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SENATE

STANDING COMMITTEE ON EDUCATION, EMPLOYMENT AND
WORKPLACE RELATIONS

ESTIMATES

(Supplementary Budget Estimates)

THURSDAY, 23 OCTOBER 2008

CANBERRA

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

Thursday, 23 October 2008

Members: Senator Marshall (*Chair*), Senator Humphries (*Deputy Chair*), and Senators Arbib, Cash, Jacinta Collins, Crossin, Fisher and Siewert

Participating members: Senators Abetz, Adams, Barnett, Bernardi, Bilyk, Birmingham, Mark Bishop, Boswell, Brandis, Bob Brown, Carol Brown, Bushby, Cameron, Colbeck, Coonan, Cormann, Eggleston, Ellison, Farrell, Feeney, Fielding, Fierravanti-Wells, Fifield, Forshaw, Furner, Hanson-Young, Heffernan, Hurley, Hutchins, Johnston, Joyce, Kroger, Ludlam, Lundy, Macdonald, Mason, McEwen, McGauran, McLucas, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Pratt, Ronaldson, Ryan, Scullion, Stephens, Sterle, Troeth, Trood, Williams, Wortley and Xenophon

Senators in attendance: Senators Abetz, Arbib, Cameron, Cash, Jacinta Collins, Fierravanti-Wells, Fisher, Humphries, Hutchins, Mason and McEwen

Committee met at 9.02 am

EMPLOYMENT AND WORKPLACE RELATIONS PORTFOLIO

In Attendance

Senator the Hon. Joe Ludwig, Minister for Human Services

**Department of Education, Employment and Workplace Relations
Portfolio overview and major corporate issues**

Cross Portfolio

Dr Michele Bruniges, Deputy Secretary

Mr Ewen McDonald, 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, Deputy Secretary

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

Mr George Kriz, Chief Legal Officer 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 Aloka Sinha, Branch Manager, Procurement and Contract Manager, Legal, Investigations and Procurement Group

Mr Shayne Howard, Branch Manager, Investigations, Legal, Investigations and Procurement Group

Mr Brien Armstrong, Branch Manager, Internal Audit Group

Ms Margaret Pearce, Group Manager, Parliamentary and Communications Group
Ms Gillian Mitchell, Branch Manager, Parliamentary Branch, Parliamentary and Communications Group
Ms Mary Balzary, Branch Manager, Communications Branch, Parliamentary and Communications Group
Mr Bob Bennett, Branch Manager, CA and Remuneration Taskforce, People Group
Mr Ben Johnson, Group Manager, People Group
Ms Chris Silk, Branch Manager, Remuneration and Performance, People Group
Ms Robyn Kingston, Group Manager, Delivery and Network Group
Mr Justin Mein, Branch Head, Implementation and Risk, Delivery and Network Group
Mr Glenn Archer, Group Manager, IT Services Group
Ms Kerrie Reyn, Acting Group Manager, Applications Systems Group
Ms Louise McDonough, Assistant Secretary, Wages and Conditions Policy Branch
Ms Jody Anderson, Branch Manager

Outcome 2—School Education

Mr Bill Burmester, Deputy Secretary
Ms Carol Nicoll, Group Manager, National Education System Group
Ms Deb Rollings, Branch Manager, Policy, Grants and Reporting Branch, National Education System Group
Ms Margaret Sykes, Branch Manager, Infrastructure Funding and Coordination, National Education System Group
Ms Suzanne Northcott, Branch Manager, National Education agreement Taskforce, National Education System Group
Mr Tony Zanderigo, Branch Manager, Reporting and Accountability Branch, National Education System Group
Ms Rebecca Cross, Group Manager, Lifting Educational Outcomes Group
Ms Helen McLaren, Branch Manager, Careers and Transitions Branch, Lifting Educational Outcomes Group
Ms Christine Lucas, Acting Branch Manager, Student Access and Equity Branch, Lifting Educational Outcomes Group
Ms Judy Petch, Director, Student Access and Equity Branch, Lifting Educational Outcomes Group
Ms Cathy Jubb, Director, Student Access and Equity Branch, Lifting Educational Outcomes Group
Ms Amanda Day, Acting Director, Student Access and Equity Branch, Lifting Educational Outcomes Group
Mr Garry Winter, Director, Student Access and Equity Branch, Lifting Educational Outcomes Group
Ms Regina Camara, Acting Branch Manager, Trade Training Centres Taskforce, Lifting Educational Outcomes Group
Ms Louise Hanlon, Branch Manager, Literacy and Numeracy Strategies Branch, Lifting Educational Outcomes Group
Ms Joanne Groube, Director, Literacy and Numeracy Strategies Branch, Lifting Educational Outcomes Group

Dr Evan Arthur, Group Manager, Digital Education Group
Ms Shelagh Whittleston, Branch Manager, Digital Education Revolution Taskforce, Digital Education Group
Mr Chris Sheedy, State Manager, South Australia, Branch Manager, National School Chaplaincy Unit, Digital Education Group
Ms Rhyan Bloor, Branch Manager, Broadband Infrastructure Taskforce, Digital Education Group
Ms Susan Smith, Acting Group Manager, National Initiatives Group
Ms Catherine Wall, Branch Manager, COAG Policy and Coordination Branch, National Initiatives Group
Ms Loire Hunter, Branch Manager, Indigenous Education Programs Taskforce, National Initiatives Group
Mr Scott Lambert, Director Science and Maths Education Section, National Curriculum Branch, National Initiative Group

Outcome 4—Vocational Education and Training

Mr Jim Davidson, Deputy Secretary
Mr Craig Robertson, Acting Group Manager, Tertiary Skills and Productivity Group
Ms Linda White, Branch Manager, Higher Skills, Tertiary Skills and Productivity Group
Ms Hilary Riggs, Acting Branch Manager, Skills Quality, Tertiary Skills and Productivity Group
Ms Suzi Hewlett, Branch Manager, Industry Engagement, Tertiary Skills and Productivity Group
Dr Caroline Perkins, Branch Manager, Tertiary Participation and Equity, Tertiary Skills and Productivity Group
Ms Robyn Priddle, Branch Manager, Foundation Skills and Pathways, Tertiary Skills and Productivity Group
Mr Patrick Cremen, Director, Workforce Development, Tertiary Skills and Productivity Group
Ms Sue Beitz, Branch Manager, Skills Australia Secretariat, Tertiary Skills and Productivity Group

Outcome 1—Early Childhood Education and Childcare

Dr Michele Bruniges, Deputy Secretary
Ms Vicki Rundle, Group Manager, Early Childhood Development
Ms Robyn Calder, Branch Manager, Early Childhood Development Strategy, Early Childhood Development
Ms Kathryn Shugg, Branch Manager, Early Learning and Care Services, Early Childhood Development
Ms Lois Sparkes, Acting Group Manager, Early Childhood Programs Group
Mr Murray Kimber, Branch Manager, Child Care Policy and Payments, Early Childhood Programs Group
Ms Annette Laurie, Acting Branch Manager, Child Care Programs Branch, Early Childhood Programs Group
Ms Deborah Anton, Acting Branch Manager, Office Secretariat, Early Childhood Programs Group

Ms Trish Mercer, Group Manager, Early Childhood Education and Workforce Group
Dr Gabrielle Phillips, Branch Manager, Performance and Analysis, Early Childhood Education and Workforce

Mrs Susan Bennett, Branch Manager, Early Childhood Workforce and Indigenous Preschool Branch, Early Childhood Education and Workforce Group

Mr Chris Alach, Acting Branch Manager, Early Childhood Workforce and Indigenous Preschool Branch, Early Childhood Education and Workforce Group

Dr Russell Ayres, Branch Manager, Early Childhood Education Reform Branch, Early Childhood Education and Workforce Group

Mr Michael Manthorpe, Group Manager, Child Care Industry Taskforce

Outcome 5—Transitions and Youth

Mr Jim Davidson, Deputy Secretary

Ms Margaret McKinnon, Group Manager, Youth and Industry Skills

Ms Christine Dacey, Branch Manager, Office for Youth, Youth and Industry Skills Group

Mr Neil McAuslan, Branch Manager, Policy, Funding and Performance, Youth and Industry Skills Group

Ms Katy Balmarks, Branch Manager, VET Technology and Recognition Programs, Youth and Industry Skills Group

Ms Anita Mills, Acting Branch Manager, Australian Apprenticeships, Youth and Industry Skills Group

Ms Jan Febey, Acting Branch Manager, Trades Recognition Australia and ATCS; Youth and Industry Skills Group

Outcome 3—Higher Education

Mr Jim Davidson, Deputy Secretary

Mr Colin Walters, Group Manager, Higher Education Group

Mr Jason Coutts, Branch Manager, Policy, Compacts and Accountability, Higher Education Group

Ms Anne Baly, Branch Manager, Review of Australian Higher Education, Higher Education Group

Mr Rod Manns, Branch Manager, Funding and Student Support Branch, Higher Education Group

Ms Julie Randall, Branch Manager, Infrastructure and Endowment, Higher Education Group

Ms Catherine Vandermark, Branch Manager, Quality and Private Providers Branch, Higher Education Group

Outcome 9—More Productive and Safer Workplaces

Mr John Kovacic, 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 Perdikiogiannis, Branch Manager, Bargaining and Coverage Branch, Workplace Relations Legal Group

Mr Henry Lis, Branch Manager, Institutions, OHS and Workers Compensation Branch, Workplace Relations Legal Group

Mr Michael Maynard, Group Manager, Workplace Relations Implementation Group

Ms Michelle Baxter, Group Manager, Safety and Entitlements Group

Ms Helen Marshall, Branch Manager, Office of the Federal Safety Commissioner, Safety and Entitlements Group

Mr James Hart, Branch Manager, Employment Entitlements Branch, Safety and Entitlements Group

Mr Derren Gillespie, Branch Manager, Tribunals Secretariat, Safety and Entitlements Group

Ms Melissa Ryan, Branch Manager, Commonwealth OHS and Workers' Compensation Branch, Safety and Entitlements Group

Ms Flora Carapellucci, Group Manager, Office of the Australian Safety and Compensation Council

Ms Amanda Grey, Branch Manager, Information Services Branch, Office of the Australian Safety and Compensation Council

Ms Julia Collins, Branch Manager, National Occupational Health and Safety and Workers Compensation Policy, Office of the Australian Safety and Compensation Council

Outcome 7—Labour Market Assistance

Ms Malisa Golightly, Deputy Secretary

Ms Janine Pitt, Acting Group Manager, Job Seeker Support Group

Mr Stephen Moore, Group Manager, Employment Systems Group

Ms Marsha Milliken, Group Manager, Income Support and Stakeholder Group

Ms Jo Caldwell, Group Manager, General Employment Services Group

Mr Tony Waslin, Group Manager, Specialist Employment Services Group

Ms Jennifer Chadwick, Branch Manager, Disability Employment Policy and Performance, Specialist Employment Services Group

Ms Sharon Stuart, Branch Manager, Disability Employment Services Branch, Specialist Employment Services Group

Mr Derek Pigram, Branch Manager, Employment Pathways Branch, Specialist Employment Services Group

Ms Kerren Thorsen, Group Manager, Employment Purchasing Group

Outcome 8—Workforce Participation

Mr Graham Carters, Deputy Secretary

Mr Matt Davies, Acting Group Manager, Strategic Policy Group

Ms Georgina Webb, Acting Branch Manager Strategic Policy Group

Ms Margaret Kidd, Group Manager, Employment Reform Taskforce

Dr Alison Morehead, Group Manager, Social Inclusion and Participation Group

Ms Sharon Rose, Branch Manager, Participation Policy, Disability and Disadvantaged Branch, Social Inclusion and Participation Group

Ms Stephanie Bennett, Branch Manager, Social Inclusion Branch, Social Inclusion and Participation Group

Ms Robyn Shannon, Branch Manager, Participation Policy, Families Branch, Social Inclusion and Participation Group

Mr Bob Harvey, Group Manager, Indigenous Group

Ms Mary-Anne Sakkara, Branch Manager, Indigenous Policy Branch, Indigenous Group

Ms Julie Polson, Branch Manager, Strategic Support Branch, Indigenous Group

Mr Stephen Goodwin, Branch Manager, Innovation and Partnerships Branch, Indigenous Group

Ms Jo Wood, Branch Manager, Innovation and Partnerships Branch, Indigenous Group

Mr Scott Matheson, Acting Group Manager, Research Analysis and Evaluation Group

Australian Building and Construction Commission

The Hon John Lloyd, Australian Building and Construction Commissioner

Mr John Draffin, Assistant Commissioner Operations

Mr Ross Dalglish, Deputy Commissioner Legal

Ms Heather Hausler, Assistant Commissioner Corporate

Mr John Casey, Chief Financial Officer

The Workplace Authority

Ms Barbara Bennett, Director

Ms Penny Weir, Head of Corporate

Ms Jo Major, General Manager, Agreements and Strategy

Ms Helen Bull, General Manager, Agreements and Policy

Ms Lily Viertmann, 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

Comcare

Mr Martin Dolan, Chief Executive Officer

Mr Steve Kibble, Deputy Chief Executive Officer

CHAIR (Senator Jacinta Collins)—I declare open this meeting of the Senate Standing Committee on Education, Employment and Workplace Relations. The committee is continuing the examination of the Education, Employment and Workplace Relations Portfolio beginning with outcome 9. Copies of yesterday's opening statement setting out the procedural requirements of the estimates process are available from the secretariat. I remind the department that the committee has fixed Friday, 28 November 2008, as the date for the return of answers to questions on notice. Today's proceedings will be suspended for breaks as indicated on the agenda. I ask witnesses called upon for the first time to answer a question to state clearly their name and capacity in which they appear for the *Hansard* record. 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 and Minister for Employment and Workplace Relations, Senator the Hon. Joe Ludwig; the Acting Secretary of the Department of Education, Employment and Workplace Relations, Mr Bill Burmester; and

other officers as well as observers to the public hearing. Would you like to make an opening statement?

Senator Ludwig—No, thank you.

CHAIR—We can move to questions.

Mr Kovacic—Before we do that, can I again reiterate the apologies of Ms Lisa Paul, who remains ill today and is unfortunately unable to attend. Yesterday there was a question that was taken on notice from Senator Humphries relating to a freedom of information request to the department. We are able to deal with that now, if that is convenient.

Mr O'Sullivan—Senator Humphries, yesterday I took on notice a question about FOI statistics in broad terms. I have that information for you. As I recall, you wanted figures from the last financial year dealing with FOI requests received and how they were dealt with. I have the statistics for the last financial year for the Department of Education, Employment and Workplace Relations but I just qualify this by noting that the department came into existence on 3 December, so it will be from 3 December to the end of the last financial year. In that period the department received 86 FOI requests and took on an additional 13 requests inherited, if you will, from the forerunners of the department. Of those, 23 requests were granted in full, 34 requests were granted in part, four were not granted, 15 were withdrawn, four were transferred and, at the end of that year, there were 19 still being processed.

Senator HUMPHRIES—There were 15 not granted in their entirety, did you say?

Mr O'Sullivan—No, there were only four that were not granted. That means FOI exemptions applied to those documents in full. You also had a question about conclusive certificates issued in that period. None were issued in that portfolio. Indeed, conclusive certificates have to be tabled in parliament. I am not aware of any conclusive certificates being issued in that portfolio for quite some time.

CHAIR—Senator Abetz.

Senator ABETZ—Chair, I congratulate you on your appointment. Also, I congratulate the minister. I think this is the first time he is appearing in this portfolio after the changes—is that right?

Senator Ludwig—Yesterday I appeared.

Senator ABETZ—Yes, but for employment. And on behalf of the opposition can I send a cheerio and well wishes to Lisa Paul for her health. I have a number of general questions that Mr Kovacic might be able to assist me with. If they are in the wrong area, please let me know and another area might like to take them on notice. First of all, can I ask some questions about the ILO in this area or not?

Mr Kovacic—Yes, you can.

Senator ABETZ—I just need some advice as to whether the ILO acknowledges the ACTU as the peak body representing workers in Australia.

Mr Kovacic—In a formal sense I think it does but in terms of whether there is a piece of paper that confirms that, I am not sure. I would have to take that second bit on notice.

Senator ABETZ—That would be interesting as to how that is actually formalised. I personally have no criticism of the fact that the ILO does that. I would have thought it would be fairly obvious that the ACTU should be so recognised, but I wanted that confirmed. Although you have confirmed it you are not sure how that is formalised, so that would be interesting if you could advise me of that. The next question is: does the ILO also acknowledge ACCI as the peak employer organisation? I assume that is in the same way as they acknowledge the ACTU.

Mr Kovacic—In essence I think the answer here is that the ILO constitution requirement is that the most representative organisations at the relevant time provide ILC representatives. In terms of who is the most representative organisation, that is largely an issue for member countries to determine. There is a principle that was stated in an advisory opinion dating back to 1922 that in a particular country where several industrial organisations representing the working classes exist the government must take all of them into consideration when it is proceeding to the nomination of the workers' delegate and technical advisers. That applies equally to employer representatives in terms of selecting those delegates to participate as part of a delegation to the ILO.

Senator ABETZ—If the government wanted to it could in fact play favourites. For example, if the government had a falling out with the ACTU, they might be able to say the national president of another union would be more representative and send that person along. Would that be possible?

Mr Kovacic—Where a government shows there was a question mark around the representativeness of the delegation it is open to other parties to raise that with the International Labour Organisation. For instance, there would be a credentials committee for the International Labour Conference where those sorts of issues would be challenged. I am not aware of any challenge at the credentials committee to the representativeness of Australian delegations to the ILO—

Senator ABETZ—That is both from a worker and employer point of view?

Mr Kovacic—That is correct.

Senator ABETZ—In fact, ACCI has been a representative for how long—do we know?

Mr Kovacic—As far as I am aware ACCI has been involved with International Labour Organisation issues dating back to the 1970s.

Senator ABETZ—That is all I need to know. Thank you for that. That is very helpful. Has the government been involved in funding any representatives from any other employee or employer organisations to the ILO since 1 January this year?

Mr Kovacic—In terms of the representation at this year's International Labour Conference the government made a decision to extend an invitation to the Australian Industry Group. The decision was premised on seeking to enhance the representativeness of the Australian delegation. Previous Australian delegations comprised two employer and two worker representatives to accommodate the Australian Industry Group. The size of the worker and employer representatives was increased to three, so it certainly was not at the expense of any existing representation.

Senator ABETZ—At the ILO—

Mr Kovacic—International Labour Conference.

Senator ABETZ—It was increased from two to three, was it?

Mr Kovacic—For employer and worker delegates, yes.

Senator ABETZ—Was it increased from two to three?

Mr Kovacic—That is correct.

Senator ABETZ—The ACTU sent three delegates—is that right?

Mr Kovacic—That is correct.

Senator ABETZ—Then ACCI had two and AIG had one?

Mr Kovacic—That is correct. That certainly strengthened the representativeness of the Australia delegation.

Senator ABETZ—Having three, of course it would do. What was the public policy reason for deciding on two-one? Why not the Business Council? Why not three from ACCI? Why not three from AIG? Why not two-one in AIG's favour? Who was the AIG representative?

Senator Ludwig—I might deal with the first part and then I will ask Mr Kovacic to deal with the second part. In respect of the first part, I will need to take that on notice to check with the minister as to the reasons, unless the department can provide an additional comment in respect of that.

Mr Kovacic—In terms of the AIG representative, it was Mr Stephen Smith but again, in terms of the rationale for the decision, it was to enhance and strengthen the representativeness of the delegation.

Senator ABETZ—The minister thought a third representative from ACCI would not be as strong, or a representative from the Business Council would not be as strong? I just think the government potentially might get itself into difficulty in trying to pick favourites, but the enhancement of delegations from two to three I think is a positive move. I have no criticism of that.

Mr Kovacic—Might I add that the involvement of the Australian Industry Group in the delegation was not challenged at the credentials committee.

Senator ABETZ—But of course the increasing of the number of delegates at the ILO from two to three is a very good segue for me to talk about Safe Work Australia—

CHAIR—Before you do that, I think there is one other question about the ILO.

Senator CAMERON—Could you tell me the cost of the ACCI—

Senator ABETZ—Is there a conflict of interest here?

Senator CAMERON—I have never got a conflict of interest.

Senator ABETZ—You are sure you are not going to go to the ILO?

Senator CAMERON—There is no conflict of interest. I know where I am going. I know what I want to see happen and it is not the same as you.

CHAIR—Just before Senator Cameron proceeds on that point, since you raised it, if there is the faintest notion that there could be a conflict of interest in this area I suppose I should declare mine. I was one of three attendees at an ILO conference in 1994, I think it was.

Senator ABETZ—But you do not have any ambitions to go back, unlike Senator Cameron.

Senator CAMERON—I have many opportunities to go to the ILO but I was too busy defending workers' rights here against Work Choices. Could you tell me the cost of the ACCI attendance at ILO?

Mr Kovacic—In terms of travel and incidentals, the total for the two ACCI representatives was \$42,192.34.

Senator CAMERON—Does the ACCI receive any other funding from government?

Mr Kovacic—There is some additional funding associated with their participation in the Australia Safety and Compensation Council. Previously they would have received funding under the previous government's Employer Adviser Program.

Senator CAMERON—Could you provide details of all funding for ACCI?

Mr Kovacic—Yes, certainly. I think in terms of the funding that is provided in the context of the ACCI we can actually do that now. As to the funding that would have been provided to them under the Employer Adviser Program, that is an issue that you may care to take up with the Workplace Authority later today, one of the department's portfolio agencies, and I will take on notice whether there is any additional funding outside of those areas that might also be provided to ACCI.

Ms Carapellucci—In terms of the funding that is provided to ACCI for their participation on the Australian Safety and Compensation Council, they are provided with \$1,056,000 over a period of three years, which equates to \$352,000 per year. The current contract runs from 1 July 2007 to 30 June 2010.

Senator CAMERON—In relation to that contract are there performance criteria?

Ms Carapellucci—Yes, there are.

Senator CAMERON—Is the ACCI meeting those performance criteria?

Ms Carapellucci—Yes, they are.

Senator CAMERON—Do you have details of the performance criteria?

Ms Carapellucci—I do not have the actual performance criteria—I can provide those on notice—but they relate to attendance at ACCI meetings and working and technical group meetings and providing a consolidated view across industry which includes not just ACCI affiliates but other industry groups as well.

Senator CAMERON—'Providing a consolidated view'—what does that mean?

Ms Carapellucci—Essentially, to speak with one voice for industry.

Senator CAMERON—It is attendance. It is speaking. There are no performance criteria when they come back about implementing ILO conventions that are agreed? There is nothing like that? It is just basically attendance?

Ms Carapellucci—There is nothing about implementing ILO conventions, but they report every six months on an agreed work plan. They are required to submit a work plan to the office of the ASCC within the department and that needs to be agreed and then every six months they report their activities against that work plan.

Mr Kovacic—I think it would be fair to describe the basis of the contractors facilitating ACCI undertaking a representational role of employers in the context of the Australian Safety Compensation Council.

Senator ABETZ—As to Safe Work Australia, one of the amendments the Senate moved and carried was an increase in the representation of both employers and employees on Safe Work Australia from two to three, so we have a great ILO precedent for that. I stumbled across that this morning. Can we start at the very beginning? Can you confirm that the government is refusing to accept any of the Senate's amendments made when the legislation was amended in the Senate?

Senator Ludwig—I would have to check on that. My recollection is that is the case.

Mr Kovacic—Can I just highlight one difference in terms of the segue in the analogy you are drawing with the ILO?

Senator ABETZ—It is not a question.

Mr Kovacic—I think I would just like to put on the record that there is a difference in terms of the circumstances in that the safe work bill—

Senator ABETZ—I know there is a difference between the ILO and Safe Work Australia.

Mr Kovacic—It is underpinned by an intergovernmental agreement signed off at COAG which was quite specific in terms of the level of membership that was envisaged for Safe Work Australia. That is a key difference that needs to be recognised in the comparison you are making.

Senator ABETZ—I am aware of all that. It was just neat that it just happened to be that way. Has the government undertaken an assessment as to which of the amendments actually offend, if I can use that term, or disagree with the intergovernmental agreement?

Mr Kovacic—If I can put it this way, in settling the intergovernmental agreement there were a couple of areas of significant discussion in the context of the Workplace Relations Ministers Council. They went to not only the membership but also the voting arrangements in terms of issues relating to Safe Work Australia and also harmonised legislation. The amendments that the Senate has made to the bill put at risk the progress in terms of national occupation and health and safety reform.

Senator ABETZ—Can you tell me how the national harmonisation is put at risk by having an audit committee?

Mr Kovacic—In essence that suggestion is unnecessary as it is a requirement of the Financial Management and Accountability Act.

Senator ABETZ—That is not the question. How does it put at risk—that was your terminology, if I am correct—

Mr Kovacic—That is correct.

Senator ABETZ—the harmonisation process if we have an audit committee? It might otiose, it might be useless, it might be unnecessary et cetera, but in what way could that possibly endanger the national harmonisation project?

Mr Kovacic—An audit committee of itself may not be an issue. The point I was making is that certain issues such as the voting rights and the membership of Safe Work Australia were key issues that were canvassed in the development of the intergovernmental agreement and were areas of considerable discussion with the states—

Senator ABETZ—I understand all that.

Mr Kovacic—and any changes in that sort of area put at risk commitment to the intergovernment agreement. They also delay the establishment of Safe Work Australia, which in itself puts at jeopardy the time frame for developing the national uniform OH&S legislation.

Senator ABETZ—I could understand all that if the government were to have said, ‘We oppose some amendments because it puts the national harmonisation process at risk but we will accept, let us say, the audit committee recommendation because, although we think it is a useless amendment, if the Senate wants it, let’s do it.’ But how can the government honestly say that every single one of the amendments is putting the national harmonisation process at risk? You cannot, can you?

Mr Kovacic—That is a question for government. All I can tell you is that there are significant risks attached to the amendments that were moved to the bill by the Senate in terms of the time frame and the development of national occupational health and safety legislation.

Senator ABETZ—How important is it that the Safe Work Australia legislation exactly mirrors the intergovernmental agreement?

Mr Kovacic—I think in the intergovernmental agreement, as I have mentioned, the areas of contention were areas of significant discussion in the context of developing the IGA. At the main meeting of the workplace relations ministerial council issues around membership and voting in particular were sensitive issues, ones that generated considerable discussion where there was a fair degree of compromise among ministers. Any change from what is in the intergovernmental agreement, therefore, carries with it a risk of support for the intergovernmental agreement being impacted, also putting at risk the establishment of Safe Work Australia. As I have mentioned, that really puts at risk the time frame for developing the national occupational health and safety legislation given that Safe Work Australia was going to play a key role in pulling together the draft legislation.

Senator ABETZ—I want to suggest not to you but to the minister that it is a pretty ham-fisted approach to say every single amendment puts at risk the national harmonisation process, because clearly not every amendment did. I can understand that some amendments may be causing more difficulty than others to the government, but to categorise them all in the same way is a bit ham-fisted, a bit over the top by Minister Gillard.

Senator Ludwig—I think we are now at a position where we are rearguing what was argued in the committee in the Senate. What I said then was that I think we are all in agreement that we should have Safe Work Australia.

Senator ABETZ—Yes.

Senator Ludwig—I understand the Liberals are of that view and we are all in a position of moving forward. There are the amendments that were moved by the opposition which did not find support by the government. We think the importance of maintaining the intergovernmental agreement is crucial to getting the harmonisation to get the outcome. I am sure I said that at the time in the Senate. The outcome is to get the harmonisation of these laws. In respect of the rejection of the amendments, as I understand it, the government continues to maintain its rejection of the amendments. I would ask the Liberals to look past the amendments that they are making because it is critical that we get to the outcomes and we get to the outcomes on—

Senator ABETZ—Just be careful. It was not only the Liberals. There were Greens, Xenophon, Family First, ACTU, ACCI—

Senator Ludwig—I am only responding to you.

Senator ABETZ—Fair enough. I am willing to take credit for all the amendments but I just want to put on record I cannot.

Senator Ludwig—You supported all the amendments, however.

Senator ABETZ—Absolutely. I would be—

Senator Ludwig—I am right in that respect, that your support for the outcome that is Safe Work Australia is critical. We look forward to ensuring that we can gain and continue to argue for that support by the opposition. I think it is important to have bipartisan support for Safe Work Australia. In respect of the amendments that have been moved, I think we have said all we can. We do think that the intergovernmental agreement is important to ensure we have got state and territories on board. What we do not want is a position where we might lose the point that we are trying to achieve; that is, the harmonisation of the occupational health and safety laws, because I think that is important. That is why we have sought the opposition's assistance in getting to that outcome.

Senator ABETZ—Chair, unfortunately I am being called away. I will return in about 15 or 20 minutes. I am sure my colleagues have other questions, but I do want to return to this issue, if I may.

Mr Kovacic—I was just going to make the point that this is an area where successive governments over a period of decades have been unsuccessful in terms of pursuing reform. It is an area of significant reform, not only from a regulatory perspective but also in terms of improving occupational health and safety outcomes and improving productivity at the national level. Anything that puts that at risk is clearly something which has the potential to derail the entire process and bring undone the significant achievement that is attached to the signing of the intergovernmental agreement.

Senator CAMERON—In response to my last question did you say how much the ACCI were paid from the office of the Australian Safety and Compensation Council?

Mr Kovacic—We did.

Senator CAMERON—Do you have minutes or a record of attendance at that council.

Mr Kovacic—We would have but we would have to take that on notice.

Senator CAMERON—Could you also advise me as to whether the ACCI are attending on a regular basis at that council?

Mr Kovacic—They would be.

Senator FISHER—I want to revisit whether or not any advice has been given by the department to the government about the impact in economic terms of the government's proposed workplace relations reforms. We have at the table the right people, do we?

Mr Kovacic—Yes.

Senator Ludwig—When you say 'advice', what type of advice do you mean? You might need to provide a bit more specificity.

Senator FISHER—Some economic modelling would be good.

Senator Ludwig—I was just trying to differentiate it from legal advice. You know as well as I it has been a long-standing convention in this place not to provide legal advice to the committee, and I assume you would agree that is the case. It does not debar you from asking process questions though, as I understand it.

Mr Kovacic—In the answer to a question taken on notice at the last estimates hearing, EW199-09, we iterated at that stage the comments of Mr Pratt, who was the associate secretary, that the department had not modelled the economic impacts of the government's workplace relations policies. Since then we have not undertaken any modelling.

Senator FISHER—The department has not undertaken any modelling for the government on the impact of Forward with Fairness either in respect of jobs, inflation, strikes—

Mr Kovacic—We have certainly not undertaken any modelling. As our response to EW199 indicates, the department did, however, prepare a submission to the Senate inquiry into the Workplace Relations Amendment (Transition to Forward with Fairness) Bill. That bill was referred to this committee for inquiry. The terms of reference included the economic and social impacts from the abolition of individual statutory agreements, impact on employment, potential for a wages break-out and increased inflationary pressures, potential for increased industrial disputation and impact on productivity, among others, and the department's submission addressed each of those issues.

Senator FISHER—You will correct me if I am wrong, but I do not think your submission was suggesting there would be increased disputes et cetera as a result of the legislation. You were addressing those issues in your submission, weren't you?

Mr Kovacic—That is correct.

Senator FISHER—That submission, however, was largely based on research done some five years ago. What you are saying is that there is nothing more current upon which the department has based its advice to government?

Mr Kovacic—We have not undertaken any modelling, as I indicated before. We have not undertaken any modelling since our last attendance at estimates.

Senator FISHER—Of course, intervening since has been this very sobering event which the Prime Minister refers to as the GFC, or the global financial crisis. Given that significant intervention, have you been asked by the government to provide any advice as to the economic impact of its proposed workplace relations reforms?

Mr Kovacic—We have not been asked that.

Senator FISHER—Without going to the content of the advice, has your advice to government in respect of the government's workplace relations reforms referred to any potential impact of the global financial crisis on the implementation of those reforms and their impact?

Mr Kovacic—I think that goes very closely to the nature of the advice that we may or may not have provided to—

Senator FISHER—It goes to the topic of the advice, I agree; it does not go to the advice itself.

Mr Kovacic—Let me put it this way: we provide advice to the government on a range of issues associated with workplace relations reform; I think I would prefer to leave it at that.

Senator FISHER—I am going to ask you again whether—

Senator Ludwig—I think you have had a response to the question and I think it does cut across advice to government. I think you should ask the question of me, and my answer would be that it is not the usual practice to provide advice to government.

Senator FISHER—In that case, has the government sought advice from this department or indeed any other agency as to the impact of the global financial crisis in respect of the implementation of the government's Forward with Fairness workplace changes.

Senator Ludwig—Again, I think it falls into that basket of advices that we would not provide to Senate committee estimates.

Senator FISHER—I have not asked for a copy of it, I have asked whether you sought that advice.

Senator Ludwig—I am not in a position to confirm or deny it. The easiest way is for me to take it on notice to check with the relevant minister.

Senator FISHER—Does that mean you do not know?

Senator Ludwig—I represent in this portfolio, so it is far better for me in that respect to take advice from the relevant minister. You are asking in respect of whether this portfolio has asked—

Senator FISHER—I am?

Senator Ludwig—I am not the portfolio minister; I represent the portfolio minister. On that basis I can take it on notice and check. That would be the usual course.

Senator FISHER—I understand that. You are taking advice as to whether there has been advice sought from this portfolio as to the fall-out, as it were, of the global financial crisis and its potential impact as the government implements Forward with Fairness?

Senator Ludwig—That is a slightly different question from your earlier one. Is it the latter question you want the advice in respect of?

Senator FISHER—Both would be good. I presume you will handle them both in the same way. My broader question is whether the government has sought advice as to the impact of the global financial crisis, particularly as the government seeks to implement Forward with Fairness and the extent to which the global financial crisis will affect what would otherwise be the impact of Forward with Fairness on the economy, in particular jobs, wages and inflation?

Senator Ludwig—The first response is I think that falls into the two iterations of the questions you asked earlier and I think I have responded to that. The second is—

Senator FISHER—And your response was?

Senator Ludwig—I have not finished providing the answer in respect of the question you have just asked now. The broader question that underpins it is a question you should put to Treasury, quite frankly, if you are asking for economic modelling. In response to the earlier two iterations of your question, I did respond. I said I would take it on notice.

Senator FISHER—Has the department provided any commentary to Treasury in respect of economic issues arising out of the implementation of Forward with Fairness?

Mr Kovacic—Not that I am aware of.

Senator FISHER—In any time frame at all? Never? Not since the election of the government? That might be a convenient time frame to start with.

Mr Kovacic—I think this was an issue that was canvassed fairly extensively at the last estimates hearing and at that stage we certainly provided answers in terms of I think some material that you tabled which had been released by the Department of Treasury under freedom of information. We certainly had not been canvassed by Treasury in the context of that particular material. We have had discussions with Treasury in terms of policy issues associated with the workplace relations reform. They have been in the context of wider government consideration of issues and in the context of issues such as the development of the government submission to the Australian Fair Pay Commission's 2008 wage review. But in terms of the context in which you are asking the question, we have not had any discussions with Treasury.

Senator FISHER—Nothing has changed essentially since you were last before the committee?

Mr Kovacic—That is correct.

Senator FISHER—Other than we have had, and are having, a global financial crisis. As to that last point, to labour it, notwithstanding the global financial crisis, in the last four weeks have you had discussions with any departmental agencies about the economic impact of the implementation of Forward with Fairness?

Mr Kovacic—No.

Senator FISHER—Presumably, you have had no requests to do so in the future that have not yet been realised? Sorry, have you had requests to have discussions which may be happening in the future as to those points?

Mr Kovacic—Not that I am aware of.

Senator FISHER—Thank you. Unfortunately, I think that exhausts that issue. Can we turn to the small business work and family program? We might go to the General Employee Entitlements and Redundancy Scheme after this one, if that suits.

Mr Kovacic—We have actually had a restructure in terms of where GEERS is allocated. That is now in a different group, which is no longer part of Mr Maynard's patch, if I can put it that way.

Senator FISHER—My questions about that will be again about the projected impact of the global financial crisis on the expenditure that may well be expected from GEERS. Mr Maynard might be not displeased that he has moved on in those circumstances—

CHAIR—Whereabouts will we find GEERS?

Mr Kovacic—It is in outcome 9, but it is within a different group within the outcome.

CHAIR—Which group?

Mr Kovacic—The Safety and Entitlements group, which is headed up by Miss Baxter.

Senator FISHER—That will still be in this part of the proceedings, won't it?

CHAIR—Yes.

Senator FISHER—I want to talk about the work and family support for small business, which was the subject of some questioning last time the department was before the committee. Can you remind me exactly what the government's program is? What does it do?

Mr Maynard—It is to provide funding for small businesses through a competitive tender process to assist them implement work and family initiatives in their workplace. The program was a government election commitment. Consultations are continuing with a broad range of players, industry stakeholders, as to the form of the program and it is expected to be launched early in 2009.

Senator FISHER—You have set out what it aims to do; are you able to say how it will do that, how it will achieve some of those initiatives, or is that subject to announcement at the launch?

Mr Maynard—It is subject to announcement and there is ongoing consultation with stakeholders at the moment prior to that announcement.

Senator FISHER—When in 2009 did you say?

Mr Maynard—Early.

Senator FISHER—How long ago did the government announce this program? It would be a year, wouldn't it?

Mr Maynard—It was announced prior to the election.

Senator FISHER—It was pretty much a year. It was announced a year ago and at this stage you can enunciate the government's goals with the program but you are not able to say how they are going to do it. In fact, you are saying that they are not going to do it until they launch it sometime early in 2009. It will be 18 months after they said they were going to do it that they will end up saying how they are going to do it. Is that a fair summation?

Mr Maynard—No.

Senator Ludwig—The correct summation is that the government will launch it in 2009 and the details will be available then.

Senator FISHER—That is right—a year and a half later.

Mr Kovacic—In essence, this program is directed at providing funding to small businesses so that they might implement work and family initiatives which not only increase productivity but also look to increase workforce participation. That is the objective—

Senator FISHER—The families will have grown up and moved on.

Mr Kovacic—The nature of projects is really contingent on the applications that come forward from small business in terms of the funding rounds. The issues that are currently under consideration are the funding criteria and the details of the program. As Mr Maynard indicated, the department is currently undertaking a range of consultations with key stakeholders in settling the details of those funding criteria to enable an announcement of the program to be made in early 2009.

Senator FISHER—Is that when the funding criteria will be announced, in early 2009?

Mr Maynard—Yes.

Senator FISHER—Businesses cannot apply for anything at the moment, can they?

Mr Maynard—Not until after the launch.

Senator FISHER—It sits stagnant essentially for a year and a half?

Senator Ludwig—I think that is an unfair characterisation. What you have heard is a significant round of consultation. Unlike when the Liberals were in government, when you look at the programs that were implemented, such as Work Choices and the like, quite frankly, what this government is doing is consulting with small business to ensure that we do listen to the stakeholders and do come to a much better outcome.

Senator FISHER—Who has been consulted with?

Mr Maynard—There are over 40 organisations that have been consulted with. I can read out the names. Alternatively, I could provide it on notice. It includes industry and associations including: COSBOA, the Council of Small Business Organisations of Australia; ACT and Region Chamber of Commerce and Industry; Commerce Queensland; the National Retail Association; the Northern Territory Chamber of Commerce and Industry; Tasmanian Chamber of Commerce and Industry. Do you want me to read the full list?

Senator FISHER—No. If you could provide the list that would suffice, but perhaps if you can characterise a break-up?

Mr Maynard—There would be industry associations, such as I started reading out; work-life balance and work and family experts; women's organisations; and the ACTU.

Senator FISHER—Out of those 40 organisations, how many small business representative organisations and business organisations are you consulting with versus—

Mr Maynard—Thirteen industry associations: six work-life balance and work and family experts and seven women's organisations. In addition, there are three Indigenous groups and the ACTU.

Mr Kovacic—I might add there are also state and territory representatives that are being consulted as well.

Senator FISHER—When did the consultations with those groups start?

Mr Kovacic—Earlier this month.

Senator FISHER—Almost a year after the election of the government you were starting consultations with organisations about the program.

Mr Maynard—I might draw your attention to the election commitment. It was to have this program fully implemented by January 2010.

Senator FISHER—You would say that it is on target, given that you are planning a launch early 2009 after which time organisations will be able to apply?

Mr Maynard—Yes.

Senator FISHER—Because the criteria will be clear. How much money has been allocated to this program? I think it is about \$12 million; isn't it?

Mr Maynard—That is correct.

Mr Kovacic—That is correct. It is over three years.

Senator FISHER—I think a couple of your questions on notice talk about the moneys that have been allocated for expenditure on salary and staffing issues, administration and advertising.

Mr Kovacic—That is correct.

Senator FISHER—From looking at those questions on notice and the answers thereto, it looks to me as if you have allocated about \$2.5 million to salary and staffing requirements. I am looking at question EW228.

Mr Maynard—Over three years, yes.

Senator FISHER—The \$12 million is over three years.

Mr Maynard—Yes.

Senator FISHER—You have got \$2.5 million over three years and also you have allocated about \$2.3 million to advertising and promoting the program over three years; is that right? I am looking at answer to question EW229. Add those two together, the \$2.5 million and \$2.3 million, and you have almost \$5 million, so almost half of the \$12 million allocated over three years has been allocated essentially to running the program, promoting it and internal departmental staffing to run the program?

Mr Kovacic—It is also about promoting the outcomes of the various projects as well and in essence sharing the outcomes more broadly. That is a key component of the communication aspects of the program. Clearly, where there are lessons learnt from the various projects it is about promoting that more widely so that other small businesses or other businesses more generally might actually draw on the lessons from particular projects.

Senator FISHER—What allocation of money will be left for small business to actually apply for grants to implement work and family initiatives over the period of the program?

Mr Maynard—If I might just retouch on the issue you raised before about the level of staffing, it also includes employment of work and family experts in Fair Work Australia in each state, which is one of the significant costs associated with administering this program. The grants process for the current financial year has \$2.3 million allocated to it and those amounts will increase over the two out years. There are comparable amounts in 2009-10 and in 2010-11, so it is in the order of \$2.3 million to \$2.5 million for each of the three financial years.

Senator FISHER—How much will be left for small business?

Mr Maynard—In the order of \$7.5 million through grants.

Senator FISHER—My maths must have been wrong to start with. About half of the \$12 million allocated will be left for small business.

Senator Ludwig—I am not sure my maths gets to half but I am open to—

Senator FISHER—It is a bit of a stretch to say that is half really, isn't it?

Senator Ludwig—Four point five out of 12 is not half, no, but I will not—

Senator FISHER—I think it is \$4.8 million, actually.

Senator Ludwig—It is open to interpretation.

Senator FISHER—Why are the expenses for the department nearly half—nearly \$5 million?

Mr Kovacic—Can I make one point? One of the key issues in the departmental expenses is the employment of eight information officers by Fair Work Australia who are going to be critical people in terms of getting out and talking to small business about family friendly initiatives. There is a large component of educative activity associated with the engagement of those individuals.

Senator FISHER—Did you say eight?

Mr Kovacic—I did.

Senator FISHER—Eight people will be employed as part of Fair Work Australia—

Mr Kovacic—As information officers around work and family—

Senator FISHER—Will their job be to tell business how to apply for grants?

Mr Kovacic—No, it is actually more about assisting them in implementing and developing fair work and family friendly initiatives as well as promoting the program and indeed I suppose spreading the knowledge of the outcomes of particular projects.

Senator FISHER—They will be employed to do more than work in respect of this program, will they?

Mr Maynard—I refer you to the election policy put out by the Labor Party prior to the last election. If I could quote from that, it says that it will:

... employ experts in each state and territory office of Federal Labor's Fair Work Australia offices to liaise with local small businesses, local government and business and community groups, providing a source of support, expertise and advice for small business and community organisations wanting to pursue family friendly arrangements in their workplace.

Senator FISHER—Will those eight officers' jobs be broader than promoting this program?

Mr Maynard—Yes. This program is designed to identify and promote the use of family friendly provisions. In addition to advertising seeking applications for the tender process, it would also be promoting the best outcomes identified through this process. That would be part of the role that these experts would have from promoting that best practice by communicating with the groups that I previously referred to.

Senator FISHER—What proportion of their salaries are funded out of the \$12 million, out of the expenses of the two point something million dollars projected over the next three years?

Mr Maynard—Their entire salary is being allocated through this process.

Senator FISHER—Eight people are being entirely funded out of the \$12 million notionally allocated out of this work and family initiative for small business, yet those eight people will have jobs—

Mr Maynard—Relating to family friendly provisions.

Senator FISHER—which partly do not relate to this program?

Mr Maynard—This program is about promoting not only the program but the outcomes of the program, the implementation of work and family initiatives for small business. Therefore the tender and the allocation of funding to individual organisations is part of it. Promotion of the use of work and family initiatives is also part of it.

Mr Kovacic—Their activities will be restricted to work and family initiatives associated with assisting business to develop, design and implement work and family initiatives whether under the program or more generally of their own initiative.

Senator FISHER—Are their jobs the same as or bigger than this program?

Mr Kovacic—They are attached to the program. They are attached to the program in the sense that they are about promoting work and family initiatives in small business.

