FISHER**—Does that mean that there will be no offices left in those states and the Territory?

**Ms B Bennett**—We were delighted that a number of our Tasmanian staff were offered positions with the Australian Taxation Office and have started their new jobs.

**Senator FISHER**—I guess I meant ‘offices’. Officers are very important and it is good that their future is being looked after, but my question was about offices.

**Ms B Bennett**—Physical space?

**Senator FISHER**—Yes. So there will be no Workplace Authority presence in those states or the Territory? Is that right?

**Ms B Bennett**—No, there will not be.

**Senator FISHER**—What about the future of the authority offices in Western Australia and Queensland?

**Ms B Bennett**—We will still have offices and officers in Perth and Brisbane.

**Senator FISHER**—So what reassurance do you have that these offices will remain open?

**Ms B Bennett**—I have the reassurance of this year’s funding, our budget arrangements. At this stage, looking at priorities and our resources, the Workplace Authority will continue to have an office in Sydney, Melbourne, Canberra, Perth and Brisbane.

**Senator FISHER**—Has the government reassured you of that fact?

**Ms B Bennett**—I put it in the context of the Workplace Authority. I do not know what you mean.

**Senator FISHER**—Has the government reassured the Workplace Authority that those offices will remain open for the future?

**Ms B Bennett**—Our funding is set out for this year and part of next year, until the establishment of Fair Work Australia, and that funding allows those arrangements to remain in place. That is at this stage.

**Senator FISHER**—Nonetheless, the fact that funding exists does not prevent a change. So you are taking the projection of funding as a guarantee that those offices will remain open, are you?

**Ms B Bennett**—I cannot do anything else.

**Senator FISHER**—How many redundancies have been offered to staff in the Workplace Authority since December last year, and how many were accepted?

**Ms B Bennett**—My figures are as at the end of April: 23 people were offered a redundancy.

**Senator FISHER**—Have they accepted?

**Ms B Bennett**—Some have; some have not. The arrangements allow people reasonable time to consider the offer and obtain financial advice and look at what their options are, so some of those people are still taking the time to think about that and some have accepted and waived that time.

**Senator FISHER**—Of the 23, how many have accepted?

**Ms B Bennett**—I do not have those figures on me. I will take that on notice.

**Senator FISHER**—Thank you.

**Ms B Bennett**—It is a moving feast from day to day as people make those decisions.

**Senator FISHER**—Evidence was given by DEEWR yesterday that part of their budget is estimated to be reduced in incoming revenue by some \$20,000—it might have been \$26,000—due to the fact that DEEWR will not be receiving income from the Workplace Authority that it previously received for doing work at the request of the Workplace Authority. Mr Pratt indicated that a component of that funding arose from work that DEEWR did at the request of the Workplace Authority to process agreements. Is that correct, from your perspective?

**Ms B Bennett**—I do not know where the \$20,000 comes from, because it was more than that.

**Senator FISHER**—Perhaps you can tell me, from your perspective, the amount involved. That would be helpful.

**Ms B Bennett**—DEEWR seconded, from 27 June to 30 November, some 50—

**Senator FISHER**—Which year was that, Ms Bennett?

**Ms B Bennett**—From 27 June 2007 to 30 November 2007 an estimated 50 staff of the then DEWR were on secondment to the Workplace Authority to assist in agreement processing and setting up the fairness test. My recollection is that the estimated reimbursement that we are providing for that is about \$1.7 million—that is for the cost of those staff.

**Senator FISHER**—How many staff did you say?

**Ms B Bennett**—It was an estimated 50 over the spread. It went up and down.

**Senator FISHER**—All right. What is the difference in totality between the Workplace Authority staffing at the time you were appointed, Ms Bennett, and what is projected to be the staffing level in 2008-09, namely 695 staff?

**Ms B Bennett**—As the PBS says on page—

**Senator FISHER**—I am drawing my staffing figure of 695 from page 286, outcome 1, table 2.1.

**Ms B Bennett**—On those staffing numbers that we discussed earlier, as at 30 April we are sitting at 726 staff. When you average that out across the financial year it will equal 729, according to the estimate of that point in time. We will exit the end of the coming financial year with an average of 695.

**Senator FISHER**—So that is some 34 or 35 fewer staff.

**Ms B Bennett**—In the main, we expect that will occur through natural attrition towards the end of that financial year.

**Senator FISHER**—That may well be how you manage it, Ms Bennett. Nonetheless, you have a significant job to do. Assistance was provided to you by DEEWR in the past. Will you be seeking DEEWR assistance again?

**Ms B Bennett**—I will not be asking them to second staff.

**Senator FISHER**—Before I put a proposition to you, can you tell me how many staff were employed at the time you commenced with the authority?

**Ms B Bennett**—I would have to take that on notice. My recollection broadly is that when we started we came with a number of staff that were seconded from DEWR. We had staff that came from the Office of the Employment Advocate. We had staff that were previously in DEWR that had been transferred under the machinery of government. We employed a number of people on temporary contract arrangements to establish it and then work out what our requirements were. It was certainly up and down during those early days. I would have to take that on notice. I have been advised that as of January this year we had an FTE around 800 and that, by the time temporaries and contractors had ceased their contracts, by March we had dropped to the number we now have—about 726.

**Senator FISHER**—I would like you to take that question on notice. But, at the very least, you are looking at a drop in staffing of—

**Ms B Bennett**—About 3.3 per cent.

**Senator FISHER**—In numbers, that is—

**Ms B Bennett**—Thirty-four.

**Senator FISHER**—You have nominated 800 full-time equivalents at the beginning of this year. Certainly the difference between 729 and 695 is 34. But over a longer period of time—but not much longer—it is more. You commenced this year with the equivalent of 800 FTEs, let alone what you had before, which you will provide on notice. So you are going from 800 FTEs to 695. That is a reduction of an eighth of your staff. In addition to that, you will not be seeking assistance from the likes of DEEWR, which has provided you with man and woman power of some 60 staff for a period—

**Ms B Bennett**—Fifty.

**Senator FISHER**—Fifty-seven; I have rounded it up to 60—how mischievous! We talked earlier about the functions of the authority and we referred to the budget papers in terms of your strategic direction. Section 150B of the Workplace Relations Act sets out the functions of you, Ms Bennett, the Workplace Authority Director. Section 150B(1)(d) states:

... to provide education, assistance and advice to employees, employers (especially employers in small business) and organisations in relation to workplace agreements;

What does the Workplace Authority do to discharge that obligation in particular? How would you characterise what the authority does in fulfilment of that function?

**Ms B Bennett**—As I explained to you earlier, there are several ways in which we provide information and advice. In the contact centre we track that we provide advice to those who are the more vulnerable workers. We know that we receive phone calls from apprentices and trainees, those with a disability, Indigenous workers, mature age persons, people from NESBs, outworkers, women and young people—and we can look at what the numbers are there. We have information on our website and tools that are particularly targeted. You can go to our website and there will be something for young people or apprentices. There are drop-down links. We can arrange translation of material into multiple languages. We have printed information in braille—

**Senator FISHER**—Thank you, Ms Bennett. What do you do to focus particularly on small business, given that the legislation states ‘especially employers in small business’?

**Ms B Bennett**—We make sure that the information that we have available and the requirements for things like the completing of forms and providing that are user-friendly, which is very important to small businesses. We have mechanisms where information can be sent to us in a number of ways, thereby not just relying on lodgement in a particular way, or on it being web based, recognising that small businesses may not necessarily have scanners, printers and all those sorts of things. The people in our contact centre are aware that small businesses need extra assistance and understanding—which is also requested in the statistics—to help them manoeuvre through the information that they need, and we are able to provide that advice when they ring the person in the contact centre.

**Senator FISHER**—Do you have any teams dedicated to assisting small business?

**Ms B Bennett**—No, we do not.

**Senator FISHER**—Have you in the past?

**Ms B Bennett**—No, not in agreement making.

**Senator FISHER**—Have you had a client relations team that have liaised specifically with small business in the past?

**Ms B Bennett**—My recollection is that those people often worked through industry associations, which were the gateway for small business. Again, the list of assistance that we provided was there for small business. I vaguely recall that there was a ‘how to make an AWA’ kit targeted for small business, but I would have to confirm that. I can correct the record if that is not the case.

**Senator FISHER**—I think there might have been, and my question is: does that service still exist? I think you have indicated—

**Ms B Bennett**—We are continually developing information and tools. Is there something at the moment? I do not think so.

**Senator FISHER**—Does that team dedicated to small business still exist? I think the answer is no.

**CHAIR**—Let the officers answer the question, Senator Fisher.

**Ms B Bennett**—I advise that we did not have a team called ‘small business’. We had at that stage information that went by industries and the nature of those industries would have been, in some cases, such as parts of retail, dominated by small business. My understanding—and I am prepared to take it on notice—is that there was not a group of people who did nothing but small business. It was cut by industry and the nature of the industry.

**Senator FISHER**—I will ask again, to make sure I understand: did you have a team that was dedicated to assisting small business in any form?

**Ms B Bennett**—My understanding is no.

**Senator FISHER**—I look forward to you answering that question on notice. I will go back to your legislative obligations, if I may. I am going to refer to section 150B and subparagraphs, so you might want to get a copy of it. I am happy to provide a copy to the committee. This is now the government’s Workplace Relations Act, which sets out your functions, including in subsection 1(a):

to promote an understanding of Commonwealth workplace relations legislation ...

and in subsection 1(b):

to provide education, assistance and advice to employees, employers and organisations in relation to their rights and obligations under Commonwealth workplace relations legislation;

Section 150B1(c) says:

to promote the making of workplace agreements;

In earlier evidence, Ms Bennett—correct me if I am wrong—you indicated that the promotional function previously performed by the Workplace Authority in respect of workplace agreements is no longer being performed.

**Ms B Bennett**—I do not have the transcription in front of me, but I think we referred to page 283 in the PBS, which says that the Workplace Authority ‘promotes an understanding’. There was a discussion about a group of people who worked in the former OEA whose role was to market, assist and develop with employers the take-up of AWAs. In terms of ‘promote’, the Workplace Authority promotes an understanding of workplace and promotes agreement making. We do that in terms of making sure that people understand what needs to be done, what is available on the website, and how they can contact us and the contact centre.

**Senator FISHER**—Yes. And we have talked about promoting and understanding, but my difficulty is with the fact that my understanding of your legislative obligation—because the government’s act says it is so—is that part of your job is to promote the making of workplace agreements. We are not talking about individual agreements; we are talking about collective agreements. We are talking about the suite of workplace agreements.

**CHAIR**—The opposition did support the bill in the parliament.

**Senator FIERRAVANTI-WELLS**—Senator Marshall, Senator Fisher is asking a very legitimate question, so do not interrupt her.

**Senator FISHER**—And, Chair—

**CHAIR**—Excuse me, I will interrupt in order to ensure that the proceedings of the committee flow through accurately. If Senator Fisher wants to refer to it as a government act, I think it just needs to be corrected on the record that this was an act that passed the parliament with the opposition’s support.

**Senator FISHER**—Well, it was, but if you want to go there, Chair—

**CHAIR**—I am happy for you to go there.

**Senator FISHER**—The government recently amended the Workplace Relations Act in respect of workplace agreement making.

**CHAIR**—And you supported that. That is the point.

**Senator FISHER**—You went no further, so clearly this—

**CHAIR**—This comes back to the way I have been trying to conduct the hearings. If you want to—

**Senator FIERRAVANTI-WELLS**—Interrupting and wasting time—

**CHAIR**—politicise the questions, the responses or the interjections will come. If we stick to asking factual questions, we will get factual answers, and we will proceed accordingly.

**Senator FIERRAVANTI-WELLS**—I thought it was pretty factual: does the legislation have a particular clause?

**CHAIR**—That was not the question. You ought to listen carefully—

**Senator FIERRAVANTI-WELLS**—We have been listening very carefully this morning.

**CHAIR**—because that was clearly the point that I was making. Senator Fisher did not just say ‘the act’.

**Senator FISHER**—I will confine my legislation to the act, Chair.

**CHAIR**—Thank you, Senator Fisher.

**Senator FIERRAVANTI-WELLS**—Senator Marshall needs simplicity and clarity.

**CHAIR**—No, Senator Fierravanti-Wells, I need accuracy. If you want to keep having this debate, we will have it for as long as you like.

**Senator FISHER**—I am ready to proceed with questions, Chair.

**CHAIR**—I think the committee has been flowing quite well, given those general guidelines. There are no hard and fast rules, but there has been a general understanding. From time to time, the chair just needs to bring it back into order so that we continue on the correct path for a smooth running of these committee hearings. Unless there are other comments others might wish to make, Senator Fisher, you have the call.

**Senator FISHER**—Ms Bennett, the legislation that provides you with your functions states in section 150B(1)(a): ‘to promote an understanding of the Commonwealth legislation’; in subsection (1)(b): ‘to provide education, assistance and advice to employees, employers and organisations in relation to their rights and obligations under Commonwealth workplace relations legislation’; and in subsection(1)(d): ‘to provide education, assistance and advice to employees, employers—especially employers in small business—and organisations in relation to workplace agreements’. I return to subsection (1)(c), which states: ‘to promote the making of workplace agreements’. The section then goes on. Clearly, there are different words used in the legislation for a purpose. Clearly, there is a legislative distinction between the functions given to your organisation—or to you as director—in respect of providing education, assistance and advice and promoting the making of workplace agreements. My question is: what is your organisation doing to promote the making of workplace agreements in satisfaction of your legislative obligation under section 150B(1)(c)?

**Ms B Bennett**—As you would understand, I do know what my legislative responsibilities are.

**Senator FISHER**—Of course.

**Ms B Bennett**—It is up to me to make a decision about what promotion is in the context of what the role of the agency is, the introduction of the new legislation and the priorities that we have. I have explained to you that I believe that ‘promotion’ in this sense is having the right information and the right assistance out to employers, employees, employer organisations and employee organisations, that says, ‘This is how you do it, this is what you are required to do

and this is what we can tell you about that process.' I have made a decision that, for fulfilling my statutory obligations in accordance with the legislation, that meets the requirements of promoting agreement making for the Workplace Authority.

**Senator FISHER**—The words are very carefully chosen, Ms Bennett. The budget statements talk about promoting an understanding of workplace agreement making, which I would accept that your activities assist towards. However, your legislative function is about promoting the making of workplace agreements, and that I still do not see. I still do not see that any government body is providing that promotional assistance to promote the making of workplace agreements. Ms Bennett, I further note in the Workplace Relations Act that section 150C states the:

Minister may give directions to the Workplace Authority Director

(1) The Minister may, by legislative instrument, give written directions to the Workplace Authority Director about the performance of his or her functions.

Has the minister provided any directions to you in accordance with that section of the act?

**Ms B Bennett**—No.

**Senator FISHER**—Have you had any discussions with the minister or the minister's office about that section of the act?

**Ms B Bennett**—No.

**Senator FIERRAVANTI-WELLS**—Did this section materially differ from your functions when you were first established insofar as it related to your promotional responsibilities, if I can put it that way?

**Ms B Bennett**—The statutory requirements on the head of the Workplace Authority Director are exactly the same as they were when I was appointed. That was unamended in the recent changes to the legislation.

**Senator Wong**—These are your government's requirements.

**Senator FIERRAVANTI-WELLS**—I appreciate that, Senator Wong. I just asked a simple question as to whether—

**Senator Wong**—You are currently quizzing the officer, and Senator Fisher was too, about how she is performing under legislation that was your legislation.

**Senator FIERRAVANTI-WELLS**—I appreciate that; that is not my question. I am interested in the education process. Are we likely to see now, under this, a process of re-education of employers, given the new regime? It is less business focused and more union focused, if I can put it that way. Are we going to see a re-education process?

**Senator Wong**—Hang on. There are so many opinions in that question, Senator. If you want to assert those opinions, it is always open to you to go out and do a press conference, if people want to listen to you, or go into the chamber and talk about it. But the officer is here to answer questions. She is not here to respond to your assertion about the characterisation of Labor's scheme.

**Senator FIERRAVANTI-WELLS**—I am interested in this point, Minister, because on 23 March there was an article in the *Sunday Telegraph* that talked about secret union deals and a meeting that apparently occurred at the Lodge on Australia Day.

**CHAIR**—If you are going to question officers about the article, I would prefer that copies be made available so that Ms Bennett can actually have it in front of her.

**Senator FIERRAVANTI-WELLS**—Certainly, though it has some things written on it. My question does not so much go to the content of the article. The article makes reference to plans and the push for new industrial relations arrangements and it refers to a document which reveals plans to pressure employers into watering down tests that penalise workers with a series of provisions. Are you aware of anything of that nature?

**Senator Wong**—If you want the officer to answer the question, are we going to get a copy of the article?

**Senator FIERRAVANTI-WELLS**—Yes, sure. I will make a copy of the article and take away some of my commentary on it and then I might come back to it afterwards.

**Senator Wong**—I am not clear what the question is and I am not sure if Ms Bennett understands the nature of the question.

**Ms B Bennett**—I am not aware of the article.

**Senator Wong**—Ms Bennett is not aware of it.

**Senator FIERRAVANTI-WELLS**—Okay.

**CHAIR**—Senator Fisher.

**Senator FISHER**—I understand that the Workplace Authority is currently negotiating or renegotiating an agreement to cover its employees—is that right?

**Ms B Bennett**—Yes. Our collective agreement in fact was passed at ballot by employees last Thursday.

**Senator FISHER**—Who assesses the agreement at the end of the process?

**Ms B Bennett**—The collective agreement covered non-SES staff, so it will be assessed by either Ms Bull or Ms Major, who have no vested interest in the terms and conditions of that collective agreement as they are not parties to it. I am hoping it will receive priority in its assessment, and we should have it pass the advice on the no disadvantage test in the foreseeable future.

**Senator FISHER**—Presumably, you will be able to reassure the employees covered by the agreement that not one of them will be worse off under the agreement than they were under the previous industrial instrument.

**Ms B Bennett**—Absolutely.

**CHAIR**—Doesn't it then need to go to the AIRC?

**Ms B Bennett**—No, it does not. We will confirm with our employees that it has passed the no disadvantage test, and then the arrangements in the terms of the collective agreement, such as pay increases and things, will flow on within seven working days after the Workplace Authority has assessed it.

**CHAIR**—It is just that Senator Fisher's point about assessing your own agreement is an interesting one.

**Ms B Bennett**—It is not in operation. If it does not pass, like every other employee, we will need to go back and renegotiate.

**Senator FISHER**—And no employee will be worse off under it?

**Ms B Bennett**—No employee will be worse off than the reference instrument. That is what we have worked towards, but it will be up to Ms Bull and Ms Major to determine.

**Senator FISHER**—How many of the authority's employees were covered by AWAs?

**Ms B Bennett**—I do not have the number of employees covered by AWAs.

**Senator FISHER**—Presumably, there is a significant proportion.

**Ms B Bennett**—It is the vast majority. There was no previous collective agreement but, depending on the machinery of government transfers, employees came under a range of arrangements. Some who came to us were employed by the DEWR collective agreement, some came under AWAs from previous agencies and some were OEA staff.

**Senator FISHER**—Thank you. I want to return to our earlier discussion about the April 2008 agreement-making guide. You indicated that you had some discussion with DEEWR in the process of drafting the guide. With what parties other than those inside the Workplace Authority did you discuss the guide in the process of drafting it?

**Ms B Bennett**—As I said, the drafting of it was internal. We used our legal people. We sought advice and discussed the wording with DEEWR, but our internal people drafted it and redrafted it depending on our processes.

**Senator FISHER**—With what parties other than parties internal to your organisation and DEEWR did you discuss the guide during the drafting process?

**Ms B Bennett**—Prior to finalisation, we provided a copy to the minister's office, as we had done with the fairness test guide at that time. I personally wanted to make sure that I had the best product. We drew on expertise such as DEEWR was able to provide and we welcomed comments to improve it.

**Senator FISHER**—Which level of personnel in the Deputy Prime Minister's office did you talk to about the guide at that stage?

**Ms B Bennett**—The relevant adviser.

**Senator FISHER**—Was that just one person?

**Ms B Bennett**—My dealings were with one person. As I said, these were general observations. It is very clear that the guide is for me, and we took a lot of views: Helen had views on things, and I did not accept those; DEEWR had some views, and some of those were good. They were all brought in to produce this. I do not want to give an impression that there was this tracking backwards and forwards, and weighing up of different things. It was consulted on and talked about and observations were made, drawing on people's experience—a lot of it our own, of course, because we had the fairness test guide, and we knew from the

first version of that the sort of information that employers and employees and their representative organisations want.

**Senator FISHER**—Did the minister's office make amendments to the guide at the draft stage?

**Ms B Bennett**—They made suggestions and asked questions.

**Senator FISHER**—Were there lots of questions, and extensive suggestions?

**Ms B Bennett**—That is subjective—there were comments and observations made in some bits, and in other bits there was nothing—pages on which there were nothing.

**Senator FISHER**—So they wrote on the document, did they?

**Ms B Bennett**—Wrote on it? No.

**Senator FISHER**—You just said there were pages and—

**Ms B Bennett**—A soft copy was sent over, and in some parts there would have been a question. In fact, there was some good editorial comment—we had missed commas in some places and they were picked up. John Kovacic was very good at picking up some of the commas that we had missed. It went backwards and forwards between us and DEEWR, and then I provided the minister's office with an opportunity to have a look, and also to see how they felt and so that they were fully aware of it. They made some comments, they came back, and we released the guide.

**Senator FISHER**—You said an 'adviser' in the minister's office—what sort of an adviser were you dealing with?

**Ms B Bennett**—I explained that it was the adviser that deals with our matters.

**Senator FISHER**—So, a workplace relations adviser, was it?

**Ms B Bennett**—I do not know what they are called in the minister's office.

**Senator Wong**—The officer has given an answer that it was the relevant adviser.

**Senator FISHER**—That is subjective.

**Ms B Bennett**—I do not have the title.

**Senator Wong**—That is the officer's understanding of the status of the person with whom she was dealing—it was the relevant adviser.

**Ms B Bennett**—The relevant adviser in the office.

**Senator FISHER**—When they send you emails and stuff, they must have a title that they go by?

**Ms B Bennett**—They do have a name.

**Senator FISHER**—Back to the comments that you received from the minister's office: in what form were they, from this person in the minister's office?

**Ms B Bennett**—It was a soft copy, such as an email version. The response came back via email as well.

**Senator FISHER**—With tracked changes in it?

**Ms B Bennett**—I recall that there were some, but some of it was just in a covering email asking more broadly about areas that would be covered. They were very general comments that were given to us to put in with the mix of others. At times, several people—including our own and DEEWR—had picked up the same areas. So it was balancing all of that to get it right.

**Senator FISHER**—Do you still have that tracked changes document?

**Ms B Bennett**—I think that probably goes to working document arrangements—the agency is entitled not to have to go into much detail about working documents and seeking advice. I do not know if I still have that version, because multiple people were able to track it. What I received was a nearer-to-conclusion document.

**Senator FISHER**—Multiple people where?

**Ms B Bennett**—Ms Bull, and their staff. Ms James provided information, Ms Parker and Mr Kovacic.

**Senator FISHER**—So there was quite some DEEWR involvement as well at senior levels. We had all those officers before us yesterday.

**Ms B Bennett**—They have explained already, and I observed what they said, so it is consistent.

**Senator FISHER**—You would be able to ascertain by returning to a track changes version of the document the extent to which the person in the minister's office suggested changes to the document and whether or not those changes could be regarded as extensive?

**Ms B Bennett**—I do not know. I do not recall seeing something that just at a point in time—

**Senator FISHER**—Look at it in a significantly more empirical way. You would be able to indicate how many changes were suggested by the minister's office by referring back to the track changes document without giving away the content of the document.

**Senator Wong**—That is the point, isn't it? Ms Bennett's evidence, as I recall, is that this is the Workplace Authority's guide, so it is the Workplace Authority's document. She has been entirely upfront with the committee that there was input, advice and comment et cetera sought from a range of sources within her own office and organisation, and also as between the minister's office and the department. She has been upfront about that. I am concerned, I suppose, that the questions you are asking are going to the detail of advice to government. If you are going to proceed further down this track, I would suggest to you that we will take those on notice and I would flag to you that the officers are being very upfront about that interaction; it is frankly unremarkable that you would have that kind of interaction. But if you are going to want to pursue the nature of advice to government, that is really not something that these committees generally go to.

**Senator FISHER**—Thank you, Minister. I do not want to pursue the nature but I do want to pursue the fact and I do want to pursue the extent, because my information is that the changes suggested by the minister's office were quite extensive.

**CHAIR**—Is there something you are relying on for that assertion, Senator Fisher?

**Senator FISHER**—I think I will simply make the assertion, Chair.

**CHAIR**—All right, then.

**Senator FISHER**—Ms Bennett, you have indicated that a number of people were commenting on this soft copy of the document through track changes. Was the Prime Minister's office involved in discussions with you about the document in its draft form?

**Senator Wong**—You asked these questions of the department—

**Senator FISHER**—And the department said they were questions of the Workplace Authority, Minister.

**Senator Wong**—No, wait. That was not what I was going to say. Departments deal generally with departments. So is your question for PMO or Prime Minister and Cabinet?

**Senator FISHER**—My question is of the Prime Minister's office. Given that Ms Bennett was dealing with the Deputy Prime Minister's office, we have emails being sent around with the track changes document, my question is whether she observed the names of any personnel from the Prime Minister's office being copied in on emails.

**Ms B Bennett**—I explained to you when you asked the question, I sought the views and welcomed comments from DEEWR and the minister's office and no-one else. The rest was internal, a weighing-up of various comments from a range of parties. Predominantly, most of the comments in the amendment came from our own people in the range of areas either in agreement experience or in legal. Those comments were given to me in a consolidated way so that I could see what the general observations were. I then made a decision about what should be or not be in the guide. We finalised it and released it on 24 April.

**Senator FISHER**—So did the Deputy Prime Minister's office approve the guide?

**Ms B Bennett**—No.

**Senator FISHER**—So why were they involved in the process?

**Senator Wong**—Senator, really.

**Ms B Bennett**—Because I thought and I believed that they could add value, and that they would have an interest in how we were applying the legislation.

**Senator FISHER**—I look forward to the answer to my question on notice indicating the extent of the value that they added.

**Senator Wong**—Was that a question that was taken on notice—the extent of the value added?

**Senator FISHER**—I am referring to the earlier question.

**Senator Wong**—Are you asking the officer to make a judgement about the value added? I am not sure how Ms Bennett is going to do that.

**CHAIR**—I am sure she will try her best.

**Senator Wong**—No doubt.

**Senator FISHER**—Is this guide the policy position agreed with the government? Does the guide implement the government's policy, Ms Bennett, in respect of the application of the no disadvantage test?

**Ms B Bennett**—This guide is my view, on behalf of the Workplace Authority, of the operationalising of the legislation. We are very clear in the guide as well that these are evolving documents. From experience and feedback that we will receive from employers and employees and their representative organisations, we may amend or clarify aspects. Page 3 sets out that we allow for versions, and I think it says in the introduction on page 6 that we do believe it is important that the guide is able to answer general and common questions about agreement making.

**Senator FISHER**—Which page sets that out? You referred to page 3.

**Ms B Bennett**—Page 3 confirms what version of the guide it is. Page 6 explains that it will be reviewed from time to time and that people should check for the latest version.

**Senator FISHER**—Who can decide changes to the guide? Who signs off on those?

**Ms B Bennett**—People can write to me or email me and I will talk internally with my own staff. Usually they do not go to changing the guide; they go to wanting more information in the guide. But we have not received anything yet.

**Senator FISHER**—Who will make a decision about whether or not the wording of the guide gets changed?

**Ms B Bennett**—I will.

**Senator FISHER**—That is your decision?

**Ms B Bennett**—Yes.

**Senator FISHER**—Okay. Did the Deputy Prime Minister's media adviser approve the release of the guide in the first place?

**Ms B Bennett**—No.

**Senator FISHER**—I want to take you now to page 13 of the guide, which deals with the no disadvantage test. I am talking about the second last paragraph in section 2.1, which reads:

The Act requires the Workplace Authority Director to compare a workplace agreement against the whole of the reference instrument for the classification relevant to the employee to be covered by the agreement.

Leaving out one sentence, the passage continues:

If the Workplace Authority Director is satisfied that, on balance, the agreement does result in a reduction in an employee's overall terms and conditions of employment under the reference instrument, the agreement does not pass the NDT.

Am I correct in interpreting this to mean that, in implementing the government's policy in the case of a collective agreement, the agreement will be required to pass the no disadvantage test in respect of each and every worker? Is that correct?

**Ms B Bennett**—When we receive a collective agreement, it does not actually list the names of any individuals. Collective agreements capture within them the workforce of that

workplace. What we receive information about is the classification and status of their employees—full-time, part-time and casual. They provide information about patterns of working hours for each classification and status of employees. If there is a class of employees who are worse off than the reference instrument, it will not pass the no disadvantage test.

**Senator FISHER**—For what purpose do you include in your policy guide the words:

If the Workplace Authority Director is satisfied that, on balance, the agreement does result in a reduction in an employee's overall terms and conditions of employment ... the agreement does not pass the NDT.

How do you assess that without knowing the terms and conditions of each and every employee under a workplace agreement?

**Ms B Bennett**—I refer to an earlier part of the guide that says:

A collective agreement will not pass the NDT if one or more employees is disadvantaged by the agreement.

As I said, we deal with a class and classification of workers. The interpretation of that wording is relatively frequently used and can be referred to in previous industrial relations interpretations. We accept that at times there have been different interpretations by different commissioners, but on the basis of the legal advice that was provided to me, and in weighing up what sits behind it as the case law, there is a pretty much accepted view of 'no disadvantage' to mean what I described it to you as.

**Senator FISHER**—What does that mean for a large retailer who may have a young worker who works, say, a late Thursday night shift and a Sunday shift, as opposed to other workers who may be working a more traditional working week? Does that mean that the no disadvantage test must be assessed and passed in respect of that young worker to ensure that that young worker cannot be worse off before the agreement is passed for the entire workforce?

**Ms B Bennett**—If it is clear from us that a class or classification of worker is receiving less than the reference instrument, as defined in the collective agreement, the agreement will not pass. We recently had a representation from someone representing a large retailer that explained that young people who were doing night shelf filling would be paid less than what their entitlements would have been if they had been on the award. We were asked the same question. This is a class of employees that is clearly going to be, from what has been provided to us, not receiving what they would have received under the award. Therefore, it will not pass the no disadvantage test and the employer and the party to the agreement will have to go back and make an adjustment to that classification and status of worker to either restore some conditions or pay a higher hourly rate for that classification. They will have to do that to pass the no disadvantage test.

**Senator FISHER**—How did that scenario come about? Was it as a result of your own investigation?

**Ms B Bennett**—No. An anecdotal representation was made.

**Senator FISHER**—That is part of the concern that I have about the wording of the task that you have set yourself through this guide in implementing that government policy. In

saying that, as I read it, if you are satisfied that on balance the agreement does result in a reduction in an employee's overall terms then the agreement does not pass the no disadvantage test. That wording, I would have thought, would need you to automatically inquire about every worker to be covered by the workplace agreement. You have given me a good example of where a worker was to be disentitled—

**Ms B Bennett**—No, a class of workers; there were more than one.

**Senator FISHER**—a class of workers was to be disentitled. But you have discovered that by dint of information coming into the authority rather than the authority going through a matter-of-course inquiry.

**Ms B Bennett**—Can I add here that that same principle, which applied under the fairness test to an individual in the context of a collective agreement, also applied previously under the no disadvantage test; hence my referral to previous industrial decisions that were made by the commission.