Senator FISHER—Part of their job is in relation to this program; is that right?

Mr Kovacic—No. Their activities are solely related to the activities of the program. Those activities are not necessarily restricted to funding rounds of the program. It is actually about sharing the outcomes of the program and facilitating the pick-up of improved work and family initiatives by small business.

Senator FISHER—If this program were to cease, would their jobs cease?

Mr Kovacic—That is the intention.

Senator FISHER—What advertising is the department anticipating will be used to promote the program?

Mr Maynard—We anticipate that radio and press advertising would be used to promote the opening and closing of dates of the funding rounds, although the extent of each of those and the messaging and the like is still subject to consultation and will be announced as part of the launch in early 2009.

Senator FISHER—Can you describe in a bit more detail the advertising, because the answer to question on notice 229 that you provided talks about the bulk of the funding dedicated to advertising being to alert businesses to funding rounds and to disseminate industry specific information. Can you tell us a bit more about what will be done and where in terms of advertising and promoting and to whom?

Mr Maynard—No. That is the subject of ongoing consultation, to find out the best method of getting the information through to the stakeholder group and therefore the nature, timing and form of the promotion has yet to be determined.

Senator FISHER—Can you tell us in what year the promotion will occur or is it to be spread over three years according to the funding? Can you give us any more detail around that?

Mr Maynard—There will be funding rounds in each of the three years; therefore, there would be promotion of the funding rounds in each of the three years and there will also be promotion of the outcomes of the funding rounds and the best practice arising from those.

Mr Kovacic—That is reflected in our answer to EW229.

Senator FISHER—When we discussed this last time, if I understand it correctly, no modelling had been done as to the impact of this program on small business or the benefits of this program for small business, which of course would be really good. Has that situation changed? Has the department done any economic modelling of the impact—

Senator CAMERON—What about modelling—

Senator FISHER—I am sorry, colleague, I am focused on the good information that the department is able to provide through this process. Has the department done any economic modelling of the impact of this program on small business and, in particular, what one would hope would be the benefits for the expenditure of \$12 million?

Mr Kovacic—I think the questions that were asked at the last estimates were about how many employees are estimated to benefit from the measure over the entire allocation—

Senator FISHER—I am happy to go to that. Can you answer the broader question first?

Mr Kovacic—At that stage we indicated that we had not estimated the number who will benefit from the program, either directly or indirectly. That still remains the case.

Senator FISHER—The department has not been able to identify the number of employees who would benefit from this program; is that what you just said?

Mr Kovacic—We have not undertaken any sort of modelling research which is around that for two reasons in the sense that, firstly, you do not know how many businesses will actually apply for the program and, secondly, there are indirect benefits from this particular activity. As a result of the lessons learnt from the projects that are funded, it is impossible to estimate how many employees might indirectly benefit from the program as well.

Senator FISHER—The answer to that question is no, isn't it?

Mr Kovacic—That is what I said a moment ago.

Senator FISHER—Has the department done any analysis of the benefit of this program for employers—that is, small business—who after all are in partnership with their employees? One would have thought that part of the government's rationale in announcing this program is to build better work and family, which means both businesses and employees. Has the department done any analysis of the benefits of this program for small business?

Mr Maynard—No.

Mr Kovacic—But we would certainly anticipate as part of the consultation process that is currently underway that we will receive feedback from small business representatives and others as to how best to establish the program to maximise its benefit.

Senator FISHER—That presupposes that the program is a good thing to implement. It is an interesting proposition to say: 'It sounds good—let's do it.' That is what it is sounding like. On what basis is the department able to advise the government that this program will be beneficial if you have not done any analysis of the benefits?

Mr Kovacic—What we are doing here is implementing an election commitment.

Senator ABETZ—So we are going to make the evidence fit the policy?

Senator Ludwig—It provides \$5,000 to \$15,000 to small businesses to help establish family-friendly working arrangements. The government thinks that helping small business establish family-friendly working arrangements and to then also ensure that we can provide advice and assistance to small business to implement those family-friendly arrangements is a good thing. That is why we are also consulting with small business about implementation of it. I would have thought that was a positive idea—

Senator FISHER—We would all like to think it is a good thing. It sounds like a good thing from the notes you have.

Senator Ludwig—I would hope that the Liberals would come on board in respect of helping small business establish family-friendly working arrangements.

Senator FISHER—Just because it sounds good does not mean it necessarily is. What I am seeking is whether or not the government is ensuring that we are getting a proper bang for the workplace buck, that it will actually have the benefits that we all want. At this stage you are not able to reassure us of that. Has the government done any analysis of what it will cost a small business to set up a mums room or a parents room, for example?

Mr Kovacic—We have indicated this in responses to questions taken on notice at the last estimates hearing. We have not done any analysis. I think the question was as to the cost of

establishing a breastfeeding room or maintaining a breastfeeding room at a particular premises. We have not done that.

Senator FISHER—Will you be doing that?

Mr Maynard—No. Just so that you understand, the amount that is being allocated per grant—between \$5,000 and \$15,000, as the minister mentioned—is not meant to be exclusively and solely a source of money to assist in implementing reforms. This is assistance so that small businesses may implement family-friendly provisions.

Senator FISHER—That would be taken into account in any cost-benefit analysis that was done, one would have hoped, at the outset rather than in the evaluation of what may well be the very quick end of a program that has not been designed properly because the empirical underpinnings have not been done in advance. It is extraordinary yet unfortunately reflective of the government's approach to what should be many important initiatives.

Senator CAMERON—Hypocrisy is just dripping out of this lot.

Senator Ludwig—I am not sure that was a question, unless the inflection at the end was a question mark.

Senator FISHER—Not in that case.

Mr Kovacic—I was checking with my colleagues. The response from those organisations invited to participate in the consultations has been extremely positive. They have generated a lot of interest in the program, which I think is indicative of the sense that the program will be beneficial.

Senator FISHER—It does sound good.

Mr Kovacic—The advice is that the positive response rate at this stage is in the order of around 80 per cent, which is pretty overwhelming.

Senator FISHER—Eighty per cent of how many? How many businesses are we talking about?

Mr Kovacic—In terms of the consultation processes, as Mr Maynard indicated before, it is organisations that have been invited to participate in the consultation process. Thirteen of the number of organisations are employer organisation representatives, including the ACCI among others. The response has been very positive.

Senator FISHER—Have any small businesses contacted the department in their excitement asking about the implementation of the program? Have any small businesses contacted the department in their excitement wanting to know about the implementation of the program?

Ms Anderson—We have had approximately 10 inquiries from small businesses whom we are also seeking to consult with individually as well.

Senator FISHER—How many?

Ms Anderson—Approximately 10 inquiries so far.

Senator FISHER—In a year. The grants, the program and the funding criteria et cetera will be announced early next year. I presume the minister will be launching the program. You

might need to get advice on that. That is a question. Will the minister be launching the program?

Senator Ludwig—One would expect or anticipate the minister would be launching the program, I am sure.

Senator FISHER—Have you started drafting what would be the pro forma contracts to underpin the grants as part of this program?

Mr Maynard—Yes, they are subject to the ongoing consultation.

Senator FISHER—Has the department developed performance indicators for the program?

Mr Maynard—We are continuing to work with stakeholders to determine what would be appropriate. But, of course, satisfaction levels of the participants in the tender process would be expected to be one of those KPIs.

Senator FISHER—How do you develop evaluation criteria for a program when you are not sure what the benefits of it will be?

Mr Kovacic—Evaluation criteria are somewhat different from KPIs, I might add.

Senator FISHER—That is bureaucratic-speak.

Mr Kovacic—No. I think evaluation of the program is in terms of the outcomes. The KPIs are about actually how the program is performing. I think they are quite different issues.

Senator ABETZ—You can have good performance with bad outcomes—is that you are telling us? It sounds like the hospital without patients.

Senator FISHER—The question coming out of that is: how can you set key performance indicators for the program?

Mr Maynard—My answer to your previous question is that we are in the process of doing that. It is going to be dependent in part upon the finalisation of the consultation with stakeholders, which is determining some of the processes and methods of delivering the program. Obviously you do not determine your KPI prior to having settled that in a consultative way with those stakeholders who are going to be involved in it.

Senator FISHER—One would have thought you would not implement a program until you have identified exactly what benefits you are trying to achieve with it, but that is not a question. I have one final question. Is the government committing to launching the program in early 2009? That gives you arguably four to six months.

Senator Ludwig—I think that is what has already been reflected in the evidence. That is the anticipated—

Senator FISHER—It is the intention. Is the government committing to that?

Senator Ludwig—What we have said is that the intention is to do that. I can provide, and I am sure you might very well have a copy of it, the press release that went out on 13 May which outlined what the government's intentions were in relation to Fresh Ideas for Work and Family.

Senator FISHER—Thank you.

Senator ABETZ—I am sure the departmental officials and the minister were disappointed that we had to have a break in the Safe Work Australia questioning. I offer my apologies. I was asking about the importance of the intergovernmental agreement being accurately reflected in the legislation. It is important that the legislation accurately reflects that agreement?

Mr Kovacic—Yes.

Senator ABETZ—Can you then explain why the intergovernmental agreement paragraph 3.3.1 is not contained in the legislation where it talks about reporting requirements? The intergovernmental agreement informs us that the chief executive ‘will provide’, not ‘may’, and it goes on to say that this report ‘will include’—not ‘may’ but has to include. There is the imperative there under reporting requirements. But it is passing strange it is not required to be in the legislation directing the chief executive. Why would that be, because the chief executive is appointed under the legislation and I would have thought is bound by the legislation, which would override the intergovernmental agreement?

Ms Carapellucci—That was in fact a drafting oversight in the legislation and I understand in the House of Representatives debate the government made a commitment that that annual report would be tabled in the parliament.

Senator ABETZ—That was a drafting oversight that only came to light after the Senate made amendments and it went back to the House—is that correct?

Ms Carapellucci—It was in the summation of the original speech in the House of Representatives.

CHAIR—That was in the second reading speech.

Senator ABETZ—Where was the bill introduced—in the House or the Senate?

Mr Kovacic—In the House.

Senator ABETZ—It then went to the Senate. Did the Senate make that amendment to include 3.3.1 in the legislation?

Ms Carapellucci—No.

Senator ABETZ—Why not? Was it another oversight?

Mr Kovacic—I think the point was that certainly the commitment was given in the closing address in terms of the debate in the House that the annual report would be tabled in the parliament. It was felt that that was adequate.

Senator ABETZ—I thought the minister gave an undertaking in the House of Representatives that it would be amended. Did I misunderstand that?

Mr Kovacic—There was an undertaking that the annual report would be tabled in the parliament.

Senator ABETZ—Is it the case that certain elements of this intergovernmental agreement can just be dealt with by undertakings by the minister?

Mr Kovacic—It was a very clear statement by the minister in terms of intent and it is consistent with the drafting of the intergovernmental agreement.

Senator ABETZ—But it was an oversight that it was not included?

Mr Kovacic—That is the evidence that Ms Carapellucci has given.

Senator ABETZ—It did go to the Senate. Minister, why could it not have been amended in the Senate? The government was aware of the oversight? Isn't it a lot better to have it clearly spelt out in the legislation rather than by a ministerial undertaking to partners that are not even in the parliament?

Senator Ludwig—I think the evidence is that the undertaking was sufficient given in the summing up speech in the House of Representatives. I can check if you want me to whether there was anything further Minister Gillard wanted to add in respect of that.

Senator ABETZ—Did the undertaking include that it would be amended?

Senator Ludwig—Not as I understand the evidence.

Mr Kovacic—The evidence is that the undertaking was that the annual report would be tabled in the parliament.

Senator ABETZ—It was acknowledged that there was an oversight in the legislation.

Mr Kovacic—There was an undertaking given that the annual report would be provided and tabled in terms of how that—

Senator ABETZ—I believe there was an oversight that this clause was not part of the legislation. Without labouring the point for too long, it was agreed that the absence of the provision of 3.3.1 of the intergovernmental agreement from the legislation was an oversight. Is that correct?

Ms Carapellucci—Yes.

Senator ABETZ—So rather than amending it in the Senate—which I would have thought could have been done quite easily—we lazily give a ministerial undertaking and do not bother amending the legislation. That is not a good way to go about public administration, is it?

Senator Ludwig—I will seek advice on that. It does beg the question—and I am not informed on this—as to whether there is a requirement to have an amendment or not, so it may be worth while just examining this issue a little bit.

Senator ABETZ—The good news is that it is coming back to the Senate because of certain issues. However, could I recommend to the government a proposed course of action that, given the opportunity provided by the opposition and minor parties, when the legislation comes back you might actually amend it? When did the minister publicly announce that she would refuse to accept the opposition's amendments, and so forth? When I say 'opposition', I withdraw that. 'The Senate's amendments' I think is a better description. When did she publicly say that?

Mr Kovacic—I think when the bill was returned to the House and debated in the House.

Senator ABETZ—What consultation did the minister have with her state and territory colleagues prior to making that statement?

Mr Kovacic—I am not aware of what consultation, if any, the minister may have had with her state and territory colleagues around this issue.

Senator ABETZ—What departmental consultations were had between your department and state and territory departmental officials?

Mr Kovacic—We contacted state and territory officials prior to the debate in the Senate. Since the debate I am not aware of any contact with state and territory officials.

Senator ABETZ—Why did you bother consulting these officials prior to the debate in the Senate? Just for fun, to see how they were?

Mr Kovacic—It has been an issue of ongoing discussion, as I have mentioned, with state and territory officials and they have been—

Senator ABETZ—Surely there was an imperative to consult with them after the Senate's amendment to see if they were—if I can use the term—liveable, if they were acceptable? Neither the minister nor the department bothered to get in touch with the state and territory governments to see whether the amendments were acceptable prior to Ms Gillard in such an arrogant and high-handed way saying, 'We will reject all these amendments,' even the audit committee amendments—

Senator Ludwig—I do not think you can make that statement—

Senator ABETZ—'without consulting.'

Senator Ludwig—I do not think you can make the first part of that assertion. The evidence at the table was that the departmental officials were unaware of whether Ms Gillard contacted—

Senator ABETZ—Take it on notice.

Senator Ludwig—Secondly, the departmental officials provided the evidence. You might want to either rephrase it in that sense, because I do not think that is an accurate reflection of the evidence.

Senator ABETZ—Did the minister consult with her state and territory colleagues prior to making what now is quite apparent was an arrogant and high-handed statement rejecting all the Senate's amendments?

Senator Ludwig—Aside from your gloss, it is a matter that I have no personal knowledge of. It is a matter that I will take on notice, if it is a request.

Senator ABETZ—You do know from the department that they were not instructed or asked by the minister's office to check out with state and territory counterparts as to what their attitude might be to each individual amendment?

CHAIR—I do not think we know that yet.

Senator ABETZ—That is what I am asking.

Mr Kovacic—The question you asked was whether we contacted state and territory officials and the answer to that was—

Senator ABETZ—No.

CHAIR—No.

Senator ABETZ—No, they did not.

CHAIR—After.

Senator ABETZ—Chair, you cannot consult them before you know what the amendments are going to be and how they might actually turn out. That would be crystal ball gazing level 3, or something.

CHAIR—I think your question was as to after the Senate debate.

Senator ABETZ—That is right: after the Senate debate and before—

CHAIR—We are often aware of amendments before a debate occurs.

Senator ABETZ—All right, let us drill down even further and use a bit more time; that is fine! I think the government is digging itself in deeper here by that intervention. Did the department consult with any of their state or territory counterparts about any proposed amendments prior to the debate in the Senate? That is an easy question.

Mr Kovacic—We contacted state and territory officials prior to the Senate debate to alert them to the possibility of amendments. We were aware that there may be some amendments but, without knowing the precise nature of the amendments or the outcome of those amendments—

Senator ABETZ—Exactly. Did you discuss with your state or territory colleagues any precise amendments or any vote of the Senate on those precise amendments prior to the minister making her statement that they would all be rejected?

Mr Kovacic—In terms of once the Senate voted on the bill and made the amendments to the bill, I have already indicated that the department did not consult with, or contact, state and territory departments to discuss those amendments.

Senator ABETZ—Nor did you consult with them once you became aware of the precise nature of the amendments?

Mr Kovacic—As I mentioned a moment ago, we consulted prior to the amendments being debated in broad terms—

Senator ABETZ—Prior to the amendments being circulated in the Senate—I am sorry, so after the amendments were circulated?

Mr Kovacic—Not after the amendments were circulated in the Senate.

Senator ABETZ—Neither the precise nature of the amendments nor the vote at the Senate was canvassed with any state or territory department before the minister made her very arrogant and high-handed statement that none of the amendments would be accepted. Since the minister's arrogant and high-handed statement, have you been requested by the minister to consult with state and territory governments about the amendments?

Mr Kovacic—We have not been requested to consult but it needs to be acknowledged that there is a meeting of the Workplace Relations Ministerial Council scheduled for 5 November, when I would anticipate that this issue would be one of the agenda items for discussion.

Senator ABETZ—Have you passed on to your state and territory colleagues the precise nature of the amendments?

Mr Kovacic—Not in a formal sense, but I am sure that they would be very aware of what they are.

Senator ABETZ—The minister seems to be deliberately trying to create a conflict with the Senate without even checking what the state and territory governments' attitudes might be to these various amendments, including, I would have thought, the most innocuous of all, the audit committee recommendation.

Senator Ludwig—Is there a question there?

Senator ABETZ—Yes.

Senator Ludwig—I was not sure if I heard it; that is all.

Senator ABETZ—It is not for the departmental officials to answer. If you had been awake you would have realised that you should have been answering that.

Senator Ludwig—I am not Ms Gillard. I think you would have realised that, quite frankly, in your question.

Senator ABETZ—Sometimes I have to look twice, but I think we can be agreed on that; but you do represent her here.

Senator Ludwig—We have not agreed on that.

Senator CAMERON—What a low comment.

Senator ABETZ—From whom?

Senator CAMERON—From you. Typical.

Senator ABETZ—For Joe or for Julia?

Senator CAMERON—Absolutely typical.

CHAIR—Order!

Senator Ludwig—Having agreed on that, as I have indicated, if Ms Gillard wants to provide additional information about the decision she made in respect of the question you have asked I will take it on notice and I will see if I can find an answer for you.

Senator ABETZ—Can the departmental officials confirm that to their knowledge no state or territory government has objected to an audit committee proposal?

Mr Kovacic—I cannot confirm or deny it because I do not know.

Senator ABETZ—Has the department received any correspondence indicating state or territory objection to an audit committee?

Mr Kovacic—We have had no contact from state and territory officials—

Senator ABETZ—At all?

Mr Kovacic—so I cannot confirm or deny what their views are on these issues.

Senator ABETZ—What that means is that the minister, who is so keen on consultation and so keen on harmonisation, is willing to overlook amendments that the Senate passed, some at the request of the ACTU and ACCI, Senator Xenophon, Family First, the Greens and the coalition. She who wants harmonisation was not even willing to discuss with the states

and territories whether that broad coalition of support for amendments would be acceptable to them. I just find that a strange way to do business.

Senator Ludwig—Are you directing that to me?

Senator ABETZ—Yes, of course.

Senator Ludwig—Thank you, because I think the evidence right back then was that you could not make that statement because of course the department officials do not know what is in the mind of Ms Gillard, quite frankly, and nor do you, I suspect. I said right back at the beginning of this discourse that I would take the original question on notice, which is that I would see if Ms Gillard wanted to provide any additional information as to the reasons for not accepting the amendments.

Senator ABETZ—Can I ask where in the intergovernmental agreement it was a requirement that the minister should have the right to fire the CEO if the CEO, in the minister's opinion—not 'reasonable opinion', just 'opinion'—is unsatisfactory? Was that in the intergovernmental agreement?

Ms Carapellucci—No.

Senator ABETZ—This was a clause put into the legislation not as a result of the intergovernmental agreement but because the minister personally wanted the right to sack the CEO if she thought in her opinion—not even in her reasonable opinion—that the CEO was unsatisfactory and she could therefore dispose of him or her.

Mr Kovacic—On that point I think it needs to be recognised that the approach adopted in the safe work bill is fairly common in respect of Commonwealth legislation; that is, the capacity for a minister to dismiss a CEO of a statutory authority. For instance, it is included in the Offshore Petroleum Act 2006, which provides that the responsible Commonwealth minister may terminate the appointment of the CEO of the National Offshore Petroleum Safety Authority 'if satisfied that the performance of the CEO has been unsatisfactory for a significant period.' Similarly, the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 empowers the relevant minister to terminate the appointment of the AUSTRAC CEO if the minister is satisfied that the performance of the CEO has been unsatisfactory for a significant period. Again, in terms of the Australian Crime Commission Act 2002 and the Commonwealth Services Delivery Agency Act 1997, there are—

Senator ABETZ—Thank you for those examples.

Proceedings suspended from 10.32 am to 10.48 am

CHAIR—I now call the committee to order.

Mr Kovacic—Madam Acting Chair, there were a couple of questions that were taken on notice earlier this morning in relation to ACCI's involvement with the Australian Safety and Compensation Council. We now have that information, if it is convenient to provide it.

CHAIR—Yes, thank you.

Ms Carapellucci—One of the questions on notice related to ACCI attendance at ASCC meetings. There have been nine meetings to date of the Australian Safety and Compensation Council, and ACCI has sent three representatives to each of those meetings. One of the other

questions related to the activities that ACCI is required to perform under its funding agreement. The funding agreement sets out some essential activities, and they are to: act as a peak body for national employer views on specific aspects of the ASCC business plan development and implementation for a formally constituted ACCI committee or committees on OH&S and workers compensation; provide experts to represent collective national employer views on the ASCC, the OH&S working group and the workers compensation working group; provide and fund the attendance of an expert representative to the OH&S working group, workers compensation working group and each relevant ASCC technical group. These representatives should be able to provide a collective national industry view on the specific work being undertaken. This could be by teleconference or in person.

They are also to: coordinate a national employer view on draft national O&HS standards and codes of practice; provide expert analysis of a nationally agreed industry employer input into ASCC research, data and related O&HS and workers compensation information as required; disseminate to relevant employer organisations and, to the extent practicable, relevant employers throughout Australia ASCC information, standards, codes and other materials; liaise with international organisations on the O&HS and workers compensation work of the ASCC. The schedule also sets out some additional activities, which I am happy to read out, or alternatively I can table this.

CHAIR—Would you prefer the additional requirements to be tabled or to be read out now?

Senator ABETZ—Tabled.

CHAIR—Just before we go back to Senator Abetz for questions and following that point: will ACCI receive similar funding on Safe Work Australia as it currently does on the ASCC?

Mr Kovacic—That decision is yet to be taken.

Senator ABETZ—Minister, during the morning tea break did you have an opportunity to contact Ms Gillard's office to see whether she or her office had made any contact with their state and territory colleagues?

Senator Ludwig—No, not at this stage.

Senator ABETZ—So you did not. It should not be too difficult to find out. If we could be told that during the course of this morning's proceedings it would be most helpful to this committee, rather than having a month or so delay on that particular question. I would have thought it would be a pretty easy question as to whether she has or has not had such contact. Before the morning tea adjournment Mr Kovacic provided us with some other examples, as he told us, where legislation had a similar provision in relation to unsatisfactory performance. Is it at proposed section 57—my memory has lapsed as to what subclause it is—where the minister is able to dismiss the CEO if in the opinion of the minister the CEO is not performing to satisfaction? Could you read that clause out for me?

Ms Carapellucci—It is at section 57(3), which states:

The minister may terminate the appointment of the CEO ... if the minister is of the opinion that the performance of the CEO has been unsatisfactory.

Senator ABETZ—Mr Kovacic, the two or three that you read out to me had a very important caveat on them, being over or for a significant period, so if the performance had

been unsatisfactory for a significant period. That very important caveat is missing from the safe work Australia legislation and, as a result, it does allow the minister to dismiss the CEO on whim, at will, because there is no objective criterion applied other than if the minister's opinion is that the performance has been unsatisfactory. That might be over a very short period.

Mr Kovacic—Similarly, section 44(3) of the Australian Crime Commission Act 2002, in this case, empowers the Governor-General to terminate the appointment of the CEO 'if the minister is of the opinion that the performance of the CEO has been unsatisfactory.' The point I was making is that the capacity for ministers to terminate a CEO of a statutory authority is not an unusual provision in legislation establishing those authorities.

Senator ABETZ—You would agree with me that, firstly, to have 'for a significant period' is an important caveat and the other important caveat is that it is the Governor-General who has to undertake the dismissal. In other words, a decision of cabinet and Executive Council has to make that decision rather than the minister having a hissy fit or a temper tantrum in his or her office at the time and saying, 'I don't like the CEO anymore.' Having to go through Executive Council is a fairly good protection for any CEO in comparison with this legislation. I will move on. In coming to this intergovernmental agreement, can you remind me again what the predecessor body of Safe Work Australia was.

Mr Kovacic—The Australian Safety and Compensation Council.

Senator ABETZ—The ASCC?

Mr Kovacic—That is correct.

Senator ABETZ—The ASCC had three employer representatives on it and three employee representatives on it; is that right?

Mr Kovacic—That is correct.

Senator ABETZ—When trying to morph ASCC into Safe Work Australia it was decided to reduce both employee and employer representation. Was that as a result of a Commonwealth government suggestion or was it as a result of the ACTU or ACCI or one of the states or territories? Where did that idea come from?

Mr Kovacic—It was an issue that emerged from the discussion around the intergovernmental agreement at the Workplace Relations Ministerial Council. As I mentioned before, it was with voting arrangements for Safe Work Australia. It was one of the two key issues canvassed by the Workplace Relations Ministerial Council. The significance attached to those particular issues is also reflected in the intergovernmental agreement. I refer you to clause 3.1.2, which requires the Commonwealth to use its best endeavours to have enacted in the parliament the legislation to establish Safe Work Australia, the main features of which are set out in schedule 1 of the agreement. **There is a commitment there for the Commonwealth to use its best endeavours to enact legislation as per schedule 1 of the intergovernmental agreement.** The views that were expressed at the Workplace Relations Ministerial Council and in discussion among officials in the lead-up to council's consideration of the intergovernmental agreement were all

factors that the Deputy Prime Minister is likely to have taken into account in terms of the approach that she has adopted here.

Senator ABETZ—That is all very interesting, but the question I asked is: who bounced the ball on the proposal to diminish employee and employer representation on this body?

Mr Kovacic—As I indicated, it was an issue that emerged from the discussions coming out of the Workplace Relations Ministerial Council and it was agreed by all governments.

Senator ABETZ—I know what was agreed by all governments, because we have got the signatures of all the Labor premiers, chief ministers and the Deputy Prime Minister or the Prime Minister.

Mr Kovacic—The Prime Minister.

Senator ABETZ—We know what the agreement is, but how did it come up for discussion? Was there a view that the ASCC was not working satisfactorily because of the overrepresentation of the ACTU, for example, by having three votes?

Senator Ludwig—The difficulty with your question is that you are now trying to go behind what was the outcome of the ministerial agreement reflected in the IGA, and I am not sure we can take that any further.

Senator ABETZ—You are not willing to tell us who came up with the idea of diluting the employee and employer representation on the Safe Work Australia body?

Senator Ludwig—It is important to reflect that this is the outcome of negotiation.

Senator ABETZ—I know it is the outcome.

Senator Ludwig—What you are asking is whether you can go behind that outcome to see what actually happened in the room and who said what to whom. That level of detail is inappropriate. What you have is the outcome of the IGA, and that is the significant point. There is a move towards Safe Work Australia and a harmonisation of occupational health and safety legislation, and the IGA reflects that.

Senator ABETZ—What is the harm in telling us, for example, whether the ACTU said, 'It's just too much of a burden for us to send three representatives to this body. Could you please reduce it to two?', and all the governments said, 'That is fair enough. We will agree to it'? Methinks that it is unlikely that the ACTU would have initiated this request, because we have a letter from the ACTU objecting to the legislation. Methinks also that ACCI would not have made that suggestion in relation to employer representation, given the joint letter between the ACTU and ACCI. As a result, it must have been at the behest of at least one

or all of the Labor governments—all nine of them—sitting around the table. I am just wondering whether one of those nine governments is willing to put up its hand and say, 'Yes, we initiated the discussion to reduce employer and employee representation.' You are proud of the final agreement, but you are not willing to be proud of telling us who initiated this diminution in the social partner representation.

Mr Kovacic—I am not prepared to add to the fact that this was a decision of the Workplace Relations Ministerial Council.

Senator ABETZ—We know that, but who initiated this particular change in the discussions?

Mr Kovacic—I have nothing to add.

Senator ABETZ—Can you take that on notice and see whether you are able to tell me. If it is internal workings of government I will have to accept that, but I will also have to accept that this new era of openness and transparency that we were promised might not actually be occurring. Take that on notice. I will not labour that point any further. Who spends the money of the department in relation to advertising?

CHAIR—Senator Cameron has some questions.

Senator ABETZ—Sorry.

Senator CAMERON—Could you explain to me the government's commitments and obligations under the intergovernmental agreement in relation to best endeavours?

Mr Kovacic—As I mentioned a moment ago, clause 3.1.2 of the intergovernmental agreement requires the Commonwealth to use its best endeavours to have enacted by the parliament legislation to establish Safe Work Australia, and the main features of the proposed legislation are set out in schedule 1 of the IGA. In particular, schedule 1 specifies:

3. The legislation will:

(a) specify the membership of Safe Work Australia as being:

I. an independent chair, nominated by the Commonwealth Minister in consultation with Workplace Relations Ministerial Council;

ii. a member nominated by the Commonwealth Minister;

iii. 8 members, each of whom is nominated by a State or Territory Minister;

iv. 2 members representing bodies which, in the Commonwealth Minister's opinion, represent the interests of workers across

Australia;

v. 2 members representing bodies which, in the Commonwealth Minister's opinion, represent the interests of employers across

Australia; and

vi. Chief Executive (non voting).

There are a range of other issues, in terms of providing for members to be part-time. It says:

(d) provide for the appointment by the Commonwealth Minister of a Chief Executive with responsibility for the day to day operations of Safe Work Australia, who is to be the head of Safe Work Australia for the purposes of the Financial Management and Accountability Act 1997 and the Public Service Act 1999, and who is to take into account any recommendations of the Safe Work Australia in carrying out the functions of Safe Work Australia.;

(f) establish the reporting requirements of Safe Work Australia to Workplace Relations Ministerial Council;

(e) provide for staff of Safe Work Australia to be appointed under the Public Service Act 1999 ...

And it makes it clear:

2. Safe Work Australia will be constituted by Members who will be accountable to Workplace Relations Ministerial Council. Safe Work Australia will be assisted by a Chief Executive and staff who will be accountable to the Commonwealth Minister.

Senator CAMERON—That is the agreement, and commitments were given by government to pursue that as per the agreement?

Mr Kovacic—That is correct.

Senator ABETZ—Recently in the mail I was favoured with a document titled *Unions Tasmania Directory 2008*. I opened and read through it. I was astounded by the amount of state government advertising in it, but I also noted some federal government advertising in it. The chances are you will not have this detail, but you never know your luck in a big city. Does anybody have the costs of those advertisements? For example, in the department the Office of the Federal Safety Commissioner placed a half-page advertisement. You might not be aware of the one for the Office of the Workplace Ombudsman. If not, I accept that. I will simply read this into the *Hansard* and ask that it be taken on notice by the Workplace Ombudsman as to the cost of the full-page ad on page 25. Also, the Office of Workplace Services provided a full-page ad. The Human Rights and Equal Opportunity Commission federally placed a half-page ad, and so it goes on. In relation to the department and the agencies under the department, I could be advised as to how much each—

Mr Kovacic—The one that the department can answer relates to the Office of the Federal Safety Commissioner, and we do not have that information with us.

Senator ABETZ—Yes, you can take that on notice.

Mr Kovacic—We can get that during the course of the day.

Senator ABETZ—What I am doing now publicly is asking in relation to the Workplace Ombudsman and Workplace—

Mr Kovacic—The Office of Workplace Services is a predecessor of the Workplace Ombudsman, so both of those issues should be directed to the Ombudsman on notice.

Senator ABETZ—I will do that, because it is a bit embarrassing that the Office of Workplace Services has a full-page advertisement—thank you for reminding me of that—and the Workplace Ombudsman also has a full-page ad. We might like to find out whether the

government or the taxpayer paid for both of those advertisements in the one and the same directory. Thank you for alerting me to that.

Senator CAMERON—What about the publications under your administration?

Senator ABETZ—That is what Senate estimates is all about and that is quite open to you, Senator Cameron. The most hurtful thing in this directory—and let me be quite open about this—

Senator CAMERON—It misspelt your name, did it?

Senator ABETZ—No, it is worse than that. They did not leave me out; they had me as Special Minister of State, a position I have not held for some two years. That is how up-to-date Unions Tasmania is.

Senator CAMERON—That must reflect your profile in Tasmania.

Senator ABETZ—That is just a little side issue. The chances are that it is indicative of how long this directory was in the making that they had not caught up with that change, nor with the change of Workplace Services being morphed into the Ombudsman. I would be interested in how those two ads came into being, how they were funded and how much they cost. We will put those two on notice.

Senator Ludwig—Can we identify the document? Is there a printing date inside the cover or is it a directory—

Senator ABETZ—It is titled *Unions Work*. There is a little logo in the top right-hand corner, *Unions Tasmania Directory 2008*, and of course when you open the front cover there is a half-page ad paid for by the state Labor government of the now ex Tasmanian Labor Premier Paul Lennon. What else do we have here?

Senator Ludwig—The only reason I was asking that, of course, is that it could have been printed before December.

CHAIR—Before any of these changes occurred.

Senator ABETZ—It could not, because we have the Workplace Ombudsman advertising in this.

Senator Ludwig—Yes, I see.

Senator ABETZ—If the department or the two agencies cannot find out, if they contact my office I can make a copy of this available to them so they can identify what I am on about.

Senator CAMERON—Spreading the word in these publications is a good thing.

Senator ABETZ—I thought if it had my name in it it might be a good thing, until they reminded me of my former glory and my now feather duster status. That was not so nice. But who knows, the electorate might allow me to grow tail feathers again and we might win government again.

Senator CAMERON—Not for a long time.

Senator ABETZ—We will see. That will be up to the Australian people to decide. Chances are we will not be deciding it by our banter across the table today. I would like to ask the minister or the department about an article on page 3 of the *Australian Financial Review* on

20 October 2008, where it is suggested that certain plans are being considered by the government, one of which is that members who do not want their union to represent them in wage negotiations will have to advise the union in writing. Is that under active consideration by the government at the moment?

Mr Kovacic—I would refer you to the penultimate paragraph of that article, where it refers to the Deputy Prime Minister saying that the government was considering proposals put to it by unions and employers and would introduce its Fair Work bill into parliament later this year. There is a range of issues being—

Senator ABETZ—Chances are that is one of a range of options being considered. In all the circumstances that is a fair enough answer.

Senator FISHER—What about the reference also made in that article to proposals to create a drop dead date for old workplace agreements? Is that under active consideration?

Mr Kovacic—Again, in the context of developing the government's substantive reform bill there is a range of issues under consideration. I reiterate the comments attributed to the Deputy Prime Minister in that article.

Senator FISHER—Mr Scott's article also referred to what you might generally call the rights of entry of union officials, and a suggestion that whilst the government might retain the permit system and whilst the government might retain the requirements that union officials give 24 hours notice of their intention to enter a workplace, the government might have its new laws allow unions to circumvent these restrictions by negotiating more generous arrangements with employers. What about that proposition? Is that under consideration?

Mr Kovacic—I am not in a position to go into detail of what issues may or may not be the subject of consideration in the context of settling the government's substantive reform bill, other than to say that there are a wide range of issues under consideration.

Senator FISHER—Was the proposition that employers be able to negotiate more union generous rights of entry with unions part of the government's election commitments with Forward with Fairness?

Mr Kovacic—If you bear with me, I will look for the precise wording of the government's Forward with Fairness commitments in terms of the content of agreements. Forward with Fairness states on page 14:

... bargaining participants will be free to reach agreement on whatever matters suit them.

Senator FISHER—Does that mean that there is also under active consideration a loosening of the requirement that allowable matters are restricted to matters pertaining to the employment relationship in terms of the content of agreements?

Mr Kovacic—The Deputy Prime Minister, in her recent address to the National Press Club, outlined the government's intention in terms of those matters that could be included in enterprise agreements under its substantive arrangements.

Senator FISHER—And?

Mr Kovacic—In essence, for the content of agreements, what is proposed is: Agreements will be able to include matters pertaining to the relationship between:

- (a) the employer and the employees; and
- (b) the employer and any union to be covered by the agreement.

The expression “matters pertaining to the employment relationship” has been used for over 100 years and brings

with it established legal principles.

The fact sheet released at the time continues:

Deductions from salary for any purpose authorised by an employee such as salary sacrifice or deduction of union dues will also be able to be included, as will terms dealing with the operation of the agreement.

Senator FISHER—In terms of the government’s instructions to the department in implementing Forward with Fairness, do the instructions include adherence to the government’s election commitments in respect of Forward with Fairness?

Mr Kovacic—The Deputy Prime Minister has indicated on a number of occasions that the government’s commitment is to implement Forward with Fairness.

Senator FISHER—She has indeed. You have indicated that in respect of rights of entry there is under consideration the proposition that more generous entitlements could be negotiated with employers, and you have suggested that that is consistent with the agreement content part of Forward with Fairness, have you not?

Mr Kovacic—I have not suggested that. I have said that there is a range of matters under consideration by the government and I am not in a position to go into detail as to what may or may not be under specific consideration.

Senator FISHER—If that were under consideration—

Senator Ludwig—That is a hypothetical question when you start with the words ‘if that were’.

Senator FISHER—Thank you. Is the negotiation of more generous rights of entry entitlements with employers consistent with Forward with Fairness? If so, which bit thereof?

Ms James—A more helpful way of answering your question might be to look to the formulation that Mr Kovacic just read out from the fact sheets about content of agreements or what the government intends to legislate for in that area. The government is using a set of words that has been used in the Workplace Relations Act or in workplace relations legislation for many decades, and the question of whether you can bargain for right of entry rights has been considered by courts and by tribunals. In fact, there is quite a lot of law under the Workplace Relations Act, the Industrial Relations Act and the Conciliation and Arbitration Act that suggests that there is some scope to bargain for right of entry rights or that right of entry rights may pertain to the employment relationship, provided that they are connected to that relationship. Rather than commenting on the policy, it is probably better to comment on that set of words and what they permit. That set of words has allowed right of entry to fall within those words, provided that the rights are properly framed, for many decades.

Senator FISHER—Bargaining about it is one thing but legislating for it is another. Do you agree?

Ms James—If you look at the language used in the fact sheet, there is a set of words that sets out the scope of agreements. The ‘matters pertaining’ part of that formulation is the same set of words used in the Workplace Relations Act and in the Industrial Relations Act. I would not say that there is an intention to expressly legislate for it. There is just an intention to retain a concept of relevance to the employment relationship as the basis for the scope of agreements. And to the extent that particular clause about right of entry is connected to the employment relationship and it pertains and fits the formula it would be able to be included.

Senator FISHER—Does that mean that there is no intent to change the law in that respect? I might come back to this, because my colleague Senator Abetz has some further questions to ask and he needs to leave shortly. I have more questions about this, but I will come back to it.

Senator ABETZ—This is a question to the minister. The *Australian Financial Review* of 23 September told me ‘Gillard dodges ABCC caucus rift’ by appointing an ad hoc committee. It then goes through who the members of that ad hoc committee are. Can you confirm that such a committee has been appointed?

Senator Ludwig—I do not have a copy of that *AFR* article. Could that be made available? I cannot recall having read it. It is just helpful to understand what you have in front of you.

Senator ABETZ—You are a member of caucus. Do you recall the Deputy Prime Minister—and I normally would not ask about what happens in caucus, but—

Senator Ludwig—Nor will I comment on it. I warn you in advance that I will not provide that response. The primary question is that, if we are going to quote from a document, the document should be made available to the witnesses, including the minister.

Senator ABETZ—Unfortunately, mine has some very insightful notations on it. I am not sure I would want to have it copied.

Senator Ludwig—That is sometimes one of the reasons we ask for it. No, it is in fairness to the witnesses so that they can see the document.

Senator ABETZ—Is the department aware of this ad hoc committee having been appointed by the minister?

Mr Kovacic—We are broadly aware of the wider consultation processes, but in terms of caucus issues in a specific sense I cannot confirm yes or no.

Senator ABETZ—That was a very good answer, because Ms Gillard said that the formation of this ad hoc committee was part of the government’s ‘extensive and genuine consultation’ over the bill. Mr Kovacic is right on the money there.

Senator Ludwig—Therein lies the reason that I would not mind having a look at the article. I know you might be challenged about tabling it because of your notation, but the difficulty is that the question that you ask might in fact be contained within the article itself, and therefore it is unfair to the witnesses to be making statements in respect of an article that we do not have in front of us. I will take that on notice, as a way of cutting through it, if you cannot provide the document.

Senator ABETZ—What I am trying to get at is that Mr Kovacic is generally aware of it. All I want to know is whether the department is providing any secretarial assistance to this ad hoc committee. In other words, is taxpayer money being used to assist this ad hoc committee set up by Ms Gillard?

Mr Kovacic—We are certainly not providing secretarial services or anything of that nature.

Senator ABETZ—Are you providing any other support that might be seen as taxpayer funded support?

Mr Kovacic—No.

Senator ABETZ—I must say reading through the names that form this ad hoc committee I really thought it was a committee of odd hacks, but we will leave that for another day.

CHAIR—That is a poor reflection on the chair.

Senator ABETZ—In fact, Chair, you are right; your name is buried in the middle of the list. Thank you for that. I just wanted to make sure that this ad hoc committee of odd hacks was not going to be using taxpayers' money. You have given me that assurance and I accept that.

CHAIR—Are you finished?

Senator ABETZ—Yes.

Senator CAMERON—Could the department provide figures on government advertising from June to November 2007?

Mr Kovacic—We would have to take that on notice. At the last estimates hearings there was a fair bit of discussion about the campaign around the fairness test. We will endeavour to provide that later today.

Senator CAMERON—Could you advise whether any of the previous government's advertising was contractually committed until after the election?

Mr Kovacic—I would have to take that on notice, but my general sense would be that it was very unlikely.

Senator CAMERON—Can the department give figures on how much EAP was given?

Mr Kovacic—Yes. I will take that on notice. We should have that. Sorry, that is a question that is more appropriately directed to the Workplace Authority, as I mentioned earlier. They oversaw the expenditure on the Employer Adviser Program, so they should be able to answer that later today.

CHAIR—Senator Fisher.

Senator FISHER—In respect of Senator Abetz's earlier questioning about the ad hoc group of eight, a similar article in the *Financial Review* suggests that the Deputy Prime Minister was talking about two comprehensive sessions of a broader backbench committee on workplace relations to make sure there was caucus input and meetings being scheduled of that group for 20 October and 10 November. Is the department aware of any meetings along those lines?

Senator Ludwig—Similarly, if we are going to quote from an article, in fairness to the witnesses and to the committee itself, it should be tabled and made available. This is a longstanding practice. I have asked twice now and I was declined on the first instance.

CHAIR—This one will be tabled.

Senator Ludwig—It does help. Thank you. I cannot recall the article in the paper, but it does seem to be an ad hoc committee formed outside of the department. It seems to be a question that should be directed at me, and on that basis I will take it on notice and see what I can find out for you.

Senator FISHER—A further question would be: does such a—

CHAIR—I suggest that we wait until that is circulated to other senators as well. You can come back to those questions.

Senator FISHER—Yes. That is appropriate.

CHAIR—You could move on to another area.

Senator FISHER—In that case I might return to the earlier questioning about right of entry and related matters. I would like to recap my understanding, Ms James, and put a question to you again that I did not give you an opportunity to respond to. Would you agree that legislating to specifically allow union officials to negotiate more generous right of entry provisions with employers is a very different proposition from allowing it to occur as part of the natural bargaining process?

Ms James—They are two different things, yes.

Senator FISHER—Would they both be consistent with the government's stated election policy in Forward with Fairness?

Ms James—I would prefer not to answer that question, because we are now talking about hypothetical laws that may or may not come into fruition and their consistency with the policy. Given that laws are under development, it is a little bit difficult for me to answer that question.

Senator Ludwig—I thought we were in a position where you are seeking to discover what might be in the legislation. It will be brought forward in due course. I am sure the department knows the timetable but, as I understand it, it is not that far away. At that point, I am sure you will be able to examine the legislation. I have no doubt, given Senate practices and the numbers in the Senate, it will be referred to a Senate committee and it will be subject to a Senate inquiry—unlike, might I add, Work Choices, which had a one-day hearing.

Senator FISHER—I am trying to ensure that Ms Gillard keeps her promise. In particular, as the department has indicated, her repeated promise that the legislation would reflect Forward with Fairness. You know as well as I do that the government is under significant pressure from your union backers to close what they consider to be some gaps. I think we are entitled to explore the extent to which closing those gaps is likely to be, firstly, inconsistent with the Deputy Prime Minister's promise to implement Forward with Fairness as promised and, secondly, likely to unfairly and detrimentally impact on employment. That is what we are entitled to explore, and I am trying to do so.

Senator CAMERON—Saying this is unfair after Work Choices; what a joke.

Senator FISHER—You can have an opportunity later.

CHAIR—Order!

Senator CAMERON—What a disgrace.

Senator Ludwig—The difficulty you face is that you use the word ‘ensure’. Ms Gillard, as I understand it, has indicated, and the department has said, that Forward with Fairness will be implemented. The legislation is not far away. How do you then positively ensure that before that point, other than Ms Gillard already making that statement—

Senator FISHER—How does Ms Gillard make a promise?

Senator Ludwig—She has.

Senator FISHER—I would have thought the answer has to be, yes.

Senator Ludwig—We end up in a very circular argument.

Senator FISHER—We do. I am not sure how the Deputy Prime Minister can in fact have made the promises that she has repeatedly made.

Senator Ludwig—I am not sure how we can disavow you of your view, which seems to have been formed in the negative already. Be that as it may, it is very difficult to disprove a negative. If you could just confine your questions to those which we can answer; if not, we will take them on notice.

Senator FISHER—Is a legislative provision to allow a union official to negotiate a more generous right of entry than is currently legislated for consistent with Forward with Fairness—yes or no?

Mr Kovacic—As I mentioned before, Forward with Fairness, in terms of the policy of what could be included in agreements, stated:

... bargaining participants will be free to reach agreement on whatever matters suit them.

Senator FISHER—I think I am entitled to conclude from that answer that an express legislative provision giving union officials broader rights would not be consistent with Forward with Fairness.

Senator Ludwig—You can conclude what you like. You are caught in the sense that the Forward with Fairness states what it states. You can interpret it how you like. Clearly, you have taken one view.

Senator FISHER—The government has made an open ended promise.

Senator Ludwig—My encouragement to you is to wait for the legislation to give you more clarity around the question that you ask.

Senator CAMERON—And support the legislation when it comes through. Do the right thing.

Senator FISHER—In respect of the second and other aspects that we spoke about earlier, with regard to the proposition that there is under consideration legislation for a drop-dead date for workplace agreements—

Mr Kovacic—No, I did not confirm that. I said there is a range of matters under consideration by the government. I was not specific as to what matters may or may not be under consideration.

Senator FISHER—What is the current legislative provision in respect of the life of workplace agreements, be it former Australian workplace agreements or Individual Transitional Employment Agreements, ITEAs—in simple speak?

Ms James—I would like to give this to you in simple speak. We have traversed some of this rather messy territory before. The sheer number of transitional instruments in the system these days makes it very hard to be definitive. We have a situation where we have agreements that were made prior to the commencement of Work Choices, which we call pre-reform agreements. Then we have some agreements made between the commencement of Work Choices and the commencement of the fairness test. Then we have the set of agreements made between the commencement of the fairness test and the commencement of the no-disadvantage test, which happened this year. Then we have agreements made since then. Then we have a whole bunch of subsets of the pre-Work Choices agreements, including old industrial relations agreements and what have you. Each of these categories of agreements has slightly different rules when it comes to how they might be varied, terminated and so on. This is not an ideal situation. However, as a matter of general principle, agreements that have been made under the workplace relations framework continue to operate unless and until they are terminated or replaced. That is a general principle. I would like to qualify that with all that I have just said before about the complexity of the framework and the variant ways in which the instruments can be modified.

Senator FISHER—Indeed. Correct me if I am wrong, but at the moment is it the case that an Australian workplace agreement can continue indefinitely in the absence of the parties deciding that it should not? Is that right?

Ms James—Agreements continue beyond their nominal expiry date, yes.

Senator FISHER—So they can have an indefinite life?

Ms James—They may have an indefinite life; that is subject to the actions of the parties—the parties remaining in the same job and the scope of the agreement continuing to apply and being capable of continuing to apply to the parties.

Senator FISHER—Agreements can currently have an indefinite life. That must mean that at the moment there is no drop-dead date legislated for those agreements. Is that correct?

Ms James—That is correct. We have had some sunseting in the framework before for NAPSAs, and at one stage we did have some sunseting for old industrial relations agreements, but that has been extended.

Senator FISHER—Would a drop-dead date for workplace agreements require a legislative change?

Ms James—The current legislative framework does not provide for it, so, yes, it would.

Mr Kovacic—One thing I would add to Ms James's advice is that, once an AWA passes its nominal expiry date, it can be unilaterally terminated by either party to the agreement on the provision of a period of notice.

Senator FISHER—That is right. But, that aside, if the parties decide otherwise Ms James has confirmed that those agreements can continue in perpetuity, as it were. Is that correct, Ms James?

Senator Ludwig—I do not think her evidence was ‘in perpetuity’. There were a range of qualifications.

Senator FISHER—Indefinitely.

Senator Ludwig—They were your words; they were not her words, as I understand it. You can go back and look at the transcript, but I think she indicated a range of circumstances which might bring the agreement to conclusion. I just wanted to make sure that there was an accurate reflection on the transcript, so you are not in the position of verballing her.

Senator FISHER—There is no legislated end date for those agreements, is there, Ms James?

Ms James—No.

Senator FISHER—It would require legislative change for there to be one, wouldn't it?

Ms James—I think I answered that question, yes.

Senator FISHER—Yes, Ms James, thank you. Would legislative provision for a drop-dead date be consistent with Forward with Fairness?

Ms James—The area we are traversing here is transitional arrangements. Transitional arrangements are very complicated arrangements and certainly the nature of the transitional arrangements that might be necessary to implement Forward with Fairness could be very complicated, given the complexity of the current system and the number of instruments that are in the current system. When the Deputy Prime Minister released the fact sheets she noted that the Australian government will introduce separate legislation in the first half of 2009 to set out transitional and consequential changes which will explain how existing employers and employees move to the new Forward with Fairness arrangements. So we are talking about an area of legislation that is very much under development.

Senator FISHER—Is there anything in that transitional explanation that talks about a drop-dead date for workplace agreements specifically?

Ms James—I would never expect such an area of specificity to be in policy statements.

Senator FISHER—But the answer is no?

Ms James—As I said, there are complex transitional arrangements that you cannot develop until you are reasonably settled on your substantive framework on the substantive bill. These are questions of a fair degree of technicality, and in the normal circumstances you would not expect governments to be releasing great rafts of detail about that in their election statements. I do not consider, by and large, that what has been released so far goes near this territory.

Senator FISHER—That is obviously your view, but is it there or not—yes or no?

Ms James—I have just told you what my view is.

Senator FISHER—Ms James, you have quite appropriately expressed your view that you would not expect it to be there. That clearly says it is not there, doesn't it? It is not there, is it?

Ms James—The policy documents do not deal with the complex array of transitional and consequential arrangements that are always necessary whenever you have significant legislative reform.

Senator Ludwig—This is one of those areas where, again, we get into this position of going through the legislation which is not here yet. I am sure you will be quite able, when the legislation is tabled, to go through, compare and contrast, should you wish, with policy documents that were provided by the Labor government prior to the election. Of course, that is in contradistinction to our position when you implemented Work Choices. We were not in a position to look at what your policy was.

Senator FISHER—We are here. You are in government. I am trying to examine your government's promise to implement your election commitment. That is a past commitment. I am asking about the heads of that election commitment, and I am entitled to do so.

Senator Ludwig—I am not stopping you. I am merely trying to assist you in the process to ensure that we do have an accurate question that the department can answer. If the department cannot answer it, I am happy to take it on notice, as I have said.

Senator FISHER—Thank you. Actually, I think you are trying to take the debate sideways into the ether of the development of the legislative process rather than allowing an examination of the Deputy Prime Minister's promise to implement Forward with Fairness.

Senator CAMERON—I thought the legislative process was important.

Senator Ludwig—Yes, but I am sure we will get your support.

Senator FISHER—It is. Of course it is, and we will go to that a bit later. A proposition first raised by Senator Abetz was that if workers do not want a union that covers their industry to represent them in wage negotiations—and the provision of that may or may not be under consideration—a union will have that right unless a worker notifies the union that they do not want the union to represent them. Does the current workplace relations legislation provide for that?

Ms James—The current legislation is a different framework when it comes to bargaining. The policy of Forward with Fairness talks about employees having a right to choose to be represented in bargaining. In the current framework there are, for example, agreements made with registered organisations and there are agreements made with employees. There are very limited rights to bargaining agents. I say they are limited because I think that the extent of the right is that you are entitled to have your bargaining agent meet and confer within a very short window of time before an agreement is made. The freedom of association provisions entitle you, to a degree, to be a member of a union or not be a member of a union and to participate in activities, but I do not think we are comparing like with like.

Senator FISHER—Is there a legislated ability currently for a union to represent a worker by right?

Ms James—It depends on what you mean by 'represent'. Represent with respect to what? Represent with respect to a bargaining process?

Senator FISHER—In bargaining. In wage negotiations at a workplace.

Ms James—It depends on the situation, but apart from the requirement that an employer who is going to make an agreement meets and confers with a particular bargaining representative, there is no obligation on an employer to engage with representatives in the bargaining process at the moment. The freedom of association provisions are a set of provisions that prohibit certain detrimental conduct, and they might apply in certain cases. But the broad statement that you are making is very difficult for me to answer in a clear-cut way, given the absence of—

Senator FISHER—Hearing your point, if a union—

Senator Ludwig—Are we heading towards a hypothetical question?

Senator FISHER—No, because I am going to turn it into an actual question. In the scenario where a union had the right to represent a worker in wage negotiations and where the employer had the obligation to negotiate with that union in respect of that employee, unless the worker writes to the union saying, ‘Desist. I don’t want you there’, would legislative change be necessary to stop a union being the default agent?

Senator Ludwig—What we have had is a scenario raised in three different iterations and then based on a question in respect of those three hypothetical situations.

Senator FISHER—You can get your head around that, Minister.

Senator Ludwig—I would ask the chair to consider that it is unfair to the witnesses to attempt an answer in respect of that on the run. We will take a look at the transcript and see what information we can provide in response to the general question, if we can.

Senator FISHER—Do workers who do not want a union to represent them currently have to advise that union in writing to stop the union from doing so?

Ms James—I cannot answer a general question. That is so broad. If you give me a specific scenario under the current act I can endeavour to answer it.

Senator FISHER—I just did that, but the minister has attempted to obfuscate with it.

CHAIR—No. He has indicated that the department will endeavour to answer that. ‘Endeavouring’ stresses the fact that they will need to take a closer look at it than what they can do immediately here before you now.

Senator FISHER—Thank you. That would be good. I will return to the consultation process in respect of Forward with Fairness. Where is the bill in respect of implementing the second stage of Forward with Fairness? What is the status?

Mr Kovacic—As the Deputy Prime Minister has indicated consistently this year, the bill will be introduced into the parliament later this year, and we are on track—

Senator FISHER—What are you able to tell me about it at the moment?

Mr Kovacic—I am able to tell you that it is on track for introduction later this year.

Senator Ludwig—I can add there are not too many sitting weeks left so it is going to be in one of those sitting weeks.

Senator FISHER—Is a draft bill being considered by stakeholders?

Mr Kovacic—Certainly, we have just come out of a two-week committee on industrial legislation process where draft legislation was the subject of consultation with a wide range of stakeholders.

Senator FISHER—Are you talking about the government consulting with the committee on industrial legislation, COIL?

Mr Kovacic—Yes, that was COIL. There was an expanded COIL process this time round, in the sense that it not only involved the traditional COIL members which are the ACCI and the ACTU but also included representatives from the Australian Industry Group, the National Farmers Federation, the Business Council of Australia, the Master Builders Association and two additional representative organisations that are represented on the business advisory group. That is the Australian Hotels Association and also the Housing Industry Association. It also included representatives from state and territory governments as well. We also included representatives of portfolio agencies, given the issues canvassed in the substantive legislation are also likely to impact on them as well. It is probably the most extensive COIL process that I can recall, both in time frame but also in the stakeholders involved.

Senator FISHER—What has the time frame been and what is it?

Mr Kovacic—I am not sure I understand your question.

Senator FISHER—You said it has been the most extensive consultation process in terms of both time frame and people involved, so tell me about the time frame.

Mr Kovacic—I have just outlined who was involved. In terms of the time frame, it commenced on 7 October and concluded on 17 October, which is in essence two weeks.

Senator FISHER—Ten days?

Mr Kovacic—Yes.

Senator FISHER—The COIL process has been completed?

Mr Kovacic—It was concluded on 17 October.

Senator FISHER—You said the COIL process involved extensive consultations. A number of groups are represented on COIL? You listed a lot of them. You have indicated that it has been expanded. Can you number the groups that were represented on COIL?

Mr Kovacic—We could do that. I will take that on notice just to make sure I have got it all right. For instance, ACCI had three representatives, including Australian Mines and Metals, as well as an ACCI official, and a representative from Australian Business Limited. That was the ACCI representation. The other employer organisations generally had one participant. In terms of the ACTU there were six participants, with states and territories fluctuating according to the jurisdiction. They ranged from one up to a maximum three or possibly four in one case.

Senator HUTCHINS—Is Mr Ron Finemore a member of the group?

Mr Kovacic—He is a member of the Business Advisory Group. He was not involved in the COIL process.

Senator HUTCHINS—He is not a member of COIL?

Mr Kovacic—No.

CHAIR—He is a BAG member.

Mr Kovacic—The Business Advisory Group, which is one of the consultative bodies the governments established.

Senator FISHER—Are you able to provide on notice a list of the COIL participants, in terms of both people and organisations represented?

Mr Kovacic—I will take that on notice.

CHAIR—Are you asking for each individual's name to be listed?

Senator FISHER—The numbers of people. For example, you have said ACCI had three people. I meant to that level of detail.

Mr Kovacic—I am happy to take that on notice to the extent that it is any different from the advice I have just provided.

Senator FISHER—I presume there will be additions. I presume you have not told me everybody who was present?

Mr Kovacic—I think I have given you a pretty good sense.

Senator FISHER—Would you like to add them up?

Mr Kovacic—At different stages we had up to about 60 people there.

Senator FISHER—Over a 10-day period?

Mr Kovacic—That is correct.

Senator FISHER—What were the different stages?

Mr Kovacic—It depended. Particular issues were of greater relevance to some stakeholders, for instance, whether it is the COIL participants or states and territories. They may have sent specific experts for particular sessions. They may have reduced their representation, because at the same time there were also some issues relating to award modernisation, which was an issue for some of the participants. It fluctuated as well with individual personal availability to participate.

Senator FISHER—There were essentially select subgroupings of COIL?

Mr Kovacic—The way the process was structured was that sessions were conducted on particular aspects of the draft bill, and they were streamed. There were joint sessions at particular times. There were sessions held with streams for COIL participants in states and territories and around particular issues. We had a very detailed program that ran over the nine days. I am advised that there were a total of 66 participants in the COIL process.

Senator FISHER—Is that people or organisations?

Mr Kovacic—People.

Senator FISHER—You have indicated COIL participants in states and territories. Is the state and territory consultation separate from the COIL process?

Mr Kovacic—It was all part of the one process. We have characterised it generally as COIL. But as I mentioned before, in terms of the program there were particular streams that were conducted either in parallel, with some targeted directly at COIL participants and others at states and territories, and we invariably reversed those. At the end of the day at all of the sessions that we conducted each of the participants would have had the opportunity to participate whether they were from the traditional COIL group or from states and territories.

Senator FISHER—Does the 56 people include the state and territory representatives?

Mr Kovacic—It is 66. It does, yes.

Senator FISHER—You referred to the traditional COIL participants. Is that what it is, traditional, or is it set down by regulation somewhere?

Mr Kovacic—Historically COIL has been limited to the ACTU and ACCI. As I mentioned previously, on this occasion, as it did earlier this year in respect of the transition bill, it not only included other members of the National Workplace Relations Consultative Council—COIL is a subcommittee of that council, the other members of which are the Australian Industry Group, AIG, Master Builders Association, National Farmers Federation, Business Council of Australia—on this occasion it was also decided to invite two organisations that had participated in the Business Advisory Group, and they are the Australian Hotels Association and the Housing Industry Association.

Senator FISHER—Did the participants pay their own costs to participate?

Mr Kovacic—They paid their own costs for travel and accommodation if they were from interstate. We provided sandwiches for working lunches—those sorts of things. Beyond that participants were required to meet their own costs.

Senator FISHER—Where were the consultations held?

Mr Kovacic—They were held at the department's offices at Brindabella Park out near the airport.

Senator FISHER—Were they all Canberra based?

Mr Kovacic—All of the sessions were conducted in Canberra, yes.

Senator FISHER—The department would clearly have supported the COIL consultation process?

Mr Kovacic—We certainly did.

Senator FISHER—Beyond the COIL process that you have described have there been consultations about the draft legislation?

Mr Kovacic—The development of the legislation has been the subject of an extensive and comprehensive consultation process. For instance, in this calendar year, the National Workplace Relations Consultative Council has met on three occasions to talk about the government's workplace relations legislation. Those occasions were 24 January, 14 March and 16 September. The committee on industrial legislation, met for the two weeks that I have just mentioned and also met earlier this year in terms of the transition bill. There have been three meetings of the Workplace Relations Ministerial Council. They were on 1 February, 23 May, 22 August, and there is another meeting scheduled for 5 November. There is a high-level

officials group, which the Workplace Relations Ministerial Council established earlier this year. That has met on 12 occasions this year to discuss the substantive reforms. That is 7 February, 18 February, 25 February, 6 and 7 March, 13 March, 9 April, 30 April, 16 June, 2 July, 17 July, 29 July and 17 September. Again, senior officials from states and territories are scheduled to meet on the 30th of this month in the lead-up to the Workplace Relations Ministerial Council in November. There have been five meetings of the Business Advisory Group, which is a special group established by the government to consult on its workplace relations reforms. That group met on 27 February, 4 March, 11 April, 22 April and 16 September. If you are interested, I am able to provide the membership of that group.

Senator FISHER—That would be helpful on notice. Is that on the public record?

Mr Kovacic—It is. We provided it in response to questions on notice last time as well.

Senator FISHER—Only if it has changed.

Mr Kovacic—It has not changed. Similarly, there have been five meetings of the Workers Advisory Group. They met on 5 March, 4 April, 20 May, 14 July and 2 September.

Senator FISHER—How many occasions was that?

Mr Kovacic—Five. There have been three meetings of the Small Business Working Group. That is the group chaired by Minister Emerson established to consult with small business on the unfair dismissal code. That group met, as I said, three times—27 February, 7 March and 1 July. There is an equivalent union working group on small business, which has had five meetings, and they met on 28 February, 7 March, 21 August, 28 August and 2 September.

Senator FISHER—Three occasions?

Mr Kovacic—Five occasions. Again, that group is chaired by Minister Emerson. It is an extensive and comprehensive process of consultation.

Senator FISHER—What is the membership of those various groups? The Business Advisory Group is on the public record? What about the Workers Advisory Group?

Mr Kovacic—The membership of all of those groups is on the public record.

Senator FISHER—Are legislative changes under consideration as a result of those consultations?

Mr Kovacic—The issues raised in those consultations have informed the development of the government's substantive workplace relations reforms.

Senator FISHER—Is that a yes?

Mr Kovacic—Yes. The whole purpose of the consultations was to assist the development of the legislation.

Senator FISHER—What sorts of areas are under consideration?

Mr Kovacic—As I have said before, there are a wide range of issues under consideration by the government in terms of settling its substantive legislation. I am not in a position to go into specifics, but clearly it is centred around implementation of the government's Forward with Fairness policies.

Senator FISHER—Can you indicate some topics that might be under consideration as a result of those consultations?

Mr Kovacic—To give you a sense of some of the issues, the Deputy Prime Minister's speech to the National Press Club on 17 September canvassed a number of issues in terms of establishment of Fair Work Australia, the content of agreements and some provisions around industrial action and strike pay. Those sorts of issues are indicative of the range of issues being considered by the government in settling the details of its reform legislation.

Senator FISHER—Do you have a timeframe for exposing the bill publicly?

Mr Kovacic—As I understand it, the Deputy Prime Minister has written to the opposition spokesperson offering a meeting to discuss the process from here in terms of progressing the bill.

Senator FISHER—When did she write that letter?

Mr Kovacic—Yesterday. I am not sure whether that has been locked in, but certainly the invitation has been made.

Senator FISHER—That letter is clearly able to be spoken about, so what does it say?

Mr Kovacic—It offers the prospect of a meeting to discuss process in terms of progressing the bill. Clearly the development of the bill has been the subject, as I have mentioned, of both extensive and comprehensive consultation with a wide range of stakeholders. As the Deputy Prime Minister also indicated in her speech to the National Press Club, the intention is for the bill to be referred to a Senate committee for a full inquiry. The precise date of releasing the exposure draft is a matter for government.

Senator FISHER—What is your expectation in terms of discussions as offered by the Deputy Prime Minister with the shadow minister?

Senator Ludwig—That depends a lot on the shadow minister. Maybe you could advise us of that.

Senator FISHER—Could you clarify, Mr Kovacic? What is the time frame for introducing the bill into parliament?

Mr Kovacic—Later this year.

Senator FISHER—Can you be any more specific than that? As the minister has indicated, there is not a lot of this year left.

Mr Kovacic—The precise timing is a matter for government.

Senator Ludwig—We have gone through this.

Senator FISHER—For implementation by January 2010?

Mr Kovacic—As the Deputy Prime Minister announced in her speech at the National Press Club, there are components of the substantive reforms, subject to parliamentary passage of the legislation, which will commence possibly as early as 1 July next year.

Senator FISHER—Unfair dismissal provisions?

Mr Kovacic—That is correct, and also the bargaining framework.

Senator FISHER—Meaning?

Mr Kovacic—The bargaining framework.

Senator FISHER—Meaning?

Mr Kovacic—In essence, all of the issues going to bargaining.

Senator FISHER—Is there anything else that is likely to have a commencement prior to January 2010?

Mr Kovacic—Both of those issues necessitate the establishment of Fair Work Australia.

Senator FISHER—Indeed they do. Are you suggesting that some of the aspects of Fair Work Australia would be legislated prior to January 2010? Is that the government's intent?

Mr Kovacic—Operational prior to January 2010.

Senator FISHER—Operational issues.

Mr Kovacic—Yes.

Senator FISHER—I would like to go to Fair Work Australia in respect of the appointment of Ms van Rooden and the 12-month role to oversee Fair Work Australia. Can you describe what her job is in that context?

Mr Kovacic—In essence, the executive director will work with all affected workplace relations agencies to commence the necessary planning and stakeholder engagement related to the operational implementation of the establishment of Fair Work Australia. Part of that will be developing a detailed implementation project plan to establish Fair Work Australia.

Senator FISHER—When was it decided to recruit for that position?

Mr Kovacic—The position was advertised in August this year.

Senator FISHER—When was the decision made to create the position?

Mr Kovacic—I would have to take the precise date on notice, but clearly before August.

Senator FISHER—Who made that decision?

Mr Kovacic—The Deputy Prime Minister would have made that decision.

Senator FISHER—Was it upon advice from the department?

Mr Kovacic—We would have provided advice on establishment issues relating to Fair Work Australia.

Senator FISHER—Do you recall, Mr Kovacic—and, of course, Mr Pratt was with us last time—whether the creation of that position was the subject of evidence last time?

Mr Kovacic—I think there were some broad questions around progress in terms of establishment of Fair Work Australia. I would need to check the record for the precise nature of that.

Senator FISHER—My recollection, hazy as it may be from time to time, is that it was not. What I am interested in is whether or not the department saw it as necessary to create this position as time passed as opposed to the creation of this position always being part of the plan.

Mr Kovacic—You are asking whether this has always been a plan? I suppose the issue of how we best establish Fair Work Australia has been an issue of consideration by our department for some time. Obviously that has evolved as the decisions relating to the development of the substantive legislation have themselves evolved. As a department we have always recognised the size of the task associated with—

Senator FISHER—It has always been a pretty ambitious task, hasn't it?

Mr Kovacic—No. It is an issue in the sense of getting it up and running. Our objective is to ensure that the government's objectives are fully achieved in respect of getting Fair Work Australia up and running.

Senator FISHER—To ask a similar question another way, was the position budgeted for?

Mr Kovacic—There is no separate allocation around this particular position.

Senator FISHER—From where is the funding coming?

Mr Kovacic—The department is funding it.

Senator FISHER—Yes, it has always been a very ambitious time frame.

Senator Ludwig—Is that a question or a statement? It is an important program and I am sure you will give it due consideration when the legislation is introduced and support it.

Senator FISHER—When is the end of Ms van Rooden's term? Is it 12 months?

Mr Kovacic—She has a 12-month contract, if I can describe it that way. She commenced work on 13 October.

Senator FISHER—So until October 2009?

Mr Kovacic—That is correct.

Senator FISHER—Is there no intention to continue her term beyond that, noting that Fair Work Australia may or may not commence operationally prior to January 2010?

Mr Kovacic—That is a decision ultimately for the Deputy Prime Minister and it is one that is far too early to make a call on.

Senator FISHER—How is it proposed to staff Fair Work Australia? What process is envisaged?

Mr Kovacic—These are all issues that Ms van Rooden will consider in developing her project plan for the establishment of Fair Work Australia. Clearly she is not starting from zero base in the sense that a range of bodies are already in existence and the intention in establishing Fair Work Australia is to bring together those bodies to form Fair Work Australia as a one-stop shop.

Senator FISHER—What are those bodies that will be brought together?

Mr Kovacic—You have the Australian Industrial Relations Commission, the Australian Industrial Registry, the Workplace Authority, the Workplace Ombudsman, the Australian Fair Pay Commission, the Australian Fair Pay Commission Secretariat and the Australian Building and Construction Commissioner from 1 February 2010 in the form of a specialist division within the Fair Work Australia inspectorate.

Senator FISHER—When those organisations are merged into Fair Work Australia, what is the intent with respect to the people who currently staff those organisations?

Mr Kovacic—These are all matters that are under consideration. In previous practices staff in these sorts of circumstances are MOGed, as was the expression used at the last estimates hearing.

Senator FISHER—Sorry, they are?

Mr Kovacic—MOGed—machinery of government transfers across to new bodies, and that is clearly one of the options that is open in this particular situation.

Senator FISHER—Will members of the Australian Industrial Relations Commission keep their jobs or will they have to reapply?

Mr Kovacic—As I have said, these are all issues that are the subject of government consideration at the moment.

Senator FISHER—There would be a fair bit of uncertainty in the tribunal ether at the moment, would there not?

Mr Kovacic—I do not know, so I cannot say.

Senator FISHER—What is happening with the appointment of the head of Fair Work Australia?

Mr Kovacic—That is a matter for government.

Senator FISHER—Has someone been appointed?

Mr Kovacic—Clearly, the Forward with Fairness policy indicates that the current President of the Industrial Relations Commission will be invited to take up the role as head of Fair Work Australia. I cannot say anything further than that.

Senator FISHER—As I understand from recent press, the Deputy Prime Minister has written to the Australian Mines and Metals Association indicating that she has asked the president of the commission to head Fair Work Australia.

Mr Kovacic—As I said, Forward with Fairness clearly states that the current president will be invited to take up the role as head of Fair Work Australia. Without having seen the letter that you refer to, I presume that is the basis on which that comment is made.

Senator Ludwig—My understanding is that the government has invited Justice Giudice to be president of Fair Work Australia. If there is a something different from that I will get back to the committee.

Senator FISHER—Thank you. I have in front of me a copy of the letter to which you referred earlier from the Deputy Prime Minister to the shadow minister. It states:

... pending respective availabilities, I extend an invitation to you ...

that is Mr Keenan—

for a briefing on the proposed process for the bill during the week of November 10.

Is it proposed to introduce the bill in the week of 10 November?

Senator Ludwig—That is a matter for government. It seems to be also a matter for Mr Keenan to provide his input into, by the sounds of that.

Senator FISHER—What does the government expect will be the process for the bill?

Senator Ludwig—That is the purpose of giving an invitation to brief Mr Keenan.

Senator FISHER—I would have thought you would have a proposal. I am asking what your proposal is.

Senator Ludwig—These are matters for government and I am sure they will be made available to Mr Keenan at that time. If he wants you to be in the room, too, he might ask you to be there.

Senator FISHER—I will turn to the Productivity Commission proposition in respect of paid parental leave and ask what the department has provided the government in respect of that proposal.

Mr McDonald—Could you please repeat the question?

Senator FISHER—Has the department advised the government in respect of the Productivity Commission's proposition that there be a system of essentially taxpayer funded paid parental leave?

Mr McDonald—Advice has gone to the Deputy Prime Minister outlining the key features of what was proposed in the Productivity Commission report.

Senator FISHER—Does the advice go to the key components of it?

Mr McDonald—The key features, yes.

Senator FISHER—What are they?

Mr McDonald—The key features of the Productivity Commission model? They are proposing an 18-week period of paid parental leave at the level of the minimum wage to apply to all working women who have worked with an employer for 12 months or more. It will also extend to part-time and casual employees and it is something that can operate in a complementary way with existing private employer provision of paid parental leave.

Senator FISHER—You have advised the government as to the components. Have you evaluated those components in your advice to government?

Mr Kovacic—That would go to the nature of advice that we have provided to government and we are not able to answer that.

Senator FISHER—I can ask about the nature of it without asking about the advice itself.

Mr Kovacic—We have indicated that we have provided advice on the key components of the Productivity Commission's interim report. We are not in a position to go beyond that because to do so would take us into territory where we are going into the details of the nature of the advice that we provided.

Senator FISHER—Have you evaluated the cost to government of implementing the Productivity Commission's proposals?

Mr Kovacic—That was done in the Productivity Commission's interim report.

Senator FISHER—Has the department provided the government with advice as to the cost of implementing the Productivity Commission's proposals?

Mr Kovacic—Again, I am not able to go beyond what we have already provided in terms of evidence as to the nature of the advice that we have provided to the Deputy Prime Minister on the interim report.

Senator FISHER—Has the department done any modelling on the economic impact of implementing the Productivity Commission's recommendations in this respect?

Mr Kovacic—No, we have not.

Senator FISHER—There has also been mooted, for example by the ACTU, a proposition for welfare payments for stay-at-home mothers to match the planned maternity leave scheme. Has the department advised the government on that proposal?

Mr Kovacic—Again, we are not in a position to go into what we may or may not have provided advice on.

Senator FISHER—You have just told me that you have provided the government with advice as to the main components of the Productivity Commission.

Mr Kovacic—The question that you are asking would take us into territory where it would be about the detail of the advice that we may or may not have provided.

Senator FISHER—Has the department done any modelling on matching the Productivity Commission's proposition with payments through the welfare system?

Mr Kovacic—I indicated a moment ago that the department had not done any modelling on any of the issues or proposals canvassed in the Productivity Commission's interim report.

Senator FISHER—I will ask about the General Employee Entitlements and Redundancy Scheme, so that certain people can be relieved. What is the scheme budgeted for over the next few years?

Mr Hart—I can inform the committee that for 2008-09 \$82.803 million has been set aside as the GEERS appropriation. In 2009-10 it is \$88.842 million. In 2010-11 it is \$90.531 million. In 2011-12 it is \$92.25 million. These figures are set as part of the forward estimates process.

Senator FISHER—There is some incremental increase, but it is business as usual? It will be an unfortunate business as usual, I presume?

Mr Hart—As I just indicated, the amount is part of the forward estimates process. GEERS is a demand driven scheme, so we will respond to the needs where employees find themselves unemployed as a result of their employer's liquidation or bankruptcy. We may or may not spend all of that appropriation, depending on the demand.

Senator FISHER—Do you expect that demand to escalate as a consequence of the global financial crisis?

Mr Kovacic—As Mr Hart has indicated, the program is demand driven. We do not make projections as to how many businesses may or may not go bust, for want of a better description.

Senator FISHER—I would have thought that in the budgeting process you would necessarily make some assumptions.

Mr Kovacic—As Mr Hart and I have indicated, this is a demand driven program. The forward estimates are largely reflecting previous allocations adjusted for the normal sorts of factors that would be taken into account.

Senator FISHER—Has the government sought departmental advice as to what might be the impact of the global financial crisis on the demands made on GEERS?

Mr Hart—I have not had any advice sought from me.

Senator FISHER—Noting the advent of the global financial crisis, has the department done or is the department doing any economic modelling of the potential impact on the demand on GEERS as a result of the global financial crisis?

Mr Kovacic—Given that the program is a demand driven program, we would not be doing any modelling.

Senator FISHER—Will you wait and see?

Mr Kovacic—It is a demand driven program. The issue is that it requires businesses to go into liquidation in terms of being eligible for access to GEERS. The extent to which businesses may be eligible is the extent to which they have made provision or otherwise for employee entitlements. There are a whole range of variables in this area that make modelling difficult, if not impossible.

Senator Ludwig—That is why it is a demand driven program.

Senator FISHER—That completes the questions I have in respect of GEERS. Thank you.

Ms Baxter—Earlier this morning Senator Abetz asked a question about the cost of an advertisement placed in the Unions Tasmania directory by the Office of the Federal Safety Commissioner. I have that cost now. It is \$3,018.95.

Senator Ludwig—That is GST inclusive.

CHAIR—Senator Abetz may resurface after lunch, so we should not be discharging any parts of this outcome.

Senator FISHER—This evening, I think—I am not sure.

CHAIR—The answer is that you will all be back after lunch. We will now adjourn for lunch.

Proceedings suspended from 12.26 pm to 1.32 pm

CHAIR—I call the committee to order. As a point of clarification for the record, I welcomed Mr Burmester in my opening statement. I understand that he will not be attending at all today, and I believe he conveys his apologies. I belatedly welcome Mr Kovacic, who is covering outcome 9 on behalf of the secretary. I offer my apologies.

Mr Kovacic—My apologies for not correcting you at the time, Madam Chair. I overlooked it.

CHAIR—We are actually missing Senator Fisher, who was in line to ask questions. Is there anything back from the department at this stage with which we could fill in some time?

Mr Kovacic—I think we have probably covered everything that we had undertaken to come back on.

CHAIR—Bear with us a moment and we will see how long Senator Fisher is likely to be. Yes, Minister?

Senator Ludwig—I had the opportunity during the lunchbreak to contact the Deputy Prime Minister's office and I spoke with an adviser there who advised me that the ministerial consultation with the various states and territories—this is in respect of Senator Abetz's question—post the amendments in the Senate in relation to the Safe Work Australia Bill had taken place. I have asked for further details in respect of that consultation. They will be provided to the committee in due course.

CHAIR—Thank you. I understand that Senator Fisher is on her way, so please bear with us for a few moments. Unless Senator Abetz turns up, I do not believe that there are other questions for this outcome, unless Senator Humphries has some.

Senator HUMPHRIES—I was going to clarify where a question might be asked. I understand that the department regulates access to Job Network providers on the basis that some migrants to the country are at that particular point in time accessing the adult migrant English program.

Mr Kovacic—I think that would be under either outcome 7 or 8.

Senator HUMPHRIES—I just wanted to clarify that. That is fine.

CHAIR—Senator Fisher is now here.

Senator FISHER—Thank you, Madam Chair. I understand that, in terms of the homeworkers code of practice, we have some \$4 million allocated; is that right?

Mr Maynard—The impact on the budget was \$4 million over four years.

Senator FISHER—How is the money being spent?

Mr Maynard—The money is being spent in a variety of ways. Perhaps the most efficient means by which I can answer that question is to offer to table the annual report provided by the homeworkers code of practice committee to the department as part of its contractual obligations. In that it will set out its plans for the year and an intended budget.

Senator FISHER—Thank you.

CHAIR—Would we have not yet received that report?

Mr Maynard—There has been a funding agreement, effectively the contract, which provides details of how we would provide \$1 million, GST exclusive, for each of the four years in quarterly payments. What we also require as part of that funding agreement is the provision of quarterly and annual reports, and we have a number of those that we can now make available to the committee for its perusal.

Senator FISHER—What processes does the department have in place to ensure that the stakeholders in the process are carrying out their obligations in terms of the funding agreement?

Mr Maynard—Can I just be sure that I understand the question? Which stakeholders are you referring to?

Senator FISHER—Upon whom does the funding agreement place obligations?

Mr Maynard—It places obligations on the committee, both in terms of its use of the funds and its reporting obligations to the Commonwealth. That is set out in the funding agreement, which was provided with the questions on notice from the last estimates round.

Senator FISHER—Who are the members of the committee?

Mr Maynard—The committee is made up of representatives from the Council of Textile and Fashion Industries of Australia, the Textile Clothing and Footwear Union of Australia, Hunter Gatherer—which is a component of the Brotherhood of St Laurence—the New South Wales Business Chamber, the Australian Industry Group, Pacific Brands, and Poppets Schoolwear.

Senator FISHER—What processes are in place to ensure that essentially the members of the committee meet their obligations under the funding agreement?

Ms Anderson—In accordance with the funding agreement, which you have, the committee is required to provide reports to the department. Two of those have just been tabled, being the annual report for the last financial year and the quarterly report for the last quarter. There is also a requirement to provide the department with an annual plan that outlines how the committee intends to spend the funds for the forward year.

Senator FISHER—What are the processes?

Mr Maynard—I am not sure that I understand the question. The funding agreement sets out a broad range of obligations, including the provision of those plans. It includes the requirement to establish a separate bank account solely for the purpose of including the funds provided by the Commonwealth, to provide reports on the interest earned in that account, and to provide advice on significant withdrawals. The full details are set out in the funding agreement that has been provided previously. If there is a specific area of obligation that you want us to comment on we would be happy to do that.

Senator FISHER—The sorts of things that you have gone to just then are more about detailing the acquittal of moneys. Can you give us a flavour of what has to be done to perform the contractual terms with respect to the members of the committee? What do they have to do to get the funding in the first place—police the code?

Mr Kovacic—The common practice in terms of contractual arrangements is that the contract would set out what the funding recipient, for want of a better description, is required to do in terms of how they actually achieve those sorts of outcomes. The actual process for doing that is a matter for the committee. The reporting arrangements are a way for the department to make its assessment as to whether or not the committee is meeting its obligations under the contract. To the extent that there are any issues that the department would be concerned about, we would explore those with the committee.

Senator FISHER—So, the process is essentially the reporting back to the department to satisfy the department. What sorts of things would you be looking for to satisfy the department that the funds were being duly spent on this project?

Mr Kovacic—I think there is also a pre-emptive thing in the sense that my understanding is that the committee also needs to provide to the department a work plan, which needs to be approved with the department. There is a pre-emptive element to it as well as a following up in terms of quarterly reports as to how the committee is going about what it is obliged to do under the contract.

Senator FISHER—What sorts of outcomes is the department looking for from this project?

Mr Maynard—For example, it would be looking at the number of manufacturers and retailers who have signed up to the code and, by doing so, have ensured that all of those employees within the supply chain are being correctly paid their employee entitlements. The annual plan provided by the committee—I do not wish to overwork the committee secretary, but I table the annual plan as well—sets out KPIs that they have identified and that we have agreed upon to increase the number of accredited disciplines and to ensure an increased level of compliance for those that have been accredited. You might recall that the homeworkers code of practice committee promotes the No Sweatshop label, which provides for employers and those in the supply chain to use that label on their clothing, to demonstrate that they are ethical manufacturers of clothing, and to promote themselves in that way. Therefore, it requires an ongoing compliance program to ensure that that continues to be valid.

Senator FISHER—You have mentioned in part ensuring that workers are not exploited. What measures are in place to ensure that employers are not taken advantage of as part of dealings in and with and around the code?

Mr Maynard—The employers are people who choose to sign up to the code. Obviously, if they felt that they were dissatisfied with the service they were receiving they would presumably cease to make application to be accredited.

Mr Kovacic—Also, I think the composition of the committee itself, being a mix of stakeholders from the industry, is an assurance in terms of the approach that is taken on the ground, for want of a better description.

Senator FISHER—I understand there has been an example, particularly a couple of years ago, in 2006, of the Textile Clothing and Footwear Union of Australia sending correspondence to employers at workplaces, where allegations of a breach had been made, suggesting that the union would be prepared to settle a matter rather than take it to the Federal Court. Some concern was expressed that there were some questions surrounding this practice. Is the department aware of the issues back then?

Mr Maynard—I understand that matter was explored in discussions with the Workplace Ombudsman at the last set of hearings, and I note that Mr Wilson gave evidence—in the *Hansard* of Tuesday, 3 June, on pages 81 to 82—in which he said:

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.

Later in the same evidence he advised that ‘we concluded those matters by determining that there was not a prima facie breach of the Workplace Relations Act’.

Senator FISHER—In terms of the union’s conduct?

Mr Maynard—I presume that would be his evidence, but you might wish to put it to him when he is here before you later this afternoon.

Senator FISHER—As far as you are concerned, there is no suggestion that the union’s conduct in that respect was inappropriate?

Mr Maynard—I do not have the details, so I do not have a view as to its conduct. I note, however, Mr Wilson’s evidence was that he determined there was not a prima facie breach of the Workplace Relations Act.

Senator FISHER—Thank you. How many staff are employed in respect of the homeworkers code of practice?

Ms Anderson—There are currently five employees who work for the committee.

Senator FISHER—What funds their wages?

Ms Anderson—That is drawn from the funding that the government provides to the committee.

Senator FISHER—Mr Maynard referred to a separate bank account. Are the staff paid out of that separate bank account or from somewhere else?

Ms Anderson—They are funded out of that bank account. Basically, the entire funds that the government provides are kept in that bank account.

Senator FISHER—In whose name is that bank account?

Ms Anderson—It is under the committee’s name.

Senator FISHER—Which is?

Ms Anderson—The Homeworker Code of Practice Committee Ltd.

Senator FISHER—Do you know the registered address of the bank account?

Ms Anderson—I do not have that detail with me, but we can certainly find out.

Senator FISHER—I would appreciate that. What is the mailing address for the committee?

Mr Maynard—The contact details for the committee are available on its website. We will certainly endeavour to find that for you, but its website is www.nosweatshoplabel.com.

Senator FISHER—I should have said ‘postal address’, I guess, in today’s world.

Mr Maynard—Yes. The physical address is: suite A, level 1, 205 Johnston Street, Fitzroy, Victoria 3065; the postal address is PO Box 2087, Fitzroy, Victoria, 3065.

Senator FISHER—Thank you. Is the Johnston Street premises in any proximity to the offices of the union?

Mr Maynard—No, this premises has recently been leased by the homeworkers committee for the duration of the funding. They previously had been located in the same building as the

TCFUA in Exhibition Street, Melbourne. However, now it has received funding it is in its own premises.

Senator FISHER—Can you provide on notice a copy of the position descriptions of the staff who are working in respect of the code of practice?

Mr Maynard—Certainly.

Senator FISHER—That completes the questions I have on the code of practice.

CHAIR—We can move on to other areas in this outcome. Unless Senator Abetz returns, you are the outstanding senator with questions in this whole outcome, Senator.

Senator FISHER—I understand that Senator Abetz will return after dinner.

CHAIR—I assume we will be well past this outcome by then.

Senator FISHER—That is right, but I thought you made some comment—

CHAIR—I was seeking to clarify earlier whether Senator Abetz had any further questions for this outcome, and your answer to that is no.

Senator FISHER—The effluxion of time will deal with that. He is committed elsewhere, in case people are wondering. I have a couple more questions about the legislation that perhaps Mr Kovacic can answer. How long is the bill?

Mr Kovacic—Given it is still a work in progress, I think it is premature to speculate on that at this stage.

Senator FISHER—How long is it today?

Mr Kovacic—I am not in a position to answer that.

Senator FISHER—You do not know how many pages it is?

Mr Kovacic—No, because elements are still being drafted. These are shifting sands.

Senator FISHER—I presume you would have presented a draft of it to COIL during the extensive nine-day consultations you had. How long was that draft? I am sure Ms James knows. She has just joined you at the table.

Mr Kovacic—It was a combination of draft provisions and particular notes that we provided to COIL. I would prefer not to go into the precise number of pages. As I have said, until the legislation is finalised that really is an issue that is still very much in the mix.

Senator FISHER—Ms James, do you know the number of pages that were in the draft bill that you presented to COIL?

Ms James—No.

Senator FISHER—As a question of process, does the bill repeal the Workplace Relations Act in its entirety and replace it with a new act, or does the bill amend parts of it?

Senator Ludwig—I think that level of detail will be made plain.

Senator FISHER—It is a process question, Minister.

Senator Ludwig—I am not sure that it is a process question. I think the best way to deal with this, particularly given that the bill will be here very, very shortly, as I understand it, at

least before the end of the year, is that a lot of those questions that you are asking can be answered more satisfactorily by the department once that is here. We already have a commitment that it will go through the committee stage. You will have the opportunity to have the department called, although that is a matter for the committee, to provide evidence in respect of the legislation. I think it would be far more sensible to deal with it in that way. That way we all have the detail in the front of us at the time, and you can ask questions that are appropriate in respect of the legislation then. It would just seem to be a more sensible way of dealing with it. I am not sure of the utility of asking questions about parts of drafts or numbers of pages.

Senator FISHER—It is one thing for the department to say they are not sure how many pages it is, and I accept that. Your view, Minister, is that it may be more sensible to have the question as to the mode of amendment dealt with somewhere else, but I am entitled to a different view. I would have thought the departmental officials at the table would know whether or not the bill seeks to repeal the current act in its entirety and replace it with another one or whether the bill does something different.