**Senator FISHER**—Indeed, Ms Bennett, but this guide is implementing the government's policy which, supposedly, is about a simpler and fairer system. So my questions are not about the past; my questions are about your policy guide which implements the current government's policy which, according to Forward with Fairness, is supposedly about moving to a fairer and simpler system which, according to its policy, is supposedly about promoting the making of workplace agreements. I am trying to work out exactly what promoting of workplace agreements is being done and then, once workplaces decide that they want to reach a workplace agreement, what the government is offering through your organisation—which, essentially, is the only one being offered by the government—

**Senator Wong**—Is there a question coming soon in this?

**Senator FISHER**—to fulfil its indications that Forward with Fairness will deliver a simpler and fairer system. So, in that context, which bit of your guide would you refer me to that shows that the no disadvantage test is simpler than the fairness test? I do not see it. I see some 40 pages of information to workplaces, supposedly promoting a system that is supposed to be simpler, and I am struggling in the first few pages to understand the fundamentals of how you will implement the application of the no disadvantage test. Where in your guide do you set out the test in a way that indicates that the no disadvantage test is simpler than the fairness test?

**Ms B Bennett**—I do not think it is appropriate for me to go into weighing up whether or not something is simpler or defending that. What I can tell you is that it is perfectly clear that the intention is that workers will not be worse off than they would be under the reference instrument. It is set out in the legislation, it is in the explanatory memorandum and it was in the government's policy. What we say here is that, on collective agreements, a decision is made, on balance, that an employee party to that agreement is not worse off. I explained the process. We do not receive collective agreements which have the name of the individual employees in the workplace; hence the collective nature of the agreement.

What we do know is the classification, the status of that employee and the working pattern. On that basis, we can make a comparison with the reference instrument and make a decision whether or not they are receiving compensation which adequately covers changes from the

reference instrument. If there is a class of employees in a collective agreement that are worse off than they would be under the reference instrument, the agreement will not pass. We will go back to the employer and the employee, or their representative, we will inform them of that and we will provide advice. In this case, it would only be for that classification that they would need to make a change. Then it will come back to us, and we will reassess that.

**Senator Wong**—If I could just perhaps add to that, Senator, I would refer you also to the earlier answers Ms Bennett gave about the processing times in terms of the fairness test versus the no disadvantage test. One might be able to extrapolate from those which one is a little bit less onerous in terms of the administration. I refer you also to her comments as to one of the reasons why it was taking longer to consider agreements under the fairness test. That was, of course, your government's decision to have an effective retrospectivity in the sense that—

**Senator FISHER**—Well—

**Senator Wong**—Let me finish, Senator. You have very long questions and I am going to give you an answer that equates. Your government chose to announce a test before you actually indicated what the legislation was, and my recollection—though I refer you to *Hansard*—is that Ms Bennett spoke about the fact that there was perhaps a better or a clearer understanding amongst various industrial parties about what the legal framework is now. That deals with the simpler aspect of your question.

In terms of 'fairer', it is interesting to note the opposition's new-found concern for fairness. I would remind you that your original Work Choices bill enabled award conditions to be scrapped with no compensation, and even your so-called fairness test only required reference to seven protected award conditions which did not include redundancy or long service leave and did not require full compensation, only fair compensation. So it is very interesting to note that you come in here and press these officers on the implementation of a test which, clearly, provides far greater protection for Australian workers than ever existed under either of your iterations of Work Choices. So I am really not quite sure what your political point is. If you are simply seeking to re-litigate the arguments that were had before the last election, that is a matter for you.

**Senator FISHER**—Ms Bennett indicated that one of the reasons for the time differences in processing no disadvantage test and fairness test agreements was the number, and she indicated that there were fewer no-disadvantage test agreements than fairness test agreements. Of course, fairness test agreements were quite popular, and I am concerned to see that there is scope given for there to be more no disadvantage test agreements submitted rather than fewer. So it might be expected that in the future there will be not fewer but more agreements, which will presumably affect the processing time the other way unless resources are able to be dedicated appropriately. But I will return to my questioning.

**CHAIR**—Before you do, did you want to respond to that, Minister?

**Senator Wong**—My notes—and obviously they are only my notes and *Hansard* will disclose the answer in relation to your question about why there was a shorter time frame on the no-disadvantage test—show that there were three proposed reasons. One was that there were fewer. And, I would interpolate there, it has only been in existence for—I can't

remember what time frame. The second was that there was no retrospectivity. And the third was that there was a lot of information released by government regarding policy and, my notes say, 'public discussion; parties clearer understanding re: requirements'.

**Senator FISHER**—Ms Bennett, can I take you to section 2.1.1 of the guide—so now we are at the bottom of page 13 and over to the top of page 14. The bottom of page 13 gives general information about valuing terms and conditions, and describes—as I understand it—how the Workplace Authority intends to value modifications to terms and conditions in agreements. It specifically addresses so-called contingency benefits, and lists what might be regarded—over the page on the top of page 14—as types of contingent leave. The precursor to the listing on the top of page 14 indicates that the removal of contingency benefits could result in an overall reduction in terms and conditions of employment, notwithstanding that there has been some compensation provided in lieu of those contingent benefits. Jury service is listed as an example of a contingent benefit. So will the Workplace Authority continue to approve workplace agreements that remove jury service leave?

**Ms Bull**—It will depend on how it is done. A number of agreements, for example, will remove that. Previously awards may have specifically listed things like jury service leave and leave for volunteers, but what they do is they roll it all up and give people a greater amount of what might be personal leave. In that case the view might be: 'No, we don't think it disadvantages the employee, because it has been replaced by something that is reasonably similar or could be accessed in similar circumstances.' But, for example, with a number of agreements which might take out all access to contingent types of leave beyond the standard—but where the reference instrument might provide more than that—the answer might well be, when we consider it in its overall effect, that it does disadvantage the employee. It really does depend. That is the purpose of the guide—to say, 'These are common things we see in agreements and this is what we will consider.'

**Senator FISHER**—In respect of jury service, how can you assess whether or not a worker is disadvantaged by a disentitlement to that contingency when you will never know whether that worker would have been entitled to that contingency in the first place? How do you do that equation on the ledger?

**Ms B Bennett**—That is why it is referred to as a contingency.

**Ms Bull**—What we assess is whether or not the agreement gives access to something that somebody may have had access to before if certain circumstances were to arise for that individual.

**Senator FISHER**—That is indeed very contingent. So can annual leave be traded away?

**Ms Bull**—The Workplace Relations Act provides that each individual gets four weeks. Beyond that, I guess people can make judgements within their agreement making about whether they want to give more annual leave or less annual leave. For example, we see some agreements where the reference instrument may provide four weeks annual leave but, for whatever reason, the employer has decided to provide six weeks annual leave. When we are doing the calculation of the overall benefits, we will put a value on that, because annual leave can be accrued and annual leave can be paid out when somebody leaves the employment. That extra two weeks which is above and beyond what is provided in the reference instrument

might be of value that could be used when assessing whether something else has not been there—for example, if a salary has been reduced, provided it has not been reduced beyond the minimum that is required under the reference instrument and the relevant pay scale.

**Senator FISHER**—How can you possibly value jury service leave?

**Ms B Bennett**—It has a value to the person that might be called up for jury duty that was entitled to be paid in the previous arrangement and then is not in the new one.

**Senator FISHER**—If they are.

**Ms B Bennett**—If they are—same as redundancy arrangements. They would be the same as well. It has a value to the employee if the situation comes about.

**Ms Bull**—The act requires that we are required to consider the overall value of the terms and conditions. The reference instrument provides that there is access to, for example, jury service. That is a term and condition. If that is not provided in the agreement then we need to have a look at the agreement as a whole to see whether or not, on balance, that constitutes a reduction in the terms and conditions provided by the agreement. That is the provision in the legislation.

**Senator FISHER**—Thank you. The second paragraph under item 2.2.1 in the guide says:

The terms of the reference instrument used for the NDT will be those in force on the day immediately before the agreement was lodged. Subsequent variations to the reference instrument ... will not be taken into account for the purposes of the NDT.

You will be more than aware of the proposal in Forward with Fairness to modernise awards. How do you see that proposition interrelating with award modernisation once awards are reviewed?

**Ms B Bennett**—The legislation says what we have to do now, and we would obviously need to see what the future is; we cannot make a prediction on what the award modernisation will be. We process in accordance with these arrangements at a point in time.

**Senator FISHER**—In the second last paragraph under that section, the final sentence reads:

In circumstances where an award may not be designated and there is no reference instrument, the workplace agreement will be taken to have passed the NDT.

What about the standard?

**Ms B Bennett**—The standard is a requirement under the legislation. Employers cannot pay or provide conditions lower than the standard.

**Senator FISHER**—Well, that is right, but—

**Ms B Bennett**—And it is taken as given that the employer has complied with and provided terms and conditions in accordance with the standard.

**Senator FISHER**—This is a guide for parties to implement workplace agreements. So you are essentially saying it is taken as given that the reader understands that the standard is there to be complied with.

**Ms B Bennett**—We could have a look at that to see if we should be more explicit about the application of the standard. There is another chapter on 3.1 which we think makes it pretty clear about the standard, and it—

**Senator FISHER**—This is a document that—sorry, Ms Bennett; please continue.

**Ms B Bennett**—Section 3.1 very clearly draws it out, at page 27; it is very clear about the standard.

**Senator FISHER**—There is something about it on page 29.

**Ms B Bennett**—And Helen has just reminded me that the letters to employers and employees about the outcomes of the no disadvantage test also remind them of it, at that point in time, and our electronic documents also make reference to it. So there are ways in which, when they are making the agreement, the reference to the standard comes out, time and time again.

**Ms Bull**—This is a reference to a specific provision in the act which says that if there is no reference instrument we cannot perform the test and the agreement is taken to pass the no disadvantage test. So when that happens, which is what this paragraph refers to, we send a letter saying—

**Senator FISHER**—Which paragraph are you talking about—are you on page 14?

**Ms Bull**—The sentence that you quoted:

In circumstances where an award may not be designated and there is no reference instrument, the workplace agreement will be taken to have passed the NDT—

refers to a specific provision in the act which says if we cannot designate it it is taken to pass; when we provide that advice to the employer and the employee, it contains information that clearly spells out that they still must comply with the standard.

**Senator FISHER**—I accept that, Ms Bull, but nonetheless a user is going to have to progress from a paragraph on page 14 of a guide that, on the face of it, does not mention the standard, to page 29, almost 15 pages later, to be reminded that, of course, the standard will apply, regardless of what is contained in an agreement. It may appear to be debating words; that is not my point. My point is that it takes 40 pages to explain the implementation of a so-called fairer and simpler test, and I am struggling to see that unfold in your guide. But it is a worthy effort.

**Ms B Bennett**—Could I, please, slightly correct that: 31 pages are about it; the remaining pages are about how to seek a reconsideration, and industry default patterns.

**Senator FIERRAVANTI-WELLS**—Senator Marshall, could I mention at this point that I did say I would get a copy of that document, in fairness to the—

**CHAIR**—Yes, it is probably a good idea.

**Senator FIERRAVANTI-WELLS**—That should probably take me to 12.30.

**CHAIR**—Yes, all right; I think that is good.

**Senator FIERRAVANTI-WELLS**—I ask the question in the context, Ms Bennett, of your functions. I will give you a moment just to read the document, if I may.

**CHAIR**—While that is happening, maybe I could just make an announcement on how I intend to proceed for the rest of the day. There has been a request from the Australian Industrial Registry, because of commitments and flight arrangements, that they be heard before afternoon tea. After some discussions with the deputy chair, what I propose to do is commence after lunch with the Australian Industrial Registry for no more than one hour, and then we will return to the program. I am a little bit disappointed with the progress we have made this morning, so, by the afternoon tea break, if we have not made some significant progress, my intention is to simply allocate an appropriate portion of the rest of the remaining day to the remaining agencies and then work according to that timetable so that there is some certainty for senators and officers about when they can stay and go.

**Ms B Bennett**—So you would like us to stay.

**CHAIR**—Unfortunately, Ms Bennett—I am sorry about this. The best laid plans were to give everyone as much certainty as possible in terms of this program today, but we cannot control the timing, unfortunately. I call Senator Fierravanti-Wells.

**Senator FIERRAVANTI-WELLS**—Ms Bennett, I have given you a copy. At the time that this article came out, were you aware of it?

**Ms B Bennett**—I have never seen this article.

**Senator FIERRAVANTI-WELLS**—Insofar as it relates to your functions—assuming the existence of this confidential agreement—it does refer to:

A leaked union strategy document marked “confidential” reveals the MUA believes it has “strong support” from Mr Rudd and plans to push for new industrial relations arrangements that will drive up inflation.

My question to you is: assuming that this is the case and that this document does exist—and I have no doubts that it does exist—how do you—

**CHAIR**—No, you cannot ask the officers to assume something and then go and ask them questions about their making that assumption already. If you had such a document that you were prepared to put forward—

**Senator FIERRAVANTI-WELLS**—I did ask in a previous estimates hearing if this document could be produced, but—

**CHAIR**—Maybe it is because there is no such document.

**Senator FIERRAVANTI-WELLS**—I accept your point. Let me just rephrase the question.

**CHAIR**—Then do that.

**Senator FIERRAVANTI-WELLS**—Okay. If there is any watering down of tests or conditions, is that a matter, Ms Bennett, that would come to your authority? Is that something that you would have an opinion on?

**Ms B Bennett**—The role of the Workplace Authority is to administer the no disadvantage test in accordance with the legislation. That is what we do. The legislation would need to be changed for us to administer it in any different way.

**Senator FIERRAVANTI-WELLS**—I appreciate the role and the powers of the ombudsman as well. What I am asking is: in relation to this allegation, if I can put it like that, you would not be in any way involved in any matters that could arise were the assertions made in this document to be correct?

**Ms B Bennett**—As I said to you, I had never seen this, so I was unaware of it, and I cannot imagine any circumstances in which it would come to us—

**Senator FIERRAVANTI-WELLS**—Where the authority would have any role in it?

**Ms B Bennett**—Yes—to have any role in it.

**Senator FIERRAVANTI-WELLS**—Thank you, Senator Marshall. That is the end of my question.

**CHAIR**—I have a couple of questions which we might deal with before the break too. Did the agency ever quantify, assess or model the impact of the requirement that employers must provide a Work Choices propaganda fact sheet to all their employees?

**Ms B Bennett**—No, Senator.

**CHAIR**—Was any funding set aside for the prosecution of employers who failed to provide the fact sheet and were therefore in contravention of the Workplace Relations Act?

**Ms B Bennett**—Prosecution of breaches of the legislation is the responsibility of the Workplace Ombudsman, so I think you will have to ask him that question.

**CHAIR**—Did you make any referrals to the Workplace Ombudsman in this regard?

**Ms B Bennett**—I do not know. It may well have been picked up in the contact centres on matters that were referred, but I am not aware of it.

**CHAIR**—Could you take it on notice.

**Ms B Bennett**—We will take it on notice, yes.

**CHAIR**—How many fact sheets were distributed?

**Ms B Bennett**—Employers were obliged to provide the fact sheet to their employees that were new, at a point—to all by a certain date and then new ever after. They could access it from our website and print it off and circulate it or attach it in any electronic material that they provided to their staff. We printed 2.72 million, which included English, translations into 12 languages and Braille, at a cost of \$86,912.62 excluding GST; 1.687 million copies were distributed on top with a postage charge of \$161,145.05 excluding GST. At the change of the legislation, 1.3 million were securely destroyed at a cost of \$5,233.80 excluding GST. The website received a total, we estimate, of 195,500 hits in relation to the fact sheet.

**CHAIR**—Did your department's marketing or communications department have input into the development of the fact sheet content?

**Ms B Bennett**—No. I have been advised no, but I was listening to Mr Kovacic's evidence, which he gave yesterday. John was the acting deputy director at the Workplace Authority at that point in time, and I have no reason not to change or amend his evidence that was given at the committee on this matter of the development and provision.

**CHAIR**—Thank you, Ms Bennett. We will recommence with the Australian Industrial Registry at 1.30 and then, at no later than 2.30, we will return to the Workplace Authority. Then we will proceed with the program as determined, giving consideration to my earlier comments.

**Proceedings suspended from 12.28 pm to 1.33 pm**

**Australian Industrial Registry**

**CHAIR**—We will restart the proceedings with questions to the Australian Industrial Registry.

**Senator FISHER**—Mr Williams, I want to take you to the registry's budget to start with. The government has provided the registry with additional funding of some \$13 million over four years. That is my understanding.

**Mr Williams**—That is correct: \$13.3 million over four years.

**Senator FISHER**—To do what?

**Mr Williams**—It is to support the award modernisation task and for the transition to Fair Work Australia.

**Senator FISHER**—Where is that set out as the purpose of the funding—to modernise agreements and the transition to Fair Work Australia?

**Mr Williams**—I do not have to memory the detail of the wording in the budget papers, but I think it is at least implied by the directions that we got from the government that set off the award modernisation task as well as the policy documents that have set out the course to creating Fair Work Australia. If I am wrong about that, Mr Mihelyi will draw my attention to the specific area of wording in the budget papers.

**Mr Mihelyi**—Just for clarity, it appeared in the additional estimates documents earlier in the year. It was just under the 'fairer and flexible workplace' measure.

**Senator FISHER**—Okay, I will come back to that. Mr Williams, can you provide a breakdown of existing staff levels at the registry?

**Mr Williams**—What sort of breakdown would you like?

**Senator FISHER**—What sort of breakdown could you provide here as opposed to one on notice?

**Mr Williams**—It would have to be on notice, which is primarily why I was asking for detail on the sort of breakdown you were interested in.

**Senator FISHER**—I want to ask you a bit more about the award modernisation task that you have before you. That will give you some clue as to how you are going to structure the registry to deal with that new task.

**Mr Williams**—As you are thinking about what you would like me to take on notice, I should set out that a considerable share of our funding goes to support fixed overheads—sunk costs, if you like. We do not break down resource allocation to any particular task, including award modernisation, because once we have sunk overheads in communications, information services, document processing and the like, including IT, it then services the totality of the

functions of the organisation, the commission and the registry. And I note that we do not then further try and notionally allocate resources to particular functions. Having said that, on top of that I have created an award modernisation project team.

**Senator FISHER**—Tell me about them, please.

**Mr Williams**—Yes, of course. It currently stands at about 11 people. Their primary current function is to support the research and analysis needs of the members of the commission. So they are doing work-up data analysis.

**Senator FISHER**—How many are there?

**Mr Williams**—Currently about 11. The reason I say ‘about’ is that not all of them are full time. So I am not doing the mental arithmetic of full-time equivalent. But, give or take a body, it is about 11 people at present.

**Senator FISHER**—So they are analysing data to assist the president in his quest, are they?

**Mr Williams**—Yes, the president and with him the full bench.

**Senator FISHER**—What sort of data are they analysing?

**Mr Williams**—Let me give you an example so there is something tangible about it. They are looking, for example, at all the awards that would apply in the metals industry—what are the key clauses in those awards, how it relates to the request that we have received from the government.

**Senator FISHER**—Are their tasks prioritised in accordance with the 19 industries that are on the priority list that the president identified?

**Mr Williams**—No, they are not because the president has indicated that it is his target to make an announcement around about 20 June, if not precisely on 20 June, about what he considers the priority industries will be not only in relation to his own views and the wider commission’s views on that but also in light of what has come out in the current phase of consultations.

**Senator FISHER**—So the list of 19 is still a draft list?

**Mr Williams**—Yes.

**Senator FISHER**—I had forgotten that.

**Mr Williams**—The president has reiterated during the public consultations that that is a list which is up there for discussion. Indeed, although I have not sat through all the consultations, I know there has been a measure of dialogue from stakeholders about what they see as the appropriateness of that list and additions and deletions. I should note too that we are running concurrently a specific area on award modernisation through our website, and the president has made the commitment to keep the process current, open and transparent. The approach, including the research approach that I have just described, is up there in some detail on our website.

**Senator FISHER**—You say you have had some stakeholder dialogue about the appropriateness of the list of 19. Can you give me more detail on that?

**Mr Williams**—Not at any great level of specifics, because it is not a day-to-day matter for me and the president has made no commitments. He is in listening mode. It is a genuine consultation mode about what the views are. A variety of respondents in each capital city over the past week have made some comments about industries and awards that they would like to see on or off the list. At this stage, as far as I understand it, the commission has simply taken that on board with the objective of the president announcing on 20 June what he intends as the priority list.

**Senator FISHER**—But you indicated that you have had discussions. In what context have you had—

**Mr Williams**—I have not had discussions personally. The consultation has been run by a full bench of the commission, chaired by the president.

**Senator FISHER**—You indicated there had been a dialogue. Has that been an off-the-record dialogue?

**Mr Williams**—Please don't misconstrue me. I was merely indicating the tenor of the consultations by the full bench of the commission against an announced program in each capital city over the past week.

**Senator FISHER**—Have you been involved in that dialogue, Mr Williams?

**Mr Williams**—No, not at all. That is a matter for the commission. Forgive me if I have misled you.

**Senator FISHER**—Maybe I misunderstood. Has the number of employees employed by the registry increased since December last year?

**Mr Williams**—The order of magnitude will be virtually exactly the same. There are always some unders and overs, but the net change would be primarily driven by the creation of the award modernisation project team, which runs currently to about 11 people. I actually have the current staff numbers with me, if that is of interest to you. As of 26 May we have a total staff of 177, and that includes unpaid inoperative staff. In terms of staff on the deck, it is 167.

**Senator FISHER**—How does that stack up against past numbers?

**Mr Mihelyi**—Compared with February it is an increase of four. In addition we have got some contractors, in particular some seconded staff from the Fair Pay Commission, of which there are four at this point in time.

**Senator FISHER**—Where are the staff that are seconded from the Fair Pay Commission?

**Mr Mihelyi**—They are part of the team that Mr Williams spoke about.

**Mr Williams**—The award modernisation project team.

**Senator FISHER**—That takes me back to the award modernisation team. You have 11 people tasked with doing part of the award modernisation task. What resources within the commission are dedicated to award modernisation? Are there any?

**Mr Williams**—The resources on the commission are the members. All other people resources are staff of the registry, including the associates that are assigned to members. At

present, the members of the commission that are involved with award modernisation are the seven members that make up the full bench, chaired by the president. That is the president, the two vice-presidents, the panel chairs and Commissioner Smith.

**Senator FISHER**—What administrative resources are the president and his team calling on for the award modernisation task?

**Mr Williams**—They draw on the staff of the registry. If you like, colloquially, we are the ‘back office’ of the commission.

**Senator FISHER**—So, on one of these 11?

**Mr Williams**—Yes. They draw on the award modernisation project team, and then all of the other resources in the functional areas, in part, whether it is information management, IT, document control and so on—contributors they need on specific tasks.

**Senator FISHER**—The registry supports the commission in the carrying out of its—

**Mr Williams**—Mandate.

**Senator FISHER**—job. The government has, by dint of the transition act amendments to the Workplace Relations Act, effectively charged the president with carrying out the award review. What is the totality of the resources at call by the president in order to support him in discharging this duty?

**Mr Williams**—Ultimately, all of the human and financial resources that are available in the registry.

**Senator FISHER**—And what are they—the 11?

**Mr Williams**—The numbers that I just gave you for the total—the 167 operative staff and our operating budget. In practice, that would be a misconstruction. The commission has a wider mandate than just award modernisation; it has its day-to-day matters.

**Senator FISHER**—Exactly.

**Mr Williams**—Indeed, as a statutory officer I have my own functions in relation to the RAO mandate. At any point in time you can draw on heavy resources or light resources, depending on the requirement of award modernisation. It is not going to be a uniform demand through the whole of the time line—there will be peaks and troughs. One of the reasons I have set it up as I have for the present—with a dedicated project team that do not do anything else, but drawing on all our functional areas as I need to—is that it means I can swing resources into and out of the role as required, without cost to the wider ongoing mandate of the commission.

**Senator FISHER**—For the purposes of fitting the resources that you have with the award modernisation task at hand, have you done any estimate of the resources that you think are going to be required?

**Mr Williams**—Not at this juncture, because that will be driven by the president finalising the process that he intends to run through to the completion of the task: his time line; what priority industries there will be; how he plans to run the development of modern awards through the panels; how he plans to create draft modern awards through a full bench, or a series of full benches. The president has not determined that yet, so until that is determined

we are not in a position to make that level of forward planning in terms of forward resource requirements.

**Senator FISHER**—You know the government's time line.

**Mr Williams**—We do.

**Senator FISHER**—And you know how many awards there are to be dealt with.

**Mr Williams**—In broad order, yes. But what we do not know is how many awards we will end up with. What we do not know at this stage is how problematic creating a modern award will be. We do not know what opportunities there will be to aggregate awards across occupations or industry areas. What we do not know is how many full benches will need to be supported—will it be one or multiple. What we do not know is whether a small handful of priority industries will be a good guide and framework for all the rest or whether there will be a lot of specific requirements that will need to be addressed again and again and again—all of them taking resources. We do not know at this stage how intensive the consultation arrangements and resourcing requirements will be. Much of this should be clearer later this month when the president sets out in a more fulsome way how he wants the process to operate.

**Senator FISHER**—That is a lot of don't-knows—isn't it?

**Mr Williams**—Yes, but it does not matter to us at present. The resources we have now are easily meeting the requirements of the commission.

**Senator FISHER**—Have they got spare time?

**Mr Williams**—No. They are easily meeting the requirements of the commission. They are fully occupied. I am not being cute about this—

**Senator FISHER**—Are commission members fully occupied?

**Mr Williams**—Again, I am not being cute. What is fully occupied?

**Senator FISHER**—Some of us would argue so.

**Mr Williams**—I would argue similarly and seriously—

**Senator FISHER**—Which way?

**Mr Williams**—The commission is progressing its mandate with the resources that are available to it. They are appropriate to what is on deck at the moment.

**Senator FISHER**—On a separate issue—are you able to provide information about case loads and work dealt with by individual commissioners?

**Mr Williams**—We do not keep that data in the public sphere. The sort of data we present, and have previously presented, at this forum is in our annual report. I have the latest material available on that with me. We do not break it down by member.

**Senator FISHER**—What do you break it down by?

**Mr Williams**—We break it down in terms of the character of the matters—whether they are unfair dismissals, collective agreements and so on.

**Senator FISHER**—Do you break it down by state?

**Mr Williams**—Yes.

**Senator FISHER**—I would appreciate it if the committee could be provided with that information—on notice would suffice.

**Mr Williams**—We have it with us today, and I am happy to hand it over.

**Senator FISHER**—Thank you. Now, back to the award review taskforce and the work that the registry is doing in supporting the president and his team in the carrying out of that task. As far as you are aware, what is the deadline for the review of awards?

**Mr Williams**—It is as in the request to the commission, which is: to be largely completed by 31 December 2009.

**Senator FISHER**—That is a little over 12 months away—about a year and a half away, and you have just given me a lot of don't-knows about implementing the nuts and bolts of that review.

**Mr Williams**—But I have also said that neither I nor the president feel like those don't-knows are at critical points yet.

**Senator FISHER**—You do not feel like they are at critical points yet? So you think they might get to critical points?

**Mr Williams**—No. That was a simple statement of fact: they are not at critical points. I am making no comment about—

**Senator FISHER**—You did say 'not at critical points yet', which suggests they may—

**Mr Williams**—I could use 'now' if you like—if you prefer.

**Senator FISHER**—Yes, it might be better. But you are giving the answers.

**Mr Williams**—I can only apologise, Senator, if my imprecision with the language continues to mislead you.

**Senator FISHER**—Thank you. My concern stems from the fact that the award review project is a significant plank—as I understand it—in the government's changes and pledges with respect to workplace relations. When questioning the department yesterday, they were unable to reassure me that work was significantly progressed with respect to this job. So I am trying to seek from you some reassurance that work is able to be progressed and that you have a plan.

I hear that, at this stage, you have a dedicated team of 11 collecting some of the nuts and bolts. You stand ready with some of 167 minus 11 to assist further, but of course that 156 have other jobs to do. You have indicated that you have not done an assessment of what the precise needs will be because, in your view, there are still a lot of don't-knows. Some are because you have said there are a lot of things you do not know, from which I have concluded that there are a lot of don't-knows at this critical stage in the process.

**CHAIR**—Is there a question?

**Senator FISHER**—It is in that context that I am trying to press you to find out how you will proceed once you know the president's plan. Will you then be ready to implement the operational support that he needs?

**Mr Williams**—I expect so.

**Senator FISHER**—How do you know if you do not know what those will be?

**Mr Williams**—Maybe I can help. Undoubtedly you would appreciate that, in my role, my relationship with the president of the commission is pretty symbiotic. The president has been in his position for a decade now. He understands the nature of the task. I detect from him a confidence about the ability to progress the task. He has indicated to me that he will be more fulsome about the plan of attack over requirements from the commission by the end of this month. That is not far away. So I feel very comfortable about that.

I would also observe that the way the organisation is set up and structured means there are people with a deep level of experience and competency. Almost no-one in the place is new, so there is a lot of corporate knowledge to draw on and there are significant economies of size. The reason that we keep these functional areas staffed with longstanding, competent people is that it is not mutually exclusive. It does not mean, if we were asking you to do A before and now we are asking you to do A and B, that B does not add on with the total cost to A. You do actually reap economies of size. The nature of the processes that we have in this area means that you can increase volume without a proportionate change in resource requirement. The history of the organisation shows that there is good reason to believe that.

**Senator FISHER**—Have you apprised yourself of the resources that have been dedicated to the award modernisation tasks in the recent past, in particular those from the Fair Pay Commission?

**Mr Williams**—This task is unique in its own right.

**Senator FISHER**—How so?

**Mr Williams**—The nature of award modernisation this time has not been done before, so I do not know what I would be comparing in relation to, as you say, the Fair Pay Commission. I have observed and I am informed about aspects of the consultation phase that the Fair Pay Commission went through in their role. That knowledge has not added or subtracted materially from the consultation phase we have just run or the consultation commitments that are set out in the award modernisation request, which the president has said he will meet.

**Senator FISHER**—As part and parcel of the previous government's Award Review Taskforce project, was some preparatory work done by the AFPC that you would expect might not be totally dissimilar in an administrative sense from the sort of work that lies ahead of you and your team, if it be that you and your team are tasked with delivering the president's goals for him in respect of modernising awards?

**Mr Williams**—Mr Nassios might want to add something about this, but the observation I would make there is that the commission, led by the president, in due course will make a call on the relevance of any of that as to how they see the task going forward. At this juncture there has been no such call from the commission. At this juncture the commission have indicated what they see as the substance of their task so far and have indicated when they will indicate further what the substance of the task is. I suspect that, if they do see that work as material, it will be interleaved with the rest of award modernisation rather than being a core

driver of the work. But that is not for me; that is for the commission at this stage. All I can do is give you my best appreciation of how I am reading it.

**Senator FISHER**—So can you guarantee that you will meet the time frame in terms of award modernisation?

**Mr Williams**—What I can say is that, at this juncture, as we look forward, the president appears to be comfortable with the task. I believe he has said so publicly. He has said so within the organisation. On the basis of my knowledge of how the organisation has worked in the past with significant tasks—not award modernisation but significant tasks—

**Senator FISHER**—Have you had a task this significant before in your time there, Mr Williams?

**Mr Williams**—Not in my time. I have been in the role for 18 months. But the organisation has a history of 100 years and there are periods in the recent past where there have been major demands.

**Senator FISHER**—You are saying there have been some people there for a long time, but you are surely not suggesting 100 years.

**Mr Williams**—No, Senator. I think we are probably getting perilously close to you placing demands on me for precision of language which are above and beyond—but I take it in good humour. But a very considerable share of our staff are very longstanding in the organisation and they are because it is the work they like, it is the work they know and we are an organisation that is unique.

**Senator FISHER**—So as the head of the administrative delivery arm of the award review task, can you guarantee that the government's deadline will be met?

**Mr Williams**—The president has indicated confidence, and I have no reason to demur from that. I certainly have seen nothing to date which would cause me to have reservations. In terms of an absolute guarantee, I have given you the best I can.

**Senator FISHER**—Thanks for the best you can. In terms of the registry's budget—I said I would come back to this—I want to refer to page 152 of the beautiful blue budget book. Tell me again what you consider that the registry have been funded to do.

**Mr Williams**—I summarised it in two parts earlier. It is to support award modernisation and for transition to Fair Work Australia.

**Senator FISHER**—Can you explain this reference at the bottom of page 152 of Budget Paper No. 2:

The Australian Industrial Registry will be provided with additional funding of \$13.3 million over four years to lodge Collective Agreements and rationalise and simplify awards.

The second bit of that certainly picks up your 'rationalise and simplify awards' task. What is with the reference to lodging collective agreements?

**Mr Williams**—I think it just reflects the factual position that, as you remove AWAs from the picture, there will be a greater emphasis on collective-agreement making, and so in the composition of our matters you will substitute collective agreements for AWAs. The mandate of the commission will be prosecuted more in the area of collective agreements than in AWAs.

**Senator FISHER**—This is the budget for the registry. What is the registry's role in lodging collective agreements?

**Mr Williams**—As you remarked earlier, as the back office of the commission, all of the administrative function is performed by registry staff. The commission is made up of its statutory members—that's it. Of themselves they cannot undertake any of the organisational functional roles.

**Senator FISHER**—Will the registry now be responsible for lodging collective agreements?

**Mr Williams**—I do not believe so. Our mandate is still clear, as it is set out in the legislation, in relation to facilitating agreement making, conciliation and mediation. As you shift the emphasis in the mix from AWAs to collective agreements there will be more of that work. I might add that collective agreement making goes in cycles and there is a significant number of collective agreements over this forward estimates period that will come to their notional end and will be remade. So it is not a uniform workload. It peaks and troughs on a cycle.

**Senator FISHER**—So that I do not misunderstand what you are saying, treat me as silly—for a passing moment only! Take me through how the registry would lodge a collective agreement.

**Mr Williams**—I just said a moment ago that we are not involved in the lodgement of collective agreements.

**Senator FISHER**—Then what are you going to do with that part of the \$13.3 million that has been given to you, according to the blue budget book, to do that?

**Mr Williams**—Our mandate is unchanged in relation to dispute resolution and in relation to agreements. What I have tried to characterise for you is that there will be a change in the composition of the work—shifting towards prosecution of the dispute resolution mandate in a context of collective agreements.

**Senator FISHER**—So what has that got to do with lodging collective agreements? Not a lot.

**Mr Williams**—No.

**Senator FISHER**—So you will use that additional money as you see fit, will you?

**Mr Williams**—Absolutely not. That money will be used consistent with our legislative mandate. When I say 'our legislative mandate' I mean the commission's legislative mandate and our requirement to support the commission in that.

**Senator FISHER**—Can you provide a detailed breakdown of how those additional funds will be allocated?

**Mr Williams**—I go back to what I said at the beginning: that is not the way we organise our financial allocations. Allocations are allocated to supporting our core functional areas, whether it is document processing, IT, statutory services and so on. That then provides a functional base to meet whatever the commission's requirements are at the time.

**Senator FISHER**—Can you not provide a detailed breakdown on how you will allocate an additional \$13.3 million? Is that what you have just said to me?

**Mr Williams**—It is broken down into which years it will be, but in terms of—

**Senator FISHER**—That is a start. How you will allocate it to your resources is what I am asking.

**CHAIR**—Mr Williams is trying to answer your question.

**Senator Wong**—He is partway through an answer.

**Mr Williams**—As I said, in part it is allocated to the award modernisation project team, and we can take on notice how much money has been allocated to that to date. But beyond that, it is moneys that are spread across the functional areas of the organisation, which then provide the back office support for the commission across the totality of its mandate.

**Senator FISHER**—Are you able to provide a breakdown of how that money is spread across the functions of the commission, to which you just referred.

**Mr Williams**—Not in any practical or realistic sense because at best it would be notional. We could say that there are X unfair dismissals and we might notionally allocate Y per cent of the total funding to supporting unfair dismissals. What I am trying to characterise is that once you have your functional support areas, they then service everything the commission does. We do not create dividing lines between whether it was X dollars going to this unfair dismissal matter or Y dollars going to that collective agreement matter.

**Senator FISHER**—Well then, can you provide a breakdown of which of your functional arms will be receiving the additional \$13.3 million?

**Mr Williams**—Not at this juncture. I think you can probably infer from my observations that the finalisation of that will be driven by the president detailing the process, timetable and milestones that he intends for award modernisation over the next 18 months.

**Senator FISHER**—So the registry has been given an additional amount of money to do ‘you know not what’ and to go ‘you know not where’, other than ‘the registry and I will manage it’.

**Senator Wong**—That is not his evidence. If you wish to make that political point you are entitled to make it, but that is not his evidence. It is not what Mr Williams said. They are your words.

**Senator FISHER**—The substantive point escapes me, Minister.

**Senator Wong**—We might agree on that, Senator Fisher.

**Senator FISHER**—Has any funding been set aside for additional members to be appointed to the Industrial Relations Commission.

**Mr Williams**—No. That is not a matter for me. The government in due course will make whatever decisions it wishes to make about appointments to the commission. In that event, I would imagine there would be some measure of dialogue about whether there would be any requirement for funds to be allocated *pari passu* with an appointment or not.

**Senator FISHER**—Has the process of transitioning to Forward With Fairness been discussed with you at registry?

**Mr Williams**—No, and nor would I expect it to be. We do not have a policy, legislative, regulatory or program delivery role. The commission is a statutorily independent body. The president operates true to that in the sense of that separation from the executive government of the day. That is a matter for the department.

**Senator FISHER**—What about in respect of the establishment of Fair Work Australia?

**Mr Williams**—Same answer.

**Senator FISHER**—In terms of the 11 members that are part of the award modernisation project team, can you identify on notice not who they are but their classifications and their job description?

**Mr Mihelyi**—Yes.

**Senator FISHER**—Thank you. Is there an expectation that you will be increasing the total number of staff?

**Mr Williams**—I think there is every prospect of that. At the last hearings, when I sat at this table, I think I characterised it as: we have the resources that we need for now and, in the event that we need more resources we will deal with that at the time. There is some measure of the unknown in this task. The character of award modernisation requests that the commissioners has received is not the same as in past events. So some of it is a bit of a learning journey for us, but as I said, that will be assessed if and as in when it arises.

**Senator FISHER**—What is the expectation in respect of the increase of three staff members in 2008-09 as opposed to 2007-08 in table 2.1 of the budget papers? What are those people going to do?

**Mr Williams**—That is a net difference from one period to another. It is not three specific people. We lose people from all over the organisation and gain people from all over the organisation, which numerically gives you a net difference of three. So I cannot say to you that it is Bob, Bill and Betty doing X, Y and Z.

**Senator FISHER**—But you are able to say with confidence, ‘Gee, I need three more people.’

**Mr Williams**—I have not said that. What I have said is that, to date, we have had the resources available to put on people as the identified need has arisen. At this juncture, in award modernisation, for example, the president has said that in his work-up research and data analysis he needs a team of the order of magnitude that we have now, and I have been a position to put that in place.

I have actually been in a very lucky position in that, as Mr Mihelyi indicated, we were able to get four staff on secondment from the Fair Pay Commission. The good fortune there is that they were available from the Fair Pay Commission and they were staff with deep knowledge in the area. That meant that we could get running and that we had a core for the project team so that, as we have further recruited in recent months, the people who have been recruiting have known what they were looking for.

**Senator FISHER**—These figures in table 2.1 do not cover commissioners, do they?

**Mr Williams**—No. This is budget reporting in relation to staff of the registry. The commission has no staff; it only has its members.

**Senator FISHER**—Speaking of commissioners, is there about to be appointed a new commissioner in my home state of South Australia?

**Mr Williams**—I have no knowledge of that.

**Senator FISHER**—I take it from what you said earlier with respect to Fair Work Australia that there is no work being undertaken by any of your team in preparation for the formation of Fair Work Australia. Is that right?

**Mr Williams**—Not in the sense in which I believe you are construing it, Senator.

**Senator FISHER**—At this stage it is a question. My prior question to you related to ‘discussions about’. Now my question is: is there any work being done in the registry preparatory to the establishment of Fair Work Australia?

**Mr Williams**—My answer to that question remains as before: no. My elaboration was going to be that, in any resourcing, any spending or any contracting decision that I and the management team make, we keep an eye to what might be the flexibilities that will be required by Fair Work Australia in 18 months time. So, for example, when we renew IT communications contracted services, transcription services, or when we are at a milestone point to review our multifunction devices, we are mindful at the least of not locking in Fair Work Australia in 18 months time to a contracted arrangement that might not suit it. So my answer remains ‘no’ but my elaboration is by way of saying it is not ‘no’ in black and white, in the sense that we are trying to make sensible judgements about keeping flexibilities open so that, as we come to understand what the requirements of Fair Work Australia will be, we can move to it as efficiently and effectively as possible.

**Senator FISHER**—Do you guarantee that you will play your part in meeting the government’s deadline with respect to the establishment of Fair Work Australia?

**Mr Williams**—Of course.

**Senator FISHER**—You are going to be working quickly, but thank you.

**CHAIR**—There being no further questions for this agency, thank you Mr Williams and officers for your participation here today.

[2.20 pm]

#### **Workplace Authority**

**CHAIR**—We welcome, again, witnesses from the Workplace Authority. Thank you, Ms Bennett, for your patience; we are trying to manage the program as best we can. I think Senator Fisher might have had some more questions for you.

**Senator FISHER**—I did; thank you, Chair. So, can we clarify, please, Ms Bull or Ms Bennett, whether or not annual leave will be able to be traded away?

**Ms B Bennett**—The annual leave that is set out in the standard is not able to be traded away; as to any additional annual leave, that is an agreement between the employer and the employee, but the standard is required.

**Senator Wong**—Senator Fisher, you used the term ‘will’; are you referring to the—

**Senator FISHER**—‘Is’, I guess, is a better way of putting it; thank you, Minister.

**Senator Wong**—I was just clarifying what you were asking.

**Senator FISHER**—Ms Bennett, does your answer change according to the fact that I should have used the word ‘is’ rather than ‘will’?

**Senator Wong**—You are questioning Ms Bennett about her current functions, not what her motives might be?

**Senator FISHER**—That is right. So I am presuming that she interpreted it as so. Thank you. I want to go to a few more areas in the agreement-making guide. May I take you to page 13 again, and 2.1.1. I want to ask about removal or modification of terms and conditions of employment in this context. In particular, is the guide suggesting that terms and conditions such as penalty payments for work like shift work, night work and work on weekends can be removed or traded away?

**Ms B Bennett**—That section of the guide explains that, if there are changes or amendments to the penalty payments for shift work, night work and work on weekends, or overtime payments or annual leave loadings, that would have to be compensated in the agreement.

**Senator FISHER**—Okay. So compensation would allow the trading away, would it?

**Ms Bull**—Yes; for example, some agreements are drafted so that the penalty arrangements are not specifically spelt out like they may be in a reference instrument—that is, for certain periods of time—but what has happened is that they have all been rolled in, and a higher salary might be paid through those agreements.

**Senator FISHER**—So, if that were the case then the penalty rates would be being traded away, in laypersons’ terms?

**Ms Bull**—In that case, what would happen is that the agreement between the employer and the employee would provide an arrangement whereby—

**Ms B Bennett**—Every hour was paid at a new rate.

**Ms Bull**—So, when we do the test, the test provides that we need to use the reference instruments, and that is why we ask a lot of information about working patterns, because we take those working patterns in terms of what the typical pattern is for the employee or the class of employees, and go through and say: ‘If we applied the reference instrument, this is what they would get as an hourly rate, taking into account penalty payments, but this is what the agreement provides as an hourly rate.’ And then we can compare the two.

**Senator FISHER**—And does that rationale apply in respect of all sorts of workplace agreements?

**Ms Bull**—Yes.

**Senator FISHER**—Okay. What about uniform or laundry allowances? Can they be modified or traded away?

**Ms B Bennett**—If they are referred to as entitlements under the reference instrument, the employer and employee could negotiate a higher hourly rate or a different allowance at a higher rate or, for example, provide internal laundering services instead of paying a cash component for the laundering instead.

**Senator FISHER**—What about vehicle allowances? Can they be modified or traded away?

**Ms Bull**—Again, vehicle allowances may be replaced by higher hourly rates of pay. Alternatively, they may be replaced by the provision of a vehicle—for example, sometimes that occurs in a workplace agreement—or other transport arrangements. It depends on the mix.

**Ms B Bennett**—On the reference instrument.

**Senator FISHER**—I presume that meal allowances are similar.

**Ms Bull**—They are the same. They can be replaced by a higher hourly rate of pay.

**Senator FISHER**—What about redundancy entitlements?

**Ms B Bennett**—That goes back to your earlier question on contingent benefits. We would have to look at what the individual was losing and what else had been included in the agreement. This is the part that we look at as a global thing—the whole package being offered to the employee.

**Senator FISHER**—What about rostering arrangements?

**Ms B Bennett**—We use working patterns as source information that we need in determining what the pay should be. As I said earlier, that includes classification or status and goes to whether they are full time, part time, casual or junior apprentice. We need information about working patterns. For some organisations that may have rolling rosters, we need that information to be able to make a decision that the rates of pay being offered or the conditions in the agreement reflect the working arrangements.

**Senator FISHER**—What about long service leave entitlements, which are referred to as a contingency as well?

**Ms B Bennett**—It depends on the state.

**Ms Bull**—Again, it is a contingent benefit, but if the reference instrument—be it the award, for example, or the state legislation—provides for long service leave then we look at the agreement to see whether either that has been provided or other benefits have been provided that would, when you look at the overall effect, mean the employee has not been disadvantaged.

**Senator FISHER**—So, clearly, depending upon the circumstances, those—

**Ms B Bennett**—And what else is in the agreement, looking at the totality of the agreement.

**Senator FISHER**—Can there be modification or trading away of any of those items?

**Ms Bull**—Except for what is provided for in the standard.

**Ms B Bennett**—In the standard.

**Senator FISHER**—Yes. Can I take you to appendix 1 of the guide. I want to ask about default working patterns. Are they considered to be ordinary hours for the purpose of applying the no-disadvantage test?

**Ms Bull**—No. They are used to determine the span of working hours and assist with the working patterns. Essentially, when an agreement is lodged, we ask the employer at that time to provide information on typical working patterns. If they do not provide that, we seek information from them. In the event that we are unable to get any of that information, our experience with these industries in terms of opening hours—for example, of businesses in those industries—informs the assessment about what the likely working patterns are. Because they are quite broad because they are industry based, we twice provide employers with an opportunity to provide information that is more specific to their particular organisation. If we cannot get that then we will apply these in doing the test.

**Senator FISHER**—In respect of call centres and fast food outlets, for example, are ordinary hours considered to be 24 hours?

**Ms Bull**—No. It would depend on what the reference instrument provided for in that industry. The reference instrument is what defines what an ordinary hour is in terms of our assessment and what would attract penalty payments.

**Senator FISHER**—In terms of the no-disadvantage test, I want to ask about future wage increases, because it is not clear to me how the no-disadvantage test unpacks in this respect. When you are assessing the no-disadvantage test as it may apply to an agreement that could last for three or four years, do Workplace Authority assessors take into consideration future minimum adjustments by the Australian Fair Pay Commission when assessing the agreements?

**Ms B Bennett**—Just a point of clarification before Ms Bull answers: ITEAs only have a date of effect of 31 December 2009—so several years. It is collective agreements that may spread over a longer period of time. But, as Ms Bull is about to explain, they are assessed at the point in time.

**Senator FISHER**—As per the guide. So that would mean that, in respect of collective agreements, the no disadvantage test does not take into account future wage increases?

**Ms Bull**—Yes.

**Senator FISHER**—That would mean that, if and when a future wage increase transpires, an individual worker may consider that they are worse off under the collective agreement—notwithstanding the fact that it has passed the no disadvantage test.

**Ms B Bennett**—They cannot be paid less than what the Fair Pay Commission says; it has to go up every time that goes up. If they are on a collective agreement that is linked to a pay scale at this point in time, it has to go up—regardless of whether it says that or not in the collective agreement. If they are paid beyond that, and remain beyond that—and there are wage cases, but it is not reflected—that is the terms of that agreement for the life of that agreement.

**Senator FISHER**—Nonetheless, your assessing of the test is relative bits and pieces to everything else. What about changes to working patterns? How does the Workplace Authority take into consideration future changes to working patterns when assessing the no-disadvantage test?

**Ms B Bennett**—As Ms Bull explained, it is a point in time. If an employer has advised us that the workplace agreement applies to its workforce in this particular way and the hours expected are these, and then turns round and expects more hours, or rosters an individual on so that the hours are in excess of what has been agreed, then that employer is in breach of its own agreement. That would allow the employee to either contact us, or contact the Workplace Ombudsman. That is the protection—that the agreement sets out the terms and conditions. A breach of that agreement in the area of hours has that protection. But, as we have said, we look at it at that point in time—we cannot work through and say, ‘Would that work in three or four years time?’ Nor can they constantly send us roster updates.

**Senator FISHER**—In any event, you have your work cut out being on inquiry for every individual employee at the time you assess the agreement—let alone thereafter.

**Senator Wong**—The point-in-time approach is the same approach as was applicable under your test.

**Senator FISHER**—Indeed, which was the subject of much criticism from your side, Minister—but I am trying not to go there. Is a training course considered adequate compensation?

**Senator Wong**—For what?

**Senator FISHER**—When trading away allowances for overtime, or redundancy provision, or allowances, would you consider a training course as potentially a sufficient compensatory item?

**Ms B Bennett**—It is very difficult to pick out one item versus another. For example, an employer might pay for someone to undertake postgraduate qualifications, and fully pay them while they are doing it—that might be; the value of an expensive piece of training to the individual’s benefit might be added in to what could be considered as an investment. But if it were, let’s say, training someone in on-the-job arrangements—such as in telephony at a call centre, or in running the till at a retailer—then no, that training would not be, because it is clearly to the benefit of the employer to have a skilled worker. That would not justify any offset of salary.

**Senator FISHER**—On the hours of work clause in your guide—so now I am talking about 2.2.11, on page 22—I want to ask about the implications in this section for employers to pay penalty rates or overtime when there is a preferred hours arrangement, which is what the paragraph addresses. My understanding is that ordinarily a worker who works outside their normal span of hours or beyond a 38-hour week is entitled to overtime and/or penalty rates, depending on when they work, but clause 2.2.11 suggests to me that an employer may no longer have that obligation to pay penalty rates when there is a preferred hours arrangement. Is that correct?

**Ms Bull**—Under awards, there are specific provisions that talk about span of hours and provide for penalty payments. Under agreements, employers can change those arrangements, as we have already discussed. This section is about when we will consider that in the no disadvantage test, in terms of: is it reasonable for an agreement to provide for certain hours, because the employee has said they want to work those hours, to be ordinary hours? This sets out our views about when that would be considered appropriate in applying the no disadvantage test and when it would not.

**Senator FISHER**—So, essentially, if you are convinced that the employee ‘genuinely prefers’—as per your words on page 22, in the second paragraph of subparagraph (a)—that is when you would consider that the test would be met?

**Ms B Bennett**—Yes, but it also states here, as you know, that it excludes casual employees, trainees, apprentices, junior or other employees that it considers would be disadvantaged, so you would be looking at predominantly full-time workers that were looking for a different array of their working hours.

**Senator FISHER**—Thank you; that was my next question, so you have saved me from asking that. Can I take you to page 29.

**Senator WATSON**—Has the flexibility clause been drafted yet?

**Ms B Bennett**—That is not our role, Senator.

**Senator WATSON**—But are you aware of whether it has been drafted?

**Ms B Bennett**—No. Can I also add, Senator Fisher, that if you look at page 23, under (b), also within determining it in collective agreements, reference is made there to the span of hours, on balance, about the terms and conditions. I think that is a piece of information that you should also note. That is on page 23, under 2.2.11(b).

**Senator FISHER**—I see. So that is your catch-all, if you like. Thanks, Ms Bennett. Page 29—I have asked that, you will be relieved to know, Senator Sterle!

**Senator STERLE**—That is a question you have asked four or five times! Sorry.

**Senator FISHER**—Sometimes it takes that many times to get an answer, Senator.

**Senator ABETZ**—Exactly right, Senator.

**Senator FISHER**—I have a question about prohibited content, Ms Bennett. The Workplace Authority presumably checks agreements for prohibited content—does it?

**Ms B Bennett**—I may initiate, according to the legislation, a consideration of prohibited content. Most agreements that we consider for prohibited content come to us seeking us to do an analysis, so it is initiated by the parties.

**Senator FISHER**—How many agreements have you identified since 2007 that contain prohibited content?

**Ms B Bennett**—From 1 May 2007 to 1 May 2008, prohibited content was removed from 23 agreements. All except one were collective agreements and were republished and gazetted as required.

**Senator FISHER**—Have you got a breakdown of the type of prohibited content that was included in those 23 agreements and offer and—

**Ms B Bennett**—The gazette notices?

**Senator FISHER**—If that is the most convenient way to provide a list. You can take that on notice if you wish.

**Ms B Bennett**—I will take it on notice so I can break it down for you, but basically there are a number of types of clauses. We have a list of them. There are 15 that are listed as the sampling of clauses that constitute prohibited content. But we will take that on notice.

**Senator FISHER**—Will that identify for me the nature of the prohibited content clauses that were identified in the 23 agreements?

**Ms B Bennett**—Yes, they will. I might also add these are gazetted. I am required to gazette notices of both the agreements and the terms of the prohibited content, and they have already been publicly gazetted on a number of occasions.

**CHAIR**—Out of interest, where do they end up when they get gazetted?

**Ms B Bennett**—It is the gazette that deals with government notices and legislation—where we had to gazette all the forms and papers. I think it is called *Government Notices Gazette*, so if you go to the website you can find it.

**CHAIR**—I will look out for it. Is it a document that ends up in the parliament?

**Ms B Bennett**—I do not know if it is printed.

**Senator Wong**—It is laid on the table. I am sure the clerk will be able to find it.

**Ms B Bennett**—Maybe that question can be directed to Mr Carter.

**Senator FISHER**—You may want to take this on notice, but can you identify what percentage of ITEAs, union collective agreements and non-union collective agreements since 1 April 2008 have not contained reference to a pay increase? Or are you going to tell me none?

**Ms B Bennett**—We cannot capture that information. That is not what we are required to assess in the agreement. We do not capture that information in our systems. All collective agreements are published by us over time. We have to clean identifying information and make sure that they are in a format, but they are in time published by the Workplace Authority.

**Senator FISHER**—Okay. This one you will want to take on notice, I am sure. It is my last question, the chair will be pleased to know.

**Senator STERLE**—And me!

**Senator FISHER**—It is again about agreements since 1 April 2008. Can you confirm what number of, firstly, ITEAs; secondly, union collective agreements; and, thirdly, non-union collective agreements have removed or modified one or more of a range of the following clauses or entitlements that would ordinarily appear in the reference instrument or the instrument used in the application of the no disadvantage test? You will want to take this on notice and I am happy to provide it in writing. Clearly, you will not be surprised to know that, from my questions that preceded this, the sorts of entitlements that I am seeking this

information in relation to include: overtime penalty rates, meal breaks, rest pauses, food allowances, uniform allowances, wet weather allowances, leave loading, annual leave, personal leave, compassionate leave, rates of pay, travel allowances, shift loading, parental leave, hours of work, span of hours, ordinary hours, crib breaks, rostering arrangements, redundancy provisions and rostered days off.

**Ms B Bennett**—We will take that question on notice, but I need to point out that the applicability of any of those entitlements requires the reference instrument to have them. They are not removed if the instrument does not have them. We will have a look and take the question on notice, but it is not a case of going through and saying they had this but do not have that because the benchmark is the reference instrument. If the award does not have it, then it is not removing it because it was never there. If the collective agreement does not have it, then it is not removing it because it was never there.

**Senator FISHER**—Exactly. Nonetheless, you have done an analysis of this sort before in respect of previous characterisations—

**Mr Williams**—They were the seven protected award conditions.

**Senator Wong**—Ms Bennett is taking it on notice and I am sure she will provide the response as she sees fit. That practical matter to which she just alluded was the one that I was going to remind the committee of. Previous questions were in the context of a test which dealt with seven protected award conditions. You have asked for data in relation to a range of provision which exist in various reference instruments. I do not know from the evidence that has been presented whether all of that data is captured separately, such that it would actually be feasible for officers to give you that information. It is a different test to the one that your government introduced, which only had the seven protected award conditions. Now, Ms Bennett will take the matter on notice, but my instinct is that that might be difficult to provide.

**CHAIR**—In relation to that, Ms Bennett will take it on notice and I think the position is whatever information is available that fits the parameters of the question should be made available. If there are reasons why it cannot be made, that explanation should be included in the answer.

**Senator FISHER**—Are you aware of whether the Deputy Prime Minister has read your guide?

**Ms B Bennett**—I am not.

**Senator FISHER**—Okay. That was no?

**Ms B Bennett**—No.

**Senator FISHER**—You are not aware.

**Ms B Bennett**—No, I am not aware.

**Senator FISHER**—Thank you.

**CHAIR**—We are up to the last question plus one, or two or three now!

**Senator WATSON**—I want to be updated a little bit in relation to the inquiry that this committee conducted into the bill. Are your decisions reviewable by the Federal Magistrates Court?

**Ms B Bennett**—No.

**Senator WATSON**—They're not. What was the outcome of the Qantas valet dispute, which featured fairly significantly in the inquiry?

**Ms B Bennett**—I stand to be corrected, but I think the Workplace Ombudsman looked into the paid entitlements. It was not a matter that we were looking into.

**Senator WATSON**—Then I will ask the next witness. Thank you.

**Senator ABETZ**—When will the Workplace Authority be posting monthly and quarterly statistics on agreement lodgements and assessments on its website?

**Ms B Bennett**—We have moved to quarterly statistics. Our last one covered the period until the end of March and it was released in about the third week of April. It takes some time for the cleansing of the information and to get it in order. The next quarterly statistics should be in mid-July to the third week of July.

**Senator ABETZ**—You indicated you had moved to quarterly reporting from—

**Ms B Bennett**—In the first few months of the Workplace Authority we were reporting monthly. With the burden of preparing those reports monthly, I decided that quarterly reporting gave a better trend and still provided the information, and we were able to bring together both processing and statistical information on agreement making. We announced in, I think, November or December on our website that we would be doing a comprehensive report on a quarterly basis.

**Senator ABETZ**—So those quarterly reports will publish approved collective agreements as well?

**Ms B Bennett**—The quarterly report provides data with respect to employer collective agreements, union collective agreements, employer greenfield agreements, union greenfield agreements and Australian workplace agreements. It will from the next quarter provide information about ITEAs as well.

**Senator ABETZ**—So it covers all agreements in that list?

**Ms B Bennett**—All agreements processed and lodged by the Workplace Authority. It provides information on activities and how we are going on processing. It also provides statistical data on the proportion of agreements within the workforce by state, by industry type, by the size of the employer covered and by the agreement type. It breaks down employee collective agreements and union collective agreements by size of employer as well.

**Senator ABETZ**—Has the Workplace Authority provided the wages policy and economic analysis branch of the department or any other branch with agreements and other information to assist with sampling of agreements made under the Forward with Fairness transitional legislation?

**Ms B Bennett**—I have provided access to a group of staff in the Department of Education, Employment and Workplace Relations to undertake some sampling work on agreements lodged with us.

**Senator ABETZ**—Have you provided the minister's office with agreements and other information about agreements made under the Forward with Fairness transitional legislation?

**Ms B Bennett**—No agreements are provided to the minister's office.

**Senator ABETZ**—I was very kindly provided with some information on question on notice EW120\_08; thank you for that information. Are we able to have a similar tabulation provided to us, on notice if need be—just refresh my memory: when was the last day that AWAs could be lodged?

**Ms B Bennett**—It was 11 April, 14 days after the introduction of the legislation, which allowed agreements that were made no later than the day of the legislation to be lodged within 14 days. So 11 April was the cut-off.

**Senator ABETZ**—For question E120\_08 you kindly provided three tables, a comparison of January 2007 and January 2008, December 2006 and December 2007, and November 2006 and November 07.

**Ms B Bennett**—And you would like that updated to 11 April?

**Senator ABETZ**—Yes, until 11 April 2008. I would also ask for, in that table or in a separate table, the monthly registrations from April 2007 through to April 2008.

**Ms B Bennett**—It is agreements entered into, so the date will be the end of March, even though that includes the last few that were lodged. They are all bundled into that. That is when the legislation ceased to exist. So it is agreements that were made up until 28 April. But we will explain that.

**Senator ABETZ**—So it will not have a separate April category?

**Ms B Bennett**—Yes, it will. They will be put into that because that was the term of the legislation. They were made before the legislation was introduced. They had 14 days to lodge, so they will come into that period. This reflects when agreements are made and received within a period. We will explain that in the notes.

**Senator ABETZ**—Just as long I get the total number. That is the importance of the exercise. Was there any last minute rush to lodge AWAs?

**Ms B Bennett**—No, there was not.

**Senator ABETZ**—Undoubtedly, you have been asked previously about processing the fairness test.

**CHAIR**—In terms of the last minute rush, did it drop off at the last minute? Was it the reverse? I ask this as a matter of interest in terms of what happened.

**Ms B Bennett**—I would have to take that on notice—

**CHAIR**—It is probably going to be included in the answer.

**Ms B Bennett**—Yes, it will be included.

**Senator ABETZ**—In November 2007, for example, there was a 13 per cent increase over November 2006—so chances are that the rush occurred prior to the election. I would assume, given that people sort of anticipated a certain event happening and given that the opinion polls had been saying a certain thing for a 12-month period—

**CHAIR**—I was asking only out of interest, not for any other reason.

**Senator ABETZ**—I dare say the increased trend occurred before—

**CHAIR**—Arguments could be put either way.

**Ms B Bennett**—I can actually provide that information, and I would also like to refer to the evidence that I gave at the last hearings. The November 2006 comparison with November 2008 was reasonable. It reflected seasonal employment arrangements. I think I explained last time that this is the time when employers put on casuals before the Christmas rush and when part-time school leavers are coming into jobs. So, while it was an increase over the other period and it was more than the previous November, the spike pattern was the same as previous years. In terms of AWAs—

**Senator ABETZ**—What was that for, again?

**Ms B Bennett**—There was always an increase in agreement lodging in November because of both the Christmas employment arrangements and school leavers.

**Senator ABETZ**—The table you provided me compared November 2006 with November 2007, which showed a 13 per cent increase between the two Novembers. So Christmas did not happen at a different time in 2007, did it?

**Ms B Bennett**—What I was also explaining, if you look at the figures over the years 2006 and 2007 in comparison with their 2007 and 2008 years, November was always the higher time for agreement lodging.

**Senator ABETZ**—Overall, yes.

**Ms B Bennett**—In terms of AWAs that were lodged, in January 2008 there were 28,134; in February, 25,200; and in March, 22,589. In those last 14 days of April, there were 8,811.

**Senator ABETZ**—Can I then inquire as to whether you had any difficulty with late lodgements. Were there any that said, ‘We put it in the mail but you’ve received them late’? We canvassed the possibility of that at the last estimates. I think we agreed that the chances of that happening were minimal.

**Ms B Bennett**—I would have to take it on notice. The legislation was clear that the agreement had to be made by the 28th.

**Senator ABETZ**—That is right.

**Ms B Bennett**—There were 14 days to lodge it, and the close-off was 11 April. Our systems closed down on 11 April. I would have to look to see whether we received some in the mail, but the point is that it would have had to have been made by the date the legislation came in.

**Senator ABETZ**—That is right.

**Ms B Bennett**—If some arrived a day or two after the mail delay, common sense would still say, as long as it was clear and the parties agreed that the agreement had been made, that the fairness test applied at that point in time. If it was made post the introduction of the legislation, it was invalid if it was an AWA or if it did not meet the other requirements. I explained earlier, in the stats, that we did receive early in the new arrangements a number of invalid agreements that did not meet the requirements of the legislation or were AWAs or purporting to be AWAs.

**Senator ABETZ**—What I was concerned about last time was the possibility of an AWA being entered into in good faith prior to the cut-off date, being put in the mail, but then, for whatever reason—let us blame Australia Post on this occasion—it did not arrive at your office within that 14-day deadline and it arrived, let us say, 16 days after the end of the AWAs being allowed to be made. Would you then still have processed and allowed that AWA?