Senator Ludwig—I still think that goes further than process. That does go to policy issues, and they will be answered very shortly in respect of the draft.

Senator FISHER—How so? I am not asking you a question of policy. I am asking a question of legislative form, not substance.

Senator Ludwig—We differ on that. I am not sure that I agree with you, in fact, I know I do not. In respect of the answer to that question, my view is that it does go to a matter of policy. It will be made plain very shortly, and there will be appropriate processes that you will be able to undertake to examine the legislation at that time.

Senator FISHER—If it was a question of policy, was it part of your election policy as to how; as to the form of your amendment to the Workplace Relations Act?

Senator Ludwig—I am sure you have read it in full. If you wanted to ask a question, I can take it on notice in respect of a broad policy question that you want to put to me.

Senator HUMPHRIES—Could I interpose there and read to the minister the advice a deputy chair of another committee received yesterday from the Deputy Clerk of the Senate. He stated in this advice, ‘There are no restrictions on committees asking about advice to ministers, the preparation of which is a major function of the Australian Public Service and a large number of statutory authorities. The Senate has on many occasions reaffirmed the principle that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise.’ He points out a particular case, concerned that the Senate had not expressly provided otherwise. I assume there is no exemption in this particular case for the question that Senator Fisher is asking. I would put to you, given the clear terms in which that advice is framed, there is no good reason why the information that Senator Fisher has asked for should not be provided.

Senator Ludwig—I have indicated that I think it is a matter of policy. I am quite happy to take it on notice and see if we can actually find out. It is a shame that you did not read that

advice when you ensured that questions about AWB were not able to be put to officials and answered when you were in government. I find it odd that you read it now.

Senator FISHER—We got the advice yesterday, did we not, Senator Humphries?

Senator Ludwig—I am speaking. Unlike the previous government—

Senator FISHER—Unfortunately, we were not in government yesterday.

Senator Ludwig—we will take it on notice.

CHAIR—Please allow the minister to finish.

Senator Ludwig—We will see whether we can provide an answer in respect of it.

Senator HUMPHRIES—We did our homework, obviously, Minister, in opposition. Perhaps you did not.

Senator Ludwig—You might find that the transcript shows otherwise.

CHAIR—Senator Humphries, I think you will find that very similar advice has been given in the past as well and ignored.

Senator HUMPHRIES—As it is being ignored now.

CHAIR—No, I am not suggesting it is being ignored now.

Senator Ludwig—No, Senator Humphries, I said that it would be taken on notice.

CHAIR—In fact, the minister took it on notice.

Senator HUMPHRIES—Right, and then he will ignore it.

CHAIR—You will be able to judge that with the answer. Senator Fisher, please move on.

Senator FISHER—When are answers to questions on notice required to be provided to this committee?

CHAIR—By 28 November.

Senator FISHER—By which time presumably the minister will have had her discussions with the shadow minister in any event.

CHAIR—I think that was a point the minister raised with you earlier as well, but perhaps if we could move on.

Senator Ludwig—Hopefully the shadow minister will share the information with you.

Senator FISHER—I have one further section of questions in this outcome, just to let you know where I am headed, and it is about award modernisation. In respect of the award modernisation request that the minister effectively issued to the president of the Industrial Relations Commission and a result of the government's round 1, if you like, of workplace relations reforms, are you aware of claims being made by the National Retailers Association that this process will result in significant costs for employers and, in particular, for their sector?

Mr Roddam—We are aware of those concerns.

Senator FISHER—I think they are saying that the costs stand to increase by up to 25 per cent on average for retail employers?

Mr Roddam—I am not sure if that is the exact claim. I think it varies from state to state in terms of what they are.

Senator FISHER—That may be so. I guess the common ground is that they are concerned that costs will increase for their members?

Mr Roddam—Yes.

Senator FISHER—With respect to the government's stated objective as contained in the schedule attached to the first round of amendments to the Workplace Relations Act, the items in the award modernisation schedule, and referring to the request to the president about ensuring that award modernisation does not result in increased costs for employers, what processes are in place to ensure that that objective is met?

Mr Kovacic—The current process is that the commission is continuing its consultations around draft priority modern awards. There were hearings early this week and I think further hearings are scheduled for next week, from memory, around those draft priority awards. It has invited comments from all interested stakeholders around the draft awards that it has issued for consultation purposes. At this stage that consultation process is very much the opportunity for stakeholders to express their views and any concerns that they might have about the draft awards that the commission has issued.

Senator FISHER—Have the Restaurant and Caterers Association expressed concerns as part of that process?

Mr Kovacic—I am aware of issues that the Restaurant and Caterers Association have brought to the attention of the commission.

Senator FISHER—What are you aware of in that respect?

Mr Kovacic—I am aware that their concerns are similar to those that you outlined with respect to the retail industry.

Senator FISHER—Extending to business closure and job losses?

Mr Kovacic—I think that is the point they have made in their submission.

Senator FISHER—Is the department undertaking an assessment of those concerns?

Mr Kovacic—We are aware of the concerns in the sense that we have received the material from the hospitality people as recently as yesterday. As you are aware, the government made a submission to the commission in terms of the current process. Clearly, as I have mentioned, the process has a way to go in that the commission is currently undertaking a consultation process that is seeking to elicit the views of stakeholders around the draft awards that it has issued.

Senator FISHER—Once the commission has consulted, what is the next step?

Mr Kovacic—From memory, the timetable has the commission making final modern awards in the priority industries in early December.

Senator FISHER—Is there anything in the award modernisation request, or anything else, that ensures that the commission will implement processes to make sure that the award modernisation process does not increase costs to employers?

Senator Ludwig—For clarification, is that costs in respect of the actual award modernisation itself—that is, the framework or what is contained in it—or do you mean the process costs for participating in the award?

Senator FISHER—Minister, that is another raft of questioning—the process costs. But I mean the effect of implementing any modernised award or awards.

Mr Kovacic—It is the award modernisation request that obliges the commission to have regard to a range of factors, including not increasing costs for employers and also not seeing employees disadvantages as a result of the process.

Senator FISHER—Indeed. My questions are around what process is in place to ensure that that regard extends to making sure that there are not increased costs for employers.

Mr Kovacic—It is really an issue in terms of the process that the commission adopts around award modernisation. It has adopted, as is required by the request, a very open and consultative process that provides opportunity for any interested parties to make submissions and express views as part of the award modernisation process. That process is still in train.

Senator FISHER—You are not suggesting that consultation will stop increased costs, are you?

Mr Kovacic—At this stage it is hypothetical in terms of the final awards because they are yet to be paid. The shape of the draft awards that have been issued for consultation may not be the final shape of the award that the commission makes.

Senator FISHER—Are you suggesting that the awards will be implemented and the impact assessed thereafter?

Mr Kovacic—I am saying that at this stage the draft award, which is currently the subject of continuing consultation, is a draft award and is the subject of consideration by the commission. As part of that process, interested stakeholders have the opportunity to express a range of views in terms of the draft awards. The final shape of those awards might be very different from the draft awards that were issued previously by the commission for consultation.

Senator FISHER—Has the department provided the government with any advice as to the economic impacts of the model award or awards?

Mr Kovacic—We have provided advice to government in the context of the submission that the government made to the award modernisation process, which touched on a range of issues, including the issue of small business redundancy, which was an issue that the commission included in draft modern awards.

Senator FISHER—That is one aspect, but what about broader potential impacts of award modernisation?

Mr Kovacic—That would go to the nature of the advice that we may or may not have provided to the minister. We provided advice to the minister in the context of the government settling its submission to the award modernisation process.

Senator FISHER—Will the department be providing to the government an economic assessment of the impact of the proposed modernised award and awards on relevant sectors?

Mr Kovacic—The department is continuing to monitor the award modernisation process. As part of the normal process of providing advice to government on a range of issues, we may or may not provide advice to government on how that process is proceeding.

Senator FISHER—What about advice on the economic impact?

Mr Kovacic—In terms of the broader issue, in essence you are asking a hypothetical as to what we might do in the future, and at this stage I cannot foresee into the future.

Senator FISHER—So you have not provided economic analysis thus far?

Mr Kovacic—What I have said is that we provided advice in the context of the government settling its submission to the award modernisation process.

Senator FISHER—I take it from that that the department has not provided the government with advice as to the economic impact of award modernisation?

Mr Kovacic—Clearly one of the issues that was canvassed in the government's submission related to the issue of small business redundancy. The government expressed its concern about the cost impact of that initiative, and that is reflected in the government's submission.

Senator FISHER—What about effect on business more broadly?

Mr Kovacic—I have said that goes to the nature of advice that we may or may not have provided. I am not in a position to provide that detail.

Senator FISHER—Has the department provided the government with advice as to the economic impact of award modernisation on business generally?

Mr Kovacic—The department has provided advice to the minister on the award modernisation process generally. In the context of the government settling its submission to the award modernisation process, we provided advice around a range of issues—one of which happened to be the small business redundancy issues, which went to the cost impact of that—and that is reflected in the government's submission.

Senator FISHER—Is the government's submission the beginning and the end of the government's views as to the effect of award modernisation on Australia's economy?

Mr Kovacic—That is a matter for government.

Senator Ludwig—We have provided the submission. What the government decides to do next is a matter for the minister.

Senator FISHER—It would be good to have it based upon some economic analysis. That completes my questioning in respect of this outcome.

CHAIR—I think that concludes this outcome. We will now move to outcome 7—Labour Market Assistance.

[2.11 pm]

Senator CASH—My questions in relation to this outcome will centre around the exposure draft of the new employment services purchasing arrangements and also the recently released request for tender. What modelling or analysis has been undertaken to ascertain that there will be improved employment outcomes arising out of the proposed compliance regime?

Ms Golightly—The review of employment services that was conducted earlier in the year looked at a review of the services to be offered as well as the compliance regime. Advice was provided to government in the budget context around the modelling, but it is of the nature of advice to government.

Senator CASH—How will there be improved employment outcomes if you have a watering down of the mutual obligations in the proposed new regime?

Ms Golightly—There is no watering down of the mutual obligations. The obligations on job seekers remain the same.

Senator CASH—So you say there will be no watering down of the mutual obligations. My understanding in relation to the mutual obligations is that, under the current system, you have a mandatory eight-week suspension of payments in certain circumstances?

Ms Golightly—Yes.

Senator CASH—That will change to a number of options including a possible eight-week suspension of payments?

Ms Golightly—Yes. That is about the penalties, not so much the obligation on the job seeker. The obligation for the job seeker to turn up at interviews and to participate in activities for a certain number of hours all remains the same. The government is very keen to make sure that those people who are wilfully noncompliant do still receive an eight-week non-payment penalty, and that is still a feature of the new system. What is being emphasised is the discretion that providers in Centrelink have and should exercise around whether the job seeker is indeed being wilfully noncompliant with no reasonable excuse. If there is a reasonable excuse or some other factors outside the job seeker's control, these will be taken into account before deciding on an eight-week non-payment penalty. So it will not be automatic.

Senator CASH—Okay. If we compare the current compliance regime with the proposed compliance regime, what are the major differences?

Ms Golightly—The major difference in the eight-week non-penalty area is that in the current regime if you have three failures you automatically receive an eight-week non-payment penalty, no questions asked. In the new system, the job seeker will have what is called a comprehensive compliance assessment, which is a meeting with Centrelink where Centrelink will discuss with that job seeker all of the circumstances that the job seeker is facing and try to determine whether there were reasons for the noncompliance which would be better addressed through perhaps even a different service or a different way that the job seeker is being serviced. However, if that comprehensive assessment finds there was no reasonable excuse and that the job seeker was being wilfully noncompliant, there is the option of the eight-week non-payment period.

Senator CASH—Why is it only an option now of a non-payment for eight weeks as opposed to a compulsory withdrawing of the benefit for eight weeks?

Ms Golightly—It is to take into account that there could be other circumstances impacting on that job seeker.

Senator CASH—I accept that, but it is still only an option at the end of the day. When does it become mandatory that a person will have their benefits suspended for eight weeks?

Ms Golightly—Centrelink still has the ability, if they have decided that there is no reasonable excuse, to impose an eight-week non-payment period.

Senator CASH—Along with other options, though? If you compare the current regime to the proposed regime, currently you will lose your benefit after you have received the three ticks, or three failures. The new regime appears to include a number of options that you can traverse before you actually get to—

Ms Golightly—Only in order to make sure that the job seeker has not had other issues impacting on their ability to comply. If Centrelink determines that there is no other issue and that the job seeker is being wilfully non-compliant, the government has been very clear that it expects that wilfully non-compliant job seekers will receive an eight-week non-payment period. The second major difference is that, under the current system, if you are subject to an eight-week non-payment period, you cannot avoid that non-payment period; you cannot have your income payments reinstated, even if you do re-engage. Under the new system, if the job seeker who is facing an eight-week non-payment period agrees to re-engage and undertake an activity, they can have their payments reinstated in recognition that they have re-engaged and are doing what they have been asked to do.

Senator CASH—Under the proposed new system, my understanding is that failures are over a course of six months as opposed to a course of 12 months.

Ms Golightly—In the current system, it is any three failures in a rolling 12-month period. In the new system, if we are talking about reconnection failures, it is three in a six-month period. There is a new type of penalty in the new system which is meant to bring in a more work-like focus to our activities. If a job seeker is meant to be undertaking training or a work experience activity of some sort and they do not attend that activity without a reasonable excuse, they will lose a day's pay for each day that they do not attend, and that is called a no-show, no-pay penalty. Also, if they have six of those over a six-month period, they will also be asked to attend a comprehensive compliance assessment.

Senator CASH—What impact do you see the change from the 12 months to the six months actually having on the system?

Ms Golightly—For a start, for the job seeker the consequence is very close to the failure that was incurred, but it also means that if they re-engage they do not have something hanging over their head for a longer period of time.

Senator CASH—I would have thought having something hanging over my head might actually be a motivator to actually comply or to actually get off my backside and do something.

Ms Golightly—But if they have already complied, then they have done the right thing.

Senator CASH—Under the proposed system, you have job seekers who can be deemed to be in severe hardship.

Ms Golightly—Yes.

Senator CASH—My understanding is that they do not have to undergo the eight-week non-payment period.

Ms Golightly—Yes.

Senator CASH—However, what does kick in is participation requirements.

Ms Golightly—Yes.

Senator CASH—If a job seeker who is deemed to be in severe hardship does not actually participate in a given activity, what actually will happen?

Ms Golightly—Everyone is offered the option to participate in an activity. If they can show that they do not have the capacity to participate, that something is impacting on that and that is proven, Centrelink can arrange for the activity to be modified or tailored to something that suits that individual.

Senator CASH—When you say that the person can show that they do not have the capacity to participate in a particular activity, what do they need to show? What are the factors that you will be taking into account?

Ms Golightly—Certainly the detailed guidelines on all of these have not yet been developed, because this does not come in until 1 July next year, but the sorts of things that we have been talking to Centrelink about are family circumstances, child care or, for example, the person's capacity in terms of a disability that might be impacting on them or some other health issue. Those sorts of things would be considered.

Senator CASH—So it certainly will not have anything to do with the fact that they might not like the activity that they have been placed in? That would not be a reason for it?

Ms Golightly—No. We do expect that our employment service providers will tailor activities to the needs of the job seekers. It should take into account what skills they need to develop, what skills are in demand in the local labour market as well as, say, their family circumstances or any of those other things that I just mentioned. But simply not liking an activity would not be enough.

Senator CASH—Those guidelines are still being developed?

Ms Golightly—Yes.

Senator CASH—Are you aware of what the decrease in long-term unemployment was from June 2006 to August 2008 based on the labour market and related payments report? If not, I do have the figures and I am happy to actually provide them.

Ms Golightly—It would depend on what the actual question might be.

Senator CASH—It is on long-term unemployment, and I am going to ask you to compare it to some other figures.

Ms Golightly—Okay. If you ask your question then Mr Carters and I can decide who is best placed to answer it.

Senator CASH—Absolutely. How does the decrease between June 2006 and August 2008 in long-term unemployed people compare with the two years prior to June 2006, which was

obviously prior to the Welfare to Work compliance reforms being introduced? Then, to what would you attribute the reduction in the period from June 2006 to August 2008?

Mr Carters—We do not have those figures available. However, when you are talking about reduction in long-term unemployment, I suspect you are talking about the ABS figures?

Senator CASH—I could actually give you the figures.

Mr Carters—But are they ABS figures?

Senator CASH—The figures I have are based on the labour market and related payments report. I can tell you what they state.

Mr Carters—We do not have the June figure, but we have September 2006 through to August 2008.

Senator CASH—What was your September 2006 figure?

Mr Carters—Sorry, I have the June figure now.

Senator CASH—What figures do you have there?

Mr Carters—For June, and this is for long-term Newstart allowance—and there is also youth allowance—it is 284,288.

Senator CASH—Yes, and for August 2008?

Mr Carters—August is 253,131.

Senator CASH—Okay, we are obviously talking about two separate lots of figures. The figures I have for June 2006 are 205,212 to 146,533 in August 2008, a decrease of 58, 679 in unemployed persons.

Mr Carters—Sorry, I cannot source your data, but it does sound like ABS data rather than beneficiary data. They are very different measures. The ABS definition of long-term unemployment and the beneficiary definition are very different because people who are long-term unemployed beneficiaries can have quite substantial amounts of part-time work and still remain on income support. They can have breaks of up to at least 13 weeks and still remain on income support. There is quite a considerable difference in those definitions.

Senator CASH—Can you give me the definition for the figures that you have?

Mr Carters—These are people who have been in receipt of Newstart allowance for 12 months or more. That is not necessarily continuously in receipt either. As I said, they can have a break, so they may actually go off and do some full-time work for a short period of time and come back on, and their duration would continue.

Senator CASH—I will come back to those questions in a little while. Can you tell me what the expected frequency is of servicing of job seekers in streams 1, 2, 3 and 4? If you prefer to take that question on notice, if that makes it easier for you, please do.

Ms Golightly—No, I can give you an outline. Streams 2 to 4 are quite different from stream 1, so perhaps I will start at streams 2 to 4. Basically the tender that is out in the market at the moment requires providers to tailor their services to the needs of each job seeker. We would expect that they would meet with the job seeker, for example, as often as is required, but we have put minimum contact requirements into the tender. We also expect that the

providers would be negotiating and updating regularly the employment pathway plan for each individual job seeker, and this plan sets out exactly the activities that the provider will arrange for that job seeker and the activities that the job seeker has to attend. They would be in contact with the job seeker on that and updating it as time goes on or circumstances change or a particular training course has been completed, for example. We expect very regular contact, but tailored to what the job seeker is doing at any one point in time.

Stream 1 is the stream that is for the job ready job seekers. In the first three months they will have a meeting with their employment services provider to help them with a résumé and put them in contact with local opportunities, but the regular contact will be with Centrelink in those first three months. If the person is still unemployed at the three-month mark, then the provider will step up its contact with the job seeker and that will commence with the provider doing a thorough skills assessment of that job seeker and talk about what skills and experience the job seeker already has and work out a plan for perhaps addressing, improving or updating those skills to suit local labour market needs and designing activities for the job seeker. Then they will put that in the employment pathway plan, and things go on as per the other streams. We expect the contact in the streams 2 to 4 to be more intensive, of course, than in stream 1 because job seekers in streams 2 to 4 have much higher barriers, particularly those in stream 4. That should dictate the type and nature of the contact that the provider has with the job seeker.

Senator CASH—Moving on to Work for the Dole and looking at the work experience activities, under the proposed new system how was the level of funding that is to be offered to providers for work experience activities determined?

Mr Carters—Was the question: how did we decide what work experience activities—

Senator CASH—No. Under the proposed new system, how is the level of funding offered to providers for the work experience activities determined?

Mr Carters—The level of funding was based on essentially a change of approach. The approach now is that people who basically enter the work experience phase get an upfront payment which is paid into the Employment Pathway Fund, plus a service fee. The logic is that only a certain percentage of those people that actually enter the work experience phase will need to have what we call a funded work experience activity, so something like Work for the Dole or Green Corps, for example. We did some calculations to determine what sort of level that would need to be to be able to offer a similar level of Work for the Dole, and some full-time Work for the Dole as well, and Green Corps activities in particular, for people that would be required under the current scenario to participate in those activities if they did not do one of the other activities. So, if there is something like part-time work or some sort of study in training, or some other options like that, they could obviously do that. But if they do not do something else, they would still be expected to undertake something like Work for the Dole or Green Corps. The level of that funding is based on providers being able to offer that same sort of proportion of Work for the Dole and Green Corps type activities to the people who would be required to do those.

Senator CASH—Under the proposed system, what is that level of funding per work experience activity? While you are looking for the figures, how does it compare to the current payment per person, obviously under the current system?

Mr Carters—As I said, the work experience credit into the Employment Pathway Fund is \$500 per person or \$850 in a remote area.

Senator CASH—How does that compare with the current scheme and also the service fees? Could I get a figure for the service fees also? I will outline what the concern is. I understand that some providers have indicated a concern that when they look at the DEEWR website the figure that is to be paid under the proposed scheme is actually substantially less than what is paid under the current scheme.

Mr Carters—I tried to explain that before. It is a very different scenario. I do have the service fee for you, which I will give you before I explain the difference. The service fee is \$456. My understanding is that the current average fee is \$1,665, so it notionally looks lower, but there is a very big difference.

Senator CASH—You will need to take me through that big difference.

Mr Carters—I will. I did try to explain it before. The difference is that the \$1,665 is based on the payment that is made to place people in Work for the Dole, which is currently a separate program. So people who are going into that are people who are actually going to participate in Work for the Dole. The way in which the new employment services arrangements are set up is that, for everybody that actually moves into the work experience phase, the provider will get that service fee and the Employment Pathway Fund credit. Not everybody who goes into that is required to do an activity, and even fewer are required to do Work for the Dole. Therefore it does not equate to it having to match what previously used to apply to Work for the Dole, because only a small proportion—and the figure that we use is about 45 per cent as an indicator of the people who are required to undertake an activity—would be expected to do Work for the Dole.

Senator CASH—Even on that basis, and taking into account your explanation, it would still appear that this proposed service fee is still less than what is currently provided.

Ms Golightly—It is comparing apples and oranges. They are getting those fees that Mr Carters outlined for every person regardless of whether or not they do Work for the Dole. So they are getting it for people who are not even doing Work for the Dole. The Employment Pathway Fund, EPF, is a pooled account. It is a notional credit into that account, and they can pool that money to spend it on any job seeker on any activity. So, in total, they are getting money for work experience activities in a broader range than just Work for the Dole. The other thing they are getting in the new system is an outcome payment for people who are in work experience, and that is not available under the current Work for the Dole arrangements. There is a main payment on top of the service fees and Employment Pathway Fund.

Senator CASH—Under the proposed system, when can you do a work experience activity?

Ms Golightly—You can do any of the activities that are described as work experience at any time, if that is what the provider feels is relevant for the job seeker, but in general, after

doing around 12 months of the first part of their stream, whether it is stream 1, 2, 3 or 4, then the job seeker would be assessed to see whether they should move into a work experience phase or if their—

Senator CASH—Hold on; what happens to them in that 12-month period?

Ms Golightly—They are being serviced in the main part of their stream. If they are stream 4, for example, they would be getting the stream 4 services of intervention with any vocational and non-vocational barriers. It could be help with counselling or drug addictions, it could be homelessness help, or it could be vocational in terms of training. Then that can continue on with work experience added in the work experience phase.

Senator CASH—To undertake a work experience activity under the proposed system, does there have to be the expectation that there will be a job at the end of that particular experience?

Ms Golightly—One of the activities that is on the work experience list is paid or unpaid work experience with an employer and, if it is unpaid work experience, we would expect that that turns into a job.

Senator CASH—When you say you ‘would expect’, what does that mean?

Ms Golightly—Again, we are developing the detailed guidelines which will be in place in for 1 July, but what we will be protecting against is employers who may just be taking advantage of labour for which they do not have to pay. We would be monitoring and putting in place controls that made sure that these were real jobs and they were not displacing other workers, for example, or not turning into ongoing opportunities for the job seeker.

Senator CASH—Under the proposed new system, my understanding is that you could now commence job seekers in Work for the Dole or another work experience activity after 12 to 18 months of unemployment, whereas currently they would have to undertake a work experience activity after six months of unemployment.

Ms Golightly—There are two things there: the 18-month option is only available to stream 4.

Senator CASH—So that will only be available to stream 4?

Ms Golightly—Yes. For everyone else, they are assessed at the 12-month mark.

Senator CASH—Why the additional six months from six months to 12 months for people, and does that include stream 1 people?

Ms Golightly—Yes. Answering the second question first, yes. As to the first question, there are two things: work experience is much, much broader than Work for the Dole. The current arrangements do not include other work experience activities. They only include Work for the Dole. In the new arrangement we are saying that we want providers to work with interventions and a particular level of support provided by a stream for 12 months with the job seeker to get them ready to move into a job or into more work experience like activities.

Senator CASH—My understanding of stream 1 is that these people are the people who are ready to go back into the workforce. Why would it take 12 months to get them to that stage?

Ms Golightly—They only go to that stage if they are still unemployed, of course, at 12 months. I mentioned earlier the skills assessment at three months. That assessment could lead to the same types of activities as might be undertaken by somebody in the work experience phase. Basically that skills assessment should identify training, Job Search assistance or some other work experience type activities that the job seeker would be required to do as part of their employment pathway plan. The list of activities is quite broad. ‘Work experience’ is a pretty general term. People can undertake those activities at any time if it is decided that that is what they need. There is a trigger at the three-month mark for the stream 1 people to do some sort of activity at three months to address whatever skill gap they might have.

Senator CASH—Is there a trigger for stream 2?

Ms Golightly—In streams 2 to 4, the employment services provider should do a skills assessment at some stage. We just do not mandate it at the three-month mark. We would expect the provider to perhaps stabilise any non-vocational issues before perhaps moving into vocational issues, although that is not mandated either. It could be done concurrently. The whole point of streams 2 to 4 is to identify all of the barriers that the job seeker faces and try to prioritise those which need to be addressed first and the sorts of activities that need to be undertaken to address them. They may well be work experience type activities; they might be something that is non-vocational or pre-employment type activities. They are some examples.

Senator CASH—So stream 1 would seem to have its own trigger and be treated differently?

Ms Golightly—Yes.

Senator CASH—Then you have streams 2 to 4 which seem to fall into the same categories.

Ms Golightly—Yes.

Senator CASH—Why is someone in stream 2 being treated similarly to someone in stream 4? My understanding is that in stream 4 they are considered to have quite serious barriers.

Ms Golightly—They are, and they are not treated similarly in that sense. It is just that stream 1 is different in concept, I suppose, to the other streams.

Senator CASH—Sorry, and the comparison, say, between 2 and 4?

Ms Golightly—With streams 2 and 4, it is the level of intensity. The level of intensity of service we would expect to increase proportional to the level of disadvantage. The fees that are paid for stream 4, for example, are much higher than those paid for job seekers who are in streams 2 or 3.

Senator CASH—When we were talking about work experience activities previously, and that you had to have a reasonable prospect of a job at the end of it, you mentioned that there needed to be a reasonable likelihood of a job prospect.

Ms Golightly—Sorry, I should mention that I think I did say that that was for certain types of work experience activities, not all work experience activities.

Senator CASH—What types of work experience activities?

Ms Golightly—Particularly the unpaid work experience.

Senator CASH—What do you mean by ‘reasonable likelihood’? I suppose that is what I was trying to get at.

Ms Golightly—Unpaid work experience is where someone is placed with an employer to get work experience for which they are not paid, so what we would be doing is putting in place controls to make sure that that employer does not exploit that unpaid worker. We would be making sure that it was leading to an opportunity for the job seeker.

Mr Carters—The other important point there is that the providers will have an opportunity to gain very substantial outcome payments if they get people into employment, even through into the work experience phase. So it is in their interests as well to maximise the opportunities that the work experience provides to be able to move the unemployed people into sustainable work. Whether that is work experience or whether it is more training, it is something that the providers will be looking at to try to achieve those outcomes.

Senator CASH—I am glad to hear that, because my worry is that we have a softer regime as opposed to a very, very strict regime to get these people back into work. I am not sure that I am getting the feeling that this is actually as good as the current system.

Mr Carters—Can I just mention one component of the compliance system, just to help answer your question. Under the current system, people do get the automatic eight-week non-payment period, but in that period if they are in a certain category of person, such as a parent or a person with a disability that needs medical treatment, then they can get financial case management from the voluntary sector, the welfare sector. However, because they actually go off income support to get the financial case management, during that eight weeks they are isolated from the system. They do not participate in the system, whereas the new model focuses on participation.

If somebody gets an eight-week non-payment period in the new system, if they put up their hand to undertake what we call a compliance activity, which is quite rigorous—it is 200 hours over eight weeks at 25 hours a week, so it is sort of the equivalent of full-time Work for the Dole—the other advantage of that is they actually go back onto income support. So they do have to participate in activities, such as Job Search or that sort of thing, just the way they would always have had to do. Whereas under the current system, there is an eight-week period where they are sort of left out on their own.

Senator CASH—I suppose the point I was making was that you mentioned the word ‘if’ they are subjected to the eight-week non-payment, and that is my concern. Under the current regime, it seems that you ‘will be’ subject to the eight-week non-payment period in certain circumstances, where under the proposed regime what you have is that you ‘may be’, and I see that as a softening of the approach as opposed to, perhaps, a tightening up of the approach.

Mr Carters—It certainly boosts participation for the job seeker.

Senator CASH—We were talking before about the reasoning behind the six months going to 12 to 18 months in relation to the Work for the Dole or other work experience activity. In cases of people who work for someone in an unpaid capacity and then they do not get a job at

the end of that, what will happen to the people who were offering them a job or for whom they were doing the work experience?

Ms Caldwell—As Ms Golightly gave evidence before, the department monitors employers who make use of the unpaid work experience placement. The duration of that placement is subject to guidelines to ensure that there is no scope for these workers to be taken advantage of. You ask what happens to a particular employer. We would look at the particular instance. There are obviously circumstances in which the placement might not work out and the individual job seeker has gained experience and then moves on. What we are actually looking for in our protections is that there is no repeat or extended use of this. So we will never achieve in the real world a 100 per cent trial resulting in a successful job, but we are certainly alert to employers who seek to make use of the current arrangements in a way that may be to their advantage.

Senator CASH—What will be the monitoring process in that regard?

Ms Caldwell—We are talking also about future arrangements here. The department collects information about which employer is making use of a work experience placement.

Senator CASH—When you say we are talking about future arrangements, what did you mean there?

Ms Golightly—All of these arrangements come into place on 1 July 2009.

Senator CASH—Yes.

Ms Golightly—I think I mentioned that we are still developing the guidelines.

Senator CASH—But I am assuming you will have a monitoring process in place?

Ms Golightly—Yes.

Senator CASH—So let's talk through the monitoring process.

Ms Golightly—Well, it has not been developed yet—that is what I am saying. We are in the process of developing it, but it is envisaged that the guidelines to our employment service providers would discuss the sorts of checks and questions they should be asking employers before they agree to the placement. We have a system whereby, if someone does gain a job, it is entered into our IT system so that we can see, for example, that someone did gain a job or did not gain a job. That will also allow us to do some monitoring. The fine details of all of this have not yet been finalised.

Senator CASH—This is certainly something that you will be looking at to ensure that you do not have a market out there of employers who are having work experience people and not paying them?

Ms Golightly—That is right. I should also mention that, in terms of compliance arrangements, we have been talking about the eight-week non-payment period. There are also other penalties, I think I mentioned, and some of them do come into effect immediately the failure occurs.

Senator CASH—Absolutely. What are those penalties?

Ms Golightly—For example, the 'no show, no pay' penalty.

Senator CASH—I lose a day's pay. I could go to the beach, have a great day at the beach and lose my pay, but I can get it the next day.

Ms Golightly—That is right.

Senator CASH—I would not personally call that a penalty, but I accept that that is something that is in the proposed bill. Anything else?

Ms Golightly—I think I touched on the reconnection failures. If somebody does miss an appointment, they will have an opportunity to reschedule that appointment, but if they miss that—what we call a reconnection appointment—without a reasonable excuse, their payment will stop.

Senator CASH—When you say 'without a reasonable excuse', what would the definition of that be?

Ms Golightly—Again, I think this is something that is defined in the proposed legislation.

Senator CASH—Will they need to sign a statutory declaration to show that—

Ms Golightly—No.

Senator CASH—So you will take the person on their word?

Ms Golightly—Centrelink is the decision maker in this regard, and they can take into account any information that they have in front of them. Certainly yes, the job seeker would be asked what their excuse was and what the circumstances were. Centrelink could also check, for example, with the provider or with the employer. Centrelink does have a range of processes that they look to in deciding whether or not something is a reasonable excuse.

Senator CASH—What is happening with the financial case management under the proposed new system?

Mr Carters—There will be no financial case management. It has been replaced by the opportunity for people to undertake an activity during the eight-week non-payment period or, in extreme cases, for people in financial hardship to be able to receive income support as well. Again, in that circumstance, it would mean that they would have to participate rather than just receive financial case management and not need to participate.

Senator CASH—What was the reasoning behind scrapping the financial case management? My understanding was it was quite beneficial to people under the current system to have that in place. What is the reasoning behind scrapping it in the new system?

Mr Carters—The reason is the participation concept and the fact that in receiving financial case management they were out of the system. Whereas now, if they participate, they actually get paid their income support during the eight weeks, so therefore they have the same obligations as anybody would who is receiving an activity tested income support payment.

Senator CASH—This next question will involve some statistics. For every person under the current system who has undertaken a Work for the Dole activity, what has been the average duration of unemployment?

Ms Golightly—We might have to take that on notice.

Senator CASH—That is fine.

Ms Golightly—I will check if we have it.

Senator CASH—You will take that on notice. You might wish to take the next one on notice: how many people are currently on the Work for the Dole case load?

Ms Golightly—I should be able to get that one for you. I will just dig it out of the files.

Senator CASH—The next one might be a follow-on: how many of these are doing full-time Work for the Dole? How many people are currently on the Work for the Dole case load and how many are currently doing full-time Work for the Dole?

Ms Golightly—If you give us a couple of minutes, we will be able to bring you those last two answers.

Senator CASH—Certainly.

Ms Golightly—If you want to go on to any other questions, I can come back when I have those answers.

Senator CASH—Just to check that I understand you correctly, if you are in financial hardship and you keep your eight weeks pay, or you do not get the financial hardship payment against you, and you do not show up to your participation activity, what actually happens to you?

Mr Carters—Basically the same rules apply. If your activity is, say, Work for the Dole or training or something like that, you would have a ‘no show, no pay’ nonpayment.

Senator CASH—It is the day principle?

Mr Carters—Yes.

Senator CASH—‘No show, no pay’ for the day?

Mr Carters—Yes. You would not get paid for the days that you did not attend and, if there were six of those days, it would trigger another comprehensive compliance assessment.

Senator CASH—In relation to the success of the current Work for the Dole program under the current employment services contract, which obviously comes to an end next year, will the department undertake a net impact study to ascertain what the results of the current system were?

Mr Carters—We do undertake net impact studies from time to time, and we have done that for Work for the Dole in the past.

Senator CASH—When did you do that in the past, and in what circumstances?

Mr Carters—We are just checking that.

Senator CASH—Do you want to go back to the original question, which is: will you be undertaking an impact study in relation to the current system?

Mr Carters—I guess the net impact study that we will get the information on for you is in relation to the current system.

Senator CASH—When was that undertaken?

Mr Carters—That was undertaken in October 2006 and the net impact was—

Senator CASH—That was two years ago. It will be almost three years when the next system comes into play. Can I ask why you would not undertake a further net impact study seeing as it is a new system?

Mr Carters—Do you want the net impact first?

Senator CASH—Yes.

Mr Carters—It is 8.2 percentage points. I am advised that we are actually doing another one.

Senator CASH—Can I ask when you may think you might be doing the next one?

Mr Carters—We understand it is in play now. So, when we have completed it, then it will be up to government to decide on the release of that.

Senator CASH—When do you think you might complete it then?

Mr Carters—By the end of the year.

Senator CASH—For release?

Mr Carters—At the government's leisure.

Senator CASH—So, if it is really, really good, we may not hear about it. That is all right. I am actually going to move on now to non-vocational barriers and—

CHAIR—Just before you do, there is just one question I have.

Senator CASH—Yes, absolutely.

CHAIR—Could you tell us what the response of service providers has been to the changes you have been discussing with Senator Cash?

Mr Carters—Yes. We have done many rounds of consultations. We have had consultations on the discussion paper, consultations on the exposure draft and then again we have done road shows on the request for tender. Many submissions have been received through those processes as well. Generally speaking, there has been a very positive response. People, again generally speaking, have been quite pleased about the extra focus on the more disadvantaged and also the extra bonuses which are available for linking more closely with employers.

CHAIR—Is it fair to characterise the response of service providers, generally—because I am aware of some specific ones—as being that they think that this compliance regime will be more effective than the previous one?

Mr Carters—For the current providers I would say, generally, yes, they would consider that to be correct.

CHAIR—Thank you.

Ms Golightly—Chair, I have the answers to your questions on Work for the Dole caseload. For the financial year 2007-08 the commencements in Work for the Dole were approximately 70,000, and the commencements in full-time Work for the Dole were 11,465.

Senator CASH—Just on the response from service providers, I have had it raised with me that some service providers are actually concerned that there is going to be a decrease in the

service fees that are payable, which is what we talked about previously. Is that something that has been raised with you?

Mr Carters—Are you talking about work experience?

Senator CASH—Yes.

Ms Golightly—I think it was raised in early discussions around the discussion paper that was sent out in May, but by the time we have got to the RFT and further information was added along the way, providers seem to be more comfortable with the position now.

Senator CASH—If I could move on to the non-vocational barriers substitute programs for work experience, under the proposed new system is a jobseeker able to meet their work experience activities by participation in a program to address non-vocational barriers?

Ms Golightly—If that is what that jobseeker most needs, yes.

Senator CASH—Let us say a stream 4.

Ms Golightly—Yes, say a stream 4, and indeed they may well still be undertaking their counselling or whatever it is at the 12-month mark, then yes, they would be able to continue if that non-vocational need was still paramount.

Senator CASH—What types of programs would be deemed suitable, say for a person with a drug problem?

Ms Golightly—Yes, there are certainly streams. Mr Carters might be able to add to this, but the services under any of the streams, including the work experience phase, are extremely flexible. Basically, we expect providers to tailor whatever service is being provided to the needs of that jobseeker.

Senator CASH—For someone with an alcohol problem, would somewhere like AA be an appropriate activity?

Ms Golightly—It may well be. There may be other programs available in the area. It would depend on the jobseeker and what was available.

Senator CASH—With something like Alcoholics Anonymous, how do you actually monitor a jobseeker's attendance if the organisation such as Alcoholics Anonymous, as the name would imply, does not actually keep attendance records?

Ms Golightly—We have not prescribed the programs. I must stress that the types of services that the provider provides are really to be negotiated between them and the jobseeker. We expect the provider to do whatever they need to do to get that person ready and able to find sustainable work. The contract makes it clear that we would expect the employment services provider to be monitoring whether the jobseeker is complying with their employment pathway plan or not. So, they will put in the appropriate arrangements.

Senator CASH—How then do you resolve the situation where the person is not actually attending but they are telling the provider that they are and the provider comes to you and says so? Where is the check and balance there?

Ms Golightly—It is with the provider; they are the expert and the people that have the most contact with the jobseeker. They will need to make whatever arrangements they feel are

appropriate to assure themselves that the jobseeker is attending. If they feel that the jobseeker is not, we would expect them to be discussing that with the jobseeker and in events where there is no reasonable excuse they can also discuss that with Centrelink.

Senator CASH—Will there be penalties in place for providers who perhaps do not have these procedures in place to actually monitor whether or not a person is actually attending? I appreciate the onus would be on the provider but what is the department going to do to ensure that this is actually working?

Ms Golightly—We are working with the industry at the moment to sort out what contract management and monitoring arrangements are necessary and efficient, because we do not want to have monitoring for monitoring sake alone. Basically, the incentives in the system are for providers to assist people to increase their skill level and get sustainable employment. If somebody is not participating in the activity that has been agreed, then the incentive is there for the provider to make sure that they are; otherwise they will not get employment and the provider will not be paid the fairly attractive outcome fees that are available in the system. So, the incentives are allowing for everybody—

Senator CASH—But you are not saying you are going to have blind faith in the provider? There will be other mechanisms in place?

Ms Golightly—Yes, of course. We have a contract with providers and we have to be able to assure the government that there is value for money in those contracts.

Senator CASH—With regard to the figures you have provided—70,000 people currently on the Work for the Dole caseload and the 11,465 persons doing full-time Work for the Dole—what percentage of full-time Work for the Dole do you expect under the new contract?

Ms Golightly—First of all, I should be clear; those figures I gave you were for the year ending 30 June 2007.

Senator CASH—Thank you.

Ms Golightly—Under the current system there are rules around when somebody can be asked or required to do full-time Work for the Dole. For example, one of them is that you have to have been in the system receiving service for more than two years. In the new system we are leaving that decision to the expert, which is the employment service provider. They can ask the job seeker to do full-time Work for the Dole anytime if they believe that is the best way to assist that job seeker.

Senator CASH—Do you have a percentage that you think might be doing full-time Work for the Dole?

Ms Golightly—No.

Mr Carters—We would assume it would be a similar level to the numbers that do it now.

Senator CASH—Going back to monitoring a job seeker's attendance where we used the example of Alcoholics Anonymous, what you will have in terms of what the service provider must show the department is that they must still be able to show that they have actually serviced the particular individual.

Ms Golightly—Yes.

Senator CASH—There will not be any loopholes there?

Ms Golightly—No. Exactly how we monitor that is yet to be decided.

Senator CASH—But it certainly is something that you will be looking at?

Ms Golightly—Yes. As I have already mentioned, as a department we have to provide assurance to the government that value for money is being received.

Senator CASH—How many job seekers are you predicting will meet their work experience activities through participation in a program to address non-vocational barriers at any given time?

Ms Golightly—I do not think we have done any modelling on that.

Senator CASH—That one has not been looked at yet?

Ms Golightly—No.

Senator CASH—Looking at work experience activities, under the current contract is participation in a Defence Force Reserve considered a substitute activity for Work for the Dole or for work experience?

Mr Carters—Yes. It is one of the options available on the mutual obligation menu. For example, at the six-month gate now, a person has a choice again to do a mutual obligation activity and they could choose to do Defence Force Reserves as that activity instead of Work for the Dole, which is the current default.

Senator CASH—Is this also the case for someone who is required to do full-time Work for the Dole?

Mr Carters—If there is a requirement to undertake full-time Work for the Dole then it is a different scenario to a normal mutual obligation menu, so it is not a substitution per se.

Senator CASH—Under the new contract, if you have someone who is undertaking Defence Force Reserves or a similar activity and they do not participate, what is the nature of the breach that is recorded against them?

Mr Carters—We have not thought this through, but that may well be a ‘no show, no pay’ approach to that one.

Senator CASH—Will there be a breach in those regards?

Mr Carters—We have talked about the new compliance regime. If there is no reasonable excuse and it does fall into the ‘no show, no pay’ approach, they will lose the day’s pay for each day that they do not attend, and six days of ‘no show, no pay’ will trigger a comprehensive compliance assessment

Senator CASH—Could they have a participation failure actually noted against them?

Mr Carters—The ‘no show, no pay’ approach is different, so in that context they actually do not get paid for the days they do not attend. So in a sense it is more apparent than a participation failure. A participation failure does not actually mean anything in terms of loss of payment.

Senator CASH—But it does if I get three of them; then I move into the potential to get eight weeks suspension?

Mr Carters—Yes, but for one you do not. What I am saying is that you have six ‘no show, no pays’, whereas participation failures are for a different scenario, such as not attending an interview and those sorts of occurrences where three of those will trigger a comprehensive compliance assessment.

Senator CASH—Going back to what you said at the beginning, it is not something that has been finalised yet?

Mr Carters—That is correct.

Senator CASH—But what you are saying is there will be a breach if a person fails to attend in those circumstances.

Mr Carters—It will count somewhere in the new compliance regime, yes.

Senator CASH—Looking at unpaid work experience activities, under the proposed new system what would be the maximum duration that someone can actually undertake unpaid work experience?

Ms Golightly—A final decision on the actual duration has not been made yet. That is part of the guidelines that we are developing.

Senator CASH—In terms of monitoring unpaid work experience activities or work experience activities, how often would the department expect the employment service provider to monitor them?

Ms Golightly—At the end of the day it would really depend on the activity, but again, the whole monitoring regime is still under development. Certain activities may only last for a couple of days and other activities might go for a number of months, so you would expect that the monitoring regime that the provider would put in place would be different.

Senator CASH—I would have thought it would be a standard monitoring procedure that the department would advise to ensure that there is consistency.

Ms Golightly—No, because what we really want is that providers tailor their activity to the job seeker, and that would include things like monitoring arrangements and not be a one-size-fits-all approach.

Senator CASH—Would there be a standard procedure in place for a provider to at least inform the department if someone does not attend a work experience activity?

Ms Golightly—This is the arrangement for the compliance regime. The provider would in fact be informing Centrelink, not the department—and yes, we would have to give them a mechanism for them to do that.

Senator CASH—Is it then recorded in the electronic diary?

Ms Golightly—Again, the electronic diary would record appointments and therefore, I suppose, appointments that were not attended, but for activities that run for many weeks that may not be the right place to do it. What the employment service provider is reporting to Centrelink is those instances where they believe that the job seeker has failed to meet an

obligation that the job seeker has for no reasonable excuse. We have asked providers to make sure that they have checked that out first and that they have discussed with the job seeker perhaps better ways of making sure the job seeker is engaged, but if there is no reasonable excuse and they have tried everything reasonable then they have the ability to report that failure to Centrelink, and that is when the compliance regime starts kicking in.

Senator CASH—Where does that then become recorded?

Ms Golightly—Centrelink systems would record it.

Senator CASH—Their IT system?

Ms Golightly—Yes.

Senator CASH—In terms of some transition questions, page 43 of the exposure draft says that DEEWR will consider on a case-by-case basis providers exiting their contracts early. If providers do exit their contracts early, what is the earliest date that the department will actually allow this to occur?

Ms Golightly—That would be in the nature of the case-by-case basis, but we expect to be announcing successful new contracts in late March or early April 2009, so we would not be expecting anybody to exit before that date.

Senator CASH—In the event that someone does exit, what will actually happen to their caseload?

Ms Golightly—This would be part of the consideration of whether we let them exit or not. There would need to be another provider available to service those job seekers, so they would be moved to another provider if one was available and if that other provider was willing to take them. So there is a whole range of things we take into account before we actually allow a provider to exit early.

Senator CASH—Will job seekers who are eligible to receive training credits on 30 June 2009 receive them?

Ms Caldwell—Training credits like the job seeker account will all be subsumed into the Employment Pathway Fund in future. Training credits will not exist as a separate instrument in future.

Senator CASH—In other words, they will not receive their training credits on 30 June 2009.

Ms Caldwell—No.

Senator CASH—What will they get instead of that?

Ms Caldwell—The training credits, as they currently exist, assist job seekers with study or training purposes. They are applied as a reimbursement to defray those costs. Under the new system the Employment Pathway Fund is available to the service provider to work in a very individualised way with each job seeker. In fact, there is an increased emphasis on training pathways quite early in the piece without needing to wait as long as for training credits at the moment. Job seekers would be able to access that training. Their provider would be able to help them using the Employment Pathway Fund in future, not the training credit as it is today.

Senator CASH—My understanding is that, with training credits, there is far more choice available to the particular individual and this choice will be limited under the proposed scheme.

Ms Caldwell—Under the new system the Employment Pathway Fund is much more flexible than the job seeker account at the moment. With the credits being moved into the Employment Pathway Fund, the system will be more flexible. I do not know if Mr Carters wants to add anything.

Senator CASH—So you are saying that it is going to become more flexible?

Ms Caldwell—The Employment Pathway Fund is more flexible than the current job seeker account and training account and credits as they stand at the moment.

Senator CASH—My understanding was that, under the new system, it would be in areas where we have skill shortages.

Mr Carters—There are a couple of issues there. One is that Productivity Program Places are available for providers to deliver training to job seekers who require that, and they are in areas of skill shortage. However, the Employment Pathway Fund can also be used to purchase training, and that training does not have to be in areas of skill shortage. It is open to the provider and the job seeker to negotiate what is reasonable to assist them to move into substantive employment.

Senator CASH—My understanding is that job seekers who are currently on the personal support program waitlist will have to wait up to a year to receive servicing.

Ms Golightly—There are people who have been on that list for a year or more, yes.

Senator CASH—What will happen with them under the proposed new system?

Ms Golightly—The request for tender that was issued on 27 September has in it a table that shows where people who are in the current system will be transitioned to. The transition for people on the PSP waitlist into the new system will be managed progressively over 12 months, but if a particular job seeker wants to be transitioned earlier than that, and they let us know, we will make that move for them immediately.

Mr Carters—And the transition is into the start of stream 4.

Senator CASH—Will their entry into the Universal Employment Services program be based on the current waitlist priority streaming?

Ms Golightly—In the first instance, the order of transition will be based on that. But, as I said, if any PSP person contacts us and wants to be immediately transitioned, we will make that happen.

Senator CASH—For job seekers who are part way through a Work for the Dole or Green Corps activity as at 30 June 2009, and who fall into the cohort who have a delay before they are referred to their new Universal Employment Services provider, what mutual obligation will they have?

Ms Caldwell—The current Work for the Dole contracts allow those people to complete projects that they start before 30 June. Those projects will typically see out their course, so I

think the job seekers that you are referring to would, if they are placed in Work for the Dole, continue on their placement in the second half of the year.

Senator CASH—What is the expectation in relation to job seekers who might be unattached to a provider during the transition period?

Ms Caldwell—They would have an activity agreement made under the current system, or an Employment Pathway plan in future, that would specify what level of job search would be expected of them. It would depend obviously on their circumstances. For example, if they were on the current PSP waitlist they may not have a burdensome ‘looking for work’ requirement, just as they do not at the current time.

Senator CASH—How will the department determine which job seekers are in the 30 per cent of job seekers who have been unemployed for more than 24 months and will not commence with the universal employment services provider on 1 July 2009?

Ms Caldwell—The transition information that is published in the request for tender goes to those categories that are determined just by the nature of the person’s length of unemployment or their participation in an old program. The department will also be entering into discussions with industry representatives and interested providers to work out some of the more operational details. We have already started that through the consultation processes to date, but obviously we will be looking to that once tenders are decided and we can offer that to all incoming providers.

Senator CASH—Will all job seekers have a mutual obligation under the transitional arrangements at all times?

Ms Golightly—They will have the same mutual obligation arrangements that are there now, so that part of the system will remain the same. If a job seeker has a mutual obligation now, they will have one under the new system and therefore through the transition.

Senator CASH—The 2008-09 budget documents indicate savings of \$279.8 million in the area of employment services. What information do you have to support these savings?

Mr Carters—It is very difficult to identify where those savings have come from because the new model is so different from the previous model.

Senator CASH—Presumably there would be information somewhere that sets out where the savings are actually occurring; otherwise, how did you get that figure?

Mr Carters—We have an appropriation for the current services and there will be an appropriation for the new one, and the difference is that figure. There are many differences in the new model to the previous one, so it is very difficult to compare the two.

Senator CASH—Are there any administrative savings?

Mr Carters—There are definitely administrative savings, yes. For example, \$20 million in departmental funds have been saved, and that is largely because of the efficiency in bringing multiple programs into one so that the amount of contract management and other services that we require has been reduced.

Senator CASH—Where did that figure of \$20 million that you just quoted come from?

Mr Carters—Because that was departmental money, we needed to estimate that.

Senator CASH—Is it possible for you to provide the information in relation to where the \$279.8 million worth of savings in the employment services area has come from?

Mr Carters—We will take that on notice and see what we can do, but, as I said, the models are very different, so it is not necessarily easy.

Senator CASH—If you could take that on notice and provide the information, that would be great. In terms of the department meeting its efficiency dividend, what actions are being taken?

Ms Golightly—That normally would be a cross-portfolio question, so I am not sure if we have the right people here.

Senator CASH—I am happy for that to be taken on notice.

Ms Golightly—That might be easiest.

Senator CASH—Has the department revised the budget figure for employment services based on the predicted increase in unemployment?

Mr Carters—No. In terms of any forecast change in employment and unemployment levels, those components are undertaken by Treasury. When Treasury provides new parameters we may or may not need to revise figures, but until we get new Treasury parameters then there is no reason to revise our figures.

Senator CASH—When are those new agreements coming?

Mr Carters—My understanding is that they are due next month.

Senator CASH—Will you be revising the figures then?

Mr Carters—That is something we will need to discuss with Treasury and with government. The other thing is that the new employment services model, like the current one, is demand driven, so everybody is guaranteed a place in that service. By definition, it would move around a little bit anyway, so when we get the new Treasury parameters we can have a look at what that might mean.

Senator CASH—What impact does the department expect increased unemployment to have on the overall cost of administering employment services?

Mr Carters—Again, until we get the new Treasury parameters we will not know that, so it is really a matter of just waiting a little while so that we can have a better look at that. If there were an increase in unemployment then the likely scenario would be that there would be more people flowing into the system and therefore there would be more service fees paid up-front. That would also put extra Employment Pathway Fund credits that, except for stream 1, are placed into the Employment Pathway Fund from day one.

The importance of training is something that would be very important if there was increased unemployment. Again, it is hard to predict what sorts of levels of extra training are undertaken, but presumably some of those extra funds would go to training. Plus, there have been extra productivity program places recently announced, so that would be an important element, as well, in terms of the out years and the number of productivity program places. We know that if there is a downturn of any sort the most disadvantaged people are the ones who suffer most, so it is very timely that the new employment services model does focus on the

most disadvantaged job seekers and provides extra support to them. But in terms of what the overall cost would be, we really cannot tell until we are able to, potentially in some future stage, plug in new Treasury parameters.

Senator CASH—Do you think that you will be spending any less on employment services in the 2009 to 2012 period?

Mr Carters—It is very hard to tell without having updated information, so, again, we are a month away from that. The reason I say that is that it really does depend on whether the level of outcomes reduces as well if there is an increase in unemployment. We certainly know from over 10 years of employment services that have been outsourced and previous models that there have been higher levels of unemployment in the past and the employment services model has been pretty robust in that respect. We would certainly expect that that would continue from July 2009 onwards.

Senator CASH—What changes will occur to time spent unemployed in relative numbers in each stream if unemployment rises to—as has been forecast by JP Morgan—one million by the end of 2010?

Mr Carters—A lot of people have been estimating levels of unemployment at different stages in the future and that is not something that we would react to. We will wait for the official Treasury parameters and not—

Senator CASH—Do you not think ahead, though, in terms of unemployed people, rises in unemployment and new contracts being negotiated?

Senator Ludwig—That borders on substantially being hypothetical in the sense that I think the witness has indicated that they are really waiting for the forecast which will be available next month and with that they will have better information available to them. The rest becomes speculative. I am sure they, like everyone else, have observed the global financial crisis. They read the papers, but in terms of their day-to-day work they will rely on those datasets that are provided to them out of the mid-year economic forecast which will be available next month.

Senator CASH—So you will be doing further analysis once you have the Treasury parameters next month?

Mr Carters—As I said, we will discuss that with the Treasury and with the government and look at where to from there.

Senator CASH—In relation to outcomes, what are the department's forecast employment outcomes for the new universal employment agreement?

Mr Carters—We actually have this available on our website. It does vary depending on which stream people are in and their duration of unemployment. So it is actually a table which—

Senator CASH—Could I get a copy of that? Is that at all possible?

Mr Carters—We are happy to table that table for you.

Senator CASH—How was all of this determined?

Mr Carters—It was largely based on the current levels of outcomes which occur under current employment services—again, the reason being that that is a reliable figure and to get into the game of projecting what likely employment outcomes might be into the future is a fairly tenuous thing to do, so we have largely based it on the current model.

Senator CASH—Will you be revising these figures to factor in slowing growth?

Senator Ludwig—Is that a statement of fact? The difficulty is that it is partly a statement that the witness at the table may not accept, because you have stated what seems to be a fact and then asked them to comment on that. It is hypothetical to the extent that they would be commenting on it. There is—and I think it is quite clear—slowing growth. What that is, we do not know. What we have indicated is that the mid-year economic outlook will provide more detail in respect of that. They are questions that go to Treasury and the mid-year economic forecast which, as I have said, will be available next month.

Senator HUMPHRIES—You could answer that question from the point of view of what the government's expectations are, could you not?

Senator Ludwig—I have provided the answer, which is the same. It is that it is a question that should go to Treasury. In terms of the government's perspective, we have indicated that we will await the mid-year economic outlook.

Senator HUMPHRIES—So you have no expectation at this point in time about what is going to happen?

Senator Ludwig—We do know—

Senator HUMPHRIES—Ministers must discuss where they feel that the parameters of these things are going. Is there not some sort of feel about these things?

Senator Ludwig—What I might feel about it is substantially different, with all respect, to what the Mid-Year Economic and Fiscal Outlook due next month will provide. I think that is the appropriate document that we should all turn to rather than what I might feel on any particular day about the global financial crises that is currently going on.

Senator CASH—How do outcomes under the proposed system compare with outcomes under the current system?

Mr Carters—As I said, we are largely using the outcomes of the current system for the cost estimates for the future system.

Senator CASH—In terms of the forecast employment outcomes?

Mr Carters—Yes.

Senator CASH—Has anything been done to ensure that there will be increased or improved employment outcomes?

Mr Carters—I do not understand what you mean by that.

Senator CASH—How do the employment outcomes under the current system compare with the projected employment outcomes under the proposed system?

Mr Carters—What I am saying is that we have not projected employment outcomes under the future system. We are just using the outcomes of the current system and applying them where they are likely to fit into the new model.

Senator CASH—Why have you not projected employment outcomes for the new system?

Mr Carters—Because in terms of the costing processes that we use in the modelling, and with our colleagues in the department of finance, we agree to a conservative approach, which is: use the information that you have rather than project some future figure.

Senator CASH—I assume then that you would accept that the current employment outcomes must be acceptable, because otherwise one would have thought that you would have wanted improved employment outcomes.

Mr Carters—It is the way in which we cost the model. It does not reflect in any way on what the actual outcomes will be in the future.

Senator CASH—So there is a possibility that the outcomes could actually be less than those under the current system?

Mr Carters—We will not know what the outcomes are until we are there, basically. Our best data for costing the future model is to use what are already proven outcome levels.

Senator CASH—Are there proven outcome levels under the current system?

Mr Carters—Yes.

Senator CASH—What is the point of having a new system if it is not based on improving outcome levels? The current system works well and you are satisfied with it, so why change it?

Mr Carters—Because the standard process for costing these sorts of major reforms is something that is agreed with the department of finance, and that is the approach which was agreed.

Senator CASH—Very briefly, does the department intend to continue star ratings for the Disability Employment Network until at least February 2010?

Ms Golightly—Yes.

Senator CASH—On what date is the next release due?

Ms Golightly—It is 31 December 2008. They are released on a six-monthly basis.

Senator CASH—Your 2006-07 annual report states:

Development of the VRS Star Ratings performance model has begun. The ratings will be modelled on the Job Network and Disability Employment Network Star Ratings but will be specifically tailored to the characteristics and circumstances of VRS. These initiatives will further integrate VRS into the department's comprehensive performance framework and be key drivers of VRS providers' performance.

When will there be a release of the VRS star ratings, and will they be made public?

Mr Waslin—There was work progressing at the time of last year's annual report but there is no decision made at this stage about the future release of star ratings for the Vocational Rehabilitation Service.

CHAIR—The committee will now break for afternoon tea and we will be back at 4.00 pm.

Proceedings suspended from 3.46 pm to 4.04 pm

CHAIR—I call the committee to order. Senator Cash, over to you.

Senator CASH—Thank you, Madam Chair. Mr Carters, during the break I took the opportunity to have another look at the figures that I quoted earlier today regarding the numbers of long-term unemployed. The figures that I am quoting form part of the Labour Market and Related Payments Monthly Profile, which is put out by Centrelink on a monthly basis and which can be accessed through the www.workplace.gov.au website. These figures take into account people on Newstart and youth allowance. Are you aware of this website and the figures that I am referring to?

Mr Carters—Yes. I also took advantage of the break to try to track down the figures that you mentioned; I now have a copy.

Senator CASH—Are we on the same page in relation to these figures? You now know that the figures have come from—

Mr Carters—I do now, yes.

Senator CASH—For June 2006, we have the figure of 205,212 long-term unemployed; by August 2008, that had fallen to 146,533. That reflects a decrease of 58,679 occurring during the period of the introduction of the Welfare to Work compliance reforms. Looking at the previous two years, we have 244,467 long-term unemployed persons in June 2004 compared with 205,212 in June 2006. That is a decrease of 39,255. Why is there that reduction?

Mr Carters—First, I will explain what these figures are, which also will explain why we could not find them initially. These are not total numbers of Newstart and youth allowance figures; they are the adjusted figures that are defined as the job seeker population, so they exclude certain groups of people. The people they exclude are those who are not looking for work at the time. So if people are incapacitated, say, through being on an exemption, in training or in voluntary part-time work—those sorts of things—they have been deducted from the total number of those who have been long-term recipients of Newstart allowance and youth allowance. That is what those figures are.

Those numbers vary quite considerably in terms of people who are excluded, which would help to explain the difference. I am sorry; I only have these numbers for Newstart, whereas your figures are for Newstart and youth allowance, but I will give you an example. The number of people in training—they are excluded from your numbers—in August 2008 was 54,912, whereas in June 2006 it was 37,598. With that example you have a 17,000 difference. That also occurs with things such as voluntary part-time work and other exemptions.

Senator CASH—And these are long-term unemployed job seekers.

Mr Carters—Yes, they are all long-term unemployed. It is hard to compare the two figures. But, even so, as for your point about there being a drop, without having a really close look at what all these different categories are, part of that explanation again would have to be the state of the economy and how that has changed over that couple of years.

Senator CASH—I put on record: thank you, Mr Costello.

Mr Carters—Otherwise, the exemptions and the categories, such as training, which I have talked about, do vary considerably.

Senator CASH—I suppose I am trying to make the point that, based on the figures—whether using yours or mine—there has been a decrease in the number of long-term unemployed people. I then get back to what we were talking about just before the break, which is the predicted outcomes of the new system. You have said that, where we use outcomes under the old system, there were none. My point is: if there has been a drop and you are prepared to use the outcomes of the current system, why has a new system been put forward? It appears to me that the current system does work; it gets people back into work, which is clearly its objective. Why then are you looking at putting forward a new system?

Mr Carters—Whether a new system is put in place or not is the government's decision, and we obviously respond to that. Having said that, in itself, the fact that we use the existing outcome rates does not predetermine what the outcome rates will be in the future. With the department of finance, it is almost a requirement that that is what we do: we agree an approach which is most able to be evidence based, and that is based on current outcomes.

Senator CASH—But would you say that, under new contract with its significant focus on training, eventually there will just be more long-term unemployed because they actually will not be going back into the workforce, as such, but will still be undertaking training?

Mr Carters—I cannot comment on that.

Senator CASH—We have looked at the KPIs; they are flagged in the request for tender document. What weighting is afforded to each of the key performance indicators?

Ms Caldwell—Three KPIs are specified in the request for tender. The request for tender also provides the formula that will be used for the quantitative assessment of KPI1 and KPI2, and the weight that is put on those KPIs in specified in detail.

Senator CASH—Can I get you to read that for me?

Ms Caldwell—Yes.

Senator CASH—Thank you.

Ms Caldwell—I will just look it up in my request for tender. It is actually a formula rather than a single value.

Senator CASH—Do the three KPIs all have equal weight? Can you give me a ballpark determination of what weight might be given to each of the three KPIs?

Ms Caldwell—Two of the KPIs are capable of being measured and will be measured quantitatively in terms of the number of job seekers, the proportion of job seekers and the characteristics of job seekers who obtain certain outcome and placement events. The weighting under the formula for each of those categories is specified; it is not that KPI1 is worth X per cent and KPI2 Y per cent. In fact, quite a detailed formula has been developed as part of the new performance management framework that puts differential weightings on results for job seekers, depending, for example, on what stream they are in, how difficult the job seeker is and whether the job is a 13-week or a 26-week job assisted or brokered by the provider. It also depends on whether there are bonus payments for skills in demand or bonus

weightings for Indigenous job seekers. The third KPI is not quantitatively measured; that is a quality KPI. Again the RFT documents the department's intended approach to consideration of a provider's performance under that KPI, but that is not a numerical figure.

Senator CASH—I suppose the issue that I want to raise and understand better is: if the KPIs are not all weighted equally—they do not appear to be; there seem to be certain indicators in each one—what process will be put in place to ensure that a potential service provider does not weight what they are putting forward towards a certain KPI that they know they would excel in, knowing that they may not be nearly as good in another KPI if you do have a different weighting system?

Ms Golightly—Just for reference, the actual weightings are on page 49 of the RFT. Indeed, they are differential for the different streams to provide incentive for providers to put more emphasis on those things that the government thinks are more important. That is why there are differential weightings: to give providers exactly an incentive to do what you have just described, which is to tailor and target their services to those things which will get them more weighting in the ratings system.

Senator CASH—But will there be checks and balances in place to ensure that they are not falling down with the other KPIs?

Ms Golightly—Basically, to get a good score, you need to be good on all of these. If you do not perform as well perhaps in something that is not weighted very highly, even though it will not count as much, it still counts. If you get zero on that, it will impact on your overall score. The whole point of the weightings is to give signals to the sector about what is more important than others things.

Senator CASH—So there will not be a problem with certain providers weighting it?

Ms Golightly—If they provide services that are targeted at different areas other than at those we have indicated are important, their overall score will be low and they will be known as a lower performing provider. That is the incentive.

Senator CASH—Can you again take me through how each of the KPIs was given its actual weighting?

Ms Golightly—Sure. I should also just take one step back. In KPI1 and KPI2, there are subissues—I think you were referring to them earlier—and it is those that are weighted. For example, in stream 1, the job ready people, as we have discussed, time to placement in employment is of a much higher value than perhaps it is for somebody who is in stream 4, where we need to spend some time with that person getting them over the barriers.

Senator CASH—So an evaluation was actually done?

Ms Golightly—Yes. An expert advisory group was set up by Minister O'Connor, on which there were external people as well as departmental officers. They did a review of the current system as well as of submissions and information that was provided by current providers and potential future providers and they also took into account the government's stated objectives with the new system. That group came up with these indicators of what would be important for different people in different streams, yes.

Senator CASH—In terms of comparison, will the providers be compared only with providers within an employment services area or will that comparison be undertaken on a nationwide basis?

Ms Golightly—It will be undertaken on a nationwide basis, but they will get a rating for each employment services area.

Senator CASH—Is that comparing apples with apples?

Ms Golightly—Yes, it is. That is exactly why we do it that way. In that way, things like local labour markets and local caseload characteristics, for example, can be taken into account.

Senator CASH—With key performance indicator 1 in the request for tender document, will any consideration be given to the appropriateness of the referrals to training or further education?

Ms Golightly—The rating system certainly is one incentive for providers and obviously the payment regime is another incentive. In the ratings system, for stream 1 the important indicators are on page 49. But, in KPI1 for stream 1, the important things are time to paid placement and time that the job seeker is off benefit.

Senator CASH—Will the pass rates of participants also be considered?

Ms Caldwell—The pass rates of job seekers referred to training?

Senator CASH—I am sorry; yes.

Ms Caldwell—That would not be measured under the quantitative area that we are talking about in KPI1, so it would not form part of these values. Under the quality KPI, regard could be given to a concern we may have from job seeker feedback, for example, that a provider was not using training well.

Senator CASH—I am sorry; I just need to clarify this: do job seekers have to succeed at their course for the provider to do well in KPI1?

Ms Golightly—Indirectly, yes.

Senator CASH—How do you indirectly do well?

Ms Golightly—Perhaps I could work backwards. If someone does fail a course or it was an inappropriate course for them or for the local labour market, the chances of that person getting a sustainable job are lower and, therefore, two things would happen. One thing is that the provider risks having expended money on that training for no return to the provider in outcome fees. The other thing that happens is that that job seeker might be less likely to be placed in a job and, therefore, it would not count in their ratings system, because they have not achieved an outcome.

Senator CASH—Under this system, is there an incentive for a job service provider to place someone in just any sort of training in order to get weighting under this particular key performance indicator?

Ms Golightly—No, because the emphasis here, particularly for stream 1, is on getting a job. If training helps them to get a job, to get it more quickly and helps them to stay in that job, they will be rewarded. If the training has not helped that, then they will not be rewarded.

Senator CASH—Will any mechanisms be put in place to ensure that does not occur?

Ms Golightly—It will not occur if the person does not get a job; if that happens, they will not get a value counted in the ratings system.

Senator CASH—With key performance indicator 2, can you please clarify whether ‘relevant participants’ will exclude all those undertaking training or further education? In line 1, there are the words ‘the proportions of relevant participants for whom placements and outcomes are achieved’.

Ms Golightly—I am not entirely sure what you are referring to. Would it perhaps be something to do with somebody who is on training?

Senator CASH—Yes. It is a provider’s entire caseload?

Ms Golightly—I think this relates to the new system where it is introducing that, for the time to placement indicator, if someone is on training, we will stop the clock while that is happening. So that time out while they are doing training will not be counted in the measure of how quickly that person has been put into a job. So the provider and the job seeker will not be penalised for doing training.

Senator CASH—The third line refers to ‘social outcomes’. Can you define ‘social outcome’ for me?

Ms Golightly—The expert reference group that was set up to come up with a ratings system examined the issue of whether there should be recognition of social outcomes, and it came to the conclusion that there should be. But it also advised the minister that work, either here or internationally, was not sufficiently progressed to give a direct measure of social outcomes and the whole definition of how you measure a social outcome. For this RFT, two things happened. The group recommended—and I am pretty sure that the minister agreed—that further work would continue on developing a proper measure but in the meantime a proxy measure would be used. That is also described in the RFT. Basically, it is only for stream 4 job seekers. It is based on the assessment that is made at that 12-month mark of whether they are ready for work experience or whether they are pretty much ready to get into a job if they have a further six months of normal assistance.

Senator CASH—Would it be a stream 4 person basically overcoming their barriers?

Ms Golightly—Their barriers, yes, and being more or less work ready.

Senator CASH—If a social outcome is achieved, do people then move into Work for the Dole or a mutual obligation activity; and, if they do not, what actually does happen to them?

Ms Caldwell—It works somewhat the other way around. We look at the stream 4 job seeker and say what has happened: have they at the end of 12 months been assessed as having improved to where they can have another six months of stream services; should they progress at that stage into work experience; or, indeed, are they no longer connected with employment services? We use what is happening with the job seeker in the real world to determine the

weighting. So the performance measure does not tell us what to do with the job seeker; the job seeker is assessed for what is most appropriate for them at the end of 12 months. Having regard to what is most appropriate, a bonus point will or will not be awarded for performance rating purposes.

Ms Golightly—So the rating is for the provider; what happens to the job seeker is as a basis of whatever the assessment is.

Senator CASH—Are the performance ratings of the service providers going to be published so that job seekers can review them and make an informed decision as to who they go for?

Ms Golightly—That certainly is the intention, yes.

Senator CASH—So will you give a guarantee that they will be published?

Ms Golightly—Yes.

Senator CASH—Where will they be published?

Ms Golightly—Normally we would put them on the department's website, but they will be available also, most importantly, through Centrelink for when job seekers contact Centrelink to register for services or to seek further assistance from Centrelink throughout their period of service.

Senator CASH—So there will not be a problem with publishing them; they will be published under the proposed new system.

Ms Golightly—Yes, that is correct.

Senator CASH—I missed this: how frequently will they be published?

Ms Golightly—Every six months.

Ms Caldwell—Just for the purpose of clarification, we gave you an earlier response when referring to 'relevant job seeker' in the first line. We were looking for the quote. It is in the draft contract and refers to measuring performance. In measuring performance, we only count those job seekers who could potentially reach the outcome. For example, when I am measuring the success of a provider in achieving job seekers sustaining employment for 26 weeks, I am measuring only those job seekers who started a job 26 or more weeks ago. It is not possible, nor would it be fair, to include job seekers who have been working only for 25 weeks; they obviously cannot have passed that goal.

Senator CASH—Thank you for that clarification.

Ms Golightly—My colleague has also mentioned to me that we will be providing the ratings to our providers every quarter.

Senator CASH—In addition to publishing them ever six months?

Ms Golightly—Yes.

Senator CASH—Under the current contract, what has been the frequency of the business reallocation?

Ms Golightly—When the contract was first extended in 2006, it included the ability for business to be reallocated every six months. From recollection—and my colleagues will correct me if I am wrong—we did that once. The then minister decided to make that once every 12 months. We then had an election. We did that 12-month reallocation, and that was the last one.

Ms Caldwell—In fact, the contractual ability to review and move business every six months has been in place since the start of the contract on 1 July 2003.

Senator CASH—Page 14 of the request for tender indicates that a formal performance assessment will be undertaken approximately halfway through the new contract. Will this midpoint be the only point for reallocation of business, or will the reallocation of business occur, as is occurring under the current system, every six months?

Ms Golightly—It will be the only routine, if you like, business reallocation. Performance reviews with providers will continue to occur every six months, but that will not involve business reallocation.

Senator CASH—What was the reasoning behind that, in terms of ensuring that providers are actually providing the service under the contract?

Ms Golightly—Basically, the consultations and review showed that every six months was overly disruptive, for both job seekers and providers, and it takes more than six months to either ramp up or decline business. So it is viewed that providers certainly see the ability to move business once during the life of the contract—but, of course, there is always at the end of the contract too—as a good incentive to making sure that their ratings and also quality of their services are up to scratch so that they do not come into that window of possibly losing business.

Senator CASH—If you have a provider who holds 100 per cent of a certain share allocation of the Employment Services Area and, following one of these reviews, they lose a percentage, what then happens? What does the department do with that share?

Ms Golightly—It will be given to another higher performing provider.

Senator CASH—When you say ‘higher performing’, how will you determine that provider is performing more highly?

Ms Golightly—First of all, we would look at the rating of the other providers, but we would also take into account any feedback through the quality indicator. In addition, we would look at things like coverage of the ESA—for example, ease of access for job seekers so that they do not have to travel exorbitant distances just to get to that new provider. We look at quite a range of things before deciding who to give it to. Also, of course, the new provider has to accept that business; they have to be in a position to take it on.

Senator CASH—I will turn now to frequency of contact. On page 28 of the request for tender, the timing and duration of servicing is not specified. Can you give me an approximation of what would be, say, the average length of an appointment based on a value for money basis?

Ms Golightly—We have quite purposefully specified a minimum number of contacts that we expect from providers, but then we have gone on to say quite clearly that that is exactly

that—a minimum—and we expect the number as well as the duration and content of those contacts to be tailored specifically to the individual job seeker in front of them. So we have set a minimum standard but said quite clearly that we would not expect just the minimum to be there.

Senator CASH—What happens if you do have a service provider who is only doing the minimum? What will be done to ensure that they lift their game?

Ms Golightly—This will come down to what sort of monitoring arrangements we end up having.

Senator CASH—Are those monitoring arrangements still to be decided?

Ms Golightly—Yes, they are part of the things that we are still developing. This is very much a model where we really expect the expert involved, the employment service provider, to tailor their service to the individual job seeker. What might be the right contact regime for you, for example, would be very different from what would be right for me. So in this model we are very much making sure that we do not put things in there, advertently or inadvertently, that reduce the provider's ability to tailor that service.

Senator CASH—Can a stream 1 job seeker who is otherwise fulfilling their mutual obligations but is yet to be successful in finding employment volunteer to commence a work experience activity before they have had 12 months in stream 1?

Mr Carters—They can volunteer to do that, but they would need to negotiate that with the employment services provider and then it would need to be agreed and put in their employment pathway plan.

Senator CASH—Does the employment pathway fund then get credited \$500 for the work experience activities?

Mr Carters—No. Those credits only occur when people enter the work experience phase.

Senator CASH—How is it then funded?

Mr Carters—But, having said that, the employment pathway fund is flexible, so it can be spent on any job seeker as the provider sees fit. The amount that is credited into the employment pathway fund for an individual is not the amount that has to be spent on that individual. The provider has the flexibility to decide how best to spend money in the employment pathway fund, as needed, for individual job seekers. However, there is an expectation that the level of somebody's disadvantage would definitely need to be taken into account in terms of the amount of funds that are spent on the individual.

Ms Caldwell—Perhaps I could add that stream 1 job seekers also undertake an intensive activity. The suite of activities that might be considered—they are listed on page 21 of the RFT—includes skill training, vocational and non-vocational activities and work experience activities. As a matter of course, a job seeker, as you posited, that said, 'I'm really keen to do such and such an activity,' would have that conversation as part of their intensive activity discussion with their provider.

Senator CASH—I will turn to intensive activities on page 31 of the request for tender document. If a job seeker chooses to undertake an intensive activity, such as training, but that

training does not fulfil all of their hours that they are required to do for an intensive activity, do they then need to undertake a concurrent activity so that they do meet their hours?

Mr Carters—The expectation is that they will do 30 hours of intensive activity a week.

Senator CASH—When you say ‘the expectation is’, do you mean they will or they will not?

Mr Carters—The expectation is that they will.

Senator CASH—How are we going to ensure that that expectation is met?

Mr Carters—As part of the contract, we will monitor the activities that are undertaken.

Ms Golightly—Again, the appropriate monitoring regime, for both the provider and us, is under development with the industry.

Ms Caldwell—Under the current program suite, we have already established practices around monitoring. Obviously, as we go forward with an intensive activity, a broader and more flexible choice is available to the provider and to the job seeker than the choice that is available currently. The minister has also made clear his commitment to engage in consultation with industry to make sure that we monitor it in a way that minimises red tape for providers as well. So we have a template and it is obviously under development to be extended for the broader range of things that are available and to make sure that we do not generate red tape—in fact, that we reduce it—in the process.

Ms Golightly—You think another area which has been bolstered in this RFT is the KPI3 quality indicator in terms of feedback from job seekers. Certainly, we have strengthened the feedback mechanisms for them to feed back to the department where they do not feel that they are getting service from their provider. So that will form an important part of the new monitoring arrangements as well.

Senator CASH—Again in terms of intensive activities, if a person is doing an intensive activity that requires them to do homework, how is that homework accounted for? Does it contribute to the intensive activity, or do all the hours have to be undertaken in the intensive activity itself?

Ms Golightly—The intensive activity is an event, I suppose, which could be made up of any number of individual activities.

Senator CASH—I will rephrase my question for you. Will the 30 hours be made up of 30 hours of contact time as opposed to, say, five hours of homework that is unsupervised?

Ms Golightly—It could be anything.

Senator CASH—So homework could be included within it.

Ms Golightly—Yes. It could be things such as a job seeker canvassing employers themselves, for example. It could be training where they are sitting in a classroom or it could be self-paced training. It is completely flexible. Their provider is meant to work out what the right activities, including the nature of those activities, are for the particular individual that they are dealing with.

Senator CASH—What about monitoring to ensure that the homework is undertaken?

Ms Golightly—The contract places the requirement on the employment services provider to make sure that the job seeker is complying with the employment pathway plan. If they do not feel that the job seeker is complying and they have investigated and found that there are no extenuating circumstances, they have the ability to report that to Centrelink.

Senator CASH—I will turn very briefly to the New Enterprise Incentive Scheme. What is the success rate for NEIS businesses established during the current contract?

Ms Golightly—I am not sure that we have information on the businesses, but NEIS participants do have a very high success rate in terms of coming off income support.

Senator CASH—Are there particular statistics that we can obtain?

Ms Golightly—In the financial year 2006-07—I'm sorry, but we are still collating the information for the most recent financial year—88.7 per cent of participants achieved positive outcomes, which means they were either employed or in education and training three months after exiting NEIS. While I am on dates, I was told by my colleagues during the break that I might not have been as clear as I should have been on the Work for the Dole figures I gave you. Once and for all, I will be clear: they were 30 June 2008 figures.

Senator CASH—Are you able to table that document?

Ms Golightly—This is under some notes for me, but we can put a note to the committee.

Senator CASH—Can you take it on notice to put those figures together for us?

Ms Golightly—Yes, certainly.

Senator CASH—I will read out the other three questions I have. You might want to take them on notice, if it is easier to do that. Of the current NEIS participants, what percentage is classified as highly disadvantaged?

Ms Golightly—Yes, we can take that on notice.

Senator CASH—Of the current NEIS participants, what percentage is Indigenous?

Ms Golightly—Yes.

Senator CASH—Of the current NEIS participants, what percentage has been out of work for more than one year?

Ms Golightly—Yes, we will certainly take those questions on notice.

Senator CASH—How many job placement organisations currently have a licence with DEEW?R?

Ms Caldwell—There are currently over 460. In fact, my colleague has helpfully informed me that the exact number of organisations that hold a job placement licence is 466.

Senator CASH—How many job seekers have been placed in jobs by job placement licence organisations over the last financial year?

Ms Caldwell—I can provide that for you.

Ms Golightly—While my colleague is looking that up, I should also mention that that number of 466 includes Job Network organisations.

Senator CASH—Thank you.

Ms Golightly—Perhaps we can come back to that question when we have located that information.

Senator CASH—Okay. My understanding is that these particular licences will not be offered under the new system.

Ms Golightly—Yes. Under the new system, people who tender for this contract will need to provide all services, including job placement. A separate licence will not be needed by us for those services to be done as a stand-alone.

Senator CASH—Just take me through why a decision was made to cease offering these licences.

Ms Golightly—It is an integral part of the service offering. The new system is based on a much tighter integration of all the services that a particular job seeker would need, and job placement—placing them into a job—is obviously quite crucial. So one of the fundamental foundations of the new system is that the services are integrated and you can go to the one provider to get the services that you need.

Senator CASH—So you will still be offering job placement licences. Is that what are you saying?

Ms Golightly—They will not need a separate licence, but the service of job placement is an integral part of the new system, yes.

Senator CASH—So it has been more of an administrative change than an actual change in what is being provided. Is that right?

Ms Golightly—Certainly the service is still there. We are saying that we are not segregating bits of the service and separating them out any more. Under the new contract, if you are an employment service provider, you need to be able to provide all the services—that is, all streams, including job placement.

Ms Caldwell—I am now able to provide the total number of placements. For 2007-08, there have been 577,800 placements. As Ms Golightly said, that is the total number of recorded placements, which includes those provided by Job Network current providers.

Senator CASH—The question was: how many job seekers have been placed in jobs by job placement licence organisations, and the answer is 577,800?

Ms Caldwell—There were 577,800 placements recorded. It is possible for a single job seeker to be placed more than once, so the number of human being job seekers would be a different figure, which I would have to take on notice.

Senator CASH—I have skipped over some questions purely because I have taken up so much time, and I will place those questions on notice, if you would not mind. I have one final question for Mr Carters. I was asking you about the differences between the two systems in terms of employment service outcomes and what had been projected under the proposed system. You mentioned that government had told you to do certain things and you would do them. Also, you said that you had provided advice to government in relation to the new system.

Mr Carters—No, I am sorry. I do not think I said that. Is this in terms of the costing of the new system?

Senator CASH—In terms of the new system.

Mr Carters—We used the outcomes from the current system to estimate the costs of the new system. We did that because it was what we had negotiated with the department of finance, which is reasonable for agreeing costings.

Senator CASH—That completes my questions.

Senator HUMPHRIES—We asked previously whether the Adult Migrant English Program fell under 7 or 8. Do we know which one it falls under?

Ms Golightly—It depends on the nature of the question but, if you ask it, we can decide which one of us can help you. Someone here will be able to help you.

Senator HUMPHRIES—I understand that, for migrants who obtain a Job Search allowance, there is an exemption from having to register with a Job Network provider if they are undertaking an Adult Migrant English Program. I want to know what circumstances or requirements are attached to that exemption.

Mr Waslin—Generally, a person registering who is classified as a humanitarian refugee would be given a three-month exemption at the start. Centrelink is the gateway to this, of course; they make the determination. The three-month exemption is for a settling-in period. But, after that, Centrelink would make a determination with the individual as to what might be the best course of action regarding which program would be best. In some cases, AMEP might be the appropriate direction for them.

CHAIR—What does the acronym AMEP stand for?

Ms Golightly—The Adult Migrant English Program.

Mr Waslin—In other cases, a referral to the Job Network might be the appropriate course. That is not to say that they can only do Job Network or AMEP. It might be that they do both those programs concurrently.

Senator HUMPHRIES—These are determined on a case-by-case basis. There is no standard arrangement where a person who is a humanitarian entrant must obtain one or the other; they can switch between the two, as it were. Is that right?

Mr Waslin—Yes. The determination is made by Centrelink as the gateway to the service, but a person who might be participating in AMEP can volunteer to go into the Job Network as well.

Senator HUMPHRIES—Is there a limit to the amount of time that a person can spend on AMEP, if they are a humanitarian entrant?

Ms Caldwell—That would be a question for the Department of Immigration and Citizenship.

Ms Golightly—They administer the AMEP itself.

Senator HUMPHRIES—We are not talking here about migrants or permanent residents under other programs; we are talking about only humanitarian entrants. Can you tell me why this applies only to them and not to migrants in other categories?

Ms Golightly—We might take that on notice, just to check the facts. My understanding is that, if they have come in on humanitarian grounds, we seek to help them to get on their feet, basically. If they have come in for other visa purposes—again, this is probably a better question for immigration—it would have something to do with their being on a working visa or for skilled migration, so accessing employment services should not be the paramount thing. I think the safest thing would be for us to take that on notice or to confirm whether the Department of Immigration and Citizenship would be better placed to answer that question for you.

Mr Waslin—Other newly arrived migrants are eligible for services, but they need to be on income support arrangements to qualify.

Senator HUMPHRIES—I have been made aware of suggestions that people sometimes use the language programs for extended periods of time without necessarily making a great deal of progress in acquiring English—they remain in those programs for extended periods but are not required to seek job placement programs. This might be a problem with the way in which the programs are structured. Have you heard of those complaints?

Ms Golightly—I have heard from time to time the part about people progressing and being on the programs for a while, but it really is anecdotal because that program is administered by another department.

Senator HUMPHRIES—I will direct it to them; thank you.

CHAIR—That concludes outcome 7. I thank the officers.

[4.53 pm]

Senator HUMPHRIES—I would like to ask about the National Mental Health and Disability Employment Strategy. I understand that an extensive consultation process was undertaken to ascertain people's responses to a new strategy to boost the employment of people with a disability or mental illness and, as of July this year, more than 300 submissions had been received. How far are we away from the finalisation of that strategy?

Mr Carters—Work is being done to look at those 300 submissions plus the results of the 13 consultation sessions. The intention, which was in the discussion paper, was that the strategy would be developed later on in the year. We are putting that together at the moment and we will provide advice to government on the outcomes of that strategy. I can give you a few general themes in terms of some of the outcomes there.

Senator HUMPHRIES—I would like to hear that. However, first, when you say that you expect some outcome later in the year, do you think there will be an announcement of some sort by Christmas? Is that the timetable you are working to at the moment?

Mr Carters—That is up to government to decide. The indications were that they were looking to attempt to meet that sort of target, but that is the government's call.

Senator HUMPHRIES—What sorts of themes have come out of the consultation?

Mr Carters—From the issues raised in the consultations some broad themes emerged, such as education and training for people with a disability or mental illness being very important. A key linkage there is the transition from school to work for young people with a disability. There is still an important issue in better engaging employers; in particular, some attitudinal barriers exist to both employing and retaining people with a disability. In that respect, the view was that more support is needed for people with a disability or mental illness to get into and retain jobs. There are still some disincentives that need to be addressed with people with disabilities moving into work.

Also, there was a key focus on Employment Services. As you will know, a key part of this is the review of the Disability Employment Network and Vocational Rehabilitation Services, on which there have also been separate consultations. That is running to a similar timetable. The sorts of issues there included that employers need to be better supported so that it is easier for them to take on people with a disability. They need to be aware of what sorts of opportunities are available for them. You will be aware that a very good service called Job Access exists at the moment. But, even with things like Job Access, there is still an issue about people being aware of that service and using it, particularly employers.

There was also an issue about the need for employment services to be able to support different pathways to employment. It is not just skill transitions, which I mentioned before; opportunities for work experience are very important. It is also about giving people in business services an opportunity to gradually move into the broader workforce. Ongoing support continues to be very important in terms of employment services for people with disabilities so that they have that support in the workplace. Lastly, as you would expect, it is important to have a reduction in administration with the delivery of services. So there is an issue about removing red tape, which also was a key issue of general employment services as well. That will give you a flavour of the sorts of overarching issues that came out.

Senator HUMPHRIES—I see that one of the terms of reference for the National Mental Health and Disability Employment Strategy is to consider whether welfare rules should be changed to help people with a disability or mental illness gain and retain employment. Does a person with a disability who seeks employment in the open marketplace, as it were, at the present time need to be employed in all circumstances under the prevailing award or industrial agreement conditions, or is it possible to vary those on account of that person's disability?

Mr Carters—Generally speaking, they do have to be employed in that way, unless they are included under the Supported Wage Scheme. Under the Supported Wage Scheme, which generally is for people with limited mental capacity, they would be able to have an assessment to determine they are able to function at a level which is reduced. Specialist assessors would determine what that level is and those people then would receive a pro rata wage for that employment. But, apart from that, people with a disability would be employed under the full wage.

Senator HUMPHRIES—Would that supported wage generally be available to people with a mental illness?

Mr Carters—Yes, it would.

Senator HUMPHRIES—So that would be available with intellectual disabilities and with mental illness?

Mr Carters—Yes.

Senator HUMPHRIES—Do I take it that either or both Minister O'Connor and Parliamentary Secretary Shorten chaired all those 13 consultation sessions that were held around the country?