**Ms B Bennett**—I will have to take that on notice, because a majority are electronically lodged and there was a good window for people to get things in. I would have to go back to see if we actually had any under those circumstances. I will take that on notice.

**Senator ABETZ**—I would hope there were not any. If that is the case, no injustice will have been done. But, in the event that there were some, I would be interested in knowing the number. Can you confirm to us: just because you shut down your systems on—was it 11 April?

**Ms B Bennett**—At midnight on 11 April the electronic lodgements ceased.

**Senator ABETZ**—You still would have had some record of those that were wanting to lodge after 11 April, albeit, under the legislation, you say they would have been too late.

**Ms B Bennett**—I will see if the technology allows us to know if somebody attempted that. People are nodding no. We can tell if something was received in the post after that date, but I do not know if our IT systems allow us—

**Ms Major**—The portal was removed.

**Ms B Bennett**—The portal was removed, so they could not have had something to get into.

**Senator ABETZ**—I am no technical whiz, but the portal would have been that mechanism by which people would have registered electronically. Is that right?

**Ms Major**—Yes.

**Senator ABETZ**—So removing that would have told people: ‘Bad luck; you’re too late to lodge and that is what the legislation says.’ What I am talking about is those that used snail mail to lodge and, in good faith, lodged it within good time but it got delivered somewhere else and, for whatever reason, did not come to your office by 11 April. What would have happened to those particular AWAs and do you have a list of them?

**Ms B Bennett**—We will take that on notice.

**Senator ABETZ**—That would have been recorded?

**Ms B Bennett**—We would have a record of paper copies received.

**Senator ABETZ**—Excellent. Thank you very much. And I think you might be able to stop me asking you any more questions by confirming that, if I have got a bracket of questions on the Homeworkers Code of Practice, that should be going to the ombudsman—or should that be going to you?

**Ms B Bennett**—I do not know.

**Senator ABETZ**—Everybody disowns them, so I will try the ombudsman. Thank you very much.

**Senator FISHER**—Ms Bennett, I am sorry, I want to take you back to the Workplace Authority certified agreement. You have got some 700-plus staff. How many of those were entitled to vote on the certified agreement?

**Ms B Bennett**—Twenty-five members of our staff were eligible to vote for the collective agreement.

**Senator FISHER**—And how many will be covered by the collective agreement?

**Ms B Bennett**—The current legislation allows the parties to seek to terminate AWAs and to go onto collective agreements. We do not know what the figures are, but we have had many staff make representations to our corporate area to understand how those options might work and what their pay arrangements would be under a collective agreement.

**Senator FISHER**—Are those staff on AWAs?

**Ms B Bennett**—We have several industrial instruments. We have AWAs. We have former DEWR staff that are on the former DEWR collective agreement. We have some staff at the moment on common-law contracts and some staff on AWAs, and now we have staff on the collective agreement.

**Senator FISHER**—I think you indicated earlier that significant numbers of your staff were on AWAs—a hundred, a couple of hundred or several hundred?

**Ms B Bennett**—No. The majority of the staff were on AWAs. That was the only instrument that these people had, and we did not have a collective agreement.

**Senator Wong**—They had no choice previously, Senator Fisher.

**Senator FISHER**—Maybe or maybe not. And the majority?

**Ms B Bennett**—The majority are on AWAs. There was no collective agreement, so there was no choice for those staff to have a collective agreement.

**Senator FISHER**—Of those, how soon do their AWAs expire?

**Ms B Bennett**—There is a whole array of dates. I am not certain, depending on whether it is one that came over from DEWR, whether it is a former OEA one, or whether it is one that they have had with the Workplace Authority. We could take that on notice.

**Senator FISHER**—What would be the closest expiry date of any of those AWAs?

**Ms B Bennett**—I think later this year.

**Senator FISHER**—The end of June?

**Ms B Bennett**—Yes, 30 June.

**Senator FISHER**—How many employees with AWAs might have them expiring on 30 June—a cluster, a hundred, a couple of hundred?

**Ms B Bennett**—We do not know. I will take that on notice.

**Senator FISHER**—Would those staff have been eligible to vote on the collective agreement?

**Ms B Bennett**—No, the legislation currently at the moment stops employees who are on an AWA voting for a collective agreement where it had not passed its normal expiry date. If it

had, they would have been able. We are putting arrangements in place for those staff that do want to terminate their AWA to go onto the collective agreement.

**Senator FISHER**—Nonetheless they would not have been able to vote on the terms of the collective agreement—would they?—as you have just said.

**Ms B Bennett**—No, but there were lots of open sessions where all employees were able to hear and have explained to them what was on the collective agreement.

**Senator FISHER**—When was the vote taken?

**Ms B Bennett**—Last Thursday.

**Senator FISHER**—That was 29 May?

**Ms B Bennett**—Yes.

**Senator FISHER**—What does the collective agreement do in respect of AWA redundancy entitlements and performance pay?

**Ms B Bennett**—There is no performance pay.

**Senator FISHER**—In AWAs?

**Ms B Bennett**—In our collective agreement.

**Senator FISHER**—But were there performance pay provisions in the AWAs?

**Ms B Bennett**—Probably in most of them, yes.

**Senator FISHER**—I thought so.

**Ms B Bennett**—Performance is linked to increments. But of course performance management is not necessarily an approach to pay. It is about ensuring that the individual knows where they are going, what is happening in the workplace and how they are performing, and that is linked to someone moving up through the increments in the collective agreement. Satisfactory performance is a requirement for moving up a step in the collective agreement.

**Senator FISHER**—All right, but you had performance pay arrangements in AWAs and now different arrangements in the certified agreement?

**Ms B Bennett**—Yes.

**Senator FISHER**—What about redundancy entitlements under the AWA?

**Ms B Bennett**—There were several AWAs, and they had different redundancy entitlements. Our redundancy entitlements in the collective agreement are consistent with those of the APS. We have made sure that they meet the requirements and, I understand, are as generous as expected.

**Senator FISHER**—Would they be less generous than some provisions in some of the AWAs still in application?

**Ms B Bennett**—My understanding is that with some of the agreements the actual time amount being paid was 17 months or 13 months and that entitlement to pay is no different from what it is under the collective agreement. What is different are some of the triggers as to the steps to go through allowing someone a quicker time or a shorter time to buy out or a

longer time for retention. These sorts of issues are different. It returns to seven months for some—I think it is the Public Service standard. If they are under 45 or have so many years of service, they receive seven months pay. If they are over 45 or have service equal to 20 years of service, they receive 13 months pay. That is what the arrangements are across the Public Service. What was different for some people's AWAs were retention periods, the payout and triggers to moving quicker or faster.

**Senator FISHER**—Would the AWA provisions have been more generous in that respect than those of the collective agreement?

**Ms B Bennett**—It is hard for me to answer that because there are individual arrangements. I know that some of the staff did have arrangements that they themselves perceived to be more beneficial.

**Senator FISHER**—Under the AWA from which they will now have to move?

**Ms B Bennett**—Under the AWA in terms of the timing for redundancies; in others it is not. But the requirement that we have is quite generous and is set by the Public Service Commission. It is that arrangement that we have picked up in the collective agreement. It is for individuals to make a decision themselves as to certain things, so some will value some things more than others.

**Senator FISHER**—What is in the collective agreement—pay increases, I suppose?

**Ms B Bennett**—Yes, pay increases, increments.

**Senator FISHER**—Back payments of any sort?

**Ms B Bennett**—It took us a bit of time. We got agreement but the processes for Public Service agreements being lodged and accepted required new policy parameters to be issued, which is under the auspices of DEEWR, and we compensated for that delay if they had those policy parameters in place.

**Senator FISHER**—So there will be pay increases and there will be provisions for back pay to be made up for.

**Ms B Bennett**—Yes, for delay.

**Senator FISHER**—Is there a bonus arrangement for signing up to the collective agreement?

**Ms Major**—No.

**Ms B Bennett**—It explains the arrangements. It is paid from the date when it would have fallen into effect. There is no sign-on bonus. And there are enhanced maternity and paternity arrangements in different ways. There are changes to things like some of the caring and leave entitlements when parents may have time when their children are sick and to things like when childcare centres say they cannot take the kids. We can do that with just a note from the childcare centre and acquiring a doctor's certificate, so some flexibilities have been brought in.

**Senator FISHER**—So does the back payment arrangement include perhaps a set amount and then some more, for the delay?

**Ms B Bennett**—My understanding, and I will take this on notice if I am wrong, is that we accepted and negotiated with the CPSU a date as of when the agreement was reached. Due to the delay in processing while we were awaiting the policy parameters, the back pay is from the date that we reached the agreement with the CPSU.

**Senator FISHER**—So 25 of your some 700 staff voted on the agreement. How many will be covered by the agreement?

**Ms B Bennett**—All new staff that join the Workplace Authority will be covered by the agreement. Staff that make a representation to me to seek to have their agreement voluntarily terminated will then also join the collective agreement and other staff, on the expiry of AWAs, will join the collective agreement.

**Senator FISHER**—Essentially it is your plan or the CPSU's plan that the entire workforce will be covered by this collective agreement, is it?

**Ms B Bennett**—Over time this collective agreement will accommodate all Workplace Authority staff, except for SES officers. They are yet to make their intent clear to me on their preference.

**Senator FISHER**—In respect of non-SES officers, do they have any choice other than to allow their AWAs to expire by attrition and then move onto the collective agreement?

**Ms B Bennett**—The Public Service arrangement is that there are no further AWAs and ITEAs are not being taken up in the Public Service, so it is the collective agreement.

**Senator FISHER**—So the choice, as you have said, is the collective agreement. It is either the CPSU collective agreement or the CPSU collective agreement—so that is the choice?

**Ms B Bennett**—That was the choice by the staff to have a union agreement. We have yet to work out what the arrangements are for senior staff. There are options open to us. I think DEEWR—through Bob Bennett—is on the record talking about different determinations and common-law contracts. Those will be available—they are not unique to us—to all Public Service agencies, and obviously I will be looking at what those arrangements are and talking to the senior staff in the authority about what they feel suits them within those options.

**Senator FISHER**—But let us leave aside the senior staff, because the CPSU collective agreement is about the non-SES staff, isn't it?

**Ms B Bennett**—Yes.

**Senator FISHER**—So you are saying that the non-SES staff chose the CPSU collective agreement, but that is the 25 of the staff who actually cast a vote.

**Ms B Bennett**—Yes.

**Senator FISHER**—And let us assume they all said, 'yes'. What was the vote?

**Ms B Bennett**—19 voted and two said 'no' and four did not vote, so that translates to a 76 participation for eligible voters and 89.47 voted 'yes'.

**Senator FISHER**—It does. Nonetheless, you are saying that the choice is CPSU collective agreement or CPSU collective agreement. You are suggesting that was the choice exercised

by the staff, but 25 of your some 700 staff were able to vote as to whether they wanted that or not.

**Ms B Bennett**—But I have to say that in the staff consultations, which I pointed to earlier, there was active participation across the agency about it. I think overwhelmingly to our staff a collective agreement was an instrument available to them—and this was actually early in the Workplace Authority when I started—and that they wanted that to be one of the choices.

**Senator FISHER**—Do you think they feel essentially—to the extent that they have a choice: CPSU agreement or CPSU agreement—that they are forced to accept that choice, and many of them see a decrease in redundancy entitlements in order to access a pay rise for their future? Do you think they feel like that?

**Ms B Bennett**—It is a really hard decision to work out what they felt like. The feedback that we received is that they did want to be reassured that the pay scales being offered fitted in with what the Public Service offered. We were able to provide information on pay scales in like agencies. They talked about the demographics of our agency—we have an agency younger than the rest of the Public Service; we have a lot of people with young families—and about some of the flexibility that we gave, in terms of those areas that I have already mentioned, being among the things that they liked.

**Senator FISHER**—They would be wanting to be reassured that they are being looked after by the current government, both in respect of pay and conditions, including their work life and their family life.

**Ms B Bennett**—Also, as a new agency, the bulk of our workers are relatively new to us, so whether there were a few from the former AWA that had that, it did not stand out as a loud voice, but they were the sorts of things that we received feedback on that we made as a priority.

**Senator FISHER**—A loud voice of 25 staff! Thank you, Ms Bennett.

**Senator WATSON**—Can you advise us on the progress of the proposed long service leave inquiry? Has it commenced yet?

**Ms B Bennett**—I am sorry, Senator, but I do not know as it is not within my responsibility.

**Senator WATSON**—I thought you would be aware of it.

**Ms B Bennett**—Perhaps I could refer it to Mr Carter as it is a parliamentary inquiry into long service leave.

**Senator WATSON**—We were told during our inquiry on the bill that the government intended to have an inquiry into long service leave, and I just wondered if any progress had been made.

**Ms B Bennett**—I can quote Mr Pratt here at one stage that since Noah sailed these matters have been dealt with. We are very specific as a statutory agency about what we deal with.

**Senator WATSON**—Yes, but I thought you might be aware of whether the inquiry had commenced. No, obviously not.

**Ms B Bennett**—Is it a parliamentary committee you are referring to?

**Senator WATSON**—A government inquiry.

**Ms B Bennett**—A what?

**Senator WATSON**—A government inquiry. That is what was suggested and put forward in our report.

**Senator Wong**—I am sorry, Senator Watson. Ms Bennett cannot assist you, and I am afraid I cannot either, so perhaps we could take that on notice. If it is a matter that the government can assist on, we will see if we can find the appropriate person. But if it is a parliamentary inquiry, obviously that is a matter for the Senate.

**Senator WATSON**—No, it is a government inquiry. That was suggested to the committee in March, when we were taking evidence about the position in relation to long service leave and the problems associated with it.

**Senator Wong**—Was that evidence from the department?

**Senator WATSON**—The question is about ‘until the government completes its proposed long service inquiry’.

**Senator Wong**—No. I am asking was the evidence from the department?

**Senator WATSON**—I cannot tell you that. It was just mentioned in the report about that concern. Minister, can you assist us in relation to the position of progress on employees under a federal award who are not incorporated and are currently under a five-year transitional process, which is due to expire in March 2011? Are you aware of progress in relation to that? It does require certain agreements with the states. Have those discussions taken place?

**Senator Wong**—No. I am not aware personally.

**Senator WATSON**—Can you take that on notice?

**Senator Wong**—I suspect that would probably require the department to provide an answer.

**Senator WATSON**—Can you take it on notice?

**Senator Wong**—Yes. I only have the Workplace Authority people at the table.

**CHAIR**—Thank you, Ms Bennett, and other officers, for what was a very long day for you.

### **Proceedings suspended from 3.23 pm to 3.38 pm**

#### **Workplace Ombudsman**

**CHAIR**—We will recommence with questions to the Workplace Ombudsman. I welcome Mr Wilson and his officers. We will move to questions, and to Senator Abetz.

**Senator ABETZ**—Thank you very much, Chair. Last time around, Mr Wilson, you kindly took a question on notice and that was EW122\_08. The question was: ‘how many workers has the Workplace Ombudsman recovered money for through its targeted education and compliance campaigns?’ I was given a figure of 5,500 workers. All I am asking on this occasion is for an update as at whatever the next convenient date is. What is it? The chances are that, by the time you get around to answering it, it would be the end of June but if not, the

end of May. Can you let me know how much has been collected thus far, if that is easily obtained?

**CHAIR**—Just before you answer that, Mr Carter has kicked me under the table because I should have invited you, Mr Wilson, to make an opening statement to the committee if you wish to.

**Mr Wilson**—That is fine.

**CHAIR**—Right, thank you.

**Senator Wong**—We are discussing Mr Carter kicking you.

**Mr Wilson**—Senator, I am pleased to answer the question in this way. For the 2007-08 financial year to date, we have conducted a number of target investigations and received money on behalf of 8,391 of those people. We have recovered \$5.7 million on behalf of those 8,391 people. That is for the year to date.

**Senator ABETZ**—As to that year to date, is it to 3 June? Or is it to some earlier date, as I would imagine?

**Mr Wilson**—I am informed it is to 30 April.

**Senator ABETZ**—That is close enough in that case. I do not ask that that question be taken on notice. Just be prepared that next time I might ask the same question if I am still in opposition. Hope springs eternal. I was told that if I were to ask questions about the Homeworkers Code of Practice, that might be to the Workplace Ombudsman? Is that correct?

**Mr Wilson**—We are not directly involved in the Homeworkers Code of Practice. We can certainly give you fairly limited information, but information nonetheless, about the work that we do with outworkers, for example.

**Senator ABETZ**—So it is under this topic. Can I ask whether your office or your predecessors within the department had occasion to discuss the activities of the TCFUA in relation to what I will describe as standover tactics with manufacturers? If I were to mention the name, Seaborne Clothing, to you and a meeting at the Stamford Hotel in Victoria, does that press any buttons or ring any bells? It does not seem to.

**Mr Wilson**—No, it does—

**Senator ABETZ**—It does?

**Mr Wilson**—I was framing an answer, I suppose.

**Senator ABETZ**—Good.

**Mr Wilson**—I believe there were a number of complaints made to our predecessor, the Office of Workplace Services, in 2006 regarding what were alleged to be breaches of the Workplace Relations Act. I am not sure from recollection which organisation was named as being involved in them or whether it related to individuals as opposed to an organisation. But certainly there were a couple of complaints made to us which we considered by looking at the preliminary legal issue of whether or not there was a complaint which fitted in our jurisdiction. Was there in fact a breach of the Workplace Relations Act? It would be fair for me to say that I do not have sufficient information with us today to be able to answer the

question in detail, but we concluded those matters by determining that there was not a prima facie breach of the Workplace Relations Act.

**Senator ABETZ**—Can you advise us as to when that meeting would have taken place? What year? If not, take it on notice.

**Mr Wilson**—I will have to take that on notice. I do not particularly recall the meeting you refer to. Is it suggested that I was involved in the meeting or that—

**Senator ABETZ**—Not you personally necessarily, but officials of the department. And I understand this particular function of the department has now been—what is the term?—morphed into the Workplace Ombudsman. Can I ask a question without making it too broad? If you do not answer as broadly as I am asking it, that will be understood but I invite any relevant information in relation to this matter. I have asked of the department and they knew nothing about it, and the Workplace Authority suggested that they did not. So I am here now with the ombudsman and I think we may have hit the jackpot. But I understand that with changed arrangements people's memories may not necessarily be as fresh as they might otherwise be. So it would be helpful if I could be told whether there was a meeting between—if I may use the loose term—officers and people representing Seaborne Clothing at the Stamford Hotel in Melbourne and whether there were any other meetings surrounding an allegation of TCFUA standover tactics—for want of a better word. If that were not the allegation, could you tell us if there was a complaint about the TCFUA; whether it was investigated; and what conclusions were drawn et cetera?

**Mr Wilson**—We will take that on notice.

**Senator ABETZ**—Can I move to a media release issued on 14 April 2008. The heading was 'Massive Penalty Awarded in Workplace Ombudsman Case against Tasmanian Hotel Owner', and I assume that the Workplace Ombudsman accepts that they should be conducting themselves as a model litigant?

**Mr Wilson**—Certainly we do. We are bound by that.

**Senator ABETZ**—In that press release, there is a statement—do you have it in front of you or not?

**Mr Wilson**—We do.

**Senator ABETZ**—Excellent. The fifth paragraph from the bottom reads:

The claimant alleged she was underpaid during the period of her employment because on commencement she was informed that she would be paid as per an Australian Workplace Agreement; however she claimed not to have seen or signed the document.

Whilst I accept and understand that that allegation may have been put to you, and that was repeated to you in good faith, are you in fact aware that an Australian workplace agreement does exist, and is allegedly signed by the complainant? First of all, are you aware that there is such a workplace agreement in existence, because I understand a copy was provided to your office when the initial investigation took place?

**Mr Johns**—I would have to take on notice whether or not we had advice about the existence of the AWA. The important matter in the proceedings obviously was that there were found to be significant breaches of the relevant award.

**Senator ABETZ**—I am aware of all that, and I have read the judgment et cetera. I am just wanting to know about this specific issue, because I do not believe that anybody in the ombudsman's office sought to deliberately mislead or take the eggbeater to this to whip it up into something that it was not, so I am not trying to impute improper motives for the sake of a cheap headline. What I am talking about is the thoroughness of processes which apparently led you, unfortunately, to make a media statement which, on the face of it, would seem to be incorrect and caused additional grief to somebody who, of course, had their name plastered all over the media for underpayments.

**Mr Johns**—To the extent that the media release says that the matter came to our attention and the person made that allegation at that time, it is, I understand, factually correct. In terms of whether later in time we were made aware of the existence of that AWA and were provided with a copy of it, I am content to take that matter on notice.

**Senator ABETZ**—Yes, if you could, because, as I understand it, you did in fact have an officer in charge of investigating this complaint—I do not want to mention names here for the sake of a whole host of people—and that officer was taken off the case after it was acknowledged that the calculations had been mucked up by a factor of three in relation to the underpayment. Can you confirm to me that an officer was taken off the investigation of this case?

**Mr Johns**—I cannot, Senator. The underpayments were ultimately in the end somewhere in the order of \$24,000 in respect of 41 employees, so they were significant underpayments as to those employees.

**Senator ABETZ**—Some of whom, if I might say, have in fact offered to pay the money back to the person concerned because they do not accept that they were in fact underpaid. The point I am making is this: officials who are tasked with calculating these payments can be out on a number of occasions in calculating the correct figure but we do not seem to afford the same opportunity to an employer who similarly goes about in good faith calculating and comes up with a wrong answer. Of course she who pays the wages is prosecuted and she—it was a 'she' in this case—who does the investigation and who similarly mucks up just simply gets taken off the case and somebody else is substituted. We do not give the same benefit of the doubt or the same leeway when people are calculating what are often matters of some complexity—let's put it that way.

**Mr Johns**—I do not accept at all that employers are denied procedural fairness in these matters. Certainly calculations are undertaken by our workplace inspectors. Every opportunity is made to provide those calculations and the basis of those calculations to the employers concerned and we explain why we say the underpayment has occurred. They have every opportunity to tell us why they think we are wrong and to explain that to us.

**Senator ABETZ**—And that did occur.

**Mr Johns**—And that occurs, but ultimately in this matter there was a finding that the employer had breached the law and underpaid some 41 employees in excess of \$24,000, and the court thought it so serious that it imposed a sanction of \$70,000.

**Senator ABETZ**—What I would ask you to do is just check through your files, see if the initial investigating officer was in fact taken off the case and, if so, what were the

circumstances surrounding her being taken off the case—and I would plead with you not to provide the name of the official in the answer. That is not part of the exercise in any way, shape or form, because, as my constituent—I was about to say ‘my client’—would say—and I know you would love me to get the wig and gown back on, Minister Wong, and get out of this place but I am not going to—

**Senator Wong**—If you were, then I would probably point out that you appear to be litigating a matter that was determined by the Federal Court and on which there was no appeal lodged, so I am a little unclear as to the point of the question in this matter.

**Senator ABETZ**—The point of the question is ‘misinformation’, and I do not say ‘deliberate misinformation’, in a media release in relation to information that my constituent says was initially presented to the initial investigator. That initial investigator mucked up the calculations a number of times, was taken off the case, somebody else came in, and it would appear that the AWA that was signed—but never lodged, and that is not in dispute—was then, it would appear, never passed on to the person that was then put in charge of the investigation. As a result, the ombudsman may well have misdirected themselves in relation to that public statement. I am not saying that anything of this sort was done with malice or deliberately. How many cases have you investigated, Mr Wilson? There must be hundreds.

**CHAIR**—Just before we move on, Senator Abetz, I note you are quite within your rights to pursue this questioning and I think that is appropriate. But, given that it is now on the public record before the committee, I was wondering whether you could table the press release and whether you would be able to provide to the committee on notice the actual judgement. I think that would be for the completeness of the record.

**Senator ABETZ**—Yes, that is fine.

**Mr Wilson**—Chair, if I may respond to the senator—

**CHAIR**—Yes.

**Mr Wilson**—there are a couple of points which the senator was asking us to look at, one of which is whether or not the media release might be wrong in any respect. We will certainly check that and if we need to correct that then we will. In respect of the process of our investigation and whether or not the inspector was moved or anything of that nature, we will also check that as well.

**Senator ABETZ**—Thank you.

**Mr Wilson**—The point I would put over and above that—to take up your last point, without undermining our core process—is that litigation is a fairly rare and special thing, but in the course of the past 10 months we have taken something like 66 matters to court and completed 42. That is in connection with 19,000 people whom we have helped over the past 10 months. The process which we have and which Mr Johns’s legal team runs is, as you indicated, part of the model litigant process. We are bound by those rules. We have a litigation policy, which is available on our website for people to see. Obviously, when matters are tried in the Federal Court, there is a very rigorous process to make sure that agreed statements are fact and that there is other evidence where that is required.

**Senator ABETZ**—This person pleaded guilty, as I understand it. Is that right?

**Mr Johns**—Yes. After we commenced the proceedings, the underpayments were made good, and then we proceeded to a penalty hearing in the matter.

**Senator ABETZ**—It is a matter of what processes are in place to avoid this sort of situation—if my information is correct. I want to ensure that that is on the record. I cannot vouch that what I am putting to you is correct, but, if it is, it would be something for the Ombudsman's office to look at.

In relation to the moneys collected in this particular case, can you indicate how much has been paid out to the individual employees and to how many of them. I understand you have nearly collected all the moneys in relation to this matter of the claims of the individual employees. I would like to know when you received the money and then when the money was paid over to each individual employee, but not the name of each individual employee—if that makes sense.

**Mr Johns**—There are aspects to that question that I will need to take on notice. But the underpayment amount of in excess of \$24,000 was paid after the proceedings had been commenced but before the completion of the hearing, obviously. So the moneys have been received. It was in respect of some 41 employees. I cannot give you the exact amounts—

**Senator ABETZ**—They varied between employees, as I understand it.

**Mr Johns**—That is right. We can take the remainder of the question on notice.

**Senator ABETZ**—I understand that. I will have other questions that I will place on notice, and I shall return. Thank you very much for that.

**Senator BOYCE**—Mr Wilson, I am just looking at the website, and it says: 'Money recovered for workers, \$40,778,000. Workers assisted, 42,482. Penalties, \$1.78 million.' I think Mr Johns partly answered this question earlier, but what period does that cover?

**Mr Wilson**—The period covered by the website information is from the 27 March 2006, which was the date of the formation of the Office of Workplace Services.

**Senator BOYCE**—So we are looking at over two years worth of penalties.

**Mr Wilson**—Yes.

**Senator BOYCE**—You pointed out that in the last 10 months—

**Mr Wilson**—In the past 10 months—

**Senator BOYCE**—That being from 1 July, last year.

**Mr Wilson**—Correct.

**Mr Johns**—The penalties in the current financial year are \$1.2 million.

**Senator BOYCE**—To the end of May?

**Mr Johns**—Yes, to 30 April 2008.

**Senator BOYCE**—How much was it?

**Mr Johns**—It is \$1.2 million in penalties.

**Senator BOYCE**—For the sake of completeness, can you put in those other figures for that same period?

**Mr Wilson**—The number of claims received—sorry I do not have the benefit of—

**Senator BOYCE**—‘Workers assisted’ and ‘Money recovered for workers’.

**Mr Wilson**—The most robust information I can give you is for the claims finalised, which is \$19,949, and that is between 1 July 2007—

**Senator BOYCE**—Does that relate to workers? No—

**Mr Wilson**—Yes, effectively. Money received in that period is a total of \$25,128,011. Mr Johns has given you the penalties recovered.

**Senator BOYCE**—If you are able to give me the figures for the first three quarters of this year compared to your first year in those terms that were used on the website.

**Mr Wilson**—We will provide you with a sheet now, if you could have it copied.

**Senator BOYCE**—My other question relates to some questions I was asking the Workplace Authority this morning. You take quite an educative role within the Workplace Ombudsman in terms of providing information to people about their rights and conditions. Is that correct?

**Mr Wilson**—We do, yes.

**Senator BOYCE**—It seemed that there was a bit of an issue about which gateway people should be going through and that a lot of people were using the approach ‘pick a gateway, any gateway’ to get themselves into the system. How do you distinguish yourself and your services from the Workplace Authority to the individual person?

**Mr Wilson**—That is a fair question. The position that we have fairly consistently put throughout the other agencies and also into the community is that in the first instance people should be contacting the Workplace Authority and the 1300 telephone number—which escapes me for the minute—is the number that we encourage people to contact. It is on that number that they can obtain advice about what they should either be paid as an employee or be paying their own employees. We have a 1300 number as well, which we advertise to people when they either have a claim which is being looked at by the Workplace Ombudsman or are contemplating lodging one, and so the services which we provide are obviously very targeted to people who think that there is a compliance issue that needs to be looked at. The relevant numbers: the Workplace Authority is 1300363264.

**Senator BOYCE**—I had better ring them straight away!

**Mr Wilson**—And the Workplace Ombudsman Australia-wide is 1300724200. As I said, the distinction there is that we are not equipped, I suppose, to help people through precisely what they should be paying or be paid as an employee. That is a very large volume service. But we can obviously help people when they get to the point of thinking that they have not been paid properly or they have an investigation actually on foot with us.

**Senator BOYCE**—Would most of your clients, for want of a better word, start with a phone call to you?

**Mr Wilson**—It is a bit of a moot point as to how matters are started with us. In a formal sense, claims are started by people submitting a claim form.

**Senator BOYCE**—Yes, but—

**Mr Wilson**—But very often it is through either contact with the Workplace Infoline or direct contact with our office. We have in each of our offices a front counter and it is quite common that people will find their way to that counter and say that they wish to make a complaint. But in most instances it is through the claim form, which is either received in the mail or through the website.

**Senator BOYCE**—The Workplace Authority keeps very good figures on the number of phone calls they receive and breakdowns thereof. Does the Workplace Ombudsman do the same?

**Mr Wilson**—We keep very good figures as well.

**Senator BOYCE**—Good.

**Mr Wilson**—We can help you with those, if you like. Do you want to know the number of phone calls we had?

**Senator BOYCE**—Yes please, and perhaps if you could describe how you classify them and why.

**Mr Loizides**—We currently receive approximately 1,500 phone calls per week, and we do keep some statistical data on the types of phone calls we get. I can take that question on notice and provide those details to you, if you like.

**Senator BOYCE**—That would be good; thank you.

**Mr Wilson**—I have some information which might be able to assist you short of taking it on notice. To our direct Workplace Ombudsman helpline this financial year there were 83,044 calls.

**Senator BOYCE**—This financial year until?

**Mr Wilson**—From 1 July 2007 through to 30 April 2008. If it makes any sense, for the same period the Workplace Ombudsman website had just over half a million unique visitors: 572,668.

**Senator BOYCE**—Thank you.

**CHAIR**—Are they just general inquiries, or can you break them down into general inquiries and formal complaints?

**Mr Wilson**—That will be the ‘take it on notice’ part of it.

**CHAIR**—Okay.

**Senator ABETZ**—First of all, I understand—let’s get the parameters right—that you are going to get an additional \$17.7 million over four years. Is that correct?

**Mr Wilson**—That is.

**Senator ABETZ**—Can you provide a breakdown of which areas of the agency this money will be allocated to?

**Mr Wilson**—That was announced in the course of the portfolio additional estimates statements, I believe, in February of this year, and it effectively took into account that the

volume of work that the office would be doing over the next couple of years until the creation of the Fair Work Australia organisation would remain high and that, in particular, there would continue to be a fairly significant call on our services from looking at fairness test matters. On that basis, the funding was effectively to ensure that the kind of service delivery that we are providing can continue until the policy announcements by the government are made and the financial determinations are made as well. So, to answer your question directly, it is not in any particular area of the organisation. It is ensuring that the services of the Workplace Ombudsman continue as they have been.

**Senator ABETZ**—Minister, I do not know if you can assist us in this regard. It clearly was a decision of government to provide the extra money. Was there any special thinking that the Ombudsman needed more money in relation to the fairness test matters that bulked up the majority of that amount of money, or was it just because of the ongoing number of complaints that it was deemed that the Ombudsman needed more resourcing?