Mr Carters—Yes, one or both of them chaired all sessions.

Senator HUMPHRIES—Do we know where those 13 consultation sessions were held?

Ms Morehead—The consultation sessions were held around the country in regional areas as well as the major cities. I will hand over to Sharon to explain further.

Ms Rose—We started off in Melbourne and then moved to Hobart, Geelong, Adelaide, Darwin, Perth, Mackay, Cairns, Brisbane, Sydney, Newcastle, Canberra and Launceston.

Senator HUMPHRIES—That is a pretty good coverage. Do we have any idea of where we go once the strategy has been announced? Is it expected, for example, that the strategy will produce some outcomes in terms of next year's budget?

Mr Carters—That certainly is a possibility, but we cannot comment on that at this stage.

Senator HUMPHRIES—Thank you very much.

Senator FIERRAVANTI-WELLS—I will be asking questions in relation to the Seasonal Worker Pilot Scheme. But, before I go to that, I want to ask a quick question about harvest labour offices. What is the situation with those offices? In particular, will those offices around Australia and head office in Mildura be retained?

Ms Golightly—The Harvest Labour Information Service as well as the Harvest Labour Service itself are part of the services being tendered at the moment. So it will continue, but people have to submit a tender, be assessed and awarded a contract. That will determine who is providing the service. Those services are part of Employment Services.

Senator FIERRAVANTI-WELLS—I will move to the Seasonal Worker Pilot Scheme. I raised questions with Immigration the other evening but was really concerned when, regrettably, they were not able to provide me with much detail, even about the most fundamental aspects of the program, such as when the first seasonal workers will be arriving and where they will be located. Basically, the DIAC officials and the minister directed me to DEEWR, which is why I am here this evening. I am very concerned that expectations have been raised in the community. I am also very worried about the lack of detail at this point about the scheme and, more importantly, that failure to communicate with the growers means there could be some very serious deficiencies with the scheme. I am also concerned that, if these expectations are not going to be met, this program may not occur. I keep hearing that the workers are coming by the end of this year, but is it going to happen? Also, if it is not going to happen in the way anticipated, will the scheme be put off? I put those parameters by way of opening. Mr Carters or the relevant officers may want to kick off, after which I will put a series of more detailed questions. Is the scheme going to start?

Mr Carters—The funding for the scheme was largely aimed at allocating 2,500 visas over three years. Those three years were due to start from July 2009—that is, the 2009-10 financial year. However, in order to pre-test that pilot—that is a pilot as well; so the government is just piloting this in the horticultural industry to see how well the concept operates—there is an intention to bring in about 100 workers earlier than that. The aim there would be to bring them in hopefully before the end of this calendar year.

In that respect, we are conducting surveys of growers in three locations to look at the demand for these services, particularly the unmet demand. This is seasonal work. The growers have told us that hundreds of millions of dollars worth of production is being lost with fruit rotting on the ground because they cannot get seasonal workers. That is part of the justification for the unmet demand. However, as a department, we needed to test that. So we have conducted surveys in three locations—Swan Hill in Victoria, Griffith in New South Wales and the Stanhope area in Queensland—to look at the level of demand. Those surveys have not all been completed, but the findings from those surveys indicate that there is definitely unmet demand but probably not quite at the level that we were led to believe.

The other really important element here is that the visas that will operate for the Pacific seasonal workers will be of seven months duration. The intention is to offer the seasonal worker six months of work at an average of 30 hours a week. That is a reasonable duration for them so that they can then remit their earnings back to their own country, so it is very much to help develop the Pacific island countries as well. In that context, we are looking at not only unmet demand but also locations where we can guarantee them six months of work, as that is important as well.

We have been out and about, undertaking those surveys. We have had community consultations. We have had consultations with growers, unions and the peak bodies. We are going out again on Friday to continue that process. What the location or locations will be for that pre-pilot intake has not quite been determined yet, but it is very close to being decided.

In addition, there have been significant developments in a very short period of time. Our view is that we are on track. We have visited each of the four Pacific island countries that are involved in the pilot: Tonga, Kiribati, Vanuatu and Papua New Guinea. We have draft memoranda of understanding with those countries that we hope to finalise next month. They will be the trigger in setting out the expectations had by not only us but also those countries and in setting out the sorts of arrangements that will need to be made. We have also visited New Zealand because, fortunately, they have a fully implemented scheme that has been operating for over a year and, obviously, we want to learn from it. Certainly, we have taken away some key messages from the New Zealand experience.

We want to look at some of the key components to making this successful. One is that we have a very good pre-departure approach so that potential Pacific islander workers are very aware of the Australian work environment and Australian culture, what sorts of community care they are likely to receive and what sorts of work they are expected to undertake. In addition, we have worked closely with each of those governments, particularly the first three—Papua New Guinea is a more recent occurrence—to look at the capacity of those countries to deliver seasonal workers. As I have said, we have been out, talking to communities, unions, employer groups and so on, looking at what sorts of pastoral care

arrangements are required. In talking to them, we have focused on some of the key areas that have been potential issues with some locations in New Zealand, such as the provision of transport and accommodation and the issue of deductions from people's wages so that there is much more transparency there. The pre-departure sessions cover such things as enabling people to understand that, if the employer pays for their airfares, there is an expectation that half of that airfare could be recouped over the 26-week period; that tax and superannuation come out of their earnings; that superannuation will be refunded when they leave the country; and they can also put in tax returns. We are working to make sure that they are comfortable in the community and there is a welcoming environment there for them. All of that has been developed over a short period of time. We are pretty confident about the sorts of issues that we have taken on board and about meeting the government's timetable.

Senator FIERRAVANTI-WELLS—I appreciate that. That is what I want to know: what is the government's timetable? Growers out there are expecting guest or seasonal workers to arrive to help them pick their fruit, and I want to know when they are going to arrive. I hear everything that you say, but there are two basic points here. You have said you are going to have this pilot; you have raised expectations. When will these people arrive and where will they go? Also, when are you going to communicate with the employers to let them know what their obligations are under a scheme that is supposed to commence later this year? We are now in October.

Mr Carters—As I have said, the scheme that is supposed to commence later this year is a pre-pilot of no more than 100 people. The full pilot does not start until July next year.

Senator FIERRAVANTI-WELLS—I appreciate that but, with 100 people, certain obligations are required on both sides. My question is: when are these people going to arrive, where are they going to go and which employers are going to take them? Even for 100 people, these basic details are required to be in place. I appreciate the work that you have done. You made the announcement with a lot of fanfare, and now I would like to know the date on which you propose these people will arrive, where they will go and when the employers will know what their obligations are. It is a pretty simple question.

Mr Carters—Yes. I am sorry; I will reiterate what I have already said. The proposal is that the 100 will arrive before the end of this calendar year. They will go to one or more of the areas of Swan Hill, Griffith or Stanthorpe. The circumstances under which they will arrive need to be linked to the memorandum of understanding with the Pacific island countries. We are back out in the communities of Griffith and Swan Hill on Friday. Consultations with the local people in those areas will help us to refine the final decision about the location or locations we choose for the pilot and then the process for identifying who the employers will be. In terms of what the expectations will be, I described a lot of them in my opening statement. They are exactly the sorts of expectations that will be placed on the employers, and we will continue to express those sorts of things to them when we are in the communities.

Senator FIERRAVANTI-WELLS—If I can summarise, at this point in time, we have a pilot scheme; we know there will be 100 workers but we do not know who they will be; we do not know precisely when they will arrive; and we do not know precisely where they will go. That is it in a nutshell, isn't it?

Senator McLucas—Excuse me, Senator. Perhaps I could be of assistance. I think Mr Carters has given you a very good explanation of the process that the department is currently undertaking to deliver the intention of having—it is not 100—up to 100 workers on a pre-pilot, if we can call it that, by the end of the year. And he has also explained the complexity of the work that has been undertaken to achieve that goal. I think Mr Carters has answered your questions very clearly.

Senator FIERRAVANTI-WELLS—He has not answered my questions, but now I will go the long route and ask you step by step, because I have a lot of questions. Perhaps you might start by explaining precisely which federal and state departments are involved in this program. I understand just from the website and from what I was told at Immigration other evening that there are a range of different departments. They were not able to tell me what they were actually doing. Could you explain to me what federal and what state departments are involved and the role that each of them plays.

Mr Carters—DEEWR has the lead—that is us. The department of immigration is responsible for the visas and for bringing people out under those visas. The Department of Foreign Affairs and Trade is responsible for the memorandum of understanding. AusAID has the responsibility for assisting with the development of the people in the Pacific Island countries. They will be developing the pre-departure package. They will also be responsible for any training that might be provided to the Pacific Islanders, both in terms of the pre-arrival training but also potentially when they return to give them enhanced training so that we do meet the requirement to actually assist with the development of the Pacific Island countries as well as servicing the growers.

Also, the Department of Agriculture, Fisheries and Forestry is involved. Their minister made the announcement in late August of the pilot. The state government departments with whom we have consulted are the Victorian state government and the New South Wales Community Relations Commission. We are talking with state ministers tomorrow as well. The employment minister, Brendan O'Connor, is meeting with the state and territory employment ministers tomorrow in Melbourne and they will have a briefing on developments with the pilot program as part of that meeting tomorrow afternoon.

Senator FIERRAVANTI-WELLS—That will be on a consultative basis. Will they have any obligations?

Mr Carters—Will who have any obligations?

Senator FIERRAVANTI-WELLS—Vis-a-vis any obligations in the scheme.

Mr Carters—The state governments?

Senator FIERRAVANTI-WELLS—Yes.

Mr Carters—The state bodies will certainly have a responsibility from a workplace relations perspective. We are very keen to ensure that close monitoring is undertaken so that the Australian workplace standards and conditions are met in terms of the employment of the Pacific Island workers. That would be their main role.

Senator FIERRAVANTI-WELLS—In terms of the federal government, have you estimated the total whole-of-government cost of this initiative across the forward estimates?

Mr Carters—Yes, we have. The cost is \$23.5 million over four years from 2008-09 to 2011-12, and DEEWR will receive \$5.487 million of that. The Workplace Ombudsman will receive a further \$4.345 million. A lot of the money will actually be spread over a number of departments, such as Immigration—

Senator FIERRAVANTI-WELLS—I was going to come to that. You can provide me with a breakdown of where that cost is across the various departments?

Mr Carters—Yes, I can give you the total figures now if you like.

Senator FIERRAVANTI-WELLS—Thank you.

Mr Carters—The Department of Immigration and Citizenship, \$12.261 million over the four years, and Foreign Affairs and Trade, \$1.42 million. That is it. I have given you ours.

Senator FIERRAVANTI-WELLS—And DFAT will include AusAID and the work that they might be doing?

Mr Carters—That is correct, yes. AusAID already have funding for some of the development activities that they will be undertaking.

Senator FIERRAVANTI-WELLS—I understand that you have set up an interagency steering committee. When was this committee appointed?

Ms Kidd—The committee as led by DEEWR was appointed in about August. There was a committee that existed prior to that that was working on the development of this and it was led by Immigration.

Senator FIERRAVANTI-WELLS—Will DEEWR chair it?

Ms Kidd—DEEWR now chairs the IDC.

Senator FIERRAVANTI-WELLS—You will have overall coordination for it?

Ms Kidd—That is right.

Senator FIERRAVANTI-WELLS—There will be 416 visas for seven months and I understand that will happen in any 12-month period. Are you going to ask for any specific conditions as part of those visas?

Mr Carters—My understanding is that we will use an existing visa class, which is a 416, which DIAC has responsibility for. There will be conditions applying to that. That will be that it is limited to seven months in any year. The reason for that is that the intention will be that people will come for the six months worth of work and hopefully they will return in subsequent years, depending on the outcomes of the pilot. There will also be the usual checks that will need to be applied in terms of people being eligible for those visas. That will include specific health checks and police checks—

Senator FIERRAVANTI-WELLS—I will come to those specific questions.

Mr Carters—As well as that, there will be a requirement that there be an offer of employment from an employer as a condition for the visa as well. They will also need to be located offshore in their home country to be eligible for that visa. So people who were already located in Australia would not be eligible. They will be multiple entry visas as well, so that does allow people, if they do have to go home for any reason, to come back.

Senator FIERRAVANTI-WELLS—In terms of the New Zealand experience, have you done any work on any other schemes or examined other schemes? Obviously the New Zealand one is the most obvious. Have you had any discussions with the New Zealanders about some of the pitfalls that they have had?

Mr Carters—Certainly, we have. We have had several discussions with the New Zealanders. They have been very good in terms of the suggestions, advice and information that they have provided to us. Essentially the sorts of issues they have identified, which we have taken on board, are factors such as, for example, the duration of the work, which is an important one, and the flexibility of the visa. The New Zealand visas do not allow multiple entry. Ours do. They do not guarantee six months worth of work, so people may have only been able to obtain, say, six weeks worth of work and then it has run out and the person needs to return. On that basis it is very difficult to remit any profits back to the home country.

They have certainly advised us about the potential for lack of transparency of deductions from wages as being an issue. We need very much better particularly pre-departure information and advice to people coming out on what the nature of those deductions may be and the logic for them. Pastoral care is very important. Again, that is something that the New Zealanders have highlighted to us that we need to pay particular attention to. As part of the approach that we will be taking to shore up the pastoral care we will be setting up regional bodies, which will be local community bodies, which will have community representation. The church is very important to Pacific Islanders, so we will have representation from the church, from growers and from unions. Basically, it will be a local body that will be located there to assist in overseeing the pastoral care arrangements to enhance the delivery of that pastoral care. They are probably the key elements we have gleaned from New Zealand. The other is not to send them to locations that have minus five degree temperatures.

Senator FIERRAVANTI-WELLS—I gathered that.

Mr Carters—That is one that hopefully we have covered off.

Ms Kidd—New Zealand has just done a review of their scheme after about 12 months and they made some changes in September based on that, and they are all incorporated in our model as well. They are things like the ability to move between growers so that you are not just restricted to one employer but you can get a season's worth of work by movement. Also, that there be better pre-departure briefing. It was quite short. We are looking at roughly three days as a pre-departure briefing, so it is very comprehensive. As Mr Carters said, better pastoral care, and also better disclosure of deductions so that they are aware of what deductions will be made from their pay each week.

Senator FIERRAVANTI-WELLS—Given the competition between our two countries, I am sure we are not going to be poaching from the same places. Is that the case?

Mr Carters—In fact, that is correct. We did agree that we would not include the people involved in New Zealand's RSE scheme. Having said that, certainly from our experience with the availability of, and the interest from, the Pacific Island countries in this there will be no shortage of people available to come so we do not see that as an issue in the short term, certainly for the duration of the pilot.

Senator FIERRAVANTI-WELLS—This matter will obviously be the subject of regional discussions in the various forums that we attend in terms of—

Mr Carters—Yes.

Senator FIERRAVANTI-WELLS—Have you had input into the content and purpose with the participating countries? What has been your involvement in those?

Mr Carters—Yes, we have. Again, we took advantage of our New Zealand colleagues and we were provided with the MOUs that they have with the relevant countries, which coincide with three of the ones that we are also expecting to bring Pacific workers from. We used that as a base but also developed further elements in that MOU and we left each of the countries with a draft of the MOU for them to consider. We are still in the stages of exchanging views on that draft.

Senator FIERRAVANTI-WELLS—Are you aware when those MOUs are going to be signed?

Mr Carters—Yes. We are expecting them to be signed next month.

Senator FIERRAVANTI-WELLS—With three of the four countries or all four countries?

Mr Carters—That will be three. PNG is still a little behind.

Senator FIERRAVANTI-WELLS—You will be signing MOUs in November?

Mr Carters—Yes.

Senator FIERRAVANTI-WELLS—You will have to wait until those MOUs are signed before you can effectively communicate terms and conditions. Is that the situation?

Mr Carters—No, not particularly. We will have to wait until they are signed to actually start to bring people in through the visas, obviously, but in terms of the sorts of terms and conditions we are already negotiating those and consulting on those. We will continue to do that.

Senator FIERRAVANTI-WELLS—But you have not finalised them?

Mr Carters—We can go very close.

Senator FIERRAVANTI-WELLS—By ‘terms and conditions’ I mean both the rights and obligations of the workers and the rights and obligations of the prospective employers. Those have not been defined?

Mr Carters—Those sorts of elements are largely covered in the MOUs. Some of the components of that do not need to be in the MOUs. We certainly would not expect much change from the draft MOUs, particularly given that they are also based on the New Zealand experience. We would be pretty confident, although not absolutely final, that they are pretty close.

Senator FIERRAVANTI-WELLS—If I am a grower sitting down waiting and having been told that this new scheme is going to be piloted and at this stage I am contemplating whether I should—

Mr Carters—Put your hand up.

Senator FIERRAVANTI-WELLS—put my hand up for one of these up to 100 workers, I am not actually going to know what my obligations are going to be vis-a-vis those workers until November. Is that the situation?

Mr Carters—The sort of conditions and so on that I have already mentioned will be provided to the potential growers and I am sure already have been in previous meetings—so they will have a very good idea, yes. They would be 95 per cent clear on what was being expected.

Senator FIERRAVANTI-WELLS—You envisage that, if one of the countries says, ‘No, I would like this obligation inserted’, that is not going to be communicated to the growers until November; is that the case?

Mr Carters—It is hard to imagine what that scenario might be.

Senator FIERRAVANTI-WELLS—I am just trying to explore it, because I have not actually seen what these obligations are and you are telling me that they are going to be contained in MOUs, which have not yet been signed. I appreciate what the growers have been told, but we also understand that there are certain expectations out there and that we have people out there who are expecting certain workers, and regrettably there are perceptions about cheap labour, which is not what this is about, I gather.

Mr Carters—That is not what this is about.

Senator FIERRAVANTI-WELLS—I think that you have issues with perception, but that is a separate issue and that is a matter for you to work out rather than me. We are not sure what the MOUs will finally contain. We know that they are going to be signed at some stage, but we do not know when—probably in the next month. Who is actually responsible for the finalisation of the signature? Who is going to coordinate that? Will it be DFAT? Who is going to be responsible for that component of it?

Mr Carters—It is DFAT who is responsible for the signature of the MOUs.

Senator FIERRAVANTI-WELLS—What costs will the employer participants be responsible for paying?

Mr Carters—I am sorry, did you say ‘the employer and the participants’?

Senator FIERRAVANTI-WELLS—No, the employer. I am going to—

Mr Carters—The employer of the participants.

Senator FIERRAVANTI-WELLS—deal with the employer’s rights and obligations and then I will come to the employees. I would like to deal with that separately.

Mr Carters—The employer will obviously be responsible for paying the wages of the worker, which would need to meet Australian conditions. They would be responsible for paying the airfare of the worker but would be able to seek to recoup half of that airfare. They would be responsible for their internal transport—in other words, from where they land in Australia to the location.

Senator FIERRAVANTI-WELLS—What about the transport, for example, for a worker who does three months with one grower and then another month with another grower? Where does the responsibility shift to the next grower, or what happens then?

Mr Carters—There is an option that we are looking at, which is to utilise labour hire companies. Part of the advantage of utilising labour hire companies is that they would be the employer per se and they would have the responsibility for those components, particularly if an individual worker needed to move between growers. That would be far easier to do through a labour hire company model than it would having each of the individual growers being separate employers. That is something else that we learnt from the New Zealand model, because they had a one-to-one relationship which did cause some problems. In that context the responsibility, for example, of the deductions for, say, the airfare over a 26-week period could be pro rata depending on the duration of the employment with the different growers.

Senator FIERRAVANTI-WELLS—But of course at this stage I, as the prospective employer contemplating participating, do not actually know yet who I am going to be dealing with. I suppose that is—

Mr Carters—Yes, that is correct, but they will know that fairly soon.

Senator FIERRAVANTI-WELLS—I am pleased.

Mr Carters—You will realise that this was only announced in late August.

Senator FIERRAVANTI-WELLS—I appreciate that, and can I just say that my question is directed at eliciting information that has not been provided by those responsible in government who made the announcements. But I appreciate that. At this point in time, if I am a prospective employer and I have to deal with a labour hire company, does that mean that my costs could potentially be higher? I cannot make that decision, can I?

Mr Carters—That could mean that your costs could potentially be higher, yes.

Senator FIERRAVANTI-WELLS—In other words, it means that in terms of my forward planning, particularly if I am a small operator, I cannot really make that decision—not yet, anyway?

Senator McLucas—I do not know whether you have seen the same television that I have seen, where people have been saying that they have been losing millions of dollars of product—

Senator FIERRAVANTI-WELLS—I appreciate that.

Senator McLucas—You are constructing this as, you know, these poor farmers. The farmers are thrilled that they may have the opportunity to get their product off—

Senator FIERRAVANTI-WELLS—I am not coming at it—

Senator McLucas—I am very happy for the officers to answer the question, but please do not construct it in such a way that this is such a terrible program. My understanding is that farmers are thrilled with the potential that we might be able to get product off the farm at the same time as assisting people from underdeveloped countries.

Senator FIERRAVANTI-WELLS—I am interested in understanding the rights and obligations of both the employer and the employee in this relationship. Given how much your government has gone on and on about industrial relations, I would have thought that you would have had issues pertaining to industrial relations well and truly lined up on this before

you embarked on it. That is the angle that I am coming at it from and, if you will allow me, it will save time if I continue my questions.

Senator McLucas—Let me just say—and I reinforce Mr Carters's point—this is a pilot. This is a trial. We do not need to go through the work properly—

Senator FIERRAVANTI-WELLS—I appreciate that, but people have to know their rights and responsibilities.

Senator McLucas—Exactly. Absolutely.

Senator FIERRAVANTI-WELLS—I want to know what the rights and responsibilities are going to be for the two important participants in this program, and that is the employers and the seasonal workers.

Senator McLucas—I think Mr Carters has made it very clear that that is the work that is being undertaken at the moment.

Senator FIERRAVANTI-WELLS—I am sure he will. I am sure he will as we progress through. At this stage, perhaps you might tell me who is going to be responsible for providing the workers with things like tax files numbers, Medicare, insurance, accommodation, transport and bank accounts? Who is going to help them facilitate the mechanisms by which these requirements are in place for the workers? Is that going to be a responsibility of the employer or the recruitment company?

Mr Carters—They are the same thing. If there is a labour hire company approached then they will be the employer. Yes, it will be the employer's responsibility to organise those components.

Ms Kidd—We will be conducting comprehensive pre-departure briefings in the country and also arrival briefings and orientation in the region in Australia. A lot of things such as tax file numbers, budgeting, payslips, et cetera will be covered in that.

Senator FIERRAVANTI-WELLS—How many employers is it anticipated will be approved to sponsor the seasonal workers in the first instance with the pilot and then subsequently over the life of the scheme? Do you have an idea about that?

Ms Kidd—We do not have a view on the number of employers. It really depends on what their individual demand is for labour. You might have a large employer and we might have a balance of small and large. It will really be case by case.

Senator FIERRAVANTI-WELLS—If you have the hire company then will it be just the one employer? We have had growers expressing interest, but we do not actually know. In that case, what was your understanding of the potential numbers that led you to at first determining a figure of 100 or less and eventually 2,500?

Mr Carters—It is a pilot and they are the figures that are seen to be a reasonable number to, I guess, tread a little bit carefully in terms of conducting this as a pilot and looking at how well it works without overcommitting the Australian government in this area until we are clear on how well this is working. In the pre-pilot, up to 100 would seem to be a reasonable number. There is no science in it.

Senator FIERRAVANTI-WELLS—You thought 100 was a reasonable number just to start off with?

Ms McSorley—Small numbers are what the regions are telling us. In the consultations in all three regions, while they are telling us they do have demand for the workers, in the discussions we have had with growers and community groups they have indicated they would like to proceed slowly in the first instance and start with small numbers, so we have been responsive to that as well.

Senator FIERRAVANTI-WELLS—I appreciate that. I was just asking in relation to the time frame. At some stage before August you did some sort of consultation that led you to establish a figure of 100 or less and subsequently 2,500? That was my question.

Mr Carters—The answer to that is, no. The survey was undertaken for us to determine which location or locations we should focus on in the initial stages. The decision on the 2,500 was taken by government on the basis that that was a sensible size for a pilot.

Senator FIERRAVANTI-WELLS—When was each of these decisions taken? Can you fix a time for me?

Mr Carters—The decision on the 2,500 was taken ahead of the announcement by government. Late August, I think, was when the decision was made. Then we undertook surveys of locations after that to determine the level of demand in each of the locations to determine where best to start.

Senator FIERRAVANTI-WELLS—Can you tell me what requirements participating employers will need to meet to demonstrate that they have made reasonable efforts to employ Australians? Will there be some sort of requirement on them before they can register?

Mr Carters—Yes. We have employment service providers across the country. One way in which we can test the unmet demand is to have advertised positions through employment service providers to demonstrate that they cannot fill those vacancies with Australian workers. That will be a very important approach. As well as that, there will need to be a demonstration that they have also considered particularly Indigenous workers in the area, other people on income support and humanitarian migrants as well. It is only where the demand cannot be satisfied that the seasonal workers would be able to be employed with the grower.

Senator FIERRAVANTI-WELLS—In other words, the obligation is on both sides. How much do I have to show that I have tried in my area to get workers and cannot get them? Will that be an obligation on me?

Mr Carters—Yes, it will.

Senator FIERRAVANTI-WELLS—I have to demonstrate all my efforts that I have made before I can register?

Mr Carters—Yes. DEEWR is responsible for approving the growers who will be included in the pilot. Part of that process will include looking at their attempts to recruit Australian workers.

Senator FIERRAVANTI-WELLS—We are talking about awareness. Are all of the growers aware of these sorts of obligations already?

Mr Carters—Those are the sorts of things that we have been telling them about in visits.

Senator FIERRAVANTI-WELLS—Have they been told about the tax file numbers and all of those other obligations?

Mr Carters—Yes, they have.

Ms Kidd—We also have a website with a lot of this information on it.

Senator FIERRAVANTI-WELLS—The DEEWR website contains a four-page document. Is that the detail that is available to them?

Ms Kidd—That is what we have put out publicly on the website.

Senator FIERRAVANTI-WELLS—That does not contain the sort of detail that has been covered thus far. It is not the sort of detail that I, as a prospective employer, would think was sufficient. I would like a bit more detail than that. But that is a separate issue. We will not go there again. What about the total costs of administration fees or costs payable to the Australian government or each participating department for prospective employers to apply or be approved to participate in the scheme? In other words, will the prospective employer have to pay a fee to DEEWR to participate in the scheme?

Ms Kidd—No.

Senator FIERRAVANTI-WELLS—The other night it was very difficult to actually pinpoint and find out to whom I would make the application. Will there be one application document that is made to your department?

Ms Kidd—Yes.

Senator FIERRAVANTI-WELLS—And that would be one document only as from the employee's perspective?

Ms Kidd—Yes, that is right. They will deal with one point.

Senator FIERRAVANTI-WELLS—Insofar as other departments need to be involved in this process from the employer perspective you will coordinate that with other departments; is that the situation?

Mr Carters—Yes.

Senator FIERRAVANTI-WELLS—Will this application be like other employer sponsors of overseas workers such as those on 457 visas?

Mr Carters—No. It is a different visa class—416. It is different in terms of the requirements.

Senator FIERRAVANTI-WELLS—What I mean is that, insofar as the 457s contain a series of undertakings, in this respect the obligations will be fixed, which is why I was asking the question before about rights and obligations. They will be fixed as the terms and conditions of both the MOU and the visa?

Mr Carters—Yes, if I understand the question.

Senator FIERRAVANTI-WELLS—Will there be guidelines or requirements for participating employers to commit to in terms of training and assistance of the workers to

participate in the pilot program? In other words, will they have to give them some further training or assistance as a part of their obligations to take on these workers?

Mr Carters—They will need to provide the sort of training that they provide to Australian workers to enable them to undertake the job, which is basically to fully understand the job, but particularly to understand the occupational health and safety components. We will also have the unions providing advice to the workers—

Senator FIERRAVANTI-WELLS—I was going to come to that in a moment.

Mr Carters—before they commence employment so that they understand their rights as well in the workplace. It is basically the same sort of training that you would expect for any worker.

Senator FIERRAVANTI-WELLS—What sorts of steps are you undertaking to make sure that smaller employers are not going to be disadvantaged? I am thinking about small growers. Are you doing anything in particular? I can appreciate—

Mr Carters—Again, the concept of the labour hire company approach to me would be of most benefit to the small employer. It may cost them a little bit more, but it would certainly facilitate their opportunity to utilise the scheme much more readily.

Senator FIERRAVANTI-WELLS—What about the role of the trade union movement in approving participating employers? Will there be a role? Will the unions determine or have a role in approving participating employers?

Mr Carters—It will not be the union per se. It will be the Workplace Ombudsman that will do checks on the employers to ensure that they have a good record.

Senator FIERRAVANTI-WELLS—If it is a labour hire company, will it then go out to some form of tender or something like that?

Mr Carters—Yes.

Senator FIERRAVANTI-WELLS—Is it envisaged that perhaps a union could be accredited as a recruiting organisation?

Ms McSorley—Could you repeat the question?

Senator FIERRAVANTI-WELLS—What I am asking is: do you envisage that a union could become or be accredited as the recruiting organisation?

Mr Carters—It is very unlikely. The reason is that certainly we would go to tender for a labour hire company and the criteria I guess would make it difficult for people without experience as a labour hire company to win that tender.

Senator FIERRAVANTI-WELLS—We are hearing anecdotal stories from various countries where people are starting to gather potential workers, and I am just keen to ensure—and I will come to questions about interference afterwards but I just wanted to put—

Mr Carters—My answer to that is that, if we went down the labour hire company route, a tender would be undertaken with an appropriate process, which would not favour any type of organisation.

Senator FIERRAVANTI-WELLS—You would be looking at a labour hire company that has established credentials?

Mr Carters—Can I just clarify something? When I said ‘tender’ I guess it is not what might be deemed a formal tender in its approach. It would be more like an expression of interest, but we would still undertake the rigorous assessment of the bidders to look at who the most appropriate person was to conduct that.

Senator FIERRAVANTI-WELLS—You will do some direct source type contract, or how would you—

Mr Carters—By expression of interest. We would seek interest from organisations who wanted to supply that service.

Senator ARBIB—Has the National Farmers Federation been involved in drafting this program?

Mr Carters—They have been involved, yes.

Senator ARBIB—Could you explain or outline what role they have played?

Mr Carters—They are a very important employer representative. The National Farmers Federation in particular and the Horticulture Australia Council are probably the two key employer bodies we have involved in discussions in terms of developing the Pacific seasonal worker pilot.

Senator ARBIB—Do you foresee a role for them in the future in terms of the implementation and supervision of the program?

Mr Carters—We would certainly see a continuing role for those key employer representatives, yes.

Senator FISHER—Has there been a role for the Australian Workers Union?

Mr Carters—Yes, there has been. Again, the two key unions are the ACTU and the Australian Workers Union.

Senator FISHER—You would see a similar role for the ACTU and the AWU as you have indicated to Senator Arbib in respect of the National Farmers Federation, would you?

Mr Carters—Yes, we would.

Senator ARBIB—Does it have broad support across the industry and union movement?

Mr Carters—Yes.

Senator FIERRAVANTI-WELLS—I was going to bring it together by noting that the website states that the steering committee will oversee the operation of the pilot at a high level and regularly consult with stakeholders, including unions. I envisage the stakeholders are the employer groups you referred to and others?

Mr Carters—Yes, they are obviously the key stakeholders, yes.

Senator FIERRAVANTI-WELLS—Rest assured, Senator Arbib, that the unions will be well and truly there. What is going to be the nature of this consultation?

Ms McSorley—The NFF and the Horticulture Australia Council accompanied us on some regional visits this month when we went into Griffith, Stanthorpe and Swan Hill. We keep them pretty regularly updated. It is pretty handy that they are located here in Canberra. We talk probably once a week or so. We also plan on involving them in the evaluation of the pilot over time, so we are just drafting an evaluation plan and consulting them about how that looks, and looking at setting up a formal group to do the evaluation.

Senator FIERRAVANTI-WELLS—You mentioned the orientation program. I understand that is going to be undertaken by AusAID on your behalf. Is that a fair summary of the situation?

Ms McSorley—AusAID is preparing some pre-departure briefing now. That is right. That will be delivered in country, AusAID and partners.

Senator FIERRAVANTI-WELLS—AusAID and partners will deliver the pre-departure. I have asked AusAID for some details, and that answers the question about the pre-departure; they will conduct it with their own agencies in country.

Ms McSorley—I think they are hoping to film some Australian footage next week in the regions.

Senator FIERRAVANTI-WELLS—That will include information and education to be supplied to them about—

Ms McSorley—Yes. We have already been supplying them with lots of information.

Senator FIERRAVANTI-WELLS—AusAID is going to supply details in relation to that, so I will not pursue that. What about the orientation program in Australia?

Ms McSorley—That will be done in conjunction with whether it is a labour hire company or employers and the peak bodies, DIAC, this department, the Workplace Ombudsman. The unions are interested in participating as well. We just have to develop that aspect.

Senator FIERRAVANTI-WELLS—You have not developed that aspect of it?

Ms McSorley—We have a plan about what we want to put in it, but we have not quite gone to the next stage yet. We have been focusing on the pre-departure.

Senator FIERRAVANTI-WELLS—Do we know the exact costs that the workers themselves will be responsible for paying?

Ms Kidd—Yes, we do.

Senator FIERRAVANTI-WELLS—What will they be paid given the different wage rates that exist in horticulture depending on the type of product and location? Is it envisaged that there will be a standard wage or different wage rates?

Ms Kidd—Yes, that is right; we will be looking at the appropriate award.

Senator FIERRAVANTI-WELLS—They will all be paid the same amount irrespective of whatever it is that they are picking if they shift from one grower to another? I understand that there are different rates in the horticultural industry.

Ms Kidd—That is right. But, as they move from grower to grower, that would be within a region and the work would not differ, so that award should cover that period.

Ms McSorley—The only complication will be where the particular employer has their own agreement, and that would apply. Clearly, if there is a labour hire company then—

Senator FIERRAVANTI-WELLS—It is envisaged this will all be explained to the workers in their own language before they come to Australia?

Ms McSorley—That is right.

Senator FIERRAVANTI-WELLS—There are not going to be any recruitment costs or any other costs imposed on the workers in country?

Ms Kidd—The sorts of costs that the workers will incur are the half cost of their airfare, obviously accommodation and then just other associated—

Senator FIERRAVANTI-WELLS—The employer pays that up front and then the airfare will be deducted according to some pre-determined way—

Mr Carters—Half the airfare.

Ms Kidd—That is right. Then there are miscellaneous costs, such as passport costs, visa application, medical screening et cetera. There will be some costs there for the workers as well.

Senator FIERRAVANTI-WELLS—Have we determined all that?

Ms Kidd—That is right.

Senator FIERRAVANTI-WELLS—Have we determined the exact amounts? We want to make sure that they know exactly what they are going to meet before they come to Australia. That has all been worked out, has it?

Ms Kidd—We have costed it and it will be covered off in the pre-departure briefing.

Senator FIERRAVANTI-WELLS—What happens if further costs are incurred when they come to Australia? Who is going to meet those costs?

Ms Kidd—The deductions will be outlined in their industrial instrument. That will be clear and upfront. The other costs will be things like food.

Senator FIERRAVANTI-WELLS—But everything is going to be explained to them before—

Ms Kidd—That is right. There will not be any surprise additional costs.

Senator FIERRAVANTI-WELLS—One of the issues has been the issue about remittance of funds and to make sure that they are not seriously eroded by bank fees and charges. I assume that you have done some work in relation to that to make sure that that does not happen?

Ms Kidd—Certainly AusAID are looking at that. They have a project on remittances and they are looking at getting a website up and running by the end of the year. It puts the different costs up there.

Senator FIERRAVANTI-WELLS—By the end of the year or before the pilot begins?

Ms Kidd—By the end of the year is my understanding.

Senator FIERRAVANTI-WELLS—We are hearing figures like 50 per cent of funds are taken out by some agencies like Western Union. You hear about fees where you have double counting in relation to moneys transferred from one currency to another. I appreciate that there are costs, but we do not want 50 per cent of their funds taken out by fees and charges. There is a perception issue about that.

Ms McSorley—That is right. AusAID is doing some work around remittance costs and engaging with those bodies who are responsible—the banks and also with people like Western Union. Part of the reason that we have gone for a much longer pre-departure briefing is also to go through some financial literacy training with the workers to make them aware of what might be the most cost-effective way of sending their money back and letting them know that probably carrying it back in their hand luggage—World Bank research indicates that that happens with a lot of remittances—is probably not the best way to go.

Senator FIERRAVANTI-WELLS—I guess in the end I am asking for what compliance measures you are going to put in place to ensure that the workers are not going to be exploited by the employers. We have seen some bad cases of that happening and I am really coming at it from that perspective. In relation to pastoral care, who is going to mentor the workers while they are here in Australia? What costs might be associated with any pastoral care and will the employers be expected to meet those costs?

Ms Kidd—The approved regional body will have a key role. That is the body we are setting up in the region. It will have a sort of oversight role in the region to assist workers with things like cultural integration and those other aspects of working in this country.

Senator FIERRAVANTI-WELLS—In other words, are the employers going to be required to meet any costs in relation to pastoral care?

Ms Kidd—No, they will not have additional costs in relation to that. I said the role will be undertaken by a separate body that we will establish in the region.

Senator FIERRAVANTI-WELLS—Are you developing some guidelines in relation to that?

Ms Kidd—That is right.

Senator FIERRAVANTI-WELLS—Will those guidelines determine whether this will simply be an oversight role or whether it will actually be a determining role as to who gets workers; is that the situation?

Ms Kidd—I am not sure what you mean.

Senator FIERRAVANTI-WELLS—What I mean is who will actually determine where the seasonal workers go?

Ms Kidd—That goes to what Mr Carters was talking about earlier about selection of employers. We will have a process where the employers will need to demonstrate that they have tested the local labour market, that they have a need, that they will comply with Australian award et cetera, conditions—

Senator FIERRAVANTI-WELLS—DEEWR will make that selection?

Ms Kidd—Yes.

Senator FIERRAVANTI-WELLS—How will the health checks, be carried out? Where will they be carried out and who will carry them out?

Mr Carters—The health checks will be carried out in the country of origin. There are facilities in the three countries to enable those health checks to be undertaken. It is certainly a process which is already well rehearsed by the New Zealanders, and each of the countries is confident that they can achieve that. For example, the sort of health check for, say, tuberculosis will be a chest x-ray to demonstrate that they do not have tuberculosis.

Senator FIERRAVANTI-WELLS—Where will additional health checks will be required? Are you going to require blood tests or those sorts of things?

Ms McSorley—That is a matter for the sending country. The normal requirements for immigration will apply. I am conscious we are straying into matters that are more relevantly dealt with by Immigration.

Senator FIERRAVANTI-WELLS—I appreciate that and I did ask Immigration some of these questions but I did not really get very far. Additional health checks where they are required, I understand, will be subject to consultation with home countries. Who is going to review the health checks? Is that going to come to somebody in Australia?

Ms McSorley—We are tapping into the existing DIAC processes that happen. As I understand it, those are reviewed here in Australia before the visa is granted.

Senator FIERRAVANTI-WELLS—Are we confident that health screening facilities exist in the places where the workers will be coming from? I appreciate that we have only 100 requests now, but will our request for this additional health screening impose a burden in the area to the detriment of the local community?

Ms McSorley—It was raised in Port Moresby on Monday that the one doctor that is appointed by DIAC might not be sufficient if there is a need to process a large number. DIAC advised that they were looking at whether they needed to appoint another recognised doctor.

Senator FIERRAVANTI-WELLS—The obligation will be on the Australian government through the department of immigration to provide those extra facilities?

Ms McSorley—My understanding is that they would appoint another doctor who is recognised.

Senator FIERRAVANTI-WELLS—What about the character checks? This will be a matter for Immigration. Will you have any input in relation to any specific requirements?

Mr Carters—Immigration will require police checks. We will not be responsible for any specific requirements. That will be a matter for Immigration.

Ms McSorley—Some of the discussions with participating countries have indicated that they also look to community recommendation of workers who will participate as an added level of character checking, if you like. The foreign minister in Port Moresby told us on Sunday that he is very concerned to send the very best workers, and so they would be looking for communities to recommend those workers who will be ambassadors, if you like, for PNG. That is the view—

Mr Carters—That is the same for the other three countries as well. They are very keen to send their best people out, because they are very keen for this to succeed.

Senator FIERRAVANTI-WELLS—What are we looking at as to the selection of the recruitment organisations in those participating countries? Will that also be avoided if you go with your one recruitment company?

Mr Carters—The recruitment processes in each of the countries to a certain extent is up to the individual countries. For example, our understanding is that Tonga would prefer to do it through their government agency. They have the ability to do that. Somewhere like Vanuatu would prefer to use local recruitment agencies, but they would limit the numbers to ensure that they are of good quality. It does vary a little bit between countries. In terms of the employers here or the labour hire company here, it is a matter for them to specify how they would undertake that recruitment, whether they would visit the countries involved to recruit people or whether they would rely on the recommendations of the government and/or recruitment agencies in those other countries. That is a matter for them to decide.

Senator FIERRAVANTI-WELLS—Do you envisage onshore and offshore roles for both entities? Who is going to monitor that?

Mr Carters—Eventually—

Senator FIERRAVANTI-WELLS—Who is going to monitor that?

Mr Carters—We will certainly monitor that. That is a very important component of the pilot and is something we will be looking very closely at. I guess what I am saying is that we know from the experience in New Zealand that they seem to have the best success if the employer or labour hire company in New Zealand actually goes offshore to the Pacific Islands to be involved in a personal way in recruitment. That option is there for whomever we select to do that. But there are others in New Zealand who do take people on the basis of a paper assessment in relying on the judgment of the countries that the people are coming from.

Senator FIERRAVANTI-WELLS—I appreciate that. That then leads to the next question: how will the recruitment organisations be reimbursed for ‘inviting’ participants to the pilot and subsequent program? There is an issue about ensuring that the most suitable workers come and that the process is free of any sort of political interference. That must surely be a concern?

Mr Carters—That is an issue that we have discussed in detail with each of the countries. Because of their experience with the New Zealand model, they are very aware of that and quite determined to get it right and to make sure it happens. Each of those countries will be monitoring very closely who is sent over, as will we, as part of the pilot process.

Senator FIERRAVANTI-WELLS—Do you envisage that you may have to put restrictions on some companies or entities that can recruit and basically select the participating workers?

Mr Carters—We would hope to leave that to the Pacific Island countries to decide their approach within the country. I think I have described the sorts of examples of the approaches that they are anticipating. Again, the experience from New Zealand is that it is a good process. There may have been one or two through the New Zealand experience that may not have been

as good and we know in that context that the relevant governments will be cracking down on that sort of approach.

Senator FIERRAVANTI-WELLS—Overstaying will basically be an issue for the department of immigration.

Mr Carters—Yes.

Senator FIERRAVANTI-WELLS—You will not really have any role in that?

Mr Carters—No.

Senator FIERRAVANTI-WELLS—Suffice to hope that there will not be any absconders?

Mr Carters—All we will say there is that this is very much about repeat business. People who overstay put that at risk. The second point is that the workers will only be able to come over themselves; they will not be able to bring family or dependants over. There will be an issue of their having links back to their own country.

Senator FIERRAVANTI-WELLS—The minister for immigration made comments about the change of circumstances. Have you looked at any modelling about the impact of this? We are talking about the pilot, but you have obviously looked at it in its longer term. Given the employment situation in Australia and the change in circumstances in recent months, have you looked at that at all and will it affect your progress in this matter?

Mr Carters—We have not looked at that, no.

Senator FIERRAVANTI-WELLS—Have you looked at any modelling in relation to the economic benefits of the scheme, both in the pilot regions and generally?

Ms Kidd—We will be doing that through the evaluation of the pilot. That will be done at the 18-month point.

Senator FIERRAVANTI-WELLS—Given that the prospective rise in unemployment—and even in the budget you have projected 134,000 unemployed people over the financial year—can you guarantee that no Australians will lose their jobs as a consequence of this scheme?

Mr Carters—We have outlined that already. There is an absolute test on the availability of Australian workers foremost before we then would permit growers to recruit the Pacific seasonal workers.

Senator FIERRAVANTI-WELLS—What action would you be taking to ensure that work which you otherwise envisage could be done under this pilot program ought more properly be done by Australians who are looking for jobs? I appreciate you have put an obligation on the employers, but as a government are you taking any steps to meet that demand?

Mr Carters—Employment services providers have quite a number of programs that are out there to assist people to prepare them to be able to undertake this sort of work. For example, Indigenous programs are there to assist in making particular disadvantaged Indigenous people more job ready to be able to take on some of these jobs. That sort of approach will very much continue. In fact, we would have a particular focus in the locations that we select to ensure that they are not being deprived of jobs.

Senator FIERRAVANTI-WELLS—Thank you.

[6.24 pm]

Comcare

CHAIR—We will proceed to questions relating to Comcare.

Senator HUMPHRIES—Firstly, I see that on page 222 of the PBS there is reference to a review of Comcare to report to the minister by July 2008. Can you tell me if that review has been completed and delivered to the minister?

Mr Dolan—There was a review undertaken by the Department of Education, Employment and Workplace Relations on behalf of the Deputy Prime Minister. We understand that report of the review was given to the Deputy Prime Minister in early August.

Senator HUMPHRIES—What aspects of Comcare were being reviewed in that review?

Mr Dolan—The main focus of the review was on Comcare's role in the licensing of private companies for workers compensation under the Comcare scheme and the application of our occupational health and safety jurisdiction to those licensees where it was appropriate and adequate.

Senator HUMPHRIES—It was just those things? The general operation of Comcare was not included as well?

Mr Dolan—It was the general operation with a particular focus on the question of our capability to regulate a range of different industry areas and some questions as to the adequacy of the workers compensation provisions of the Safety, Rehabilitation and Compensation Act.

Senator HUMPHRIES—That was delivered to the minister in August. Is there any expected time line as to when that is going to be made available as in having been published or will there be an announcement in due course? If so, when will that be as to what the government proposes to do about this?

Mr Dolan—That is not a matter I am familiar with. I believe there was some discussion of it in the Workplace Relations Ministerial Council, from what I can discern from the report of that meeting. I believe there was to be some consultation subsequently with officials. I am afraid that is not really a matter I have much more information on. I can seek information from the department and get it back to you on notice.

Senator McLucas—If you wanted to put those questions on notice we could put them to the department.

Senator HUMPHRIES—I assume the issues being raised in the review of the SRC Act include some of the issues that were raised in the context of the election campaign last year. There was a fact sheet produced on the Kevin 07 website towards the end of last year where comment was made about the exclusion of journey-to-work claims and claims made for workers on authorised recesses. It made this reference: 'This change creates a jurisdictional nightmare for workers, whose claims will not be covered at all. It will be shifted to state based schemes such as third party transport accident schemes.' Is that the sort of thing that was being examined in the review?

Mr Dolan—One of the terms of reference of the review related to the provisions in relation to journey claims and recess breaks.

Senator HUMPHRIES—There have been a number of reviews that have taken place in recent years of state based workers compensation schemes, and in at least four jurisdictions they have resulted in journey claims being excluded. Is that your understanding of what has happened at the state level?

Mr Dolan—My understanding is that the majority of jurisdictions do not have under their workers compensation schemes journey claims although there are of course transport accident arrangements and so on. Two major jurisdictions still have journey claims, New South Wales and Queensland.

Senator HUMPHRIES—So we have no idea at this point whether it is likely that the Commonwealth's position will change as a result of this review with respect to that issue of journey claims?

Mr Dolan—That is a matter for the Deputy Prime Minister.

Senator HUMPHRIES—My understanding is that, because the ACT uses Comcare as its contracted agency to deliver workers compensation services, the changed arrangements that the Commonwealth made through the amendments to the SRC Act last year have had the effect of making the ACT also in effect exclude journey claims for its employees. Is that your understanding?

Mr Dolan—Yes. Comcare manages the claims and liabilities of ACT public servants and as a result ACT public servants, being on the same conditions as federal public servants and others in the Comcare scheme, no longer get compensation for journey claims. But there is also a private scheme for other employees in the ACT under ACT law whereby journey claims are still in place.

Senator HUMPHRIES—My understanding is that the eligibility for a claim is actually determined under ACT law so it is possible for Comcare to deliver workers compensation claims management-type services for the ACT but under different criteria from those that are delivered to the Commonwealth.

Mr Dolan—That is not my understanding. There is a specific provision in the Safety, Rehabilitation and Compensation Act that effectively allows the ACT government to be declared a Commonwealth authority for the purposes of this legislation and, as a result of that, employees of the ACT government are treated in the same way as Commonwealth employees for the purposes of the act. It is made under Commonwealth law, not under ACT law.

Senator HUMPHRIES—For example, if the ACT wanted to continue to allow journey claims to be made by its employees it would have to sever its relationship with Comcare and find some other way of delivering workers' compensation services?

Mr Dolan—If it wanted journey claims handled under workers compensation arrangements, yes.

Senator HUMPHRIES—We recently passed through the Senate the same-sex legislation to align same-sex relationships more closely to those that apply to heterosexual relationships. Included in that legislation was a change in the definition of 'dependants' under sections 19

and 29 of the SRC Act. I assume that will have the effect of widening the number of people who are dependants under that legislation and who might make a claim in certain circumstances. If I have interpreted that correctly, do we expect an increase in the outlays necessary under this legislation to cover those sorts of claims and, if so, do we know of what order?

Mr Dolan—I would make two comments in response. The first is the principal point of the act where dependants come into play as a result of a work related death of an employee, which in our jurisdiction is thankfully a comparatively small number of claimants. That is where the major focus of this is. Total incapacity sometimes has some implications for this as well, but that is rarer. The scheme itself is funded through premium payments by employers, so there is no direct call on the budget in those circumstances. It is a cost to employers. We have not done the modelling. We did not consider it sufficiently significant in the scheme to have to do that. We could take a look and see if we could get some further information for you.

Senator HUMPHRIES—Given the small number of such deaths, you would not expect there to be a rise in the premiums that agencies are paying?

Mr Dolan—We are not expecting that, but I am happy to take a look at it and get any further information if it is available.

Senator HUMPHRIES—Can you tell me whether the rate of claims per 1,000 full-time employees of the Commonwealth has been affected by the amendments that were made to the SRC Act last year affecting journey claims and recess claims?

Mr Dolan—There has certainly been a substantial reduction over a number of years in the number of claims per 1,000 employees. We are trying hard to distinguish how much of that reduction is a result of effective prevention of injury by employers in our system and how much relates to the amendments that the parliament passed in March last year. Our assessment was that there would be approximately a 15 per cent reduction in the number of claims as a result of those changes. That seems to have been the pattern that we have seen so far. We can get you more detailed information if you wish on that.

Senator HUMPHRIES—But when did those changes come into effect?

Mr Dolan—They came into effect in April 2007.

Senator HUMPHRIES—We have got a year's data at this stage, or something of that order.

Mr Dolan—I am sorry I did not bring it with me, but I will make it available.

Senator HUMPHRIES—Can you break up in those figures what the reduction might have been attributable to in terms of journey claims and what reduction might have been attributable to recess break injuries?

Mr Dolan—We can probably do that. Claims for recess breaks are a comparably small proportion. I will certainly make a reasonable attempt to do that.

Senator HUMPHRIES—If you can that would be great. If you cannot I will not break down over it. You mentioned before the review and you said one of the things that actuated

that was the concern about some of the arrangements, I think you said, for licensees under the scheme. I think there was a moratorium imposed on the licensees at about the same time that the review as announced; is that right?

Mr Dolan—That is correct. At the time the review was announced the Deputy Prime Minister announced a moratorium on new declarations of eligibility for licences. A number of organisations had already been declared eligible to be considered for a licence and those processes continued.

Senator HUMPHRIES—What is that number?

Mr Kibble—There were around 16 companies that got to that first ministerial declaration stage.

Senator HUMPHRIES—That moratorium has now been in place for more than six months?

Mr Kibble—Yes, it closed in December 2007.

Senator HUMPHRIES—So nine months or so. I assume that when the results of this review are announced there will be some decision made about whether that moratorium continues. Perhaps it will be superseded by new arrangements, but are you aware if many companies or organisations anxious to become licensees are not applying because there is a moratorium in place and if there are those who would be wishing to take advantage of the right to become a licensee if that still exists after the review is completed?

Mr Dolan—We have not directly been approached, to my knowledge, by very many employers for whatever reason. The sorts of organisations that tend to provide services to potential licensees continue to ask us questions about how the system might work and say that they are working on behalf of unnamed organisations in relation to that. We are not hearing about a major pent-up demand. It may well be there, but they are not telling us about it.

Senator HUMPHRIES—I see in the PBS that there is predicated an increase of approximately \$3.15 million in income for licences in the 2008-09 financial year. Given that we have had a moratorium in place for the first three months or so of the financial year, can we attribute that increase over the last financial year to an increase in the size of the licence fees or do we expect that there will be some new arrangements that will allow people to come in and make fresh applications to be licensees?

Mr Dolan—The increase is principally attributable to the fact that before the moratorium there had been a progressive increase in the number of licensees in the system. This reflects the fact that we have a number of existing licensees and it reflects the increased costs of regulating a larger number of those licensees.

Senator HUMPHRIES—The costs of regulating? This is revenue; this is not a cost. This is on page 236.

Mr Dolan—We recover our costs from the licensees. We recover directly from the licensees the costs of regulating them as to claims services, rehabilitation of employees and occupational health and safety.

Senator HUMPHRIES—It is listed here as licence fees, though.

Mr Dolan—Yes.

Senator HUMPHRIES—Do you actually recover the licence fees on a cost recovery basis?

Mr Dolan—There is also an element that goes to the cost of supporting the Safety, Rehabilitation and Compensation Commission in its consideration of licence applications. That is a comparatively small amount. The licence fees are about the ongoing cost of regulating those licences.

Senator HUMPHRIES—All of the current licensees would be businesses such as enterprises or non-government organisations. Is that the case?

Mr Dolan—No, there is a mix. We have some what you might call traditional arrangements. The Reserve Bank of Australia, for example, being a somewhat different entity of the Commonwealth, nevertheless government, is one example. Australia Post is another. It is still a government business enterprise but is dealt with under the licensing arrangements. There is a spectrum from the Reserve Bank, on the one hand, all the way through to the National Australia Bank on the other.

Senator HUMPHRIES—The last thing I wanted to ask about was stress claims. We have heard a lot, particularly in the early part of this year, about extra pressures under which Commonwealth public servants were operating due to increased working hours and so forth in the federal Public Service. Has there been an increase in stress related claims in the first half of this year?

Mr Dolan—Not that we have seen. It is probably useful to qualify that in that we see stress related claims as being slow onset. There is not an immediate effect between perception of unreasonable workload and so on and a claim. It takes some time for those claims to materialise. As the occupational health and safety regulator, we have drawn the attention of employers to their responsibility to appropriately manage the stress at work of their employees.

Senator HUMPHRIES—Would you wait for evidence of an increase in such claims before you tried to manage that through these agencies or would you give them advice in anticipation?

Mr Dolan—Given the public attention and profile that has been given to these views about stress and the possibility that there were unreasonable levels of stress in workplaces, we thought it was our responsibility as the regulator to say to employers, ‘Workplace stress is something that falls into the provenance of health and safety in the workplace, and here are some things that we have provided to all employers’—advice and education about how stress in the workplace can be managed safely. There is a preventive sort of approach to this.

Senator HUMPHRIES—Do you publish figures in your annual report, for example, that show how you break up the kinds of claims by agency?

Mr Dolan—No. We do report on in particular the main agencies by their premium percentage, which is a proxy for how they are going in injury prevention and injury management. I do not recall in particular any specific claims—

Mr Kibble—Not by agency. In the annual report we certainly publish figures for the jurisdiction as a whole in terms of the major injury types, but not by agency, no.

Senator HUMPHRIES—If I were to ask you at future estimates about what figures were emerging in those sorts of areas you would be able to give me some idea?

Mr Kibble—Yes.

Proceedings suspended from 6.43 pm to 7.49 pm

Australian Fair Pay Commission Secretariat

CHAIR—We will now move on to the Australian Fair Pay Commission Secretariat. I understand that Senator Humphries has questions.

Senator HUMPHRIES—Thank you very much, Chair. I see in the PBS that the Fair Pay Commission Secretariat is responsible for providing public access to information that reflects the factors that the commission must have regard to in fulfilling its wage-setting function. It mentions, in connection with that, access to information about macroeconomic developments. When did the commission last update information on, say, its website about macroeconomic developments?

Ms Taylor—The commission updates its information on a regular basis. There are three main documents that reflect the macroeconomic and microeconomic situation. They form the commission's decision document, which was released in July this year. That is this document, entitled *Reasons for decision*. In there you will find information about the economic circumstances. In addition, twice a year we release the *Economic and social indicators—monitoring report*, which is this document here. The next report is due to be released in early March. There was one released just recently, in September. They are available in hard copy and they are also available on our website. In addition to that, if there is commissioned research that the commission has had undertaken for it, that research is published as soon as the commission receives and considers that. So there are three regular occasions and then there are ad hoc ones as the commissioned research comes in.

Senator HUMPHRIES—So is that document that is going to be produced in March the first opportunity the commission will have to provide that kind of macroeconomic development information that responds to the world economic crisis?

Ms Taylor—Yes. That will be the first time that the analysis that the commission will be looking at will be published. The other thing that will be published as well is the submissions that the commission receives. The commission has a process of submissions, consultation and research. The commission will call for submissions again commencing 5 December this year and they will close on 20 March. A number of those submissions have traditionally addressed the current economic state. We expect that they will again. There is a lot of information that is provided to the commission in those submissions. They are published, again, on the website as soon as possible after the submissions close on 20 March.

Senator HUMPHRIES—The last decision that was made was to increase the minimum wage by \$21.66 a week effective as of the first of this month.

Ms Taylor—Yes.

Senator HUMPHRIES—Obviously it is not possible to provide any information about the effect of that decision, but when was the previous pay decision?

Ms Taylor—The previous decision took effect from 1 October in the previous year.

Senator HUMPHRIES—What was the amount of that increase?

Ms Taylor—From 1 October 2007 the minimum wage was \$13.74 per hour, an increase from \$13.47 per hour, and \$522.12 per week.

Senator HUMPHRIES—Okay. Given that the role of the secretariat is to examine the impact of its decisions on a range of economic indicators and particularly, I assume, business profitability, what can you tell us about the data that you have collected on the effect of that decision applicable from 1 October last year?

Ms Taylor—The major part of that information is in the commission's *Reasons for decision*. There are a range of indicators that the commission looks at in its monitoring of its decision. It looks at issues about inflation—the changes in inflation. It also looks at the impact on individual household income. In an overall sense, it looks at some of the indicators of business profitability but not specifically in detail. The commission has not done any detailed research on that.

Senator HUMPHRIES—Does it look at employment as one of those factors?

Ms Taylor—Yes. It considers movements in employment and unemployment. That is one of the range of indicators it looks at.

Senator HUMPHRIES—As I have not seen that last report, can you just summarise what the overall impact of that last minimum pay rise was.

Ms Taylor—According to what the commission considered, there was a very minor impact, if any, on a range of indicators from its last decision.

Senator HUMPHRIES—Including inflation and employment?

Ms Taylor—Including inflation and employment.

Senator HUMPHRIES—There was a forum supposed to be conducted this month—the Minimum Wage Research Forum.

Ms Taylor—Yes.

Senator HUMPHRIES—Has that taken place yet?

Ms Taylor—No, it takes place next week.

Senator HUMPHRIES—Where is that happening?

Ms Taylor—It is happening in Melbourne, where the commission is. It will take place over two days. It is an opportunity for the presentation of a number of papers by leading international and Australian academics.

Senator HUMPHRIES—Who will be invited to that forum?

Ms Taylor—There are a range of people invited. There were all of our major stakeholders, both nationally and in the states and territories; leading academics, both in Australia and some international academics; and a range of organisation representatives as well.

Senator HUMPHRIES—Approximately what will the cost of the forum be?

Ms Taylor—Approximately, the cost of the forum will be about \$200,000.

Senator HUMPHRIES—Can I ask you—this is a bit of self-commentary here—to describe what you would say is the assessment by your stakeholders of the performance of the commission since its inception.

Ms Taylor—Yes. In fact, we have commissioned some research from our stakeholders about their perceptions of the commission. It particularly focused on the processes that have been put in place to enable the stakeholders to participate in the processes the commission has. My overall summary of that research is that the opinion of the commission and its processes was quite high. In comparison to the year before, there had certainly been an improvement in a number of factors that our stakeholders saw as important—the opportunities to engage with the commission, the opportunity for discussion with the commission and the transparency of the commission through an increase in the number of publications and making more information available. So overall it was a very good rating.

Senator HUMPHRIES—It may be very hard to project an answer to this question, but do you have any impression of where the international economic crisis might be leaving the Fair Pay Commission with respect to the next decision on the minimum wage?

Ms Taylor—No, I could not speculate on that. It is up to the commission. Again, the commission will receive a range of information and a range of views through its submission process and its consultation process, through the research and particularly, if I can say so, some of the research and discussion that will arise through the research forum. I will say about the research forum that the commission will be publishing those papers and discussions before the end of the year as well.

Senator HUMPHRIES—It is hard to imagine that you would see an increase of the order of \$31.66 again, though, in the present climate.

Ms Taylor—I could not comment on what the commission may or may not do.

ACTING CHAIR (Senator Humphries)—There being no other questions, thank you very much, Ms Taylor, for your appearance this evening. We will proceed now to the Workplace Authority.

[7.59 pm]

Workplace Authority

ACTING CHAIR (Senator Humphries)—I welcome Ms Bennett and Ms Bull. Thank you for being here.

Senator FISHER—Ms Bull and Ms Bennett, I would like to ask you some questions arising out of some answers that you gave to questions on notice last time and, in particular, in relation to the no disadvantage test and the agency's implementation of that. I have about seven answers to refer to. Tell me the most convenient way to refer to it. I refer to response EW508.

Ms Bennett—Give me a moment.

Senator FISHER—They are in the range of 493 to 508, actually. They are all in that range.

Ms Bennett—The first one I have is 509, I think.

Senator FISHER—Good—you start just where I want to end.

Ms Bennett—The first question was?

Senator FISHER—508.

Ms Bennett—The policy guide?

Senator FISHER—Yes, in respect of the no disadvantage test. Most of these questions did arise out of your policy guide in respect of the no disadvantage test. We are on the home track, so to speak. In respect of that particular response, can you confirm that your response means that under the current no disadvantage test the Workplace Authority does not test pay rates in workplace agreements as against the Australian fair pay and conditions standard?

Ms Bennett—No. Sorry if it is not clear. What we are saying is that the assessment is done as a point-in-time test. Our reading of the question from Senator Abetz was whether we take in future pay increases. The answer is that, no, we can look at what the rate should be in the award, taking into account what the current pay scale summary might be—the pay scale rate—that reflects the Fair Pay Commission decisions or pay increases. But it is point in time. We had interpreted the question as: does it include future wage increases? We could not possibly forecast or crystal ball gaze what the commission would have done. It is a point-in-time assessment.

Senator ABETZ—I had confidence in you.

Senator FISHER—As was the case with the coalition's Forward with Fairness test. It was the same situation in that respect under both the coalition's Forward with Fairness test and—

Ms Bennett—The fairness test and the no disadvantage test.

Senator FISHER—Sorry, the fairness test, I should say.

Ms Bennett—They are both point-in-time assessments.

Senator FISHER—I take you to answer EW505, which has to do with—

Ms Bennett—Sorry, I am being guided through the folder here.

Senator FISHER—It is within a group of about 20 there. Do I understand from that response, which talks about the application of the no disadvantage test in respect of hours of work, that under Labor's no disadvantage test a preferred hours arrangement can be included in a workplace agreement?

Ms Bennett—Yes, it can. But, as we note, it cannot be for casual trainees, apprenticeships, juniors or others and that is a key difference to the fairness test, where preferred hours could be agreed to between the parties. Under the no disadvantage test it is as it is set out here.

Senator FISHER—So the difference is that those categories of casual employees, trainees and apprentices and juniors cannot negotiate preferred hours but everybody else can?

Ms Bennett—They can negotiate different hours. It is what they are paid for those arrangements that becomes the core issue so that they would still be paid the rates that would apply for the times that they worked. For example, while as a junior or casual it may be their preference to work on the weekends. Individually that is between the employer and employee. But under the no disadvantage test they have to be paid the penalty rates for weekend work.

Senator FISHER—Okay. Thank you. I take you to answer 504, which was in response to a question about whether or not the policy guide allowed a new individual statutory agreement or collective agreement to reduce redundancy entitlements. Does your answer effectively mean that under the no disadvantage test redundancy entitlements can be traded off?

Ms Bennett—The parties to the agreement could decide that there would be no redundancy provisions. This is what is referred to in the legislation as contingency benefits. But it would only pass the no disadvantage test if there is either an increase in the salary or wages paid or another like condition added into the agreement which we would see as having sort of equal value to it.

Senator FISHER—Could the provision of a car park be considered sufficient in certain circumstances for trading away various conditions?

Ms Bull—The test is a global test, so we look at the overall effect of the agreement. The policy guide does reflect on car parking. Car parking in certain circumstances could be a benefit that we would see that is additional to what is in the reference instrument. Essentially the decision at the end of the day looks at all the terms and conditions in the agreement compared to the terms and conditions that would be provided in the reference instrument. It then makes a judgement about whether, when you take all that as a whole, the agreement provides at least as much or more than what the employee would have got under the reference instrument.

Ms Bennett—And I think the example, if I can add to what Helen is saying, is, if you worked somewhere where there were no parking pressures and there was lots of free available public parking, you would not count a parking spot as having any value. There is quite a lot of information about things like parking spots. The tax office has rulings on parking and what fringe benefits count and all those sorts of things. Let us say in the circumstance you are giving, if someone has been given a parking spot in a CBD, we know what the value of that is and we would be able to say, in the whole suite of things that is being provided, yes, that has a value and whether that would equal some of the things that have been included or not included.

Senator FISHER—So that does mean, then, that it could in fact be the provision of a car park that could tip the balance in favour of that being sufficient compensation for Labor's no disadvantage test to enable agreement to pass Labor's no disadvantage test?

Ms Bennett—It would probably have to be a very good parking spot, but, yes, it is possible.

Senator FISHER—Thank you, Ms Bennett. The last two answers I want to refer to are EW496 and EW497. Let us go to 496 first, which would appear to indicate that, under

Labor's no disadvantage test, penalty payments, night shift allowances and shift loadings can be traded away. Is that right?

Ms Bennett—They can be compensated. As Ms Bull explained, it is a global test. Other things can be put into the agreement that would compensate for that change. I think it is—

Senator FISHER—But that is what trading-off is all about, is it not?

Ms Bennett—But I think it is really important it is very clear in the policy guide and the way we would be looking at financial compensation that that equalled what someone would have got for those weekend rates and overtime so that their hourly rate for the hours that they worked would be the same for the hours that they may have worked in evenings or on weekends or public holidays.

Senator FISHER—So those payments and allowances could be traded off?

Ms Bennett—For an amount equal to or more than what they would have received if they had worked those hours and were paid on that formula.

Senator FISHER—Which is what the no disadvantage test is indeed all about. The final answer is 497. Once again, do I understand—it is rather a long question—from your answer that uniform allowances, vehicle and meal allowances can also be traded away?

Ms Bennett—They can be compensated. As I said, they also can be compensated for a higher salary or other clear benefits so that the employee is not disadvantaged by the change.

Senator FISHER—I have one further question. Does the Workplace Authority check for the inclusion of prohibited content in workplace agreements under Labor's no disadvantage test?

Ms Bennett—Prohibited content provisions under the legislation were not changed with the introduction of Forward with Fairness, so the arrangements prior to Forward with Fairness still stand. So, yes, the Workplace Authority checks for prohibited content.

Senator FISHER—When requested to do so?

Ms Bennett—When requested to. Our staff are cognisant of what prohibited content is. If it emerges in the assessment of an agreement, they will also act on that.

Senator FISHER—In respect of prohibited content, the requirements of the legislation are the same under Labor's no disadvantage test as they were under the coalition's fairness test, is that correct, in the aspect you have just described?

Ms Bennett—The introduction of the transition arrangements with Forward with Fairness did not change prohibited content at this stage.

Senator FISHER—You say 'at this stage'.

Ms Bennett—The Prime Minister has indicated that those issues will be considered in the substantive legislation.

Senator FISHER—So does all that mean that, in respect of prohibited content, in respect of redundancy entitlements, in respect of penalty payments, night shift allowances, shift loadings, uniform allowances and vehicle and meal allowances the application of Labor's no

disadvantage test has the same effect as the coalition's fairness test could have? Is that what all that means? It would appear so to me from the answers we have just been through.

Ms Bennett—The fairness test protected seven key award conditions, which were referred to as protected award conditions. In applying the fairness test in its simplest form, those protected award conditions which are set out in the policy guide, which is still available in the fairness test, set out that they had a value. So the role of the Workplace Authority was to make sure that, in taking that away at that point of time, something else or financial compensation was given that equalled the value of those seven award conditions. The no disadvantage test looks at the reference instrument. That means that not every award will have a laundry allowance and not every award will have those components. We look at each agreement against the relevant reference instrument, the relevant award. So you look at the total picture of what is provided rather than just seven protected conditions. So it is a much larger measure of what advantage and disadvantage would be in compensation. It is a higher benchmark.

Senator FISHER—But, nonetheless, you have indicated that in the application of the no disadvantage test there are situations in which redundancy entitlements, penalty payments, night shift allowances, shift loadings, uniform allowances and vehicle and meal allowances could all be traded away in exchange for compensation.

Ms Bennett—Removed or amended.

Ms Bull—Can I just clarify on that list of items that redundancy was not considered under the fairness test. So the protected award conditions were in the main monetary type allowances or benefits. For example, penalty rates were tested and allowances like uniform allowances were tested, but redundancy arrangements were not a consideration when we tested agreements under the fairness test.

Ms Bennett—It was not one of the protected award conditions.

Senator FISHER—Thank you for that clarification. Thank you, Ms Bull. I take you to your answer to question 493, which is about workplace agreements and statistics. Your answer was provided in respect of publishing details relating to the making of collective agreements on your website. Will the authority be publicly releasing statistics this year?

Ms Bennett—Yes, Senator. I can give you an update on collective agreements, actually, in answering that question at that point in time. As at 15 October 2008, we had published 4,730 collective agreements.

Senator FISHER—Perhaps, Ms Bennett, if you could provide those figures on notice to the committee or in writing afterwards.

Ms Bennett—On the publishing of collective agreements?

Senator FISHER—As to what they are at a particular point in time. At the moment, I am not so concerned about what they are. I am more concerned to know that the details will be published so that they are capable of being looked at.

Ms Bennett—Yes. We certainly can do that. At the point in time last estimates, we explained in the evidence that there had been a bit of delay because of other priorities. But we have certainly well caught up. As I said, there are almost 5,000 collectives that researchers

and others can now access through our website to get information on collective agreements. They are both fairness test and no disadvantage test collective agreements that have passed.

Senator FISHER—What about ITEAs, individual transitional employment agreements?

Ms Bennett—Like AWAs, these are individual arrangements between the employer and the employee. There are privacy provisions to that. So they are not able to be published in the same way because there is identifying information about the names of the parties. However, we have released 1,000 AWAs on DVD.

Senator FISHER—AWAs or ITEAs?

Ms Bennett—AWAs. We are about to release in December 1,000 ITEAs. But the delay to December is that we need to manually remove—black out—the names of the parties and any other identifying information, such as an ABN or something like that. And then they have been scanned and will be provided.

Senator FISHER—So you will be publishing actual agreements but with any identifying characteristics obliterated?

Ms Bennett—For individual agreements.

Senator FISHER—Will you be publishing statistics in respect of individual agreements and ITEAs included in that, obviously?

Ms Bennett—Yes. We are expecting to either late December or early in January provide what we would normally provide about processing information and pass and fail rates. But I have, as requested last committee, brought a handout on the processing statistics. Senator Marshall asked that I bring an updated table to this hearing, so we have brought an update on information that has normally been the lead part of our statistical releases that we have done in the past.

Senator FISHER—Thank you, Ms Bennett.

Senator ABETZ—I cannot imagine what has kept him away from receiving it. I would have thought he would be the first person here to receive it. But if we could see it, it would be good, thanks.

Senator FISHER—Thanks, Ms Bennett. Senator Abetz may have some questions in respect of that document once to hand. But from the statistics the Workplace Authority has published, the June quarter figures look to suggest that there has been a decrease in the number of union collective agreements of almost 20 per cent—about 17 per cent, I think—and about a 60 per cent decrease in greenfields agreements. Can you explain that?

Ms Bennett—The last statistics that were released were in the first weeks of the introduction of the no disadvantage test and shortly after the introduction of the legislation. We also know from when the fairness test was introduced that as legislation is being adjusted there is a bit of a decrease or a slowdown in activity as people gather enough information to be able to meet the new requirements. The business community employees and unions were also well aware that the changes were coming in. We saw a drop in all fields of agreements being lodged in those weeks before the changes were introduced.

Senator FISHER—So including ITEAs, even though you have not published—

Ms Bennett—We saw a reduction—

Senator FISHER—Well, I notice you had no comparator, I am sorry.

Ms Bennett—We had a reduction in AWAs over the same like-like period over a pattern of time.

Senator FISHER—I see.

Ms Bennett—It reduced just prior to the introduction of the legislation. There have been fewer ITEAs lodged and more collective agreements since the introduction of Forward with Fairness.

Senator FISHER—So we are talking about 1 March this year and essentially the stats for March, April, May and June—that quarter?

Ms Bennett—The 28th, so April. It was 28 March that the legislation came into effect. So April, May, June.

CHAIR—Do you mind if I take a moment to clarify some of the information in this table. Ms Bennett, can you take me through this. In table number 1, you have 47,000-odd agreements where the fairness test does not apply. If we go down to table 2, we have another row where the no disadvantage test is not applicable. It is able to pass. Let me finish the question, because it extends beyond that. Sorry, it does not. The rest of them are failure issues.

Ms Bennett—The fairness test had a threshold where, in any agreement where the employee was earning more than \$75,000 per annum, the test did not apply. So that reflects two fields, really. It was either that it was a high income or that the industry that that person worked in was not one covered by an award.

Ms Bull—The occupation was not in there.

Ms Bennett—Occupation.

Ms Bull—There was a third leg, which was that the agreement did not modify or remove protected award conditions.

CHAIR—So the ones identified in the first table are the ones where the fairness test does not apply because of the date?

Ms Bennett—No. In the main, it was because the legislation said someone earned \$75,000 or more—

CHAIR—In the first table?

Ms Bennett—Yes, in the first table—table 1.

CHAIR—Okay. Then in table 2, for instance, there is an additional 200. What are the factors identified there?

Ms Bennett—In the main, that 200 is because they are in occupations that are not covered by awards. Therefore, the reference—

Ms Bull—The legislation for the no disadvantage test provides that all agreements are tested under the no disadvantage test. However, if there is no reference instrument—that is, there is no relevant award and we cannot designate an award—the act provides that the

agreement is taken to pass the no disadvantage test, which is a different arrangement from the fairness test.

Senator FISHER—But one in common?

Ms Bennett—Well, the difference was it either did not apply or it was taken to pass because it was an award free occupation.

Ms Bull—Yes. Under the fairness test, one of the arms of the threshold test was that there was no award coverage.

Senator FISHER—That is right.

Ms Bull—But there were two other items.

Senator FISHER—There were two others as well. But one of them was in common.

CHAIR—And what does this category ‘cease to operate’ mean?

Ms Bull—It means that the agreement did not pass the test and either the parties did lodge a variation within a period of time. It relates specifically to operational agreements that are ITEAs for new employees and greenfield agreements. If the agreement in that circumstance does not pass the test, the parties have 37 days to vary the agreement. If a variation is not received, the agreement will cease to operate on the 37th day after the date of the notice. Alternatively, they may have negotiated a variation which subsequently still does not pass the no disadvantage test and the agreement will cease to operate on the date that the authority makes the decision that the variation does not pass either.

CHAIR—So then some of those in that next row would, after the relevant time period, end up being cease to operate?

Ms Bull—Do you mean the ‘failed—requires relodgement’ one?

CHAIR—Yes.

Ms Bull—They are non-operational agreements, so they are ITEAs for existing employees and union and employer collective agreements. Under the legislation, those agreements do not operate. They do not operate until they pass the test or seven days after we decide they pass the test. So if the original agreement which is lodged non-operational does not pass the test, then they have to choose whether they would ever lodge another agreement. So they may walk away from the process. There is no time limit because the agreements are not operational.

CHAIR—Do you have an additional handout that sets out all of those explanations? Perhaps I could ask you to take on notice those issues.

Ms Bull—We can take that on notice. It is detailed in our policy guide on the no disadvantage test, but we can take that on notice and provide that explanation.

Senator ABETZ—This handout—I was stumbling on what to call it, but I realise you have headed it as a handout so that has made it easier for me—has on it under table 1 ‘duplicate and invalid agreements’. There is an asterisk. Can you explain the notation of the asterisk further to me? The last bit says ‘Where a document other than the agreement was lodged by

the parties to the agreement'. Is that where if we want to blame somebody—the staff accidentally put the wrong bit of paper in the envelope and send it off to you—

Ms Bennett—It does sort of mean some of those things. There are two things.

Senator ABETZ—I would have thought that would be quite minimal.

CHAIR—That is too many of those, I would have thought.

Senator FISHER—It is a lot of those.

Senator ABETZ—Exactly. It might round the figure down to 1,870. I would have thought it would be minimal. I was inquiring more as to the other category and what that actually means.

Ms Bull—That category relates to lodgements. It relates to two types of lodgements. One is about invalid agreements. The legislation under both the fairness test and the no disadvantage test—they are slightly different—provides provisions where an agreement is validly lodged. For example, if an agreement is not lodged with the correct declaration form or does not fill out mandatory fields in the declaration form, the agreement under the legislation is not validly lodged. A test—either the fairness test or the no disadvantage test—can only be conducted on validly lodged agreements. What we do in those circumstances is we send the agreement back to the employer indicating that and ask them to re-lodge it correctly. Duplicate lodgements are slightly different in that they are lodgements that have been validly lodged but they may be missing information that is needed—for example, ABNs. In some cases, we have employers ring up and say with a collective agreement, 'Sorry, but we lodged the wrong one. We didn't lodge the one that was voted on. We lodged the earlier draft.' So they come in. They are counted originally. But they are to round out the figures to say that there are certain numbers that did not end up having the test applied to them for particular reasons.

Senator ABETZ—Is that the same explanation, I would assume, in table 2 for invalid with the asterisk?

Ms Bull—That is right. Those agreements are all agreements that were not validly lodged. There were some significant changes to lodgement requirements made under the transition legislation. In particular, previously you were not required to lodge a copy of the signed agreement—the signature pages. Under the new legislation, you are required to lodge that. We are still seeing many lodgements that do not meet those sort of requirements so that is why that figure is much higher than it was.

Senator ABETZ—I would have thought you would be concerned if out of 70,000 agreements lodged, 10,000, or one-seventh of them, are invalid. That is potentially a bit of a harsh term given what happens with them—that they can be resubmitted et cetera. But, still, I do not want you to expose yourselves too much. But do you think you might have been able to make it easier for people to fill out all the fields or whatever else or explain in greater detail so that, in effect, one in seven agreements are not accidentally lodged—I assume it is accidentally—with a field missing or part of it not in proper order?

Ms Bennett—We are monitoring it very closely. A proportion of them have gone down.

Senator ABETZ—Good.

Ms Bennett—I also must say that, in the first weeks, some of the other issues that we were confronting about invalidity is that there were AWAs lodged past that date. They were AWAs purporting to be ITEAs. But when you went into them, it said, ‘This is an AWA between this person and this person.’ So that obviously was clearly something that did not meet the requirements.

Senator ABETZ—And those people are given the opportunity to re-lodge?

Ms Bennett—Yes. Our website has been extensive. It is very clear when you do an electronic lodgement. Every session that I have gone to where I have spoken to employers and employees and unions and bargaining agents, I have explained the requirements. We have recently conducted some information sessions in which numerous parties to agreements have been there. We have explained that it is a requirement of the legislation that there are copies of the signature document and the other declarations. Then it will not be valid. We believe that the proportion is going down. Also, of course, it is not a time series it is reflecting at the time. So less and less are adjusting to it.

Senator ABETZ—So, one, you are conscious of it and, two, you have undertaken, for want of a better term, education campaigns. You are confident that as a result the number of invalid lodgements as a percentage will be decreasing?

Ms Bennett—May I also add that we do actually—

Senator ABETZ—Is that right?

Ms Bennett—Yes. That they are decreasing.

Senator ABETZ—Thank you.

Ms Bennett—I will add that in many, many cases we have also rung the parties and told them that it is not valid prior to the formal advice coming out in a letter explaining what has happened.

Senator ABETZ—In the absence of my very good friend Senator Marshall, could I request that you provide us with a similar handout update next time we meet. I think it would be helpful.

Ms Bennett—And we will include some information about the definitions requested by Senator Collins.

Senator ABETZ—Thank you.

Senator FISHER—Can you indicate, Ms Bennett, in respect of the second table, the timeframe? Is it from 31 March until 20 October?

Ms Bennett—Table 2 is 28 March to 20 October because that is the introduction of Forward with Fairness. In future it will reflect that—from 28 March to the date that we bring it along.

Senator FISHER—So the second table overlaps with the first in respect of part of the time period. But obviously they are different agreements with different tests. So they are actually different agreements subject to each table?

Ms Bennett—The overlap is the processing time and finalising the processing. So for the next time we meet, it will be entirely processed and it will just be outcomes.

Senator FISHER—Yes. You have indicated in response to Senator Abetz that, for example, where your category of invalid agreements is lodged and you categorise them as invalid, the parties are given the opportunity to re-lodge agreements. What is the applicable law in the interim for a workplace that has lodged an agreement you classify as invalid?

Ms Bennett—Well, they are not in operation. That category that you are talking about, they are not actually operating or in place—

Senator FISHER—That is right.

Ms Bennett—until they have passed. So they will be employed under the arrangement that they have in place. So that is either the award or the existing collective agreement or an individual agreement prior to that.

Senator FISHER—When you write to parties telling them that the agreement they lodged was invalid and therefore needs attention if they wish to pursue it, does the authority tell them what applies at their workplace in the interim? Do you tell them what you have just said to me in the letter you write them or the information you send them?

Ms Bennett—No, we do not, Senator. It is available on Q&As that we have on the website. But it is very clear when they lodge it that it is not in operation until we pass it for those fields of agreements. Certainly from our staff that answer the info line, if they ring, they would get that information and advice that would tell them that it had not passed and, therefore, they should continue with their arrangements until they are able to make a new arrangement.

Senator FISHER—Did you used to tell people in writing when their agreements failed to pass what, therefore, applied in the workplace?

Ms Bull—When the agreements fail under the no disadvantage test, we tell them what applies. When they have failed under the fairness test, we tell them what applies. The invalid issues are slightly different because, as before, we have not been able to test that agreement. Under the no disadvantage test, as I said, all collective agreements and ITEAs for existing employees are not operational until we make a decision that the agreement passes the test. In any event, in terms of those agreements that are operational on lodgement, there are some legal issues that define when agreements are made and things like that. Essentially, provided the agreement has been properly made, which is a slightly different step before lodgement—the act provides different arrangements for that—the view would be the agreement would be operational from the time it was made.

Senator FISHER—If there were examples where workplace parties are suggesting that the authority has simply returned agreements to the workplace stating that they have failed without giving any indication of what applies in the breach, would you consider that to be not your normal practice? Would you rectify it?

Ms Bennett—As Ms Bull was explaining, that would be surprising. I just want to state a difference. In the fairness test, when one had failed, they would have been given an opportunity to change it to increase the rate of pay or reinstate a condition. If they had failed to do that within the time frame, they would then be advised that they had not varied it.

Therefore, it ceased to operate. And they were advised that it was backdated and it fell back to this instrument. They were also advised that they needed to make good any back pay that was owed. If they failed to inform us of that, the matter would also be referred to the Workplace Ombudsman. I think that, to be fair to us, if you go through that journey, there were several times that it was very clear to the employer what they needed to do. So I believe it would be very exceptional for the employer to not know that they owed back pay, they needed to vary an agreement under the fairness test or an agreement applied.

In terms of the no disadvantage test, they would be told that their agreement did not pass and was not in operation. In fact, the legislation says until it is passed by us and seven days later. Other than, as Ms Bull explained, for ITEAs for new employees or greenfield agreements, it is pretty clear to them that they know that that agreement does not apply and it is not in operation.

Ms Bull—When an agreement does not pass the no disadvantage test, there are standard letters that we have which get sent to both parties to give generic advice about the sorts of areas which would mean it would not fail, why it did not pass and what would be needed to pass the test. The letters do not provide a rate of pay—a break-even rate of pay—which used to happen under the fairness test.

Senator FISHER—That is right.

Ms Bull—The reason is that even under the fairness test we have had significant feedback that employers were concerned about us doing that because it gave the expectation in some cases that the only way the agreement would be varied was to provide more money, which is not the case. In particular, under the no disadvantage test, which is also different from the fairness test—the fairness test was varied by a unilateral undertaking done by the employer—apart from employer greenfields agreements, all agreements under the no disadvantage test must be varied by agreements between the parties. The way that is done in order to pass the no disadvantage test is not something that the Workplace Authority can advise on. We give a number of different options about how that might be done—for example, providing different benefits or providing a higher rate of pay. In all cases, the procedure is that the senior assessors in the relevant assessment area must ring the employer before the letters go out to explain in a telephone conversation why the agreement has not passed and what sort of issues they could consider in varying it. We did have some feedback from the recent seminars that some employers said that did not occur.

Senator FISHER—Yes.

Ms Bull—We have asked them to report that to us because that is our procedure and it is outlined in our procedures.

Senator FISHER—If a specific employer wanted you to reinstate your previous practice—that is, indicate what might be a break-even rate of pay—would you do that?

Ms Bull—We do that in the telephone conversations. We say, ‘Approximately it is out by X per cent’ or something like that.

Senator FISHER—Okay. Other than that, I understand the situation. My final question around this is: what happens if the Workplace Authority—even you are human—makes a

mistake during the assessment process? What happens if, for example, the Workplace Authority incorrectly applies the calculator in respect of a group of agreements at a workplace where you have a number of employees doing identical jobs being paid identical rates for all intents and purposes—the rates of pay are the same? What happens if the calculator has a hissy fit and essentially results in the Workplace Authority making a mistake in assessing agreements?

Ms Bennett—Since the establishment of the authority, in our policy documents we have a reconsideration mechanism where the parties can come to us, explain what their view is and ask us to reconsider the decision that we have made.

Senator FISHER—What happens if in that process the reconsideration et cetera takes the agreements outside the period required for rectification or otherwise?

Ms Bull—We have an administrative process in place when a reconsideration request comes in. We put the process on hold in terms of the letters being generated. Then we do the review. If the review shows that we made a decision that we were not able to make—a good example is often the wrong award was applied, and the legislation is very clear about the reference instrument that has to apply, or there was evidence that was given to us that we did not take into account—in those cases we will rescind the original decision and replace it. For example, if the original decision was that the agreement did not pass, we would rescind that decision and reissue a pass notice, which would mean the agreement continued to operate. Alternatively, in many, many cases, what has happened in review when it does not pass is that the review may change; we just alter the rate. The agreement may still not pass but the rate that we are requesting, for example, in the fairness test might differ from what we suggested in the first instance. We reissue a new notice and give them another 14 days.

There are some times when an assessor might realise that they have pushed a button that generated a letter and it generated the wrong letter. We will reconsider that ourselves in our motion. We will ring the employer and we will reissue the notices to both parties and explain that there has been an error.

Ms Bennett—I will also add to Ms Bull's comments. We also have an internal audit process where we check—a quality assurance arrangement. So we are also checking ourselves and not just waiting for requests for reconsideration.

Ms Bull—Yes. We review one decision in every 100. So every 100th decision is reviewed by a separate quality assurance area.

Senator CAMERON—Do you use backpackers?

Ms Bennett—Senator, we use young people that have working visas. I do not have the information on the establishment of the—

Senator CAMERON—From the previous government?

Ms Bennett—On the establishment of the Workplace Authority in the period, I think, April, May, June and July 2007 through a recruitment agency, which I think, if I recall correctly, was Julia Ross and another company; I have answered it before. We were provided staff.

Senator CAMERON—These people would be colloquially known as backpackers, would they not?

Ms Bennett—They were referred to in the media as backpackers, yes.

Senator CAMERON—But they were backpackers as would commonly be understood. Is that correct?

Ms Bennett—Some of them, yes.

Senator CAMERON—Thanks.

Senator FISHER—I have one more question. With the indulgence of the committee, I have circulated—

Senator CAMERON—We have come a long way from backpackers.

Senator FISHER—An article in the *Age* from 16 September quotes Ms Stitt from the Australian Services Union as suggesting that a case that the union has taken to the Workplace Authority means that the union has waited nearly six months to see if some of the new agreements—Labor's ITEAs—pass the fairness test. 'The rules were ineffective', Ms Stitt is quoted as saying. Are you aware of the situation?

Ms Bennett—Yes, I am. We have been engaged on this matter for some time.

Senator ABETZ—In a meaningful way, no doubt.

Senator FISHER—In a meaningful way.

Ms Bennett—No. We disagree with the information and have advised them as well that—

Senator FISHER—It is not quite six months that the legislation has been in, is it?

Ms Bennett—The suggestion of that time delay in processing was not accurate.

CHAIR—What is the accurate story?

Ms Bennett—I need to be a bit careful here because of privacy arrangements. We can go a little bit into this. This were some complicated arrangements that related to Toll Dnata and the transmission of business, which also then relates to what the reference instrument would be, which is bound up in the legislation. It also involved a labour hire agency, so some of those people were employed neither by Toll Dnata nor by the ongoing company. It was a quite complicated assessment. Ms Bull can go a bit into this. But the suggestion in the article is that some of these agreements had been with us for a long time without there being processing. That is not actually true. Can I tell you that as soon as the article came out, there was certainly no delay in any others that were lodged in that time to make sure that, in the time where these issues were going on between the employer and the unions, their agreements were given a priority in making sure that they were assessed before the transmission of business arrangements occurred.