**Mr Wilson**—My recollection is that the original portfolio budget statements had our funding starting to decline from the 2008-09 financial year and that in effect there was a need to take another look at that in terms of the continuing workload of the Workplace Ombudsman. Mr Scully, our chief financial officer, has just reminded me that originally our budget was due to go down from \$60.9 million in 2007-08 to \$36.3 million in 2010-11. That is a very significant reduction, obviously. The measure which was announced in the budget provided a total of \$16.7 million over three years, or \$17.7 over two years. It effectively provided us with one chunk of about \$5.8 million in 2008-09 and another chunk of about \$11.9 million in 2009-10 in order to make sure that we kept our operations as they were.

**Senator ABETZ**—But you have now got a new workload, or an extra workload—I do not care what we call it.

**Mr Wilson**—The new workload comes about, I suppose, as a result of the continuation of the fairness test, if that makes any sense, in that there is a continuing expectation that we be involved in recovering money for workers where the fairness test has failed, and the expectation certainly is that that will continue for the remainder of this financial year and possibly longer. But there are also, I suppose, other drivers within the Workplace Relations Act in terms of the kind of investigations we do. Many of those investigations which are time consuming and also legally intensive relate to agreement making, and I suppose the funding is a recognition of those sorts of things.

**Senator ABETZ**—So that I get a handle on it, we agreed \$17.7 million over four years, or not?

**Mr Wilson**—\$16.7 million over three.

**Senator ABETZ**—Commencing from which year?

**Mr Wilson**—In 2008-09.

**Senator ABETZ**—So this coming financial year, there is going to be \$16.7 million for the three years 2008-09, 2009-10 and 2010-11. Is this correct?

**Senator Wong**—I am sorry, Senator, I am having a little trouble discerning what the point is. I will confirm with the officers, and Mr Wilson and Mr Scully can correct me. As I

understand, the \$16.7 million or thereabouts was disclosed through the additional estimates process. It was additional funding over and above the forward estimates funding which was announced in your last budget. The government has in fact allocated more money to this.

**Senator ABETZ**—That is right. That is what I asked. My very first question was, ‘Have you been provided with an additional \$17.7 million over four years?’ In fact, it is \$16.7 million so that has been corrected for me. Do not be so defensive, I was just trying to find out where the money—

**Senator Wong**—I was not being defensive; I was having trouble discerning the point of the questions.

**Senator ABETZ**—Don’t you worry about the point of my questions. If they are in order, I am allowed to ask them.

**Senator Wong**—You simply asked me if I was being defensive, and I said I was as having difficulty discerning the point of the question.

**Senator ABETZ**—That is kind of you to reflect on your difficulties, but that does not concern me. In the \$16.7 million over three years, can you remind me how that is allocated within each of those three years? We have \$11.9 million in 2009-10, is that right?

**Mr Wilson**—That is correct.

**Senator ABETZ**—How much in 2008-09?

**Mr Wilson**—\$5.8 million.

**Senator ABETZ**—That would make?

**Mr Wilson**—\$17.7 million and then there is a reduction of \$1 million in 2010-11.

**Senator ABETZ**—That is where I got my \$17.7 million from and that is why you are talking about \$16.7 million because there is going to be a reduction in 2010-11. All is revealed now. That was the point of my questioning, trying to get my head around those issues. Can we now be provided with a breakdown of existing leases and offices throughout Australia and, believe it or not, I do not expect you to have that in your back pocket, so can you take that on notice?

**Mr Wilson**—These are property leases that you are referring to?

**Senator ABETZ**—Yes. You would have a number of offices around Australia—26 or something?

**Mr Wilson**—We have 26 offices. One of the concerns I might have is that some of that information may well be commercial-in-confidence. It is also the case that some of the arrangements we have for property may not be direct leases. I will have to check on those in that they may be leases held by DEEWR or another agency, which we are then using for a fee.

**Senator ABETZ**—Chances are that you would have some arrangement whereby some notional rent was paid, and, if that is not the case, just make reference to that. With great respect—

**Senator Wong**—I want to assist in this process, given Mr Wilson’s concern about some of the detail. Is your request essentially the cumulative cost of accommodation?

**Senator ABETZ**—No, it is not. As I understand it, there are 26 separate office sites from which the ombudsman operates around Australia. Is it correct that there are 26 different office sites from which the ombudsman operates around Australia? Or is it 27?

**Mr Wilson**—It is 27. There are 26 cities.

**Senator ABETZ**—Ever growing, that is great. Can I be told in relation to each one of those offices, for how long the lease or occupation arrangement is in place and if you are in departmental accommodation without a lease whether it is just ad hoc or whether it is for an agreed period of time. I cannot see what the commercial-in-confidence aspect is about each of those leases and what it costs. Just give me the total lease cost, but also identify in which offices you do not actually pay any rent, if there is such.

**Mr Wilson**—We pay for all of them. I am fairly confident of that.

**Senator ABETZ**—I am sure the departments would sting you even if there is not an official lease arrangement in place. Also, a renewal date for whatever the arrangements may be either leases or arrangements with the departments.

**Mr Wilson**—We can do that.

**Senator Wong**—So it is the cumulative cost of accommodation and lease date arrangements, essentially, for all of the offices?

**Senator ABETZ**—In relation to each individual 27.

**Senator Wong**—But the cumulative cost?

**Senator ABETZ**—Yes. Could I ask for the cost of each one, unless there is some commercial-in-confidence? Even for my humble electorate office, people can ask questions as to how much that is costing the taxpayer, and I would have thought that people should be able to find that out as well. If there are some particular reasons, I will accept that.

**Senator WATSON**—How many contractors has the agency hired since 1 January 2008?

**Senator Wong**—Contractors?

**Senator WATSON**—Contractors. Are they new positions or are they replacing existing contractors?

**Mr Wilson**—I thought we had that information, Senator. We have consultants; we do not have contractors. I am sorry about that; we will need to take that on notice.

**Senator WATSON**—Perhaps you might give me a breakdown of consultants and contractors. At what level are they working? What program or project are they working on? And what is the duration of the contract for each of those consultants or contractors? In February and March 2008, when we were doing an inquiry into the bill, there was quite a big problem concerning Qantas valet workers. What was the outcome of that?

**Mr Wilson**—Before I take that question, I have just been reminded by Mr Johns, our chief counsel—if I can come back to the contractors and consultants question—that one of the things which we do fairly significantly is to pay external legal firms for services, and they are consultants to us. Is that the information you are seeking?

**Senator WATSON**—Yes, if they are consultants.

**Mr Wilson**—Again, we might have some commercial sensitivities about that, but we will see how we can package that information. In relation to the Qantas valet question which you just asked us, I will ask Mr Campbell to answer the question.

**Senator WATSON**—It was quite a big issue before our committee, and a lot of the committee members expressed some concern about the sorts of arrangements. I am interested in the outcome because I have not read anything in the papers.

**Mr Campbell**—We commenced an investigation into the offer of AWAs to employees working at the Qantas valet sites around Australia in February this year. The concern was that duress was being applied to employees in the course of those offers. The investigation concluded in March this year, and we did not establish any breaches of the Workplace Relations Act.

The particular issue of concern we were looking at in this matter was that Hertz Australia had previously provided valet parking services under a contract arrangement with Qantas. Prior to the conclusion of that contract, Qantas went to tender on the services and ultimately Equity Valet Parking was awarded the contract to provide those valet parking services to Qantas. In the course of that transaction and as a result of Hertz losing that contract, it in effect laid off a number of its employees. The manner in which it did that was by offering redundancies to those employees that were excess or offering redeployment within Hertz.

Equity Valet Parking made offers of AWAs to some of those excess employees of Hertz. Those offers of employment were conditional on the individuals accepting the AWAs. As the employee offers were new, it was determined that the employees could be required to sign an AWA as a condition of employment. Section 400(6A) of the legislation at the moment provides that, where transmission of business is occurring, that circumstance cannot unfold. However, we determined as part of this investigation that there had been no transmission of business between Hertz and Equity Valet Parking; in fact, it had been one contract ending and a new one starting. Therefore, there was no breach of the Workplace Relations Act as a result.

**Senator WATSON**—Telstra redundancy was another issue. Did you look at that one?

**Mr Campbell**—The redundancy cases involved what?

**Senator WATSON**—It was a Telstra redundancy as a result, I think, of a new agreement. They lost their previous conditions, as I recall.

**Mr Campbell**—We do have an investigation afoot that involves Telstra. That concerns an offer of AWAs. I am not sure that it involves redundancy, and I could not give you a clear answer on that at the moment.

**Senator WATSON**—This was a matter that was drawn to the committee's attention by the Communications, Electrical and Plumbing Union, the CEPU. There was a concern about the possibility of provisions of this bill extinguishing the old IR redundancy provisions. The consequence of that would have been a diminished payout on redundancy.

**Mr Campbell**—I am sorry; I am not familiar with that investigation, so I cannot assist you there.

**Senator WATSON**—Did the matter go before the ombudsman or not?

**Mr Campbell**—I am not aware of that, but I can take that question on notice.

**Senator WATSON**—Could you take a look at it? I would be interested in following that up.

**Mr Wilson**—We will take that on notice. I am with Mr Campbell; that does not ring any bells. That is not to say it has not been looked at, but we will check on the matter.

**Senator WATSON**—I would be surprised if it had not been looked at.

**Mr Wilson**—You say that was referred to in the evidence earlier in the year?

**Senator WATSON**—Yes, it was on page 60 of the Telstra redundancy report.

**CHAIR**—Thank you, Mr Wilson and officers, for your participation today. We will now move to the ABCC.

[4.25 pm]

### **Australian Building and Construction Commission**

**CHAIR**—Welcome Mr Lloyd and other officers of the ABCC. Before we move to questioning, I invite you to make an opening statement to the committee, if you so wish.

**Mr Lloyd**—I have no opening statement.

**Senator BOYCE**—Budget Paper No. 2 has \$3 million taken out of the budget from the 2007-08 financial year for the Australian Building and Construction Commission. Is that correct, Mr Lloyd?

**Mr Lloyd**—Yes.

**Senator BOYCE**—I would like to talk through where that takes us. How many employees did you have, say, at the end of last year?

**Mr Lloyd**—That might be in the annual report. I do not have that number at my disposal. I will just check with my staff. We have been increasing in numbers quite consistently. We have now reached 143 staff at last count.

**Senator BOYCE**—When was that count?

**Mr Lloyd**—That would be in the last week or so.

**Senator BOYCE**—Last Wednesday?

**Mr Lloyd**—No. The last week or so; it would be May 2008.

**Senator BOYCE**—With a \$3 million drop from the estimates earlier in this year, how have you gone about increasing your staff in this way?

**Mr Lloyd**—With the \$3 million reduction, in January this year I reviewed our projected expenditure for the remainder of the financial year and decided that I could afford to offer \$3 million in savings as part of a portfolio savings exercise associated with a fair and flexible workplace relations system. I did that confident that it would in no way impact on our ability to discharge all of our functions and to provide all of our services to the industry. We look at the budget on a regular basis in the executive—the chief financial officer gives us reports every month—and I concluded that we could offer up that saving and continue to discharge all of our functions.

**Senator BOYCE**—The golden haired boy, Mr Lloyd! Perhaps you could explain to me where those savings were; perhaps you could just characterise the areas?

**Mr Lloyd**—Our two main expenditure items would be staff salaries and also legal expenses. We commenced in October 2005 and we have been working up to our budgeted staffing figure and we were just part way through that journey. We now have 143; we are funded for staffing of 155. The fact that we have not been able to get to that maximum staffing figure straightaway meant that we had the capacity to offer savings. Also, our legal expenses were not as great as we had budgeted for and therefore there was capacity to make the savings.

**Senator BOYCE**—Can you explain why your legal expenses were not as—

**Senator ABETZ**—More people rolling over?

**Mr Lloyd**—That was one factor, yes. We estimated that a number of our major cases might go to a trial of some days. In some of those cases—particularly a very large case we conducted in Perth—the parties agreed to plead to the contraventions, and therefore the requirement for an extended trial did not eventuate.

**Senator BOYCE**—That sounds like a very good outcome for the government coffers. Could we just go on a bit more with the cases that you have handled. How many notices under section 52 of the Building and Construction Industry Improvement Act have you attended to in relation to breaches since you started?

**Mr Lloyd**—The number is just four under 100, so it is 96 cases.

**Senator BOYCE**—Is that since inception?

**Mr Lloyd**—Yes. From 1 October 2005 to 31 March 2008 the number is 96. I can give you an update on that. Through to 9 May 2008 the figure is 102.

**Senator BOYCE**—So there have been another six. How many notices to attend and ask questions about breaches under the act have you issued over that period?

**Mr Lloyd**—They are issued for the purpose of assistance in the conduct of an investigation, so investigation only occurs if there is a reasonable cause to believe that the person receiving a notice may have information that is pertinent to the investigation.

**Senator BOYCE**—When we get to the number of examinations and so forth conducted, how many of your investigations have resulted in proceedings being taken in court?

**Mr Lloyd**—Are you asking how many matters that involve the use of the section 52 power have resulted in court cases?

**Senator BOYCE**—How many notices to attend and answer questions have you issued relating to breaches that would come under section 52 and then, out of those notices—what is the success rate, I suppose, is what I am asking.

**Mr Lloyd**—These figures are based on the lower figure of 96. Of those 96, four of the notices have involved proceedings which are currently before the courts; 13 have led to proceedings which are now finalised—so that is 17; five were involved in an investigation which resulted in me publishing a section 67 report, which I have the ability to publish; 22

resulted in investigation being closed with no formal proceedings; and for 41 the investigation is ongoing.

**Senator BOYCE**—When you say 13 have been finalised, do you mean they have been through the court procedure?

**Mr Lloyd**—Yes. I might add that the 22 cases where the investigation was closed with no proceedings were still successful, because we found out the truth of the matter.

**Senator BOYCE**—Yes, and presumably behaviour was changed because of it.

**Mr Lloyd**—Yes. I think there has been an impact on the industry's conduct, from the ABCC.

**Senator BOYCE**—I am doing a quick add-up here: we have got 85 of those 96 notices leading to further action; is that a correct assumption to make there? When I add those up I get to 85.

**Mr Lloyd**—I am not sure if it is 85; 17 have resulted in either a case currently underway or a finalised case, five led to a section 67 report, 41 investigations are still ongoing, and 22 are closed with no proceedings.

**Senator BOYCE**—Okay. We will leave it there. Let's look at those 17 court cases. Have any of those been challenged since they have been to the Federal Court?

**Mr Lloyd**—Those cases have been finalised and penalties have been imposed. I am almost certain in saying that there has been no challenge to that.

**Senator BOYCE**—Or to your compliance powers related to those cases?

**Mr Lloyd**—Yes, there has been a challenge to our compliance power in the Federal Court on a couple of occasions. There have been three challenges to the power in the Federal Court. One involved an appeal to the full Federal Court, and the use of the power was upheld. Another case went to the Federal Court, and again the Federal Court found in favour of the ABCC. So there have been three challenges, and none have been successful.

**Senator BOYCE**—That was going to be my next question. How important do you feel your compliance powers under section 52 are in relation to those cases and witnesses appearing in the cases that you have successfully prosecuted?

**Mr Lloyd**—The section 52 power is, of course, designed to break down the cone of silence which tended to permeate the industry. It has been useful in doing that. Sometimes, of course, people choose to or say they will give evidence subject to it being done under section 52, because they may be afraid of reprisals if they are seen to be cooperating with an investigation by the ABCC.

**Senator BOYCE**—If they are seen to cooperate?

**Mr Lloyd**—Yes. Sometimes they are—

**Senator BOYCE**—Who are they frightened of?

**Mr Lloyd**—Other parties in the industry who may be, in effect, the target of the investigation may not want them to give evidence. That is one basis on which the section 52 power comes into use. Also, on other occasions, people just refuse to cooperate with us

voluntarily in an investigation and therefore we feel we have no option if they will not voluntarily cooperate. We then use the power.

**Senator BOYCE**—How effective do you think you would be if you did not have those compliance provisions that are within section 52? How crucial is it to the successful operation of the commission?

**Mr Lloyd**—I would say it has been successful. It has been effective in breaking that cone of silence. Having used it on 102 occasions, or whatever it is, obviously we feel that it is a power and a tool which is necessary for us to use to discharge our responsibilities under the act.

**Senator BOYCE**—We were not terribly sure about the number of employees at specific times, so could I put that question on notice?

**Mr Lloyd**—Yes.

**Senator BOYCE**—I just want a snapshot of employees up to the end of May for this financial year and for the last financial year, and a sense of who has changed and where within the classifications.

**Ms Hausler**—The number of staff last year as at the end of June was 134. The number now is 140 plus the two deputy commissioners and the commissioner, so 143 as at today.

**Senator BOYCE**—Would I be able to get a breakdown of the classifications for those staff?

**Ms Hausler**—We have them here.

**Senator BOYCE**—Thank you.

**Ms Hausler**—What would you like to know?

**Senator BOYCE**—Just the classifications.

**CHAIR**—It would be easier if the officer tabled the document rather than go into each one.

**Senator BOYCE**—I am happy for them to do that.

**Mr Lloyd**—Certainly.

**Senator BOYCE**—How many classifications are there, just roughly? Two or three or 20?

**Ms Hausler**—There are three broadband classifications and two SES classifications, so five in total.

**Senator BOYCE**—Okay, just read them out.

**CHAIR**—I was assuming there might be 145.

**Ms Hausler**—As at today, there are eight people in broadband level 1, 83 in broadband level 2, 40 in broadband level 3, six SES band 1 and three SES band 2 officers.

**Senator BOYCE**—Thank you. I do have some more questions, Chair, but someone else can have a go.

**CHAIR**—Senator Abetz.

**Senator ABETZ**—Last time around, you kindly took on notice two questions: EW126 was one of them and I asked how many individual employees have made representations to the ABCC. You told me that, as at 27 March 2008, there had been 368 such representations or complaints from employees. Are you able to provide us with an update? Wherever you may have cut off your figures, I do thank you for having such up-to-date figures as at 27 March, but do you have April or May? If not, you could take it on notice. There are no follow-up questions that arise.

**Mr Lloyd**—As at 5 May 2008, the figure is 384.

**Senator ABETZ**—Thank you. Has there been an increase in the number of freedom of association prosecutions?

**Mr Lloyd**—That was your other question on notice.

**Senator ABETZ**—EW125, that is right. We were told that there were nine that had been undertaken in relation to the issue of freedom of association. Are there still nine?

**Mr Lloyd**—No, there are now 10.

**Senator ABETZ**—Can you tell us what has happened with those 10? Is that easy for you to tell us? One prosecution, nine successful or nine unsuccessful; what is the break-up; how many are still in train? Take it on notice, if need be.

**Mr Lloyd**—Yes, we will take it on notice.

**Senator ABETZ**—Thank you.

**Senator WATSON**—What is the impact of the budget cuts? Is it about \$3 million?

**Mr Lloyd**—Yes.

**Senator WATSON**—Could you explain how that is going to impact on your work?

**Mr Lloyd**—In January, I looked at how we were travelling with our budget and what we projected to end the year at. I came to the conclusion, which I advised the secretary of the department, that we could afford to make a \$3 million saving that would not in any way affect how we discharged functions of the services that we offer to the building and construction industry. As I mentioned before, we were tracking under the budget and we could therefore afford to make the savings.

**Senator WATSON**—Very good. In terms of the compliance with the national building code, there is no problem there about your ability to do that sort of work?

**Mr Lloyd**—No.

**Senator WATSON**—That is great. Well done.

**Senator BOYCE**—We were talking earlier, and you mentioned, I think in answer to a question from Senator Abetz, how many investigations all up you have been pursuing. How many of those have been finalised and how many of them are continuing?

**Mr Lloyd**—Since the ABCC started we have finalised 221 investigations. In the current financial year to 6 May, we finalised 64 investigations and at the moment we would have 60 investigations—that is, open investigations—underway.

**Senator BOYCE**—Are the 41 that relate to section 52 included in that 60?

**Mr Lloyd**—No. They are compulsory hearings, as such, and the investigation numbers I have quoted are separate to that.

**Senator BOYCE**—Let me get this clear. Investigations could turn into compliance issues.

**Mr Lloyd**—I see. Yes, sorry; I beg your pardon. We gave you a figure before that 41 of the section 52 hearings involved ongoing investigations. Those 41 would relate to the 60 current investigations I just told you of. Of course, more than one section 52 hearing may relate to the one particular investigation.

**Senator BOYCE**—Okay. I think I am getting sorry I asked that question! Could you just—and I think we have started this processed—break down the subjects of the investigations and the noncompliances or alleged noncompliances that these investigations cover? Do you have topic areas or subject areas that we could put them in?

**Mr Lloyd**—We have a breakdown for proceedings that we have commenced or finalised in court. I am not too sure we have those figures for investigations at the moment.

**Senator BOYCE**—I think your website sets out some of that stuff very very well, but until you put it into that public arena you do not classify it?

**Mr Lloyd**—No. We obviously have to understand what sections of the legislation are potentially contravened, and the cases typically involve unlawful industrial action—coercion to enter a union agreement, coercion to employ people or coercion to have employees be members of a union. They are the offences which typically are subject to investigations.

**Senator BOYCE**—Do you refer matters to other bodies? I understand that from time to time you may refer matters on.

**Mr Lloyd**—Yes, we do.

**Senator BOYCE**—Could I just get some sort of idea of who and what you have referred, say, in this financial year for instance?

**Mr Lloyd**—Yes, I can give you some figures on that. Since the inception of the ABCC in October 2005 we have referred five members to state police, four matters to the Workplace Ombudsman, two matters to the ACCC, and one matter each to the tax office, the AFP, ASIC and the Commonwealth DPP.

**Senator BOYCE**—Has there been any change in the level at which you have referred matters in the last six or nine months?

**Mr Lloyd**—I do not think there has been any discernible change that I am aware of, no.

**Mr Hadgkiss**—There has been an increase in investigations of late.

**Senator BOYCE**—And therefore something of an increase in referrals as well?

**Mr Hadgkiss**—Not necessarily. Those are more matters pertaining to the functions of the ABCC.

**Senator BOYCE**—Can we talk in any general way about the matters that were referred there?

**Mr Lloyd**—It is very difficult because some of those matters are obviously subject to investigations by those bodies, and therefore I am reluctant to talk about them tonight.

**CHAIR**—Maybe, Mr Lloyd, you could take that on notice and provide the answer to that question based on what you can.

**Senator BOYCE**—Whatever you can. Part of my interest there is why they are coming through your system into this area. Could I perhaps ask you: is it that in the course of your investigations you have found an activity that you regard as more serious than the initial reason the cases were referred, or would they have more properly been dealt with elsewhere? Does that make sense?

**Mr Lloyd**—Yes. Certainly the second point is the key reason. If we find there is a possible contravention of another piece of legislation then as public officials we are obliged to bring that to the attention of the other body.

**Senator BOYCE**—Do you need to sometimes make the judgement between prosecuting your case or handing the perpetrator over, for want of a better term?

**Mr Lloyd**—It is a bit hard to say.

**Mr Dalglish**—The answer is yes. Sometimes in any investigation there will be an aspect of it which belongs to another jurisdiction, if I could put it that way, and an aspect of it that belongs to our jurisdiction. Usually through discussion with that body we will determine which one will take it forward.

**Senator BOYCE**—Which is the best way to handle it.

**CHAIR**—Senator Boyce, do you mind if I follow up on that? I am interested. Do you then monitor what actually happens, or whether the referred agency actually acts upon the referral?

**Mr Lloyd**—We do to the extent that we can, yes. Sometimes they have limited capacity to disclose to us what they are doing with the matter, but where they do, in principle, we like to keep across it, yes.

**CHAIR**—Could you take that on notice, again within the constraints of what you can tell us? If you could tell us what you can tell us, that would be appreciated.

**Mr Lloyd**—Yes.

**CHAIR**—Thank you. Thanks, Senator Boyce.

**Senator BOYCE**—Going back to that area, I understand that a Code Monitoring Group existed, which you were a part of—is that correct?

**Mr Lloyd**—Mr Hadgkiss is a member of the Code Monitoring Group.

**Senator BOYCE**—And that Code Monitoring Group has existed for the duration of the commission's existence—is that correct?

**Mr Lloyd**—Yes.

**Mr Hadgkiss**—Yes. The Code Monitoring Group convened as recently as, I think, a few months ago and will be reconvening again in July.

**Senator BOYCE**—In July. When you say 'convened'—

**Mr Hadgkiss**—We physically come together to discuss issues. The ABCC is a member. The department, DEEWR, chair it. Other representatives come from Prime Minister and Cabinet, Finance, Defence and the department of infrastructure.

**Senator BOYCE**—When you say ‘convened’, are you convened by the chair from DEEWR or do you have a regular meeting every two months?

**Mr Hadgkiss**—We physically meet in Canberra at the premises of the department. From recollection, our meeting was held in April, and we will meet again in July.

**Senator BOYCE**—Is there a regular schedule for these meetings?

**Mr Hadgkiss**—As in the agenda?

**Senator BOYCE**—No, as in the first Monday of the third month.

**Mr Hadgkiss**—No, it goes on the availability of the members. The same people tend to be the representatives, and it is just convened when they are available to meet. It is not something like the first Wednesday of each quarter or anything like that—it is when people are available, and when there are matters to be discussed, obviously.

**Senator BOYCE**—Do you still refer the results of your investigations to the Code Monitoring Group?

**Mr Hadgkiss**—Yes. There is, in fact, a subgroup—a code working group, made up of the same departments I have just mentioned and chaired by the department—which does feed into the Code Monitoring Group proper.

**Senator BOYCE**—And code site visits?

**Mr Hadgkiss**—They are carried out by the ABCC. If you want an indication of numbers I would have to take that on notice, but they have certainly increased of late, which is a reflection of the increase in recruiting of personnel on code monitoring activities.

**Senator BOYCE**—Going back to that staffing band—at what level would the people who conduct the code site visits be?

**Mr Hadgkiss**—It is headed by an SES officer who was recruited late last year. I think the next person is the assistant director, who would be at the band 3 level. There are a number of team leaders for each jurisdiction—each of the major states: Victoria, New South Wales and Western Australia and Queensland. Then there is a number of staff within the teams in those jurisdictions.

**Senator BOYCE**—It would be good if you could take on notice that question regarding the number of site visits related to the code. I do not know if you are able to break it down into monthly figures, but that would be wonderful.

**Mr Hadgkiss**—We can.

**Senator BOYCE**—Whatever is reasonably easy to provide. Can you say how many projects are currently under construction that are, or have been, subject to the code—maybe for this financial year?

**Mr Hadgkiss**—That, again, I would have to take on notice; that number is vast. But the activities of the code group are not confined to purely government work. A large number of builders are also subject to code monitoring for their private works.

**Senator BOYCE**—That was going to be my next question. If you had been able to give me that figure, I was going to ask you to break it down into government and non-government.

**Mr Hadgkiss**—We will endeavour to come up with those figures.

**Senator BOYCE**—Thank you.

**Mr Hadgkiss**—I understand there were 378 site visits for the code in this financial year, from 1 July 2007. I imagine that would have been up to the end of May. From September 2006 to the end of May, the figure is 587, so you can see a discernible increase in this financial year.

**Senator BOYCE**—A big increase based around staff.

**Mr Hadgkiss**—And that, of course, does not include audits carried out by the group.

**Senator BOYCE**—No.

**Senator STERLE**—Could you identify for us the functions of the ABCC?

**Mr Lloyd**—The functions are set out in section 10 of the legislation. They are essentially to monitor and promote appropriate standards of conduct in the industry. That is achieved by monitoring and promoting compliance with the Building and Construction Industry Improvement Act 2005, the Workplace Relations Act 1996 and the Independent Contractors Act 2006. We investigate suspected contraventions of those acts and Commonwealth industrial instruments. We institute and intervene in proceedings. We provide advice and assistance to building industry participants regarding their rights and obligations. We disseminate information about the act and also we have the function of providing representation to a building industry participant who might be a party to a proceeding where that is considered appropriate to advance the objects of the act. That is a summary of the functions.

**Senator STERLE**—How many investigations do you have currently? You did say, but I am sorry I did not catch it.

**Mr Hadgkiss**—We have none.

**Senator STERLE**—Sorry?

**Mr Hadgkiss**—We do not have any code investigations.

**Senator STERLE**—No current investigations?

**Mr Hadgkiss**—No.

**CHAIR**—But how many current investigations?

**Mr Lloyd**—About 60 is the number that we mentioned before.

**Senator STERLE**—Hang on, you have no current, but you have 60 current?

**Mr Hadgkiss**—Current? I thought you said code, sorry.

**Senator STERLE**—No, current—I thought I was losing the plot then. You have 60.

**Mr Lloyd**—Sixty.

**Senator STERLE**—Can you tell us what the nature of the alleged breaches are that are the subject of those investigations?

**Mr Lloyd**—As I mentioned before, they cover the matters we normally investigate such as unlawful industrial action, coercion and intimidation in matters like requiring employees to be union members. The variation, termination or making of union agreements employing certain people and freedom of association type things would be typical.

**Senator STERLE**—Right of entry investigations?

**Mr Lloyd**—Yes, breach of right of entry.

**Senator STERLE**—How many legal proceedings have been commenced by the ABCC?

**Mr Lloyd**—We have got those figures here. Just bear with us for a moment.

**Senator STERLE**—Yes, no worries. We are not going anywhere for a while.

**Mr Dalglish**—The figure for proceedings that have been commenced by the ABCC since 1 October until 13 May is 33.

**Senator STERLE**—Why 1 October?

**Mr Dalglish**—That was when the organisation started.

**Senator STERLE**—On 1 October?

**Mr Dalglish**—1 October 2005.

**Senator STERLE**—Sorry, that is why I was sounding confused.

**Mr Dalglish**—In addition to those 33, the ABCC inherited quite a number of cases from the Building Industry Taskforce. They are already in progress.

**CHAIR**—Can you break the 33 down into headings?

**Mr Dalglish**—Yes. There are seven freedom of association, four coercion, one strike pay, seven right of entry, seven unlawful industrial action, five unlawful industrial action and coercion, and two freedom of association and coercion. If you take the two hybrid categories in, there would be nine freedom of association and 11 coercion.

**Senator STERLE**—Nine and 11, did you say?

**Mr Dalglish**—Nine freedom of association, 11 coercion and 12 unlawful industrial action. But you need to realise that some proceedings involve both of those elements.

**Senator STERLE**—Just to confirm, is it the case that the ABCC has the responsibility of investigating or instituting proceedings regarding a breach of an award in the building industry?

**Mr Lloyd**—Yes. We have to investigate and if necessary we can prosecute for breaches of awards or agreements.

**Senator STERLE**—As you did say earlier, as a part of your functions.

**Mr Lloyd**—Yes, that is right.

**Senator STERLE**—Is it the case that the ABCC has a responsibility for investigating and instituting proceedings regarding breach of an agreement in the building industry?

**Mr Lloyd**—We could do that, yes.

**Senator STERLE**—And is it the case that the ABCC has a responsibility for investigating and instituting proceedings in relation to a breach of the Australian Fair Pay and Conditions Standard in the building industry?

**Mr Lloyd**—Yes, I think that is the case.

**Senator STERLE**—And is it the case that the ABCC is responsible for investigating or instituting proceedings under the Workplace Relations Act against a person who has misrepresented an employment relationship as an independent contracting arrangement?

**Mr Lloyd**—In relation to the building and construction industry, we have responsibility for the enforcement and prosecution, if necessary, of the independent contractors legislation.

**Mr Dagleish**—And also the sham contracting provisions of the Workplace Relations Act.

**Senator STERLE**—How many proceedings have the ABCC commenced in relation to a breach of an award in the building industry?

**CHAIR**—It was not in the breakdown of your list earlier.

**Mr Dagleish**—No, of course. There are proceedings in relation to failure to follow dispute resolution procedures in certified agreements.

**Senator STERLE**—Do you mean prosecutions against employers for not following them or against the employees?

**Mr Dagleish**—Generally speaking, it is in an unlawful industrial action context, if there has been a failure to follow dispute resolution procedures in a workplace agreement. We have had a number of those.

**CHAIR**—What about the question? How many proceedings have the ABCC commenced in relation to a breach of an award in the building industry?

**Mr Dagleish**—Unless there is a dispute resolution procedure, I think the answer is none, because they are referred to—

**Senator STERLE**—There have been no breaches of any awards?

**Mr Hadgkiss**—They are referred to the Ombudsman.

**Senator STERLE**—How many proceedings have the ABCC commenced in relation to a breach of a workplace agreement in the building industry?

**Mr Lloyd**—I think Mr Dagleish's answer covers some of that. I think we will have to take on notice whether there has been a breach, particularly of a dispute resolution procedure. I think there have been a number of those.

**CHAIR**—Putting to one side dispute resolution procedures, how many proceedings have been commenced in relation to breach of a workplace agreement in the building industry and to all other breaches?

**Mr Lloyd**—I think there would be very few, if any. We would have to take that on notice.

**CHAIR**—It was not in the list of prosecutions that Mr Dalglish gave us before.

**Senator STERLE**—I get the impression there have not been any. You say you will take it on notice.

**Mr Lloyd**—Yes. As Mr Hadgkiss underlined, these matters are often referred directly—

**CHAIR**—We will come to that.

**Senator STERLE**—How many proceedings have the ABCC commenced in relation to a breach of the Australian Fair Pay and Conditions Standard in the building industry?

**Mr Dalglish**—None.

**Senator STERLE**—How many proceedings have the ABCC commenced in relation to misrepresentation of an employment relationship as an independent contracting arrangement?

**Mr Dalglish**—No proceedings have been taken as yet.

**Senator STERLE**—As yet?

**Mr Dalglish**—That is right.

**Senator STERLE**—Are some in the pipeline?

**Mr Dalglish**—There certainly have been investigations under the sham contract provisions.

**Senator STERLE**—How long ago were those investigations taken?

**Mr Dalglish**—They are ongoing.

**CHAIR**—How many? Out of the 60 that I think you told us are on foot at the moment, how many are to do with the independent contracting arrangements?

**Mr Dalglish**—There is one that I know of because I know that it is the subject of legal advice. Actually, there are two that have been the subject of counsel's advice.

**Senator STERLE**—So that has commenced?

**Mr Dalglish**—No. No proceedings have commenced.

**Mr Hadgkiss**—In fairness, there would be very few referrals of that nature. We can give you a breakdown of that.

**CHAIR**—We will come to that. You will have plenty of opportunity.

**Senator STERLE**—How many matters have the ABCC referred to other relevant agencies or bodies?

**Mr Lloyd**—I have already given that answer. I will just turn it up again.

**CHAIR**—Actually I have written it down. Just to confirm: that was five to state policing authorities, four to the Workplace Ombudsman, two to the ACCC, one to Tax, one to AFP, one to ASIC and one to the Commonwealth Director of Public Prosecutions.

**Mr Lloyd**—That is right.

**Senator STERLE**—Could you tell us the nature of the matters that have been referred by the ABCC?

**Mr Lloyd**—I have taken that on notice, and I will do so again.

**Senator STERLE**—How many matters has the ABCC referred to the Australian Taxation Office regarding underpayment of superannuation in the building industry?

**Mr Lloyd**—One matter has been referred to the tax office. I do not know off the top of my head what the subject matter was.

**CHAIR**—Could you take that on notice?

**Mr Lloyd**—I will take it on notice.

**CHAIR**—Mr Dalglish, do you know?

**Mr Dalglish**—Not in relation to that particular matter, but you are talking about a formal referral to the ATO?

**CHAIR**—Yes.

**Mr Dalglish**—There are less formal referrals.

**CHAIR**—Less formal?

**Mr Dalglish**—Yes, that do not involve briefs and—

**Senator STERLE**—How do you do that?

**Mr Dalglish**—It is usually from an investigator level. The investigator will ring a contact in the ATO or, if somebody rings and complains about nonpayment of superannuation, they will be referred to the ATO.

**Senator STERLE**—Do you have a list of how many referrals there have been over the time?

**Mr Dalglish**—I do not have a list, but I know there were 13 complaints regarding nonpayment of superannuation, and the callers were on the 1800 line and they were referred to—

**Senator STERLE**—So there is no paper trail. This is just your investigators on the site, and someone has come up and had a grizzle and your inspectors have just referred them to the tax office. Is that it?

**Mr Dalglish**—Yes, it has been referred to the ATO Superannuation Hotline.

**Senator STERLE**—So there is a paper trail?

**Mr Dalglish**—An electronic trail, yes.

**CHAIR**—So you have not done any investigation about superannuation?

**Mr Dalglish**—No. They have been referred—

**CHAIR**—So you simply refer them to the tax office.

**Senator STERLE**—How many matters regarding phoenix companies have the ABCC referred to the Australian Securities and Investments Commission?

**Mr Lloyd**—One matter has been referred to ASIC in the list. Again, I would have to check on what the subject matter was.

**Senator STERLE**—What list is that?

**Mr Lloyd**—The list I gave previously.

**CHAIR**—And how many informal referrals?

**Mr Dagleish**—I do not have that number.

**CHAIR**—Would there be any?

**Mr Dagleish**—I know that there have been referrals about phoenix companies to the ATO.

**CHAIR**—Have they resulted in your investigations or are they simply referrals?

**Mr Dagleish**—I do not have that information.

**CHAIR**—Could you take that on notice?

**Mr Dagleish**—All I have is that referrals about phoenix companies have been made to the ATO.

**Senator STERLE**—How many?

**Mr Dagleish**—I do not have a number.

**Senator FIERRAVANTI-WELLS**—Can I just ask one question on phoenix companies?

**CHAIR**—No.

**Senator FIERRAVANTI-WELLS**—Can I afterwards?

**CHAIR**—Yes. There is all night left.

**Senator FIERRAVANTI-WELLS**—Thank you.

**Senator STERLE**—Mr Lloyd, would you agree that the ABCC's activities in relation to breaches of awards and agreements or the Australian Fair Pay and Conditions Standard, superannuation entitlements or sham contracting arrangements are significantly less prominent than its activities in relation to matters such as right of entry, unlawful industrial action and coercion?

**Mr Lloyd**—I am sorry, I was talking to the minister. Could you repeat that?

**Senator STERLE**—I am happy to repeat that for you, Mr Lloyd. I was saying: would you agree that the ABCC's activities in relation to breaches of awards and agreements or the Australian Fair Pay and Conditions Standard, superannuation entitlements or sham contracting arrangements are significantly less prominent than its activities in relation to matters such as right of entry, unlawful industrial action and coercion?

**Mr Lloyd**—There are less investigations in terms of those matters, yes, which reflects the complaints made to us.

**Senator STERLE**—Mr Lloyd, less? You gave us a list of how many—what was it, 60-odd? What did it all add up to, that list you gave us of freedom of association, unlawful industrial action, right of entry—significantly less; all of them, compared to nothing?

**Mr Lloyd**—We respond to complaints. We investigate complaints made to us. If it is not complaints made about fair pay standards et cetera, we are not going to investigate it.

**Senator STERLE**—Or, if there are, you pass them on?

**Mr Lloyd**—Some we pass on if we think—

**Senator STERLE**—So you do have complaints made to you, but you pass them on?

**Mr Lloyd**—In some areas we do.

**Senator STERLE**—I would say: or you are not investigating any.

**Mr Lloyd**—If we have a complaint made to us and we feel it is better handled by another agency, we obviously refer it to them. For example, if a superannuation matter is referred to us, generally you would say that the tax office has a more severe and expedient way of dealing with the matter, so we would refer it there.

**Senator STERLE**—All right then. What about when we talk about the Australian Fair Pay and Conditions Standard and independent contracting? You said that they have been raised with your commission but you have passed them all on. You have not taken any of them on.

**Mr Lloyd**—Sorry. I have not seen the fair pay standards being raised with the ABCC.

**Senator STERLE**—When I asked about the Australian fair pay, in relation to the responsibility of investigating and instituting proceedings in relation to it, you said, ‘Yes.’

**Mr Lloyd**—I said we could investigate and take proceedings.

**Senator STERLE**—So none of them have been raised with you?

**Mr Lloyd**—No.

**Senator STERLE**—Or were you passing them on to the ombudsman?

**Mr Lloyd**—To my knowledge there has been no complaint made to the ABCC of a potential breach of the fair pay standard.

**CHAIR**—That is clear.

**Senator STERLE**—What about breaches of awards—your answer to that, when we spoke earlier?

**Mr Lloyd**—Again, we have referred, as I say, four matters to the Workplace Ombudsman. Those matters may involve breach of award. I would have to take that on notice.

**CHAIR**—What about informal referrals, Mr Dagleish? Just so we are very clear. What you told us before about the referrals—given what Mr Dagleish then told us, that that was a formal referral that included a brief. Would that be a correct description?

**Mr Dagleish**—Yes. The referrals—

**CHAIR**—Then there is another amount of informal referrals.

**Mr Dagleish**—Yes.

**CHAIR**—Can you actually give us a list of all the informal referrals and to what agencies?

**Mr Hadgkiss**—In fairness, Senator, that may not be possible. The 1800 operator would receive such a call and would simply give the caller the appropriate agency to call, be it the Workplace Ombudsman or whatever.

**CHAIR**—Mr Dagleish was able to give us some figures in respect of taxation.

**Mr Hadgkiss**—I think he is referring to formal disseminations to the tax office.

**CHAIR**—No, he was not. He was talking about the referral from the 1800 number to another agency. That is what he was telling us. Mr Dalglish, is it possible to give us the information about the informal referrals to the different agencies, to build on the list you have already started to give us?

**Mr Dalglish**—I can take that on notice.

**CHAIR**—What have you got in front of you now, though?

**Mr Dalglish**—The figures from the 1800 number, as I understand it—and this applied from the moment we started recording exactly to whom the 1800 number callers were referred. There have been informal referrals in that same sense to the Workplace Ombudsman if somebody rings up and says—

**CHAIR**—Yes, but how many?

**Mr Dalglish**—Can I take that on notice?

**CHAIR**—Take questions on notice if you cannot answer them here, but if you have got the information in front of you I would like you to answer them, because you are able to give us some information, so I suspect you have got more information.

**Senator FISHER**—On a point of process, Chair. Doesn't notifying this committee of what is currently an informal referral run the risk of suggesting that a referral has some more formal status by providing this committee with detail about it?

**CHAIR**—No.

**Mr Dalglish**—The difficulty I have is that we do not distinguish between somebody who rings up and says, 'I am complaining about being underpaid,' and somebody who rings up and says, 'What's the right wage rate to pay?' We do not distinguish between an inquiry and a complaint about underpayments.

**CHAIR**—But in that case both of those issues would be referred either formally or informally to the ombudsman?

**Mr Dalglish**—Yes.

**CHAIR**—So how many?

**Mr Dalglish**—I do not actually have it right in front of me at the moment, but the figure I am aware of is 244—either inquiries or complaints. Because of the nature of an 1800 telephone call, once it is identified who is the proper body to refer it to—

**CHAIR**—We will come to who the proper body is in a moment. So 244 referrals from the 1800 number to the ombudsman. What is the number referred to the state police?

**Mr Dalglish**—I told you that we do not have those figures.

**CHAIR**—No, they are the formal ones; we are now talking about the informal referrals. You do not know the number referred to the state police?

**Mr Dalglish**—No.

**CHAIR**—To the tax office?

**Mr Lloyd**—I think to the state police would be quite rare.

**CHAIR**—Well, it is your biggest formal referral.

**Mr Lloyd**—Yes, because there has been an investigation and we have some information on it. On a call with an informal matter, we get matters relating to building and industrial relations and those types of queries. I think it would be unusual for an informal matter to be a matter that would involve the state police. It may have happened but it would be unusual.

**CHAIR**—So we have 13 informal referrals to the tax office and 244 to the ombudsman. How many informal ones to the ACCC are you aware of?

**Mr Dagleish**—No, I do not have that.

**CHAIR**—The others probably fall into the same description you just gave us with respect to the state police. On what basis are those matters dealt with by the workplace ombudsman instead of the ABCC?

**Mr Lloyd**—I consider that a number of matters that particularly go to unpaid entitlements are matters where they have an expertise. They deal with that across all industries, including our industry, and it seemed that they are better equipped and better placed, and it is a more efficient use of taxpayer's money, to refer those types of matters to the ombudsman.

**CHAIR**—Is it not the case that you are supposed to be the tough cop on the beat for the building and construction industry?

**Mr Lloyd**—Yes, and the ombudsman might become aware of a case where there is a serial offender, if you like, who is not paying entitlements. I would anticipate that if they encountered that they would consider referring it to us. A matter of just straight-up unpaid employee entitlements, they would do it day in day out, so that is why the matter would be referred to them.

**CHAIR**—Of the 244 that are automatically referred through the 1800 number and the four formal briefs, how many of those have you investigated?

**Mr Lloyd**—The four matters formally referred I would expect have been investigated. Information has been given to us and we have investigated it, and probably discovered it was an unpaid entitlements matter and therefore it has been referred across.

**CHAIR**—You do not actually investigate any of the 244 that are referred, do you?

**Mr Lloyd**—No; my impression is that some of those are just inquiries, as Mr Dagleish, I think, was saying. Some might be wanting to know what their pay rate is, and that is better referred to the organisations that do that more effectively. Some, if they are potentially complaints, are referred to the ombudsman.

**CHAIR**—Isn't it the case that the powers of the ABCC are different from those of the Workplace Ombudsman?

**Mr Lloyd**—Of course we are different; we have different legislation—

**CHAIR**—And different powers?

**Mr Lloyd**—and different powers, yes.

**CHAIR**—Why should those powers not be used by the ABCC in investigating breaches of awards and agreements or sham contracting arrangements?

**Mr Lloyd**—I cannot add much more to my previous answer. I have said that that is for the organisation which has expertise in investigating matters of unpaid entitlements. As I understand from when I have run inspectorates like the ombudsman, the vast majority have settled with the employer paying. They have got the experience in that so, when two organisations have jurisdiction, how best to deploy the resources of the organisations is considered and, on that basis, those matters are referred.

**CHAIR**—Earlier, in your answer to the question of Senator Boyce, you said two things. First, you said you are fully equipped and resourced to discharge all of your functions, and you then went on to say that you are fully financed and equipped to fulfil all of your obligations to the industry.

**Mr Lloyd**—Yes.

**CHAIR**—Then why do you not investigate these matters as they come before you, instead of referring them?

**Mr Lloyd**—I cannot add anything more to what I have just said. I have outlined the reason for that.

**CHAIR**—Mr Hadgkiss indicated before that you did not get many referrals of these matters to investigate in the first place.

**Mr Hadgkiss**—That is correct.

**CHAIR**—Isn't it the case that a large portion of inquiries are actually self-initiated by the ABCC?

**Mr Hadgkiss**—That is correct.

**CHAIR**—What percentage?

**Mr Hadgkiss**—Out of the 6,720 matters initiated by the ABCC, 1,361 have been initiated internally by members of staff.

**CHAIR**—Have any of them related to sham contracting, superannuation arrangements or breaches of awards or industrial instruments?

**Mr Hadgkiss**—If they were, they would be referred to the appropriate agency.

**CHAIR**—I did not ask if they were. I asked if any of those involved those matters.

**Mr Hadgkiss**—I am not sure.

**Senator STERLE**—Earlier on you said no.

**Mr Hadgkiss**—It is the first time I have been asked that question.

**Senator STERLE**—Your commission said no when asked earlier.

**Mr Hadgkiss**—All I am saying is, out of—

**Senator STERLE**—Does the left hand know what the right hand is doing?

**Mr Hadgkiss**—In fairness, I think we should get this right. This is the first time this figure—1,361 being initiated within the agency—has been raised. I have been asked how many of those relate to sham contracts or whatever. I am unsure. If they were initiated in that

fashion, they would be referred to the appropriate agency, as the commissioner has already said on several occasions.

**Senator STERLE**—No, you have not.

**CHAIR**—We were talking about you initiating matters yourself. Are there any?

**Mr Hadgkiss**—I am unsure. I thought I had indicated that. Out of the 1,361, I am unsure whether we could give a definitive answer to that effect. All I am giving you is an assurance that, if they were breaches of the matters you have raised, they would be referred to the appropriate agency, be it the ombudsman or whoever.

**CHAIR**—Because you simply do not investigate those matters?

**Mr Hadgkiss**—We cannot add to what has already been given in answer before.

**CHAIR**—How many site visits does the ABCC make for the purpose of investigating breaches of awards, agreements or sham contracting arrangements?

**Mr Hadgkiss**—I will take that on notice.

**CHAIR**—You do not know?

**Mr Hadgkiss**—I do not know, but I will endeavour to obtain that figure for you and an answer will be provided.

**CHAIR**—What steps does the ABCC take to ensure that it is monitoring and promoting appropriate standards of conduct by building industry participants in relation to breaches of awards and agreements, underpayment of superannuation and sham contracting?

**Mr Hadgkiss**—That it is ordinarily the role of the ombudsman.

**CHAIR**—I thought one of the objectives referred to earlier was the promotion of those standards within the industry.

**Mr Lloyd**—We have a website, we have fact sheets and we distribute material. For example, when the independent contractors legislation was promulgated we posted on the website fact sheets and information about obligations under that legislation. We cross-reference some of the material that we put on the website to the ombudsman, the Workplace Authority or whatever portal is responsible for the information. So that sort of information is there, and we give presentations about obligations. Like any other modern organisation we have a number of means of communicating. That covers the various obligations and responsibilities of the building industry participants.

**CHAIR**—What about monitoring?

**Mr Lloyd**—We conduct the site visits, we respond to complaints, we give advice about inquiries, we monitor various aspects of the industry's conduct—

**Senator STERLE**—It does not sound like you follow it up very professionally.

**Mr Lloyd**—I would dispute that.

**CHAIR**—You are monitoring by conducting site visits to make inquiries about the issues in relation to breaches of awards and agreements, underpayment of superannuation and sham contracting. Is that what you have said to us?

**Mr Lloyd**—That is one of the things. We have not done targeted site visits, if you are thinking about that. If we suspect there is a contravention of one of those elements, we would investigate it. If it is considered to be better undertaken by another agency, it would be referred to them.

**CHAIR**—How many investigations have you conducted in relation to those matters?

**Mr Lloyd**—I would have to take that on notice.

**CHAIR**—Are there any?

**Mr Lloyd**—I will have to take it on notice. I cannot give you a figure.

**CHAIR**—Would it not be appropriate to mention matters such as breaches of awards and agreements, underpayment of superannuation and sham contracting in presentations to building industry participants?

**Mr Lloyd**—That is done in some presentations. It depends on what the subject matter of the presentation is and what advice is sought. We have delivered 600 or so presentations.

**CHAIR**—In relation to the presentation made to the Master Builders Association of New South Wales on 23 May, was any mention made of the need to comply with awards?

**Mr Hadgkiss**—Is this the top 50 builders function, Senator?

**CHAIR**—Yes.

**Mr Hadgkiss**—No mention was made, no.

**CHAIR**—Why?

**Mr Hadgkiss**—I made no mention of any specific behaviour in terms of compliance or, as you term it, monitoring. We do not monitor particular unlawful behaviour. We can only investigate what comes through the 1800 number or through referrals.

**CHAIR**—Did you mention any other unlawful behaviour?

**Mr Hadgkiss**—I mentioned unlawful behaviour certainly in relation to matters that we had put before the court et cetera.

**CHAIR**—But nothing to do with award breaches, industrial agreement breaches, superannuation underpayment, sham contracting—

**Mr Hadgkiss**—It was not raised by the top 50 builders.

**CHAIR**—Well, it was a presentation that you made to them.

**Mr Hadgkiss**—It was, yes.

**CHAIR**—Can you give us a copy of that presentation?

**Mr Hadgkiss**—Yes.

**CHAIR**—Thank you. On what formal basis was the decision made to simply refer to other agencies matters to do with sham contracting, underpayment of superannuation, breaches of awards and industrial agreements?

**Mr Lloyd**—Mr Wilson, the Workplace Ombudsman, and I exchanged a letter in which we basically undertook to refer matters between the two agencies. That was the basis on which it

was done. There was no MOU as such; there was a letter in fairly general terms. I do not think that sham contracting would have been mentioned because, from my recollection, it was before the Independent Contractors Act came into force.

**CHAIR**—Can you provide us with a copy of that document?

**Mr Lloyd**—Yes.

**CHAIR**—Given the objectives which cover all these matters are clearly stated in the act, on what authority did you rely upon to simply discharge your obligations under the act in this respect?

**Mr Lloyd**—We both had jurisdiction over matters. The jurisdictions overlap on some matters. Therefore, we decided that there should be a referral process put in place. That is how we decided. It is the best use of the government's resources.

**CHAIR**—Given the obligations under the act, do you think there is actually a problem with your simply referring some of these obligations to somebody else?

**Mr Lloyd**—No, I do not. There is a part of the act where I think it is acknowledged that we are encouraged to refer matters to other organisations.

**CHAIR**—Can you point me to that?

**Mr Lloyd**—I just cannot pick it up.

**CHAIR**—Would you take that on notice. In your view, which states experience the greatest problems—

**Mr Lloyd**—Sorry, it is referring matters to other relevant agencies and bodies is part of our functions under section 10(a)(iii) of the Building and Construction Industry Improvement Act, referring matters to other relevant agencies and bodies.

**CHAIR**—That is in terms of individual matters. You read that as you can actually transfer whole chunks of the 10 obligations you have under the act to somebody else?

**Mr Lloyd**—Yes.

**CHAIR**—In your view, which states experience the greatest problems in relation to compliance in the building and construction industry?

**Mr Lloyd**—Our experience has been that Western Australia and Victoria are the states which encounter the most difficulty with compliance.

**CHAIR**—Are you able to tell us how many site visits have been made by the ABCC and in what states those visits have been conducted?

**Mr Lloyd**—Yes, we can.

**CHAIR**—What are they?

**Mr Lloyd**—Site visits by state?

**CHAIR**—Yes.

**Mr Lloyd**—From the inception of the ABCC: Victoria, 744; New South Wales, 634; Queensland, 1,128; Western Australia, 517; South Australia, 133; Tasmania, 245; Northern Territory, 153; and the Australian Capital Territory, 50. That is a grand total of 3,604.

**CHAIR**—Thank you. Can you provide a breakdown of site visits by purpose?

**Mr Lloyd**—No, I cannot.

**CHAIR**—Now or ever?

**Mr Lloyd**—I think it would be very difficult to get that information by purpose.

**Mr Hadgkiss**—It could have a multi-purpose as well, and we would not be able to get that breakdown. We could give you a breakdown of those in pursuance of the national code and those in pursuance of unlawful activity that we are investigating.

**CHAIR**—Could you do that by the self-initiated site visit?

**Mr Hadgkiss**—No. Again, Senator, we do not keep those statistics.

**CHAIR**—But you are able to tell me how many were initiated.

**Mr Hadgkiss**—We can give you statistics where self-initiated people have gone to sites to give presentations. The commissioner has already said that is 664 since October 2005.

**CHAIR**—Earlier, Mr Hadgkiss, you told me a precise number about self-initiated visits.

**Mr Hadgkiss**—That is investigations, not site visits.

**CHAIR**—Can you break down these site visits by investigations, as opposed to presentations?

**Mr Hadgkiss**—Yes. I can tell you that we have done 664 presentations, and we have given whatever figure the commissioner just mentioned in terms of site visits.

**CHAIR**—Can you do them by state?

**Mr Hadgkiss**—The presentations?

**CHAIR**—No. I could do the maths, I suppose.

**Mr Hadgkiss**—I think the commissioner has already given that: out of the 3,604 there were 1,128.

**CHAIR**—I thought you were telling me that site visits included presentations.

**Mr Hadgkiss**—They may well do. They may also be at a local church hall—I am not sure.

**CHAIR**—Then it is not a site visit, is it?

**Mr Hadgkiss**—That is right, and that is why we cannot give you a definitive figure.

**CHAIR**—You can, because you just told me you could tell me how many presentations there were. All you have to do is—by state—subtract the amount of presentations and you are left with investigations of site visits, aren't you?

**Mr Lloyd**—I think the difficulty is that some of the presentations—and the ones that Mr Hadgkiss and I give—are to a conference. Therefore, they are not part of a site visit. Our inspectors go on to sites and give presentations—sometimes as part of a visit, or sometimes they go out of hours to a firm and give them a presentation.

**CHAIR**—I want to be clear about the site visit information that you gave me: what does that include?

**Mr Lloyd**—Site visits, as I understand it, are not national code site visits: they are site visits by our inspectors to building sites.

**CHAIR**—What is a national code site visit then?

**Mr Hadgkiss**—They are additional: there were 587 in that same period, in addition to the 364.

**CHAIR**—You can break them down by state?

**Mr Hadgkiss**—Yes.

**CHAIR**—And you can do that for me?

**Mr Hadgkiss**—Do you want that now?

**CHAIR**—Yes, if you have got it.

**Mr Hadgkiss**—We start with Victoria, 179; New South Wales, 135; Queensland, 135; Western Australia, 58; South Australia, 41; Tasmania, eight; Northern Territory, seven; ACT, 24. That is a total of 587.

**CHAIR**—So explain to me the difference between a code site visit and a site visit.

**Mr Hadgkiss**—A code site visit is where members of staff of the ABCC go to a site to ensure that the national code and its guidelines are being adhered to—often at the invitation of the builder or contractors. At other times there are more formal site visits. The other figure that the commissioner gave you—3,604—would be in pursuance of a variety of purposes: part of investigations into unlawful activity; or to assist builders who ask for visits by the ABCC.

**CHAIR**—Would the code site visits include checking about compliance with industrial awards, industrial agreements, superannuation or sham contracting?

**Mr Hadgkiss**—No, they are confined to the code and guidelines.

**CHAIR**—And the code and guidelines do not require checking award compliance, industrial agreement compliance, superannuation compliance or sham contracting?

**Mr Hadgkiss**—No.

**CHAIR**—Not sham contracting, either?

**Mr Hadgkiss**—They are not there for that purpose. Obviously, if that came to their attention, or any of those other matters that you raised, they would be referred to the appropriate agency—or, indeed, the ABCC if it was a case of sham contracting.

**CHAIR**—Could you tell us how many notices to produce have been issued by the ABCC, and in what states those notices have been issued?

**Mr Hadgkiss**—There have been 475 to date. Do you want it state-by-state?

**CHAIR**—Yes.

**Mr Hadgkiss**—Victoria, 373; New South Wales, 55; Queensland, 10; Western Australia, 27; Tasmania, 10; and none in the Northern Territory or the ACT.

**CHAIR**—For what purposes are the notices to produce issued?

**Mr Hadgkiss**—They are served on parties to produce documentation in furtherance of an investigation by the ABCC, and the ABCC go back in 14 days time to collect the documentation sought.

**CHAIR**—Can you explain to me why there have been so many site visits in Queensland, yet so few notices to produce issued?

**Mr Hadgkiss**—Often it is a reflection of the geography of Queensland—the various cities that they visit in Queensland, which, as you know, is a booming state.

**CHAIR**—What purpose does the large number of site visits in Queensland serve?

**Mr Hadgkiss**—To ensure that there is lawful activity on those sites.

**CHAIR**—But why is it so out of whack with what you told me before about the problem states being Victoria and Western Australia?

**Mr Hadgkiss**—It is a reflection of, as I say, the geography of Queensland—the size of the state and the number of cities.

**CHAIR**—You told me earlier that the problem states were, in your view, WA and Victoria—

**Mr Hadgkiss**—Correct.

**CHAIR**—but there seems to be a larger number of site visits in Queensland.

**Mr Lloyd**—Because there are fewer cases in Queensland, fewer investigations going through to cases, the inspectors and investigators would have more time to conduct site visits. With respect to inspectors in Victoria and Western Australia, probably more of their time is engaged in actually following through on investigations, leading to briefs of evidence.

**Mr Hadgkiss**—It is also a reflection of the industry wanting visibility of the ABCC.

**CHAIR**—So it is a visibility issue?

**Mr Hadgkiss**—It may be; that may be a component.

**CHAIR**—Not ‘may be’; you offered that information to me. Can you tell me whether it is or it is not?

**Mr Hadgkiss**—I am sorry, Senator; I am unable to give you a definitive answer or analysis of why Queensland has the number of site visits it has.

**CHAIR**—Why?

**Mr Hadgkiss**—Because we do not keep those statistics.

**CHAIR**—It goes back to the first question: what purpose does that number of site visits serve?

**Mr Hadgkiss**—Certainly from the industry’s point of view the high visibility of the ABCC is paramount to the industry.

**CHAIR**—So it is about high visibility?

**Mr Hadgkiss**—I am not saying it is about any particular factor; it is about a number of factors. In the case of Queensland, I am not able to give an analysis of why each of those 100—whatever number it was—visits was down to a particular factor.

**CHAIR**—You have just told me twice the reason and then said that that is not what you are saying.

**Mr Hadgkiss**—I am saying ‘maybe’; we do not keep statistics on why we go onto a site at any particular time. I cannot give you those statistics.

**CHAIR**—Would it not be more appropriate for those resources to be expended elsewhere rather than making all those site visits in Queensland?

**Mr Hadgkiss**—Again, we respond to what the industry ask of us and, if they want high visibility and they want us seen in wherever in Queensland then we respond, where we can, to their wishes.

**CHAIR**—So it is about high visibility?

**Mr Hadgkiss**—On those occasions I have given. I am not saying the definitive answer is: why we have 100 and whatever visits is because of a particular factor. There could be of a number of factors.

**CHAIR**—Maybe you could take that on notice and actually find out why and tell me?

**Mr Hadgkiss**—As I say, we do not keep those statistics.

**CHAIR**—You have told me a couple of times—you told me once that it is because the industry wants high visibility and that is what you are giving them.

**Mr Hadgkiss**—That is a factor—a factor of many.

**CHAIR**—What are the other factors?

**Mr Hadgkiss**—The other factors are the sheer geography. If we send someone to Gladstone, for instance, we would not go for just one site visit. It would be in the interest of taxpayers’ money to visit a number of sites whilst in the vicinity.

**CHAIR**—To do what?

**Mr Hadgkiss**—To visit sites.

**CHAIR**—To do what?

**Mr Hadgkiss**—To talk to builders, to give presentations, to investigate unlawful activity or whatever each of those visits may require.

**CHAIR**—But not in terms of breaches of awards, industrial agreements, non-payment of superannuation or sham contractors?

**Mr Hadgkiss**—Should those matters be raised, they would be referred to the appropriate agency.

**CHAIR**—Of which there have been four?

**Mr Hadgkiss**—Formal disseminations, yes.

**CHAIR**—Only four are as a result of site visits. All the others are a result of the 1800 number.

**Mr Hadgkiss**—I am not aware of whether they came out of site visits or whether they came out of the 1800 number.

**CHAIR**—Mr Dagleish was. He has already told us where they came from. How many referrals have you made as a consequence of site visits?

**Mr Hadgkiss**—I cannot give you that answer, Senator.

**Senator STERLE**—You do not keep many records, do you?

**Mr Hadgkiss**—Senator, it is the first time in six years that this has been raised.

**Senator STERLE**—One would think that, with your investigative powers, paperwork is a very important part of your work. You do not seem to have a lot of information handy.

**Mr Hadgkiss**—In fairness, Senator, it is not something that we ordinarily need to produce for our annual report.

**CHAIR**—Take it on notice, and we will see how we go. I have some more questions but I am happy to go elsewhere now.

**Senator ABETZ**—Does the government actually support the activities of the ABCC?

**Senator Wong**—The government has made its position on the ABCC very clear.

**Senator ABETZ**—The question was: does the government support the activities of the ABCC?

**Senator Wong**—The government has been clear that it intends to retain the ABCC until 31 January 2010. The government has made it clear that it will not tolerate intimidation or violence by any party in the building and construction industry and that we support the existence of a strong cop on the beat in the building and construction industry. ‘Support the existence’ and ‘strong cop on the beat’ were the phrases used, I think, but I could be wrong.

**Senator ABETZ**—Therefore, does the government support it? And using the language reminds me that that language, having a ‘strong cop on the beat’, was used. I know that in my home state of Tasmania people appreciate the presence of a police officer—or a ‘cop on the beat’, to use the colloquialism—just walking around to see whether everything is in order. The community like that. Would it be fair to say that the government, in announcing that it supports a ‘strong cop on the beat’—to use that language—does support the ABCC going around various building sites from time to time and saying, ‘Here we are. We are here in the event of a breach of the law. We are here to assist you and, even if you don’t have any problems today, you might have tomorrow. This is who we are?’ Minister, you and the government would see that as a normal course of the ABCC’s activities, wouldn’t you?

**Senator Wong**—What is your point? We have made our position on the ABCC eminently clear, so I am not sure what point you are making.

**Senator ABETZ**—The point I am making is that we have had very hostile questioning from Labor government senators as to why on earth the ABCC has bothered to visit however many sites it visited in Queensland. I am wondering whether the government is supportive of

those site visits being undertaken by the ABCC, in the context that we are led to believe, at least on face value, that the government does support a 'strong cop on the beat' in the building sector.

**CHAIR**—Now that a speech has been made, Senator Abetz, we do not accept your categorisation of the questioning. Questioning for all senators is about getting information, and for several hours today we saw questioning on the Workplace Authority by other senators too.

**Senator ABETZ**—Chair, be very careful. You are the chair.

**CHAIR**—You are always free to come to the conclusions that you wish to come to, but you should not try to describe other senators in any other way. Have you got further questions for this agency? I know there are a lot of senators who do have, and we have got to get through it tonight—and we will.

**Senator ABETZ**—All right. What is the government's timetable in relation to the review that it is undertaking in relation to the ABCC?

**Senator Wong**—I might ask if Mr Lloyd can assist at all, but the information I have is that the Deputy Prime Minister—and I think this was covered in questioning of the department, but you may not have been available—asked the Hon. Murray Wilcox QC to conduct consultation with industry and report on how best to transition to the specialist division of the Fair Work Australia inspectorate, which I have referred to previously. I understand that the Australian government has asked His Honour to commence his consultations from 1 July 2008 and to report by the end of March 2009. You will recall, Senator, no doubt, that the election commitment was that the ABCC would remain in place, retaining its current powers and full resources, for the period until 31 January 2010.

**Senator ABETZ**—How much is Mr Wilcox being paid for this review? If you do not know, take it on notice.

**Senator Wong**—The ABCC is not the body which—

**Senator ABETZ**—Yes, I know. I am asking you, Minister.

**Senator Wong**—These questions probably should have been asked of the department, Senator, but I understand you were in another committee. We did go to this issue. I am happy to take the matter on notice, but I do not have officers at the table who are responsible for that.

**Senator ABETZ**—That is fine. Is Mr Wilcox the only person undertaking this review or will he be supported by a panel of other individuals?

**Senator Wong**—You will have to put that on notice. I do not have those officers here.

**Senator ABETZ**—Is this Murray Wilcox—just so we get this clear—the same Murray Wilcox who described the Howard government as an elected dictatorship? Are we talking about one and the same?

**Senator Wong**—I am not familiar with what Mr Wilcox may or may not have said. What I am aware of is that this is the same Justice Wilcox who was a judge of the Federal Court of Australia from 1996 to 2006 and, prior to that, I understand, was the last Chief Justice of the Industrial Relations Court of Australia.

**Senator ABETZ**—I think he might be one and the same person. Can we also have confirmed that he is the one and the same person that previously criticised the powers of the ABCC's predecessor, the Building Industry Taskforce? Is he one and the same person?

**Senator Wong**—I have given you the information I have.

**Senator ABETZ**—Yes, and I am asking whether the Murray Wilcox who criticised—

**Senator Wong**—I was not a media monitor, last time I looked.

**Senator ABETZ**—the powers of the ABCC's predecessor, the Building Industry Taskforce, is the same Murray Wilcox that the government has appointed to undertake the review of the ABCC. Is it the same Murray Wilcox?

**Senator Wong**—I do not have that information.

**Senator ABETZ**—All right. Can you take that on notice?

**Senator Wong**—No, I am not taking that on notice.

**Senator ABETZ**—Because you know it is the one and the same Murray Wilcox, who—

**Senator Wong**—No, because if that is on the public record—

**Senator ABETZ**—will take this approach that he has already indicated publicly—

**Senator Wong**—This is a former judge of the Federal Court under your government, Senator.

**Senator ABETZ**—This is, as Peter Walsh would say, a Stalinist-type inquiry where you have got the conclusion determined before the inquiry starts.

**Senator Wong**—This is a former judge of the Federal Court who sat on the bench under your government.

**Senator ABETZ**—You know it is a set-up, and it is atrocious.

**CHAIR**—If you do not have any questions, Senator, we will move to somebody else.

**Senator ABETZ**—You pretend you support the ABCC—

**CHAIR**—Order! This is about asking questions, not about making speeches.

**Senator ABETZ**—there is quietness as the ABCC is attacked by Labor senators, and you then appoint Murray Wilcox.

**CHAIR**—Have any other senators got questions?

**Senator FIERRAVANTI-WELLS**—I do. Is this the same Murray Wilcox who, back in February 1996, took John Howard to task over his claim that an employer could not sack a worker for stealing unless he had been issued two written warnings? Is it the same Murray Wilcox who already back in 1996 was exhibiting—if I can put it this way—antagonism towards the then opposition? We had 10 years of it, and then last year we saw his commentary—

**CHAIR**—Senator Fierravanti-Wells, if you are going to ask a question, ask a question.

**Senator FIERRAVANTI-WELLS**—I am asking Senator Wong if it is the same person.

**CHAIR**—No. You are making a speech. So ask the question.

**Senator FIERRAVANTI-WELLS**—Is it the same Murray Wilcox who, back in February 1996, was criticised by various people in the press about his commentary upon the propriety of certain actions of the then opposition? That is my question.

**Senator Wong**—I have given you the information I have, Senator, and I am sorry I do not have any information about comments which may or may not have been made by somebody in 1996.

**Senator ABETZ**—Can I ask then: do you believe that this Murray Wilcox who is going to do this inquiry is going to approach this issue with a fair, open and unbiased mind, given his record on all these things?

**Senator Wong**—Yes, I do, Senator, on the basis that the qualities you just described are the qualities we expect of appointments to the bench. As I understand it, this gentleman sat on the federal bench during the period of your government, and the qualities you describe are the qualities that the community and governments expect of their judges.

**Senator FIERRAVANTI-WELLS**—As somebody who practised in the Federal Court and watched some of his dealings in the court, suffice to say that he was not backward in coming forward in his personal views. Is this the same Murray Wilcox? Might I suggest, Senator Wong that you—

**Senator Wong**—Unlike you, Senator, I do have a bit of difficulty with making what would otherwise essentially be quite inappropriate and defamatory comments of members of the judiciary in this context.

**Senator ABETZ**—Why? What is defamatory about saying that? That is just ridiculous.

**Senator Wong**—The comments you made about the behaviour of this gentleman on the bench were really—as a lawyer, you should know—quite inappropriate.

**Senator ABETZ**—No, they are not. He was coming forward with his comments. What is defamatory?

**CHAIR**—Senator Abetz, Senator Fierravanti-Wells has asked a question, and the minister is answering the question.

**Senator ABETZ**—No, she is making allegations.

**Senator Wong**—Actually, to be fair to the senator, I did actually intervene.

**CHAIR**—Order! As I have said before, if questions are going to be loaded with political overtones or statements or speeches that accompany them, I am going to give—and it works both ways, as I have demonstrated—

**Senator FISHER**—Good.

**Senator ABETZ**—Except when the chair is asking them.

**CHAIR**—Thank you for that very incisive interjection, Senator Fisher.

**Senator ABETZ**—It stumped you.

**CHAIR**—As it has worked both ways, people will be given the opportunity to respond. If we want to get to asking questions and to getting answers, we will proceed on that basis.

**Senator ABETZ**—Chair, this is a point of order. The minister made an allegation against a senator asserting that she was defaming—

**CHAIR**—If this is a point of order, what is it?

**Senator ABETZ**—It is a reflection on a senator that they would use the forums of this parliament to defame somebody, when all she said was that her experience was that this judge was not backward in coming forward with his views.

**CHAIR**—I do not think there is a point of order. That is my ruling.

**Senator ABETZ**—How on earth could that be defamatory, Minister Wong? How silly. How stupid. How desperate.

**CHAIR**—Are there other questions? There are other senators who actually have questions, including me, which we will proceed to if no-one else—

**Senator FIERRAVANTI-WELLS**—I do, while we are at it. I ask the minister if she is aware of the lecture that Murray Wilcox gave in May 2007 to the Law Society of the Australian Capital Territory. If she is not aware of it, I would suggest that it makes for very informative reading. It was the basis upon which Senator Abetz made the comment referring to the Howard government as an ‘elected dictatorship’.

**Senator ABETZ**—How do you figure that?

**Senator FIERRAVANTI-WELLS**—I ask the question again: with a history like this, how can Justice Wilcox come at this review in an unbiased manner?

**CHAIR**—I am sure the minister will answer.

**Senator Wong**—Thank you, Chair. Senator, I again refer you to the history of this gentleman’s public service on the federal bench—notwithstanding your comments about his activities as a judge, which is what I was referring to when I responded previously. I also note that others do not appear to support your view. I note that the Master Builders Association issued a statement on 22 May saying that the MBA:

... has backed an inquiry into the Australian Building and Construction Commission (ABCC) replacement, saying the move is a positive sign that the Government is committed to maintaining a tough cop on the beat ...

et cetera.

The Wilcox review is the sign the industry has been waiting for ...

These are comments from the Master Builders Association in relation to the AIG. The AIG was also reported as having welcomed the appointment of Wilcox QC. I am reading off a website where Ms Ridout says he was:

... highly respected and we are extremely confident he will bring wisdom and balance to the exercise.

Clearly, others do not share your view. That is your view. The government has a different view, and a couple of peak employer organisations do not seem to share your view, Senator.

**Senator FIERRAVANTI-WELLS**—What aspects of the authority’s power or conduct require this sort of review? I do not understand the nature of this review. What are the parameters?

**Senator Wong**—I have given you the information I have. As I explained to Senator Abetz, this is a review where I understand the department would be the appropriate agency to question, rather than Mr Lloyd, Mr Hadgkiss et al. So any further questions on those sorts of issues, as I indicated to Senator Abetz, I will have to ask you to put on notice.

**Senator FIERRAVANTI-WELLS**—Perhaps if I can, the question being: what aspects of the authority's power or conduct necessitate this review? Could you also take on notice the extent of the review, and is it envisaged that there will be a reduction of powers and is this, in effect, a backdoor to watering down the powers of the building watchdog?

**Senator Wong**—It is not that, and you know that, Senator, because I told you and your colleagues that when I was first asked a question. I can refer you to the Deputy Prime Minister's press release of 22 May which does go to some of the issues you have asked. It says:

The Rudd government is committed to ensuring that all participants in the building and construction industry comply with the Australia's workplace relations laws to the letter.

The Rudd government has no tolerance for behaviour that breaks the law whether it be unlawful industrial action or underpayment of employees.

It is the intention of the Rudd Labor Government to always have a tough cop on the beat in the building and construction industry.

The Rudd Labor Government will deliver on its pre-election commitment to retain the Australian Building and Construction Commission until 31 January 2010 and to replace it at that time with a specialist building and construction division of the inspectorate of Fair Work Australia ...

Consistent with our commitments last year, we will shortly commence a process of extensive consultation with industry stakeholders about ensuring that the transition to those new arrangements will be orderly, effective and robust.

This will involve a process of consultation and report which will be conducted by the Honourable Murray Wilcox QC, a former Australian Federal Court judge.

As announced at the Forum, it is the Government's intention to seek feedback on the terms of reference to be issued to the Honourable Murray Wilcox QC.

It then lists a number of matters which, obviously subject to feedback received on the terms of reference, the government intends to ask His Honour to consult and report on. There are quite a number of dot points there which I am sure are available publicly.

**Senator FIERRAVANTI-WELLS**—Thank you.

**CHAIR**—Are there any further questions from other senators?

**Senator FISHER**—Minister, you indicated that the government has made its position clear on the retention of the ABCC until the nominated date. Has the government made its position clear to the unions who are agitating for an early abolition of the ABCC?

**Senator Wong**—I think the government made this position clear to the Australian people. It is not a secret; it is in our policy and it has been repeated by the Deputy Prime Minister on a number of occasions. I am sure that members of various aspects of the Australian community would be aware of that.

**Senator FISHER**—Are you aware of the group of unions that are agitating for an early abolition of the ABCC?

**Senator Wong**—I am not going to get drawn into commentary on this. I have explained the government's position to you, which I am sure you are aware of, and I have outlined the government's position in these estimates hearings. There is a lot of public commentary about a whole range of matters and I am not going to be drawn on those issues.

**Senator FISHER**—Has the government responded to the ACTU's submission seeking early abolition of the ABCC?

**Senator Wong**—I am not aware of the status of such a submission. I can simply reiterate what the government's position is, and it is as I have outlined on a number of occasions in this hearing.

**Senator FISHER**—There is a group of five unions agitating for early abolition of the ABCC and their concern appears to be springing from the tough investigation and compliance powers afforded to, now, your government's cop on the beat which presumably formed the background to the earlier questioning from my Labor Senate colleagues. Mr Lloyd, I understand that one of the suggestions by those who oppose your continued existence, because it interferes with what they would have as their day-to-day operations on building sites, are concerned about your powers in examining witnesses under compulsion. I understand you have guidelines about this. Can you tell me what steps the ABCC takes in the use of your compliance powers to ensure that people's rights and in particular people's human rights are not adversely affected?

**Senator Wong**—The latter part of your question is appropriate in terms of asking Mr Lloyd to respond on, I suppose, what you broadly call rights and safeguards issues. The former part of your question, to be frank, is the same sort of range of opinion that has characterised a lot of your questioning in this hearing, and those are not matters, consistent with the position I have taken with all officials before this hearing, that Mr Lloyd should be asked to comment on.

**Senator FISHER**—Thank you, Minister. Mr Lloyd, what steps has your agency taken to ensure the maintenance and observance of people's rights, in particular human rights, in carrying out your role?

**Mr Lloyd**—In relation to exercise of section 52 power, there are a number of processes and safeguards. As I said before, we prefer to obtain information voluntarily, so we use the powers only when that does not give us the information that is sought. The powers can only be exercised where we believe, on reasonable grounds, that person has information relevant to an investigation. They are given 14 days notice in writing. They have a right to legal representation. Importantly, answers given and information or documents produced are not admissible against the person except in very limited circumstances—for example, giving false or misleading evidence. Evidence, therefore, obtained directly or indirectly as a result of the answers is also inadmissible against the person. And, unlike for some other agencies with compulsory powers, there is no requirement for a witness to claim privilege; the immunities are automatic. Before each hearing, there is a very comprehensive letter accompanying the notice outlining the witness's rights.

**Senator FISHER**—Are these guidelines, as you have outlined, followed in 100 per cent of your cases?

**Mr Lloyd**—They certainly are.

**Senator FISHER**—So they are sacrosanct?

**Mr Lloyd**—They are. A number of them are in the act, anyhow; we have to comply.

**Senator FISHER**—Indeed. You mentioned that under your guidelines witnesses have the right to legal representation, and that seems to be an important protection. What percentage of witnesses avail themselves of what they presumably see as an added protection?

**Mr Lloyd**—Sixty-four per cent of witnesses have availed themselves of legal representation.

**Senator FISHER**—Thank you. What economic analysis or modelling has been done of the work performed to date by the ABCC?

**Mr Lloyd**—The major analysis is the Econtech report, which was commissioned last year and looked at the impact of the ABCC on the productivity and efficiency in the industry.

**Senator FISHER**—That went to construction costs and prices?

**Mr Lloyd**—Yes, issues such as that and the impact on the cost and the timeliness et cetera of doing work in the industry.

**Senator FISHER**—So that would have clearly had a bearing in economic terms on the economic welfare gain to consumers?

**Mr Lloyd**—Yes. The study looked at the economic impact and it made conclusions about the contributions to GDP that otherwise would not have occurred and the impact on productivity. I do not have the report with me so I am not too sure if it has gone directly into prices, but there was, I think, a conclusion of the report that, without the ABCC, prices would have been higher.

**Senator FISHER**—Without the ABCC, prices would have been higher for consumers?

**Mr Lloyd**—Yes.

**Senator ABETZ**—That would have been inflationary would it not? I suppose you cannot comment on that.

**Senator FISHER**—Were it not for the existence of the ABCC. Is the analysis done by that report regarded as meeting appropriate academic and professional standards to arrive at a robust conclusion?

**Mr Lloyd**—We went through, as we are required to do in commissioning such a report, an open public tender. A number of research organisations tendered for the project and Econtech was selected.

**Senator FISHER**—Is that analysis—that report—available to the government?

**Mr Lloyd**—It is on the website and is publicly available.

**Senator FISHER**—Has the government been provided with or sought a copy of analysis of that sort or indeed apprised itself to your knowledge of the findings of the report?

**Mr Lloyd**—It would be inappropriate of me to divulge my dealings with the minister or the government.

**Senator FISHER**—Have you provided advice to the government in respect of that report?

**Mr Lloyd**—Again, I consider it inappropriate for me to discuss here in the committee what advice—

**Senator FISHER**—I am not asking you about the content of it, I am simply asking you, of the fact, as to whether you have discussed that report with the government, with the minister in particular?

**Mr Lloyd**—Again, I think that it is inappropriate of me to convey what I have or have not discussed with the minister.

**Senator FISHER**—I am disappointed in that. Nonetheless, I would think it concerning if the minister had not considered it incumbent upon her to take into account existing robust analysis of the benefits of—

**Senator Wong**—Is this a speech, Senator?

**Senator FISHER**—Get to enjoy them, I am here for a long time.

**Senator STERLE**—Now you are being loose with the truth; I do not know about enjoy them.

**Senator Wong**—I am sure your colleagues will give you speaking time in the chamber.

**CHAIR**—Senator Fisher, please ask your question.

**Senator ABETZ**—Of course we will, she is a very good speaker.

**Senator STERLE**—After seven days, how much can you bear? On and on waffle for four days last week, Senator Boyce, of complete and utter waffle.

**CHAIR**—We have only got 11 minutes to the dinner break, so let us see if we can get a few more questions in.

**Senator FISHER**—Thank you chair, that satisfies me for the moment.

**Senator FIERRAVANTI-WELLS**—What was that Senator Sterle, did you reflect on your colleagues comments? Chair, did you hear that?

**CHAIR**—Senator Fierravanti-Wells, do you have a question?

**Senator FIERRAVANTI-WELLS**—No, I think Senator Sterle—

**CHAIR**—Senator Boyce, do you have a question of me again?

**Senator ABETZ**—Glenn is very interested in his screen all of a sudden.

**CHAIR**—Mr Lloyd, can you confirm that it is a function of the ABCC to monitor and promote compliance with the Building Construction Industry Improvement Act, the Independent Contractors Act and the Workplace Relations Act?

**Mr Lloyd**—Yes.

**CHAIR**—Is it a function of the ABCC to institute or intervene in proceedings in accordance with the BCII Act?

**Mr Lloyd**—Yes.

**CHAIR**—Would you agree that the ABCC has an enforcement role in relation to the legislation for which it has responsibilities?

**Mr Lloyd**—Enforcement: we are empowered, as you say, to intervene and institute proceedings. To that extent, it could be described as an enforcement role.

**CHAIR**—So, your only enforcement role would be to intervene in proceedings, is that what you mean?

**Mr Lloyd**—And to institute proceedings, to commence proceedings.

**CHAIR**—The previous question was to confirm whether there was a function to institute or intervene in proceedings in accordance with the BCII Act. The next question was: so would you agree that the ABCC has an enforcement role in relation to legislation for which it has responsibilities?

**Mr Lloyd**—I imagine ‘instituting proceedings’ is allied to ‘enforcement’.

**Senator ABETZ**—One has the feeling that there is going to be a supplementary to this question.

**CHAIR**—There may be, depending upon the answer. To be honest, I am expecting you to say yes, Mr Lloyd, but it is up to you what you say.

**Mr Lloyd**—Our role is to ensure that workplace relations laws are applied, enforced and adhered to in the building industry.

**CHAIR**—In so far as those acts apply to the building industry, would you agree that you have an enforcement role in respect of those acts?

**Senator Wong**—I am not sure you can ask Mr Lloyd to go beyond what is in the act. The act sets out his role. It says, ‘investigating suspected contraventions’ of the various acts to which you have referred. Then the next subsection says:

instituting, or intervening in, proceedings in accordance with this Act ...

I am sure his evidence would be that yes, that is what applies to him.

**Senator ABETZ**—I am wrong, there was not.

**CHAIR**—No. You are often wrong, Senator, but—

**Senator ABETZ**—I was hoping I was wrong.

**CHAIR**—Are you of the view that the ABCC also has a role to play in advocating the implementation or retention of particular laws for the building and construction industry?

**Mr Lloyd**—Our role is to conduct ourselves in accordance with the act. We cannot go beyond advocating what is in the functions. It is not my role to advocate what might apply better or worse. We go about basically conducting ourselves in accordance with the act.

**CHAIR**—So then it would be the case that the ABCC Commissioner and the deputy ABCC commissioners are responsible for upholding and promoting APS values and observing the code of conduct?

**Mr Lloyd**—Obviously, we are Australian government employees.

**CHAIR**—Isn't it the case that the code of conduct requires those bound by it to at all times behave in a way that upholds the APS values and the integrity and good reputation of the APS?

**Mr Lloyd**—Certainly.

**CHAIR**—Isn't it the case that it is a Public Service value to be apolitical, performing functions in an impartial and professional manner?

**Mr Lloyd**—Yes.

**CHAIR**—Could you explain then why on 23 May 2008 the *Australian Financial Review* reported—and I have provided you with a copy of this:

The ABCC's deputy commissioner, Nigel Hadgkiss, in a speech to the Master Builders Association today, will urge employers to support the present powers of the building industry regulator.

**Senator ABETZ**—That is government policy.

**CHAIR**—I will ask the questions and we will see what answers we get. If you want to provide the answer for the officers, you can try to do that.

**Mr Hadgkiss**—That is a misrepresentation of my presentation—what was stated to the journalist. I did not make such a statement.

**CHAIR**—Did you make a statement similar to that?

**Mr Hadgkiss**—No. I agreed to talk to a journalist prior to the interview. It was conducted in my presence—an SES officer. It was given on the condition that the journalist would provide me with what he proposed to attribute to me as remarks. That was abided by. He forwarded to me in writing, and a copy to our media unit, what was going to be printed as being attributed to me. I agreed with what he was proposing to print, and that was not abided by. Those remarks were not in what he forwarded to me the next day, prior to publication.

Indeed, the next day, the Saturday after the presentation, the *Fin Review* correctly reproduced what I had said. I refer to an article in the *Fin Review* on the 24th. It said Mr Hadgkiss 'would not be drawn on the powers on the ABCC's replacement', and it quoted me correctly:

"It's not for me to say what the new body should look like."

**Senator FISHER**—Chair, could we have that article copied and tabled in accordance with your practice?

**CHAIR**—Yes, absolutely. In respect of the newspaper article, you responded to that. What about in the presentation?

**Mr Lloyd**—I was correctly quoted in the presentation. A different journalist, who was present at my presentation, correctly recorded my words, as I say: 'It is not for me to say what the new body should look like', and, 'Mr Hadgkiss would not be drawn on the powers of the ABCC's replacement.' I am referring to the *Fin Review*, page 16, 24 May—the day after the previous article, which you referred to.

**CHAIR**—Could you explain why it is that, on slide 17 of the presentation—and that slide, I understand, sets out prosecutions and interventions in relation to major projects—the building contractor in each case is listed as the victim?

**Mr Lloyd**—Yes.

**CHAIR**—Explain to me why.

**Senator Wong**—Senator, I might have missed this. You are referring to slides in the presentation.

**CHAIR**—Yes.

**Senator Wong**—Were they tabled?

**CHAIR**—No, not yet.

**Senator FISHER**—Not yet—if they are going to be.

**CHAIR**—It is being taken on notice, actually.

**Senator Wong**—I do not have a copy.

**CHAIR**—It was a question taken on notice earlier.

**Mr Hadgkiss**—It is part of a presentation I regularly give.

**CHAIR**—Can you explain why you refer to building contractors as victims?

**Mr Hadgkiss**—Because they were the victims of unlawful behaviour.

**CHAIR**—The victims of unlawful behaviour?

**Mr Hadgkiss**—Correct.

**CHAIR**—Given that these are civil penalty prosecutions and not crimes, do you think that that is really an impartial and professional description to use?

**Mr Hadgkiss**—It is an appropriate description. They are the victims of unlawful behaviour.

**CHAIR**—I take it from Senator Fisher's interjection there she agrees with you. No?

**Senator FISHER**—I am surprised at your question, Chair.

**Senator ABETZ**—Consumers can be the 'victims' of price gouging. That term is often used in the public debate. There is no suggestion of criminality or anything else but a civil misdeed, if you like—price gouging—and we refer to the 'victims' of price gouging.

**Senator FISHER**—Equally, the 'victimisation' of workers under Workplace Relations Act.

**Senator ABETZ**—Yes.

**CHAIR**—So you would agree with Senator Abetz on this matter, Mr Hadgkiss?

**Mr Hadgkiss**—Sorry, I found the slide in question, which I was sharing with the commissioner and the minister.

**CHAIR**—You have agreed to take it on notice, but are you able to table that presentation now?

**Mr Hadgkiss**—Yes.

**CHAIR**—It might be better if you also send it to us electronically. We will now break for dinner.

**Proceedings suspended from 6.28 pm to 7.41 pm**

**CHAIR**—We now continue with the questioning of the ABCC.

**Senator Wong**—At the outset, I would like to thank the committee for their assistance in the slightly delayed start time. It is much appreciated.

**CHAIR**—Thank you, Minister. Mr Hadgkiss, can you clarify for me the role of the ABCC in relation to compliance with the national code of practice for the construction industry?

**Mr Hadgkiss**—The ABCC is responsible for the industrial relations provisions within the code and guidelines.

**CHAIR**—Is it your role to assess agreements for code compliance?

**Mr Hadgkiss**—No.

**CHAIR**—Whose role is that?

**Mr Hadgkiss**—The department's.

**CHAIR**—Does the ABCC accept the views of the department in relation to the code compliance of industrial instruments?

**Mr Hadgkiss**—Yes.

**CHAIR**—You do? So, as long as an agreement has received a certificate of compliance from the department, that agreement would be accepted by the ABCC as code compliant?

**Mr Hadgkiss**—I believe so, yes.

**CHAIR**—Yes?

**Mr Hadgkiss**—I believe so.

**CHAIR**—Is believe so not yes?

**Mr Hadgkiss**—It is a belief that that is what takes place.

**CHAIR**—Is there any basis on which the ABCC rejects the views of the department in relation to code compliance of industrial instruments?

**Mr Hadgkiss**—There are occasions when the views of the ABCC may be sought prior to making announcements on agreements.

**CHAIR**—But once the department has made a decision, that is the decision?

**Mr Hadgkiss**—That is their decision, yes.

**CHAIR**—That is a decision you abide by?

**Mr Hadgkiss**—Ordinarily, yes.

**CHAIR**—Under what circumstances don't you?

**Mr Lloyd**—There is one occasion that I can recall when an agreement was considered to comply—it was the agreement with the CEPU concerning Victorian industry—and we had

concern about the content of that agreement, particularly how it related to side deeds. We asked that the matter be reviewed.

**CHAIR**—All right. If it is reviewed and still deemed code compliant by the department, that is accepted?

**Mr Lloyd**—Yes.

**CHAIR**—So it is clear that it is the department's role?

**Mr Lloyd**—Yes.

**CHAIR**—If you do not get a review, it is still the department's role to make that decision?

**Mr Lloyd**—That is right.

**CHAIR**—Has the ABCC ever given advice to a head contractor not to use a particular subcontractor on the grounds that its instrument was not code compliant, even though the subcontractor's instrument had a certificate of compliance from the department?

**Mr Lloyd**—I do not recall an instance of that.

**CHAIR**—Can you take that on notice and check?

**Mr Hadgkiss**—It certainly would not be the practice of the ABCC to do it. We would give advice to a head contractor or, if a head contractor had queries about the bona fides of its subcontracting agreement, we would refer them to the department.

**CHAIR**—But you would not give advice to them not to use that particular subcontractor.

**Mr Hadgkiss**—No. That is not our role.

**CHAIR**—I understand that it is not your policy, given what Mr Lloyd says. But the question is whether you have.

**Mr Hadgkiss**—Not to my knowledge.

**CHAIR**—Have you ever given advice about whether particular types of agreements are cocompliant?

**Mr Hadgkiss**—We can give provisional advice, but the ultimate decision lies with the department.

**CHAIR**—I should rephrase that, then. Apart from advice which you might offer in giving the determining of whether it is cocompliant, have you ever given advice to others—to contractors or to builders—that some agreements are or are not cocompliant?

**Mr Hadgkiss**—It would be provisional advice. The ultimate decision would lie with the department. There would be caveat that for a final definitive answer they would still must defer to the department.

**CHAIR**—So you have give provisional advice on whether complaints are cocompliant or not?

**Mr Hadgkiss**—A builder or employer could show an experienced investigator or lawyer an agreement and they would be given some provisional advice. But ordinarily they would be told that a final answer, which must be given in writing, can only come from the department.

**CHAIR**—So on no occasion would the ABCC have ever given advice that, for example, all union collective agreements in South Australia or all union collective agreements in Queensland are not cocompliant?

**Mr Hadgkiss**—I am unaware of that.

**CHAIR**—Would you take that on notice and check?

**Mr Hadgkiss**—Certainly.

**CHAIR**—On how many occasions has the ABCC sought and obtained legal advice from external legal sources which has then been provided to one or more building industry participants?

**Mr Dagleish**—There is at least one instance of which I am aware of.

**CHAIR**—Can you tell me what that instance was? Can you also take on notice to see if there were other instances?

**Mr Dagleish**—Yes. There was an instance where dispute proceedings being taken by the CFMEU New South Wales Branch were before the New South Wales Industrial Relations Commission. This concerned two issues. One of those issues was a requirement to produce all books and records from 2001 to data to the Wollongong office of the CFMEU. That dispute proceeding was against Fine Line Australia Pty Ltd, a painting company. BISCO was the umbrella association acting for Fine Line. They request our advice and assistance in respect of a notice of motion in those proceedings to have that aspect of those proceedings dismissed for want of jurisdiction. We said that we would get legal advice and we provided a copy of that advice to the building industry participant.

**CHAIR**—So it was advice sought specifically on behalf of that building industry participant by the ABCC?

**Mr Dagleish**—Yes.

**CHAIR**—What did that advice cost?

**Mr Dagleish**—I would have to take that on notice.

**CHAIR**—And that is the only instance that you are aware of at the moment?

**Mr Dagleish**—You have prefaced your question by saying ‘legal advice from external providers’. Obviously, we give legal advice to building industry participants regularly as to their rights and obligations under the act.

**CHAIR**—I am interested specifically in—

**Mr Dagleish**—Specifically in relation to external providers, that is an instance in which the advice was provided.

**CHAIR**—What was the cost of that advice?

**Mr Dagleish**—I will take that on notice.

**CHAIR**—Is the third party asked to contribute to those costs?

**Mr Dagleish**—No.

**CHAIR**—When you provide advice to a third party, do you provide the same advice to the other party in the dispute?

**Mr Dagleish**—No. In this particular instance the advice was requested by BISCO and it related to jurisdiction in respect of a constitutional corporation very shortly after the Work Choices legislation was introduced. It was a matter of some public importance.

**CHAIR**—Yes, but it was advice paid for by the ABCC—

**Mr Dagleish**—Correct.

**CHAIR**—and provided simply to one party. The question is: would that advice have been provided to both parties? I understand that the nature of the advice was specifically for one party, but was the advice provided to both parties?

**Mr Dagleish**—The effect of the advice was—in the sense that the advice was converted into written submissions which were served in the proceedings.

**CHAIR**—Yes. But was it provided to the other party?

**Mr Dagleish**—The written submissions, yes.

**CHAIR**—But the advice?

**Mr Dagleish**—No.

**CHAIR**—No. Thank you. That is what I was asking.

**Mr Dagleish**—The written submissions were exchanged. It was simply the conversion of the advice into a submission.

**CHAIR**—So the advice, word for word, was just transcribed into a submission?

**Mr Dagleish**—Not every word, no.

**CHAIR**—That is right. There is a difference and that is what I am asking. I do not think that a lot turns on it, but I am specifically asking whether the advice was provided to both parties in dispute.

**Mr Dagleish**—Not as an advice, no.

**CHAIR**—No. On how many occasions has the ABCC provided formal representation to a building industry participant who is a party to a proceeding under the BCIIA or the Workplace Relations Act?

**Mr Dagleish**—One, I think.

**CHAIR**—Just one?

**Mr Dagleish**—Yes.

**CHAIR**—In terms of formal representation? We have moved on from the previous question.

**Mr Dagleish**—Yes.

**CHAIR**—Just one?

**Mr Dagleish**—Yes.

**CHAIR**—All right. And what was the cost of that representation.

**Mr Dagleish**—I will have to take that on notice; sorry.

**CHAIR**—On how many occasions has the ABCC intervened in court or tribunal proceedings to date?

**Mr Lloyd**—The number I think is about 76.

**CHAIR**—Could you take that on notice and confirm that?

**Mr Lloyd**—Yes.

**CHAIR**—But only if the figure is not correct. Who within the ABCC is responsible for deciding whether or not to intervene in a particular matter?

**Mr Lloyd**—It is generally one of us here and I sign off—if I am present and available—on informing the ARIC that we are going to intervene. In my absence Mr Dagleish or Mr Hadgkiss decides.

**CHAIR**—Who decides on the nature of the submissions made upon such an intervention?

**Mr Lloyd**—Again, it is a discussion with the appropriate senior officer. Sometimes we may get external legal advice or representation to give us that intervention in a court case.

**CHAIR**—And there has only been one instance of this?

**Mr Lloyd**—Of?

**CHAIR**—Of this intervention.

**Mr Lloyd**—There have been 76 cases.

**CHAIR**—Sorry, yes. Of the 76, on how many occasions have the ABCC made submissions that were supportive or consistent with the submissions that were put by the employer party to such a proceeding?

**Mr Lloyd**—It is very hard to judge that because our submission typically is to advise the parties of their rights and obligations under the legislation. Whether we come down on one or the other is not necessarily discernible. A lot of the interventions in the ARIC are involved in section 496 hearings of dispute matters, and our role typically is to say that this may potentially constitute unlawful industrial action and the rights and obligations of the parties under the act are such and such. Our submissions are more in that role of assisting the commission and the parties about where people stand.

**CHAIR**—Maybe you could take this on notice and just give me your view of which of the nature of those interventions are supportive of the employer, which are supportive of the employees and which ones you say are even handed. Prior to intervening in any proceedings, does the ABCC confer with one or more of the parties to such proceedings to advise them of the submissions that will be made upon intervention?

**Mr Lloyd**—It is our general practice to advise the parties that we are proposing to intervene. I do not think it is normal for us to discuss the submission we are going to make, but normally we discuss with the parties our intention to intervene.

**CHAIR**—When you say ‘normally’, would that be in all cases?

**Mr Lloyd**—No, sometimes a notice comes in very late and we cannot contact the parties, particularly on section 496s as they move fairly quickly to hearing.

**CHAIR**—Could you take on notice and describe to me when you have discussed with both parties, one party and which one they were, or neither party.

**Mr Lloyd**—We will try and do that. We do not record every occasion. But our practice is to attempt to inform the parties we are going to intervene.

**CHAIR**—Thank you. I accept you can only provide the information which you are able to provide. Can the ABCC confirm that for all matters, including civil penalty proceedings, it applies and regards itself bound to observe prosecution policy of the Commonwealth?

**Mr Lloyd**—Yes.

**CHAIR**—Okay. So you do not have your own policy?

**Mr Lloyd**—We comply with the legal services directions.

**CHAIR**—Does the ABCC accept the views put by His Honour Finkelstein in *Pine v Seelite Windows & Doors Pty Ltd* to the effect that the question of whether the public interest is served by the pursuit of certain prosecutions is as applicable to contraventions of the Workplace Relations Act as it is to criminal prosecutions?

**Mr Dagleish**—Yes.

**CHAIR**—You do?

**Mr Dagleish**—Yes.

**CHAIR**—Without conditions?

**Mr Dagleish**—We actually use the test set out by Mr Justice Finkelstein.

**CHAIR**—Based on that answer, could explain to me how the public interest was advanced in the matter of *Cruse v Multiplex*?

**Mr Dagleish**—That matter was the subject of an appeal hearing on 13 May, and the full court of the Federal Court of Australia has reserved its decision on that appeal. I do not think it is appropriate to comment on it in those circumstances.

**CHAIR**—Can the ABCC confirm whether, in the conduct of various proceedings that have been instituted by it, it regards itself as obliged to observe any common law duty of procedural fairness?

**Mr Dagleish**—Common law duty of?

**CHAIR**—Common law duty of procedural fairness.

**Mr Dagleish**—The answer to that is that we are not subject to the same strictures in terms of unused material that the DPP is in criminal matters.

**CHAIR**—So do you have a guideline which you follow in respect to that then?

**Mr Dagleish**—No. We are bound by the principles of being a model litigant in the legal services directions. To that extent the guidelines are set down by the Attorney-General.

**CHAIR**—The ABCC was subject to criticism by the AIRC in the matter of Martino v McLoughlin on 29 August 2007. What steps, if any, has the ABCC taken to address the commissioner's criticism?

**Mr Hadgkiss**—It has been brought to the attention of investigative staff.

**CHAIR**—Have they been instructed to take any particular action?

**Mr Hadgkiss**—As I say, it has been brought to the attention of investigative staff.

**CHAIR**—And, as I asked, have they been instructed to take any specific action?

**Mr Hadgkiss**—They are to be aware of that criticism by the commissioner.

**CHAIR**—Simply to be aware of it? What does that mean? What is the impact of that?

**Mr Hadgkiss**—They have been acquainted with the commissioner's decision that was made in respect of that and are to be aware of the ramifications of not abiding by that decision.

**CHAIR**—How were they made aware?

**Mr Hadgkiss**—Through meetings and through new investigators coming on board and it being part of their training.

**CHAIR**—Are they advised in a procedural way on how to act to avoid the occurrences that happened in that case?

**Mr Hadgkiss**—It has not become part of policy, no.

**CHAIR**—It has not? They have simply been made aware of it.

**Mr Hadgkiss**—Like other decisions that affect their day-to-day duties, yes. In fairness, as you are aware, the ABCC were successful in that matter.

**CHAIR**—Yes. I was not asking about that. I was asking about the criticism that was made of the ABCC in that matter and what was done about it. You have said it has been brought to the attention of inspectors.

**Mr Hadgkiss**—Yes. Correct.

**CHAIR**—And that is all.

**Mr Hadgkiss**—They have been made aware, as with any other decision by a commissioner or by the bench, to be aware of the ramifications of that decision.

**CHAIR**—Right. And what were the ramifications that they have to be aware of?

**Mr Hadgkiss**—Exactly what you read out.

**CHAIR**—I only read out that there was criticism made.

**Mr Hadgkiss**—That has been brought to their attention through—

**CHAIR**—So all they have been told is that the commission made criticisms of the ABCC in their decision?

**Mr Hadgkiss**—And to be aware in future of any investigations of the ramifications of that criticism.

**CHAIR**—So the criticism itself was given to them, was it?

**Mr Hadgkiss**—Yes, exactly. It has been—

**CHAIR**—I did not read out the criticism, Mr Hadgkiss.

**Mr Lloyd**—We take every observation and criticism by a bench or an AIRC member seriously. To be fair, though, that is one—and, I must say, an isolated instance of—criticism by courts or tribunals of our investigation procedures. Everybody is always looking for ways to improve and enhance what they do. As Mr Hadgkiss is saying, we looked at it and we advised inspectors of that criticism, to be mindful to continue to apply high standards to their work. That is how it was treated.

**CHAIR**—All right. In the most recent report on the exercise of the ABCC's coercive powers, it was disclosed that, of the 85 examinations conducted up to 31 March, 41 were with respect to investigations that were ongoing. Of those 41, how many investigations were commenced 12 months ago or more?

**Mr Lloyd**—We will take that on notice.

**CHAIR**—All right. You will probably have to take this on notice. The same report showed that 27 of the 85 compulsory examinations—about a third—were with respect to matters that resulted in no court action whatsoever. Can you update me on the figures on the results of compulsory examinations provided in the March 2008 report?

**Mr Lloyd**—Update you? In what way?

**CHAIR**—In respect of the ones that have resulted in no further action.

**Mr Lloyd**—I would have to take that on notice.

**CHAIR**—I think this is my last question. In response to a question on notice, which is EW129\_08, the ABCC provided a list of legal matters and associated legal costs. I am just wondering why that table excluded matters conducted in New South Wales. It may have been an oversight.

**Mr Dagleish**—I do not know what you are referring to.

**CHAIR**—The information I have is that it is EW129\_08.

**Mr Dagleish**—I think I have that document.

**CHAIR**—It would appear, on my reading, that there are no matters in respect of New South Wales on that table.

**Mr Hadgkiss**—Alfred v Lanscar is a matter.

**Mr Dagleish**—Alfred v Lanscar was actually the ACT.

**CHAIR**—Yes, ACT.

**Mr Hadgkiss**—Maybe where the answer lies—to be definitive, we would have to take it on notice—is that the list of matters there is part of the question of each matter 'concluded'. No doubt a number of other matters have concluded since this was supplied. You must bear in mind that a number of prosecutions by the ABCC would still be on foot; they have not yet

been concluded. Although, since these were supplied, I recall that there are a number of matters that have been concluded successfully by the ABCC in New South Wales.

**CHAIR**—Could you do two things for me: could you check the answer to this question and if there are some omitted matters—and I make no judgement about why—would you correct the answer?

**Mr Hadgkiss**—There is the matter of Silvestri; it was concluded this morning.

**CHAIR**—Let me finish. If this answer needs to be amended because there was an omission for a reason, please amend the answer to this question. Could you also take on notice the same question but in an updated form up until today, or at the time when you are preparing the answer. I am happy to put the rest of my questions on notice.

**Senator ABETZ**—Can I ask you, Mr Lloyd, if, first of all, you have extensive legal experience? That is not blowing your trumpet too much is it?

**Mr Lloyd**—I cannot claim to be a lawyer. I am an economist.

**Senator ABETZ**—Right. So you are an economist.

**Mr Lloyd**—Yes, I have an economics degree. That is my tertiary training.

**Senator ABETZ**—Have you heard the term ‘victim’ used in things such as motor vehicle accidents and defamation in your normal course of interaction within the community?

**Mr Lloyd**—Yes, I have heard that mentioned for motor vehicle accidents, certainly.

**Senator ABETZ**—And of course there is not necessarily criminality involved in a motor vehicle accident or a defamation.

**Mr Lloyd**—I presume so, yes, in some motor vehicle accidents.

**Senator ABETZ**—Can I now go to this very helpful sheet that I want to congratulate the chair in providing—he did not provide it but he ensured that the committee was provided with it. It is a document that I understand you, Mr Hadgkiss, use as part of your presentation to various groups and organisations.

**Mr Hadgkiss**—Correct.

**Senator ABETZ**—And that document has down the left-hand side a heading ‘Prosecutions’—is that correct?

**Mr Hadgkiss**—Correct.

**Senator ABETZ**—It then lists seven cases under the heading ‘Prosecutions’.

**Mr Hadgkiss**—That is so.

**Senator ABETZ**—Then there is another heading ‘Interventions’ with a further seven cases underneath that—is that correct?

**Mr Hadgkiss**—That is so.

**Senator ABETZ**—In relation to the seven prosecutions, can you advise whether they have all been finalised?

**Mr Hadgkiss**—Yes.

**Senator ABETZ**—Was the ABCC successful in all those seven prosecutions?

**Mr Hadgkiss**—They were.

**Senator ABETZ**—There are various other categories, but then there is the category at which the chair took some umbrage: the category of ‘Victim’. Can I ask you in relation to the case of *Martino v CEPU & Anor* whether the subject of the illegal action in that case was, in fact, the Eastern Victoria group?

**Mr Hadgkiss**—That is correct.

**Senator ABETZ**—In relation to *Cruz v CEPU & Anor*, was the subject of the illegal action or victim Roche Mining?

**Mr Hadgkiss**—Yes.

**Senator ABETZ**—And I assume we could go through the other five examples with you giving us the same answer?

**Mr Hadgkiss**—That would be correct.

**Senator ABETZ**—Thank you. We then move to the interventions: have all those been concluded?

**Mr Hadgkiss**—Yes, with the exception of—

**Senator ABETZ**—In relation to one of them, I understand there might still be an assessment outstanding?

**Mr Dagleish**—Yes, in respect of the Leighton Contractors.

**Senator ABETZ**—That is the second one.

**Mr Hadgkiss**—Yes, the one with \$1.6 million—

**Mr Dagleish**—It is before the Supreme Court of Western Australia for the assessment of damages.

**Senator ABETZ**—And assessment of damages follows upon the court finding that certain illegal activity has been undertaken?

**Mr Dagleish**—There were admissions and agreed penalties totalling \$150,000.

**Senator ABETZ**—So, in relation to all the matters under interventions—the seven of them—we have a similar situation that illegal action has been found by a court, or it has been agreed to by the parties that illegal conduct had occurred.

**Mr Hadgkiss**—I have two corrections under prosecutions: the Lovell matter at the bottom is still before the court, and I am informed the *Alfred v Wakelin* matter is still to be determined by the court.

**Senator ABETZ**—As well?

**Mr Hadgkiss**—Those two matters; the remainder, to the best of my recollection, have been concluded successfully.

**Senator ABETZ**—Thank you. Moving to the heading ‘Victims’, the seven victims were the subject of the illegal activity complained of in relation to the seven interventions.

**Mr Hadgkiss**—Yes.

**Senator ABETZ**—If we have a look at the site value, is this the total cost of the particular job, activity or contract in which it is alleged this illegal activity was undertaken?

**Mr Hadgkiss**—That is an approximate value of the project in question, involving the unlawful activity.

**Senator ABETZ**—The smallest contract amount out of both categories—prosecutions and interventions—is \$200 million—is that right? At the very bottom, Paper Australia v CEPU.

**Mr Hadgkiss**—That particular action involves \$200 million, but the paper mill concerned is considerably more.

**Senator ABETZ**—Right. The largest figure is, in fact, \$2 billion, and that is the Worley Parsons case—is that correct?

**Mr Hadgkiss**—That is correct.

**Senator ABETZ**—So we are talking about projects and contracts that have substantial commercial value and where substantial amounts of money have been tied up, as a result of which illegal activities on those projects could cause severe economic disruption to those that you have classified as the victims?

**Mr Hadgkiss**—Yes.

**Senator ABETZ**—That was very helpful.

**CHAIR**—Would you describe employees who have been underpaid wages as victims?

**Mr Hadgkiss**—Yes, absolutely.

**CHAIR**—In the case we talked about recently, which was a Mrs Healey from the Theatre Royal Hotel, who was convicted of underpaying 41 casual workers, it would be fair to describe those 41 casual workers as victims of Mrs Healey from the Theatre Royal Hotel.

**Mr Hadgkiss**—I would.

**CHAIR**—Thank you, Mr Hadgkiss. If there are no other questions of the ABCC we will move on to the Australian Fair Pay Commission. Thank you Mr Lloyd and officers.

[8.16 pm]

#### **Australian Fair Pay Commission**

**CHAIR**—I welcome Ms Jennifer Taylor from the Australian Fair Pay Commission Secretariat. Thank you for waiting again all night. We did try to plan to have all the agencies done fairly quickly, but we cannot control the nature of questions and unfortunately we are at the whim of all the senators and their interests, which is what we are actually here to do. While I apologise, I cannot do any more than that.

**Ms Taylor**—I understand. That is fine.

**CHAIR**—Do we have questions for Ms Taylor?

**Senator FISHER**—I do. I want to talk about the Fair Pay Commission's budget, to start with. We are talking about page 171, table 2.1 and the total resources for outcome 1. It looks

to me as if the Fair Pay Commission Secretariat is essentially looking set to enjoy a resource reduction in its budget in terms of \$1 million. Is that right?

**Ms Taylor**—Yes, the expenditure is \$1 million less. If I can pre-empt your next question, it is in relation to the funding the commission received for carrying out a certain task, which was the creation and publication of pay scales, which the commission is no longer doing. The additional funding that the secretariat received for that has now returned. So the 2008-09 estimate is as close to what it would have been without the additional funding that had come in which has now gone back.

**Senator FISHER**—So about an eighth of your funding was essentially directed towards the pay scales?

**Ms Taylor**—Yes. At the last estimates we went through the additional funding that had come to the Australian Fair Pay Commission to carry out that task that the commission is no longer doing.

**Senator FISHER**—In relation to the staffing reduction from 38 to 34, where are they going to be gone from?

**Ms Taylor**—Those staff are the four staff that were associated with the pay scales, and they have gone to the Australian Industrial Relations Commission.

**Senator FISHER**—Which agency is performing the pay scale function that the AFPC was formerly fulfilling?

**Ms Taylor**—The creation and the publication of pay scales is not currently being performed. The Workplace Authority provides pay scale summaries.

**Senator FISHER**—How far through the process—

**Senator Wong**—It has essentially been superseded as per the government's policy by the award modernisation process, about which you took evidence this morning.

**Senator FISHER**—Yes, but, Minister, the evidence that I took this morning showed, in my view, a splendid lack of progress on the award modernisation project. Meanwhile, Australia's workplaces are entitled to have information about how the existing regime of pay scales and pay rates translates to them at the workplace. But I was not going to ask Ms Taylor that question. Instead I was going to ask her how far through the pay scale process the commission got in the year that you enjoyed the funding to perform the job.

**Ms Taylor**—We had the task for approximately six months. In that time we had 56 pay scales drafted. They had not been approved by the commission. We had established a roundtable of the stakeholders.

**Senator FISHER**—By which commission—the Fair Pay Commission?

**Ms Taylor**—The Australian Fair Pay Commission. We had established a roundtable of stakeholders including all major parties. They had established a priority list of pay scales they wanted tackled first, and we were working through that list.

**Senator FISHER**—How would you describe your progress?

**Ms Taylor**—The progress over that period of time and with the assistance of all of the stakeholders was that, as I say, we had drafted 56 of those pay scales. There were—

**Senator FISHER**—Out of how many?

**Ms Taylor**—On the first priority list there were seven. We asked for a priority list in descending order that was the first 50 and then we went down in blocks of 100.

**Senator FISHER**—Can you describe that to me as a proportion of the job that you would have had ahead of you, had it continued as your job?

**Ms Taylor**—There are approximately 3,500 to 4,000 pay scales which we would have looked at. It would depend very much on the priorities that the stakeholders wanted to put on those pay scales. We had also taken the advice, of course, of the Workplace Authority on those pay scales that they had received the most inquiries about. It is a similar list, obviously, to the 400- or 500-odd pay scale summaries that are published.

**Senator FISHER**—Are the pay scales that the Fair Pay Commission has done its work on now applicable and published as applicable in the workplace?

**Ms Taylor**—No. As I say, the Fair Pay Commission had not approved those pay scales. They are at various stages of drafting and there were some issues still to be resolved around a number of those pay scales.

**Senator FISHER**—So the Fair Pay Commission was allocated \$1 million, essentially, to do this job, and it was partially done. As a result of that, Australia's workplaces are no better informed at all, because the commission has not approved the partial work that was done. Is that right?

**Senator Wong**—Senator, really—you have just put a political opinion to the witness and asked her to say yes or no. Her evidence is—and this would have occurred under your government—the commission did not approve the various pay scales that had occurred. She has given you evidence about what has occurred as a result of the budget decisions. My recollection is those measures in the budget papers that you are asking questions of were reported in the additional estimates. We have already been through this process.

**Senator FISHER**—Minister, how then is the government going to ensure that members of the public and Australia's workplaces can access pay scales—how and when?

**Senator Wong**—Can I just remind you, Senator, that under your policy the pay scales were not simply—

**Senator FISHER**—How and when?

**Senator Wong**—Let me finish. You asked a question and I am answering it, so perhaps you could stop interrupting me. Under your government the pay scales were not an explanation of what was in existence already. They were intended to be new pay scales. That was part of your Work Choices legislation, as you know, just as the award modernisation process is part of ours.

**Senator FISHER**—How and when, Minister, will Australia's workplaces be able to access pay scales? How and when will Australia's workplaces be able to inform themselves as to legally applicable rates of pay?

**Senator Wong**—Those questions I am sure could be directed to the department and/or the relevant agency, but it is not Ms Taylor—

**Senator FISHER**—Well, I did not get answers on that yesterday.

**Senator Wong**—I had not finished, Senator. I am sure you can direct those questions on notice to the relevant part of the department or the relevant agency. You have already had evidence in this committee about the award modernisation process.

**Senator FISHER**—It looks as if I have little option other than to do that. What process will an employer, employee or union follow if they do not agree with whatever is put to them as the applicable pay scale?

**Senator Wong**—Who is this question of?

**Senator FISHER**—I am at a loss too, Minister, but I guess I will put that on notice into the ether.

**CHAIR**—You must know who you are asking.

**Senator Wong**—Who are you asking? We cannot discern that.

**Senator FISHER**—You have just said to me that I am not permitted to ask the question of Ms Taylor.

**Senator Wong**—You can ask them. Frankly, I just think that, if you had those issues, they probably should have been asked of the relevant agency rather than waiting till Ms Taylor came to the table late on the second day to ask her questions which are not within her remit.

**Senator FISHER**—You were here yesterday, Minister, when we did a merry dance around the issue of whom we should ask what. Obviously some of the dance steps have not been choreographed sufficiently accurately for your purposes.

**Senator Wong**—That is just bizarre. What a bizarre contribution, Senator. It has no relation to reality. That seems to be the way with so many of your questions, with all due respect.

**Senator FISHER**—Learn to enjoy it, Minister.

**CHAIR**—Let us bring this back on track.

**Senator FISHER**—I have some different questions, Chair.

**CHAIR**—All right then, but they need to be questions for this agency.

**Senator FISHER**—What indications, Ms Taylor, has the Fair Pay Commission been given in respect of the development of Fair Work Australia?

**Ms Taylor**—The development of Fair Work Australia is a matter for the government. The indications have been in the government's policy that came out about the transition to Fair Work Australia. That is what we have received.

**Senator FISHER**—Has the commission discussed with the department what the role of the Fair Pay Commission will be in the future?

**Ms Taylor**—No. The policy documents on the transition talk about the role of minimum wage setting as moving into Fair Work Australia.

**Senator FISHER**—So you envisage no role for the Fair Pay Commission?

**Senator Wong**—The evidence was that that is a matter for the government's policy. Ms Taylor referred you to the government's policy.

**Senator FISHER**—My question, Ms Taylor, was actually whether you had had discussions with DEEWR. Ms Taylor's answer to me was about the government's policy. Really the answer is a yes or a no, I would have thought.

**Ms Taylor**—I misunderstood what you said. My answer is no, we have not had discussions with the department.

**CHAIR**—Thank you.

**Senator FISHER**—In respect of the AFPC's review of minimum rates of pay: how many submissions has the Fair Pay Commission received since December last year?

**Ms Taylor**—We received a total of 87 submissions.

**Senator FISHER**—When did you receive the government's submission?

**Ms Taylor**—I do not have the exact date on me—I can take that on notice—but submissions closed on 14 March, and the majority of submissions were received towards the closing date.

**Senator FISHER**—If you can answer that question on notice, that would be good. I understand that the government made both a prebudget and a postbudget submission.

**Ms Taylor**—Yes.

**Senator FISHER**—I think evidence was given yesterday that you have received the government's postbudget submission—is that correct?

**Ms Taylor**—Yes.

**Senator FISHER**—Is that on your website?

**Ms Taylor**—It should be on our website. We received a number of postbudget submissions from, I think, major stakeholders and they are in the process of being posted on our website.

**Senator FISHER**—At the moment, are they?

**Ms Taylor**—Yes. I have not checked today, but they were supposed to be up there either yesterday or today.

**Senator FISHER**—That may well explain it. When I asked if the government's postbudget submission was on your website yesterday, I was led to understand it was not—so maybe it will be up there by now.

**Ms Taylor**—It should be. If not, it certainly will be within the next 24 to 48 hours.

**Senator FISHER**—Thank you. One of the factors referred to in some of the submissions to the Fair Pay Commission, as I understand it, were taxation initiatives in the 2007-08 budget, such as low-income tax offset, and the childcare tax rebate. The suggestion made by some was that these are aspects of the tax transfer system that have an important role in mitigating income inequality. Are these factors that the commission will take into account in

arriving at a determination as to whether there should be a minimum pay increase for workers?

**Ms Taylor**—I cannot speculate on what factors the commission will take into account. I can say that the criteria set down in the legislation is what the commission uses. Its method of gathering information about that criteria—one of which is the safety net—is to receive submissions, commission research and consultations. In that very broad sense, the commission will consider all information that it has received.

**Senator FISHER**—Does the AFPC conduct modelling or retain consultants to conduct modelling that will reflect the impact of the tax transfer system on wage outcomes?

**Ms Taylor**—In the past the commission has, and it currently does. It produces that modelling in its reasons for a decision. It also produces that modelling in its *Economic and social indicators—monitoring report*, the first of which was produced in February, and it will be producing those six-monthly.

**Senator FISHER**—Do you have something to add, Ms Taylor, following your discussion with the minister?

**Senator Wong**—I actually just said I did not realise it was six-monthly. But it is on the website.

**Senator FISHER**—The postbudget submission is on the website?

**Senator Wong**—No, the issue you were just discussing.

**Senator FISHER**—Okay—I am glad that one is. I am looking at the computer at the same time as the minister and I am told that the government's postbudget submission is still not on the commission's website, so I look forward to it being there—tomorrow, Ms Taylor?

**Ms Taylor**—It will be there very shortly.

**Senator FISHER**—Very good. Once the Fair Pay Commission hands down its minimum wage decision, who will be responsible for distributing pay scales following, and as a result of, that decision?

**Ms Taylor**—The Workplace Authority. We will be producing the pay scale summaries and they will be giving advice as they normally do on appropriate—

**Senator FISHER**—The Workplace Authority. Can you estimate a time frame for the Fair Pay Commission handing down its minimum wage decision?

**Ms Taylor**—The commission has not announced a date; however, the chair of the commission has said publicly on a number of occasions that it will be in early July. In its last reasons for decision, the commission also indicated that the decision would be handed down in early July with an implementation date of 1 October.

**Senator FISHER**—What percentage of workers does the AFPC estimate are covered by awards in Australia?

**Ms Taylor**—The estimates of Australian pay and classification scale reliance, based on the ABS data, are that around 14.3 per cent are pay scale reliant.

**Senator Wong**—I am just trying to correlate whether that was what you were asking for.

**Ms Taylor**—And they are employees in the jurisdiction of the Australian Fair Pay Commission, so not those still covered by state awards.

**Senator FISHER**—Okay. So what percentage of workers is that again?

**Ms Taylor**—It is 14.3 per cent of employees—about 1.34 million employees.

**Senator FISHER**—When was the decision taken to task the Workplace Authority with the significant task of publishing pay scales?

**Ms Taylor**—I could not answer that.

**Senator FISHER**—When were you informed that that was to occur?

**Ms Taylor**—That has always been the case. The Workplace—

**Senator FISHER**—Always? Well, there must have been—

**Ms Taylor**—Sorry, since the Australia Fair Pay Commission has been in existence—since March 2006—the Workplace Authority have given advice about rates of pay that are applicable and then published pay scale summaries.

**Senator FISHER**—What work was the AFPC doing that we were discussing earlier?

**Ms Taylor**—That was the creation and publication of new pay scales.

**Senator FISHER**—Once the AFPC creates new pay scales, someone else informs everybody about them. Is that how it works?

**Ms Taylor**—No. There were various mechanisms by which people would find out about pay scales. One was the Australian Fair Pay Commission's website, the Workplace Authority, industry bodies and unions. Employee organisations would have access to those as well.

**Senator FISHER**—But it never really got off the ground, did it?

**Ms Taylor**—Not for the creation and publication of new pay scales, no.

**Senator FISHER**—No. It never really got off the ground, however, as a comprehensive scheme that allowed every Australian worker covered by the federal system to know their pay scale and pay rate, did it?

**Senator Wong**—What did not get off the ground was your government's scheme.

**Senator FISHER**—It did not get off the ground and it still is not getting off the ground—well, I do not know that; I cannot make that claim.

**Senator Wong**—Thank you for the concession.

**Senator FISHER**—I am trying to work that out, Minister. Can you please explain again the role that the Workplace Authority is having in this?

**Senator Wong**—No, Senator, you cannot ask this officer. She has given you her understanding of whose responsibility it is. With respect, I do not think it is fair to the secretariat of the Fair Pay Commission to require her to give an answer about another agency's role. It is like me asking you what Senator Fierravanti-Wells does.

**Senator FISHER**—Who will be doing the task that the Fair Pay Commission was previously doing in respect of pay scales?

**Ms Taylor**—In the creation and publication of pay scales the award modernisation process will be looking at the whole issue of awards, which will include rates of pay, as I understand.

**Senator FISHER**—Last year the Fair Pay Commission was specifically funded to prepare pay scale summaries. Now it is a job partially done. It has now been passed on to somebody else.

**Senator Wong**—I am trying to work out what you are referring to, Senator. Were you referring to the award modernisation?

**Senator FISHER**—Yes.

**CHAIR**—Just keep asking your questions, Senator Fisher. Don't be distracted.

**Senator FISHER**—I am not getting an answer, but—

**CHAIR**—You have not finished asking the question yet, so finish the question and we will assist you in getting an answer.

**Senator FISHER**—It is news to me, quite frankly, that the Workplace Authority was to be assuming this role. I am wondering how long I have been out of the loop. I genuinely ask, 'How do you know this?' and Ms Taylor says, 'Well, it has always been thus,' whereupon I think our wires have become somewhat crossed—or perhaps not.

**Ms Taylor**—The Australian Fair Pay Commission cannot interpret what is in an existing pay scale; it has no authority to do that. So the process was for the Australian Fair Pay Commission to create and publish new pay scales. The Workplace Authority, it is my understanding, has had the role of— Sorry, I correct myself, I do now believe it was the then Department of Employment and Workplace Relations who started out the function that transferred to the Workplace Authority.

**Senator FISHER**—Yes.

**Ms Taylor**—My apologies, Senator. I forgot that step.

**Senator FISHER**—I did seek your clarification several times.

**Ms Taylor**—Sorry, Senator. So it was the Department of Employment and Workplace Relations, as it was then, that started the process that then went to the Workplace Authority to do the pay scale summaries. So they have been doing the pay scale summaries, publishing the pay scale summaries and giving advice on rates of pay.

**Senator Wong**—My recollection—and I think this is consistent with the evidence that has just been given—is that it was your government that gave the role of publishing the notional pay scales to the Workplace Authority, so if you are out of the loop there that is probably not Ms Taylor's fault.

**Senator FISHER**—Now that I understand the chain of events, it is entirely consistent, Minister, but the chain of events that I earlier understood was being put to me was somewhat different.

**CHAIR**—I am glad that we are past that. Are there any more questions?

**Senator FISHER**—Thank you, Chair, I think I have finished.

**Committee adjourned at 8.44 pm**