Senator FISHER—The article suggests:

New Labor contracts as bad as AWAs, says union

Workers are 'losing benefits'

Is that an accurate reflection of the situation, do you think?

Ms Bennett—I can advise you that 30 September—

CHAIR—This article is dated 16 September, so the veracity of the report relates to the time period when the report was made.

Ms Bull—And the agreements with us. The agreements were lodged with us well after August.

Ms Bennett—Yes. One of the two issues about this was the suggestion we had been sitting on agreements. When we went back to the lodgement, we saw that those agreements had been lodged to us by the company, as Ms Bull suggested, on 19 August. This meant that they were well within—

CHAIR—What date were they signed?

Ms Bennett—Pardon?

CHAIR—From the common employee point of view, when were they signed?

Ms Bennett—There is an issue there, Senator Collins, and we are working with the Ombudsman on those issues because the legislation does say that an agreement that is signed must be lodged within a time frame. We are working with the ombudsman on those issues. But the point is this suggestion that we had sat on them for a long time. They were lodged on 19 August.

Ms Bull—In various periods from about then on, from memory. I think there were three lodged in July, and the remaining 119 had been lodged after then.

Ms Bennett—And they are continuing to be lodged and they are continuing to be assessed. I would say a reasonably high proportion did not pass.

Ms Bull—And a number of them were invalid as well.

CHAIR—Was any of this known at 16 September when this story was reported?

Ms Bennett—Yes. We had been—

CHAIR—No. Was it known by the relevant employees?

Ms Bennett—Yes. They had received parties—

Ms Bull—On about 16 September or a few days before, we had made a decision that, I think, 22 of the agreements that we had at that stage did not pass the no disadvantage test and required variation.

CHAIR—But they may not have been alerted to that decision at the time that article was written?

Ms Bennett—Some of these were AWAs and some of them were ITEAs. The ASU was not a party to those agreements because they are individual arrangements between the employer and the employee. The parties to it are required under legislation to receive the same letter. It may have been that that letter had not yet been shared by one of the parties to the ASU.

CHAIR—What was the date of the first of the agreements with Toll?

Ms Bull—This spans across both the fairness test and the no disadvantage test.

CHAIR—I understand that. But, in terms of this class of agreements, I am just curious about how long they were sitting with the employer before they were filed with you.

Ms Bull—I cannot answer that question.

CHAIR—In a sense, you would be responding to this without criticism of you. I am more interested in this article as being a criticism of the overall process. If these agreements had been sitting with the employer well before 19 August, then that is an issue with the overall process, not necessarily you.

Ms Bull—We have advised the ASU of the agreements and the dates we received the agreements. I understand we have also advised, in relation to some where we do not have any record of having had the agreements lodged, that those issues to do with the requirements of the act on lodgement are about compliance and are a matter for the Workplace Ombudsman.

CHAIR—But the question I am asking, which should not affect any privacy issues, is: what is the earliest date of the batch of agreements that arrived with you on the 19th?

Ms Bennett—We will take that on notice. We can tell you that of the agreements—

Ms Bull—I do not have that information in front of me. You are asking what—

CHAIR—You can take it on notice.

Ms Bull—Are you asking what date the agreements were made between the parties?

CHAIR—The date the parties signed them.

Ms Bull—I do not have that. You are asking what date they were signed between the parties. I do not have that information in front of me.

CHAIR—But you would have it on notice, would you not?

Ms Bennett—We can take it on notice and talk to the ombudsman. But, of the agreements in question here, there were 122 AWAs of this going around. There were 119 ITEAs. It also involves some proportion of agreements by a labour hire agency where those people were employed. Not all of those from that labour hire company or all of those employees worked full time as well in that arrangement. We had been working with the parties on AWAs and the ITEAs at various times since 24 July, which is when we started our first contact with them. So it has been going backwards and forwards.

Ms Bull—My recollection is that all agreements lodged for Toll under the fairness test had already been completed when it was raised with us. At the time we had only received three agreements in relation to the no disadvantage test. The rest had come in subsequent to the issue being raised by the ASU. I understand there may be some issues about agreements relating to the labour hire company that may not have been settled under the fairness test at the time the ASU raised it.

CHAIR—Sorry, Senator Fisher. That was an issue that had been raised with me.

Senator FISHER—I think my good colleague Senator Abetz has a question. I have completed mine.

Senator ABETZ—Thank you very much. You told us that you select one out of 100 to test for robustness. Did you tell us what that sampling revealed? How many were found to be defective?

Ms Bennett—Where we had made an error in the assessment?

Senator ABETZ—Yes.

Ms Bennett—I do not have that information with me, Senator. I can take it on notice.

Senator ABETZ—If you would not mind.

Ms Bennett—Regarding our quality assurance, Senator Collins asked a question on notice about the definitions attached to the chart. I have provided those. While it does at the top look as if it relates to table 2, we can provide the definitions for the first table, which is the fairness test. Those definitions—

Senator ABETZ—So the document attachment applies only to table 1?

Ms Bennett—Table 2.

Senator ABETZ—Only to table 2.

CHAIR—Because it is the no disadvantage test rather than the fairness test.

Ms Bennett—Where it is much clearer on the fairness test. But we will provide an explanation of those terms.

CHAIR—Are there any further questions?

Senator ABETZ—No.

CHAIR—Thank you very much.

[8.56 pm]

Australian Industrial Registry

Senator Ludwig—Senator Collins, I was not here earlier. I understand that Comcare has been dealt with?

CHAIR—Yes.

Senator Ludwig—And the Australian Industrial Registry?

CHAIR—We are about to do them now. And the last agency, then, will be the ABCC. Welcome, gentlemen.

Senator HUMPHRIES—I want to ask about the likely time frame for the completion of the work modernisation process, please.

Mr Williams—The commission is continuing to advise that its time frame is unchanged. Completion is by 31 December 2009.

Senator HUMPHRIES—So what stage has the process reached now? Have you any awards that have actually been modernised or completed?

Mr Williams—The industries identified as the priority industries by the commission have had draft modern awards published and have entered a consultation phase. The preparatory work is being undertaken, including consultations for stage 2 of the award modernisation

process. I might add, perhaps to pre-empt the next question, that a more detailed timetable for the final two stages—3 and 4—has also now been announced by the commission.

Senator HUMPHRIES—Is the expectation that you will produce in stage 4 all of the awards in one tranche as opposed to sort of beginning the process of producing some awards over a period of time?

Mr Williams—Stage 4 is not as you characterise it. Stage 4 is the final tranche of industries. By that stage you will have then had draft awards progressively available all the way through to 31 December 2009. You will have all of them in readiness for the commission to make its final decisions about finalising those modern awards—there are too many ‘finals’—to take effect on 1 January 2010.

Senator HUMPHRIES—So you are telling us that you expect to be able to have all of the awards drafted in time for them to be adopted and made effective as of 1 January 2010?

Mr Williams—That is the understanding that I have from the commission, yes.

Senator HUMPHRIES—But at this stage you have not completed the process with respect to any individual award. You do not expect to do any of that in respect of any particular award until much later in the process?

Mr Williams—Because none of the awards will be operative until 1 January 2010. In that sense, none of the awards are finished.

Senator HUMPHRIES—Well, a draft of the award is what I mean.

Mr Williams—But there are draft awards for the 14 priority industries already, and consultations as we speak are occurring on those draft awards. I think we have had submissions from the parties on them. As I said, there is a detailed timetable out there for stages 2, 3 and 4 for all the other industries. I should identify Mr Nassios, the General Manager of Statutory Services, immediately to my right and, with him, Dennis Mihelyi, our Chief Financial Officer. I have just been reminded that when I said they would all be finished, the advice we have is they will be finished by 31 December 2009. The commission’s date to actually achieve that is to finish them by 19 December so that they can be assured that it will all be in place by 31 December.

Senator ABETZ—That is so you can have Christmas off, and I do not blame you.

Mr Williams—Well, I would not wish to conjecture what the commission’s considerations were. But the date they have set is 19 December.

Senator HUMPHRIES—That is not to imply that from 19 December the commission will begin the process of approving these revised awards, I assume. There would be a lot of work to do between 19 December and Christmas, I assume.

Mr Nassios—Senator, can I just correct that slightly. The date of 19 December is this year. That will be the date for the priority awards.

Senator HUMPHRIES—Right. That makes a lot more sense. I was going to say—

Mr Nassios—So those 14 will be finalised on 19 December.

Senator HUMPHRIES—So throughout next year we will be seeing the approval by the commission of those awards that have been prepared by 19 December this year?

Mr Nassios—By 19 December, there has been a process that already has been proceeding in respect of what is referred to as the priority awards. There are 14 of them. The draft of them has already been distributed. There is currently a consultation process over the draft. That is happening at this very moment. The intention, according to the timetable issued by the commission, is that by 19 December those—

Senator HUMPHRIES—This year?

Mr Nassios—Yes. They will be finalised.

Senator HUMPHRIES—Those 14?

Mr Nassios—Yes.

Senator HUMPHRIES—How many others remain to be done?

Mr Nassios—It is not an easy question, because how the commission has decided to do this is by looking at the industry listing that the commission itself has. There are about 110 industry listings. It is looking at dividing that 110 over the course of three further stages. The second stage has also already commenced in at least the preliminary consultation.

Senator HUMPHRIES—Okay. We will watch that with interest. I read in the annual report that you have a target of 85 per cent of the financial returns of registered organisations being produced within seven months of the end of the financial year. The actual target that was reached for 2007-08—I assume this refers, therefore, to those that were lodged within 2006-07—was only 65 per cent being lodged in that time frame. Can you explain to me what you believe is the reason that you have not been able to reach that 85 per cent target?

Mr Nassios—The primary reason is a staffing issue. Unfortunately, while we do our best to try to remind organisations of the obligations that they have in terms of timetabling, we do not tend to succeed as often as we would like. So we have to engage a hastening process to follow up that type of process. Unfortunately, this year we have been a bit short staffed and we are trying to remedy that at the moment by recruiting a couple of extra staff, which will help us get over that for the next year.

Senator HUMPHRIES—But being short staffed will not inhibit your reaching your target with respect to award modernisation?

Mr Nassios—No. The registry has certain functions in which it supports the commission as an administrator. But it also has certain functions as statutory responsibilities. The financial returns are, in essence, its statutory responsibilities. It is a group of people of approximately 20 or so that has functions in respect of financial returns, elections and rules of organisations. So that is a discrete group of persons within the registry.

Senator HUMPHRIES—Finally, I want to try to clarify something that was raised at the last estimates committee by Senator Fisher. The budget papers make reference to the registry being provided with an additional \$13.3 million over four years to rationalise and simplify awards and to lodge collective agreements. I would have thought it is not the role of the

registry to lodge agreements. It is the role of the registry to process agreements. Is that just a poor choice of words?

Mr Williams—We hope that we expressed last time and then in answering the question on notice with absolute clarity that that was a misprint by whoever put together that publication.

Senator HUMPHRIES—I am not sure that that is what was achieved last time. I am happy with that. Thank you very much.

CHAIR—There being no further questions, thank you very much.

[9.07 pm]

Australian Building and Construction Commissioner

Senator ABETZ—Can we have confirmed to us, please, the current number of staff at the ABCC?

Ms Hausler—It is 145.

Senator ABETZ—At 30 June this year, it was 147?

Ms Hausler—Correct.

Senator ABETZ—That is right?

Ms Hausler—That is correct.

Senator ABETZ—So have those two vacancies been filled, or are we actively looking to replace them?

Ms Hausler—People come and go.

Senator ABETZ—Like Mr Hadgkiss?

Ms Hausler—Correct. And as vacancies occur—

CHAIR—Has he left?

Ms Hausler—He has, yes.

Senator ABETZ—He is now deputy director or something of prosecutions somewhere.

Mr Lloyd—His last day was about a week ago, Senator.

Senator ABETZ—That allows me to place on record, at least, my appreciation for his efforts in the ABCC. Can we have a breakdown of staff member classifications and the divisions in which they are employed? Can you please take it on notice.

Ms Hausler—I can give it to you now if you like.

Senator ABETZ—No, do not bother, thanks. The variation in the numbers is so small. As long as you can indicate to me that there has not been a great shift in the classifications. Is that correct?

Ms Hausler—Yes.

Senator ABETZ—You undoubtedly have a number of court cases going at any particular time. I was wondering if you could give me a brief update in relation to four of them. There is *Stuart v Pitt*. Who would be able to assist?

Mr Lloyd—Mr Williams—Deputy Commissioner Dalglish will do that.

Senator ABETZ—Mr Dalglish, thank you. The one you filed on 12 May 2008—Stuart v Pitt, Mates and CFMEU—

Mr Dalglish—The matter has been set down for hearing for three days before a federal magistrate commencing 9 April 2009.

Senator ABETZ—Thank you. Cruse v CFMEU and McLoughlin? What is happening with that one? If you do not have the detail easy to hand, I am happy for that to be taken on notice.

Mr Dalglish—I think I do.

Senator ABETZ—Although the sound of the rattling paper might help keep my colleagues awake.

Mr Lloyd—I have some information here on it, Senator. It is in the Federal Magistrates Court. It is set down for a directions hearing on 3 November.

Senator ABETZ—So that is progressing. What about Stuart v CFMEU and Corbett? That was filed on 25 February dealing with the Morwell police and law courts complex site.

Mr Dalglish—That case is in the docket of His Honour Mr Justice Gray in the Federal Court. It is still awaiting a hearing date. Discovery has been completed but no hearing date has been set down yet.

Senator ABETZ—All right. Awaiting hearing date. The last one I want to inquire about is Hadgkiss v Buchan, Heath, Molina and CFMEU.

Mr Dalglish—That matter is for hearing in the Australian Industrial Relations Commission before Senior Deputy President Lacy to commence on 17 November 2008 in Perth.

Senator ABETZ—Thank you for that. You kindly provided a response to Senator Marshall's question EW648. Can you comment, if you have that answer? It dealt with the existing arrangements that allowed for investigations of underpayments and breaches of agreements and awards by OWS and/or the ABCC, depending on the nature of the complaint. I am just wondering how the arrangement is currently operating between those two organisations.

Mr Lloyd—Well, Senator, it is continuing as it has operated in the past. If the—

Senator ABETZ—It is all good and cooperative?

Mr Lloyd—Yes. It certainly is, yes.

Senator ABETZ—So there have not been any difficulties experienced?

Mr Lloyd—No.

Senator ABETZ—Well, I do not seek to delay the committee any further than that. I am willing to take your assurance on that. I turn to the national building code and guidelines. How have the code and the guidelines contributed to the reduction of lawlessness in the construction industry, in your view, Mr Lloyd?

Mr Lloyd—The code and guidelines are a very important element of the improved conduct in the industry. They basically reflect good and sound practice required in managing workplace relations on a building site. I think they are particularly effective because they require the contractor to meet certain standards. Of course, at risk is ultimately a contractor's capacity to tender for government work. Another important facet of the code and guidelines, of course, is that they do achieve code compliance. The agreements and the practices of a contractor must be code compliant on both their government projects and on their private sector projects.

Senator ABETZ—And do you believe that the code and guidelines have improved the culture and practices within the building industry?

Mr Lloyd—Yes. They have certainly been part of the package and an effective part of the overall package of regulating the industry.

Senator ABETZ—Much as I am tempted to ask you about the benefits for the Australian economy of that, are you in a position to be able to comment on that, or would you be relying on economic analysis done by other people to comment on that?

Mr Lloyd—Yes, Senator. To my knowledge, there is no study specifically directed to the contribution of the code and guidelines. There have been studies about the trends and productivity in the industry itself but nothing, to my knowledge, based on the specific contribution of the code and guidelines.

Senator ABETZ—How many agreements has the ABCC checked for code compliance between 1 December 2007 until 1 October 2008?

Mr Lloyd—Senator, that is a function of the Department of Education, Employment and Workplace Relations. They assess the agreements for code compliance.

Senator ABETZ—So the answer is no?

Mr Lloyd—That is right, yes.

Senator ABETZ—Thank you for steering me in the right direction. I would have been surprised if you had said none. That would have meant I would have asked a follow-up question and embarrassed myself even further. So thank you for saving me from that. Therefore, you cannot tell me how that compares with the previous 12 months. What I might do, Chair, having asked that question and that following question, is put that on notice for the benefit of the department.

CHAIR—If it makes you feel any better, Senator Abetz, I have done just the same myself.

Senator ABETZ—It is spooky for both of us that we are of a like mind to inquire into these areas. Has the ABCC continued to distribute the model clauses booklet, or was that a departmental job as well?

Mr Draffin—Senator, we have a number of fact sheets that cover various topics on the code.

Senator ABETZ—Including model clauses?

Mr Draffin—Including model clauses.

Senator ABETZ—Good. So you do do that? You are continuing to do that?

Mr Draffin—We continue to do that.

Senator ABETZ—Thank you. Has the content of the booklet been reviewed since 1 January this year?

Mr Draffin—No. I do not believe so.

Senator ABETZ—Are you able to assist me with the Code Monitoring Group?

Mr Draffin—Yes. We are on the Code Monitoring Group.

Senator ABETZ—That was scheduled to meet in August. That occurred?

Mr Draffin—No, Senator. The last meeting of the Code Monitoring Group was the 10th of this month.

Senator ABETZ—Right. So we did have one in August and we had another one in—

Mr Draffin—No. We did not have one in August. We had one in October.

Senator ABETZ—So for the August one I was asking about, I was on the money on that other than it was rescheduled for October and that has been held.

Mr Draffin—Correct.

Senator ABETZ—Are you able to share with us the outcomes of that meeting?

Mr Draffin—The Department of Education, Employment and Workplace Relations is responsible for the secretariat provisions of the Code Monitoring Group. Whilst I was present during that meeting and certainly aware of what was said and resolved, I think it would be best that the secretariat perhaps answer that question.

Senator ABETZ—All right. I will ask that that be placed on notice for the department through the *Hansard*. I thank you for that guidance. Are you able to tell us when the next meeting is scheduled, or should I be asking the department that as well?

Mr Draffin—No, I do not know that answer, Senator.

Senator ABETZ—I will put that on notice for the department. Has the membership of the group been altered since 1 December 2007? I dare say I need to ask that of the department as well, or can you help me?

Mr Draffin—I can certainly tell you that it has altered, but I could not tell you exactly the changes.

Senator ABETZ—Can you take that on notice?

Mr Draffin—Yes, we can.

Senator ABETZ—Thank you very much.

CHAIR—Senator, just on that one, would you prefer that one also to be taken on notice by the department?

Senator ABETZ—I thought Mr Dalglish was taking it on notice. I am beastly careless. Chair, what I think you are hinting out may be the best. Let us let the department take that on notice so they deal with all the secretarial matters. I think that is a good point, Chair. Thank

you for that. In responses to the estimates in May, the ABCC indicated that 24 per cent of its inquiries relate to right of entry issues. Can you provide some examples of breaches related to right of entry? Do any spring to mind that make up part of that activity? Are the statistics still about the same?

Mr Draffin—Senator, I will go to your last question and I will answer that first. In terms of right of entry breaches, for the period 1 July 2008 to 1 October 2008, in percentage terms, 18 per cent of what—

Senator ABETZ—So is that one eight?

Mr Draffin—One eight per cent of what the ABCC investigated. Twenty-two per cent of what we investigated related to right of entry provisions.

Senator ABETZ—So very similar statistics?

Mr Draffin—Yes.

Senator ABETZ—What sort of things are examples of breaches of right of entry?

Mr Draffin—A typical right of entry breach, Senator, would be the situation where a member of a union simply enters a site having no regard to right of entry provisions. That is a common complaint that is forwarded to the ABCC.

Senator ABETZ—I take you to freedom of association. Last time I think we were told 11 per cent of complaints related to that. What is the percentage for that period that you are now giving us from 1 July to 1 October in 2008, if that is a convenient window for all these matters?

Mr Draffin—Thirteen per cent.

Senator ABETZ—Thirteen per cent. So there has been a slight increase. And that would be, what—largely related to some people trying to insist on membership of an industrial organisation before they are allowed to work?

Mr Draffin—Yes, that is correct, Senator.

Senator ABETZ—What about coercion inquiries? Last time that was nine per cent.

Mr Draffin—It is 18 per cent.

Senator ABETZ—One eight. That is somewhat out of the box in comparison to the others. So there has been a doubling of that.

Senator CAMERON—It is all the bad bosses in the construction industry.

Senator ABETZ—Can I ask what are some examples of coercion or how coercion might occur on building sites?

Mr Draffin—Senator, in the main, the coercion normally relates to agreement making—union endorsed EBAs.

Senator ABETZ—Right. So not necessarily bad bosses?

Mr Draffin—Not necessarily bad bosses.

Senator CAMERON—Some could be.

Mr Draffin—Some could be, Senator, yes.

Senator CAMERON—The balance. That is what we are looking for—that balance.

Senator ABETZ—Union behaviour is calculated at seven per cent. Was that a category you provided to us last time?

Mr Draffin—I do not have a figure for union behaviour.

Senator ABETZ—Yes. I am not sure how that was arrived at. Has your rate of investigation been maintained as in previous periods? Has there been an increase in it or decrease?

Mr Lloyd—I think it has been pretty steady, Senator. We currently have 46 ongoing investigations. We have been around that 50 figure for some time now for ongoing investigations.

Senator ABETZ—What I am trying to get a handle on is, with these statistics, we can rely on them as being a fair representation of the number of investigations that have taken place over the past period?

Mr Lloyd—Yes.

Senator ABETZ—So really the only notable statistic to come out here is that coercion inquiry seems to have doubled. The others have remained relatively stable?

Mr Lloyd—Yes. The coercion figure is 18 per cent, which is up on the previous time.

Senator ABETZ—With all these various types of breaches, do you think that the officers of the ABCC are better placed to investigate these types of breaches than potentially other law enforcement agencies?

Mr Lloyd—Senator, I would not like to venture an opinion on that. We have a responsibility to discharge our functions under the act. We do it to the best of our ability. We spend quite a bit of time and training equipping our staff to do it. I would not want to say much more than that.

Senator ABETZ—Fair enough. How many notices under section 52 of the Building And Construction Industry Improvement Act to attend and answer questions in relation to breaches of the act have been issued since 1 January this year?

Mr Lloyd—I do not have that figure. I have current figures as the total number that we have issued.

Senator ABETZ—The total over the life of the—

Mr Lloyd—Over the life of the ABCC. I do not have a figure from the date that you have requested.

Senator ABETZ—All right. Can we have the total figure, please?

Mr Lloyd—The total number of notices issued since 1 October 2005 is 142. That is notices to attend and answer questions.

Senator ABETZ—Can you then take on notice for us how many have been issued since the beginning of this calendar year?

Mr Lloyd—Yes.

Senator ABETZ—Can I also inquire how many notices under section 52 to attend and answer questions—exactly the same—there have been between 1 January 2007 and the full calendar year of 2007, if that is possible?

Mr Lloyd—We will take that on notice.

Senator ABETZ—How many notices have been issued under section 52(1)(d) with respect to examinations to be conducted or documents or information to be produced in relation to potential breaches?

Mr Lloyd—Since 1 October 2005, that number is four.

Senator ABETZ—Any recently? Take it on notice. Given that it is just a handful, I was wondering if you might have a recollection whether one had been done recently. If you can let me know whether any have been issued in 2008, that would be helpful, and any in 2007. How many of these investigations have resulted in proceedings being taken in court based on evidence provided by witnesses at these examinations?

Mr Lloyd—Twenty-three examinations have resulted in proceedings being commenced.

Senator ABETZ—And does it also happen sometimes that as a result of those investigations things are able to be resolved without the need, then, to proceed?

Mr Lloyd—Yes, Senator. There have been 31 investigations where the investigation has been closed with no proceedings.

Senator ABETZ—And that is because the investigation has undoubtedly found that there has been no illegal conduct?

Mr Lloyd—Yes.

Senator ABETZ—No evidence or insufficient evidence to warrant a prosecution.

Mr Lloyd—Yes.

Senator ABETZ—Have there also been occasions when some evidence has come to light that you have been able to go to somebody and say, ‘Well, we now have certain evidence’, but they say, ‘Look, fine. We’ll mend our ways?’ As a result you determine that, given the nature of the breach, it was not worthwhile prosecuting the matter?

Mr Dagleish—Perhaps I can answer that one. Generally speaking, if there are proceedings taken after a section 52 examination, it is because the examination has revealed that any proceedings would be unsuccessful. But it is most unlikely that a section 52 notice would be issued in circumstances where it was a trivial case because that is one of the criteria when you are issuing a notice. You would not issue a notice if it was a very small matter.

Senator ABETZ—But you may what? I am more acquainted with traffic matters. You may have been investigating what you thought at one stage was a serious accident and then you realise that, from all the evidence, all you have is a bald tyre. In those circumstances, you might say to the person, ‘Next time be more careful. This is a matter of concern. Have your tyre fixed and be on the way’ sort of thing.

Mr Dagleish—If it turns out that the examination would only show a minor contravention as opposed to what was originally suspected, that could happen. That could happen.

Senator CAMERON—Proof of the object of the act.

Senator ABETZ—Of course. A judgement is made by the officers that I am sure is done in a professional manner and on the understanding that the rules of being a model litigant and not taking vexatious court actions applies to the ABCC, as it does and should do with other Commonwealth authorities.

Mr Lloyd—It certainly does.

CHAIR—Senator Abetz, it is 9.30 pm, which is our supper break, so we will suspend until 9.45 pm.

Proceedings suspended from 9.31 pm to 9.46 pm

CHAIR—I call the committee to order.

Senator ABETZ—Can I ask the ABCC how effective the compliance powers under section 52 have been with respect to witnesses providing information about lawlessness in the construction industry? Has it been found to be a useful tool?

Mr Lloyd—Senator, we have found it to be useful. The industry was characterised historically by a reluctance of people to assist investigations. That was the finding, I think, of the Office of the Employment Advocate, which had the role in the past, and the Building Industry Taskforce when it was initially set up. Regrettably, there was a code of silence approach in the industry. The power helps break that down.

Senator ABETZ—So if those powers were removed, in a nutshell, it would hamper your capacity to investigate and deal with some of the cultural issues that have been previously identified?

Mr Lloyd—Senator, I have to be careful here. It is not for me to sort of comment on what might happen in the future. All I would say is that it has proved to be an effective power.

Senator ABETZ—I understand the need for that circumspection. How many education seminars did the ABCC conduct with employers, unions and employees in the building industry in the period 30 November 2007 until 1 October 2008?

Mr Lloyd—We do not have that. We can take it on notice.

Senator ABETZ—Thank you. On average, how many downloads from your website have there been per month? Take this on notice. Even if you do have the figures, it will take too much time to tell us, let us say. Allow me to start again. Are you able to provide us with a monthly download figure from the ABCC website?

Mr Lloyd—I do not have the exact figure but I know it is in the order of 250,000 a month.

Senator ABETZ—But are you able to do that on a monthly basis?

Mr Lloyd—Yes.

Senator ABETZ—If you could do it from, say, 1 January 2007 through to 1 November 2008 and give monthly figures.

Mr Lloyd—Yes. We will do the best we can. We did change the software at one stage. We work off the platform of the portfolio of DEEWR. There have been some changes in the software analysis of our site, but we will do what we can.

Senator ABETZ—Do what you can.

Mr Lloyd—We will do what we can.

Senator ABETZ—Do what you can.

Senator CAMERON—Senator Abetz, you can discount it by 10 per cent for this month. I have been a frequent visitor.

CHAIR—When you say download, you are talking about just visitors?

Senator Ludwig—I suspect a better indication is page impressions.

Senator ABETZ—You can ask that question. I have asked mine.

CHAIR—Senator Abetz, what I am interested in myself, perhaps as an additional question, is the difference between someone who enters the website and downloads information from it as opposed to someone who simply visits it.

Senator ABETZ—What have you been up to, Senator Cameron? Have you been downloading?

CHAIR—Are you able to differentiate that?

Mr Lloyd—We do get data on different visits—downloads and impressions and other things. We take account of the fact that the model will give you what you want and there are limitations on what each one indicates. Important, I think, is to watch the trends, when you sit where I do. Taking account of all that, trends are very important—whether it is going up or down or whatever.

CHAIR—But you can provide the broader picture?

Mr Lloyd—Yes. We will try. We will provide as much as we can, yes.

CHAIR—Thank you.

Senator ABETZ—Minister, I have a few questions for you that are policy related. Does the government agree that many people believe there is a need for a special body to police the building and construction industry?

Senator Ludwig—Well, there is one. When you say ‘believe’, I can say this: it is business as usual for the ABCC. All education advice audits—I think you have heard that tonight—investigations and court proceedings will continue as normal. The ABCC continues to perform its statutory function as an independent statutory agency.

Senator ABETZ—Yes. But do you agree from even your movement through the community that many people believe there is a need for a special body such as the ABCC?

Senator Ludwig—Well, as I have said, the government will ensure there always is an appropriate regulation for Australia’s building and construction industry to ensure that things like unlawful conduct by any party, in fact, are dealt with. Really it is to ensure that all lawful conduct by all parties in the industry is the better, I think, side to the argument.

Senator ABETZ—But a special body, even if it were to be, if you like, a specialist division of Fair Work Australia?

Senator Ludwig—Well, to the extent that consultation on the structure, independence, powers, resourcing and other matters relating to the new specialist division is being conducted by the honourable Barry Wilcox QC, as I am sure you are aware. He is a former Australian Federal Court judge. He will report to the government by the end of March 2009, so I look forward to that report.

Senator ABETZ—So the government is not willing to offer a view as to whether it is of the view that there is a need for a specialist organisation such as the ABCC?

Senator Ludwig—I do not think you could take that view from what I have said. I think I have answered the question that you have asked. If you want me to take it on notice and check with Ms Gillard anything further that she might want to add in respect of what I have said, I can.

Senator ABETZ—Before the election, we were told that at least until 2010 the ABCC with its current powers would be kept. I would have thought there would be no reticence on the part of the government to acknowledge that it will—

Senator Ludwig—I am happy to acknowledge that.

Senator ABETZ—At least until 2010 there is a need for this specialist body.

Senator Ludwig—To the extent that the government's Forward with Fairness policy implementation plan includes a commitment to retain the office of the Australian Building and Construction Commission until 31 January 2010—

Senator ABETZ—You have the words that you have been told to read out. You keep reading them out so we will move on. We will move on.

Senator FISHER—If it is good enough to keep it until January 2010, why not in perpetuity?

Senator Ludwig—Well, that is the commitment we made.

Senator FISHER—So just because it is your commitment? I hope it was right, then. I hope it was evidence based.

Senator Ludwig—I am sorry. In respect of the question, I have answered it.

Senator FISHER—Sorry, colleague.

Senator ABETZ—No. A very good intervention. Is the government considering issuing a section 27 building code?

Senator Ludwig—I do not have any information on that.

Senator ABETZ—You can take that on notice. Does the government believe—

Senator FISHER—Can I ask, Senator Abetz, as a follow-up question: Minister, what do you envisage in terms of legislative provision? Will you be legislating in respect of the building industry at the same time or as part of the next bill that will be tabled in parliament? How is that going to work?

Senator Ludwig—Given that you commenced with the word ‘envisaged’, I cannot answer the hypothetical question. What I can say is a matter for government.

Senator FISHER—Do you know the answer yet? Does the government have the answer to that question yet?

Senator Ludwig—It is a matter for government.

Senator ABETZ—And you are the government. What is the government doing?

Senator Ludwig—It was a hypothetical question. In respect of that, I do not know whether I need to provide any additional information to it. But, as I have said, there is a report by Mr Wilcox. It will report by March 2009. I would have thought it would be an opportune time to see what the report said first.

Senator ABETZ—Is the government of the view that the code and the guidelines that were issued in 1997 are causing any problems?

Senator Ludwig—Well, I can take that on notice.

Senator ABETZ—As a matter of policy, does the government have concerns or privacy concerns if an employer were to pass on the names and addresses of employees to third parties?

Senator Ludwig—You might have to give that a bit more context. It would depend on whether there was privacy legislation in place, whether there were secrecy provisions in respect of the legislation that you are referring to or whether it was in respect of information that the government held or information—

Senator ABETZ—From a public policy point of view, if an employer—

Senator Ludwig—I still think you need to put it in that context—any employer in any state or any employer in any territory or any employer in respect of a government employer and then, of course, whether there is any intervening legislation which might govern the employer in that context. I am not trying to be difficult. I am trying to deal with the broader issue. If you put a scenario which is hypothetical in nature, it is very difficult to answer it, quite frankly.

Senator ABETZ—You are dealing with the specific issue to say that if there is legislation in place that says you are not allowed to, then it might be a concern to the government. I am asking in the broader context as a general question, unless legislation specifically allows it, whether the government would be concerned with employers giving out the names and addresses of their employees to third parties.

Senator Ludwig—It would still depend on the context in which it was provided and whether it was provided, where there was privacy legislation in place, in accordance with those national privacy principles.

Senator ABETZ—If it was not specifically allowed under the—

Senator Ludwig—This is the problem. We are now dealing with a hypothetical circumstance, as far as I can tell.

Senator ABETZ—This is, I would have thought, a fairly fundamental public policy principle.

Senator Ludwig—And it is.

Senator ABETZ—But if you do not have any issues, that is fine, and we will move on. But I find it passing strange that—

CHAIR—Is the tax office a third party?

Senator ABETZ—That is why I said ‘unless specifically allowed by legislation’. So with all these things there are always exceptions. I think they have now been legislated in a raft of areas.

CHAIR—And de-legislated.

Senator ABETZ—And de-legislated from time to time, as the view of the government changes from time to time. That is why I would have thought the government may have had a view on these issues. But clearly the minister finds it difficult. Chances are it is the hour of the night rather than anything else. Mr Wilcox, in one of his statements—he called it a discussion paper—told us that some of the prohibitions that have evoked criticism include prohibitions on employers providing to unions the names of new staff, job applicants, contractors or subcontractors. I would have thought the government, as a matter of policy, would be saying, ‘What on earth is it the business of contractors, subcontractors or unions to be told by an employer the name of employees let alone job applicants without the specific approval?’ I would have thought at least on that the government and the opposition might be of one mind. But, anyway, we will see what the government determines in relation to those matters. In the discussion paper, His Honour Mr Justice Wilcox postulates: ‘Is there any hard evidence to support the assertion that the industry’s present happy position is attributable to the legislation?’ Given the number of investigations and complaints that you receive, is it fair to describe the current industry’s situation as ‘happy’?

Mr Lloyd—The word ‘happy’ is an unusual description.

Senator ABETZ—Or you would have had to have spent a lot of time on the bench to come up with a description like that, so I thought you might have understood the term, Mr Lloyd, but not so. In your last annual report you say:

Anecdotal evidence from building industry participants suggests that the ABCC’s power to intervene has been a positive force.

I think you have confirmed that. His Honour Justice Wilcox then makes the observation:

However, no hard evidence of the utility of intervention is offered.

That is an implied criticism or a suggestion that this is an unsubstantiated claim in your report and I was just wondering what your response might be to that observation by His Honour?

Mr Lloyd—I obviously stand by what was in the annual report. The intervention power is used. We have used it on around about 90 occasions. We intervene not to take a particular side but to ensure that parties and the Industrial Relations Commission are aware of the obligations that ensue from the various acts. We are told quite frequently by employers—because a lot of the cases we intervene in are matters involving an industrial dispute, either actual or

threatened—that the intervention of the ABCC was seen by them to be effective in bringing the matter to a resolution.

Senator ABETZ—Of course, it is each one of those individual cases that are referred to as anecdotal evidence that, in fact, actually builds up the case and is the hard evidence in support of those powers. Can I take you to paragraph 115 of His Honour’s discussion paper in which he says:

... it understandably causes resentment amongst building workers that they, but not workers in almost any other industry—

I am just wondering if you are aware if there are other industries,—

can be summoned to give evidence about work-related events with a view to building up a case against their co-workers and/or their union.

The power to ‘be summoned to give evidence about work-related events’ is a general power, is it not, within the legislation that also applies equally to the employer side of the equation?

Mr Lloyd—Yes. All our powers relate to any building industry participant.

Senator ABETZ—His Honour does not see the need to opine on the potential understandable cause of resentment amongst building contractors and building employers, that they are being singled out unlike any other contractor or any other employer. I make that by way of a statement of observation, but I did want to assure myself that these powers to which His Honour refers apply equally. As a result, potentially these powers could be used against a contractor to provide evidence in relation to illegal conduct being undertaken by another contractor in the same sector. Is that correct?

Mr Lloyd—That is correct.

Senator ABETZ—That applies equally to both sides of the equation. Thank you for that. Whilst you, I think quite rightly, had some difficulty with the term ‘happy’ employed by His Honour in his discussion paper, would it be fair to say that rather than calling it ‘happy’, it is ‘happier’, if I can employ a similar term, and that the current level of industrial harmony and productivity on building sites is somewhat better than before the inception of the task force and the ABCC?

Mr Lloyd—I would like to make a couple of comments. Our main function in our outcome as described in the budget statements is to ensure that on building industry worksites workplace relations laws are enforced. My view is that the industry is now more lawful than what it was previously. Also, we are often told by contractors that an important benefit for them is that their site management and foremen now have more time to devote to managing the project, rather than previously when they spent a lot of time dealing with regular and frequent industrial troubles.

Senator ABETZ—If somebody had a complaint against the ABCC and its conduct, how would one potentially go about getting redress?

Mr Lloyd—There are a number of avenues. If it is a matter that is being conducted in the courts they can go to the court. They can seek relief from the exercise of our powers through taking us to the Federal Court. In regards to conduct of officers, there is a Public Service Code of Conduct and they can approach the Public Service Commission or me. There is also the

ombudsman; they could write to the government or the minister. So, there is a number of areas of complaints that are accountable.

Senator ABETZ—All those bodies might be interested to know that His Honour Justice Wilcox is of the view that they are not significant because he opined there is no significant external supervision of the ABCC, so the courts, the ombudsman and the Australian Public Service Commissioner might all be interested to know the view of His Honour that they are not significant. But, of course, that is not strange given just a few paragraphs later on in this discussion paper we are given this great insight into how Justice Wilcox is approaching this task where he tells us about a certain decision:

Marshall J followed established law however his decision illustrates the unsatisfactory nature of that law.

So here we have a judge that follows High Court decisions and precedents and we have the view being expressed that that of itself ‘illustrates the unsatisfactory nature of that law’. Can I ask, in all your experience with the ABCC has the name Professor Williams come to light as somebody that has been involved in industrial law?

Mr Lloyd—I am not aware of Professor Williams. He has written—

Senator ABETZ—Because this former would-be Labor candidate—

Senator CAMERON—Oh—

Senator FISHER—And former Labor candidate?

Senator ABETZ—No, would-be; never quite got there.

CHAIR—Can we get to the question please?

Senator ABETZ—He gives his opinion in a particular speech, which bizarrely is one and two-thirds pages of Professor Williams’s critique from a particular perspective which, might I say, to borrow a term, is one input—one point of view—but it is not from somebody who has necessarily been noted for his expertise in the industrial area, but that is fine. Expressing differing points of views would be interesting but I just happen to note there is no countervailing or balanced argument from any eminent QC who practices in the area who may have been willing to offer a differing view. I would have thought a discussion paper by its nature should have all the different points of view in relation to this.

CHAIR—Is this a question?

Senator ABETZ—I think you have raised a very fair point, Chair. No, there is not a question.

CHAIR—Are you asking Mr Lloyd something?

Senator CAMERON—Senator Abetz, that question forced me off my good behaviour.

Senator ABETZ—Now you are misleading the committee because you just said there was no question, but now you are saying it is a question. You have got to make up your mind on that. I think I have made my points, Chair, and I promised Senator Cameron 45 minutes. I think I might be giving him 47 or 48 minutes.

CHAIR—We wanted Senator Arbib to fit in there as well. Senator Cameron?

Senator CAMERON—Thank you Senator Abetz. You are extremely generous.

Senator ABETZ—As always.

Senator CAMERON—Thank you, Mr Lloyd. Are you aware of the case Steven Lovewell versus Bradley O'Carroll and others?

Mr Lloyd—Yes.

Senator CAMERON—This case was started by the ABCC by serving an official of the Queensland Plumbing Union on 24 December 2007, Christmas Eve. Is that correct?

Mr Lloyd—Yes.

Senator CAMERON—The action that was brought would potentially have left that union official and his union with significant fines, if proven?

Mr Lloyd—Yes.

Senator CAMERON—In the range of \$66,000 for the official and \$360,000 for the union?

Mr Dagleish—The allegations in the statement of claim arose under section 43 of the BCII Act and the maximum penalties for a breach of that provision are not as high as that.

Senator CAMERON—Multiple breaches can bring multiple fines?

Mr Dagleish—Subject to the totality principle.

Senator CAMERON—So the potential was there. You are not clear.

Mr Dagleish—I am absolutely clear. You are talking about a series of contraventions which would be treated as a course of conduct and it would be subject to the totality principle.

CHAIR—And under that principle?

Mr Dagleish—Under that principle, if it is treated as one course of conduct, then you look at the maximum penalties for one contravention.

Senator CAMERON—On 8 October the ABCC filed a notice of discontinuance in the Federal Court before Justice Spender; is that correct?

Mr Dagleish—Yes.

Senator CAMERON—I am asking Mr Lloyd.

Mr Dagleish—Okay.

Senator ABETZ—In fairness, Mr Dagleish is the—

Senator CAMERON—I really need it from him; I do not need it from you, Senator Abetz. Despite the notice of discontinuance, Justice Spender commented on the merits of the case. Can you advise me what Justice Spender said in relation to the ABCC case?

Mr Lloyd—He made a number of comments.

Senator CAMERON—What would be the most concerning comments for you?

Mr Lloyd—I am just reading a report on the comments. I do not have the comments themselves in front of me. There was a suggestion—I am just trying to pick it up—that somehow we had been not even-handed in our approach; I would say I do not share that view.

Senator CAMERON—I am not asking for your view. I am asking for what the judge said.

CHAIR—You were asking what the judge said and what would most concern Mr Lloyd.

Mr Lloyd—Yes, and I just told you the one that most concerned me was that—

Senator CAMERON—Justice Spender's comments were:

The case, as brought and as evidenced by the evidence yesterday, was misconceived, was completely without merit and should not have been brought.

Where does that stand in your concern?

Mr Lloyd—I disagree with it.

Senator CAMERON—I am not asking you whether you disagree with it. The judge said these things. Does that not concern you?

Mr Dagleish—I know the answer is—

Senator CAMERON—Mr Dagleish, I am not asking you the question. Mr Lloyd is responsible for this.

Senator ABETZ—I have a point of order. People and departmental secretaries are more than entitled to pass questions to those officers that have the actual knowledge. It has been an accepted and longstanding principle and to try to require Mr Lloyd to answer every particular question is quite ludicrous.

Senator CAMERON—I know, but I do not want to waste any time.

CHAIR—On the point of order, I have been watching this carefully, Senator Abetz, and Mr Lloyd has not actually deferred to the other officer; the other officer has volunteered to provide information. The nature of these questionings—

Senator ABETZ—I think a hand gesture indicated it, but that might not be recorded on *Hansard*.

CHAIR—But the nature of this question is with respect to Mr Lloyd as the senior representative of the ABCC and how he takes such criticism. And, with respect, I think that is an appropriate question for him rather than one of his—

Senator ABETZ—And he has answered it and said he disagrees with it. Then for the detail of why the ABCC disagrees with it, the person that has all the legal knowledge in relation to a legal judgement is clearly the appropriate person to answer.

Senator CAMERON—I am happy to move on. I have more questions; how the ABCC wants to answer them, I think, is up to the ABCC. On 9 January, Mr Lloyd, you issued a media backgrounder, so you are very familiar with this case. That backgrounder named in a very public way everyone involved and, given that the judge made the comments that the case was without evidence, that it was misconceived and without merit, why would you rush a backgrounder out on these individuals who had nothing to answer? Is this a publicity thing that you do automatically?

Mr Lloyd—Yes, it is. When we commence proceedings, in every case it is our practice to issue a backgrounder about what the allegations are. That is what we do in every case.

Senator CAMERON—And it does not concern you that you can issue a backgrounder giving this impression that these people are facing serious charges when your case is totally misconceived? Is that not a problem?

Mr Lloyd—We issue a backgrounder on every case when we commence proceedings.

Senator CAMERON—If your case is misconceived, do you not think that you owe both the Queensland Secretary of the PGEU and the Queensland Branch of the CEPU an apology?

Mr Lloyd—You will have to defer that to Mr Dalglish.

Senator CAMERON—This is an issue of policy; it is not a technical question. Surely you do not have to defer on whether someone is entitled to an apology when they have had such a misconceived case brought against them.

Mr Lloyd—As I said, I do not accept all of the views of the judge.

Senator CAMERON—It is not a member of the Labor Party, is it?

Mr Lloyd—Before we initiate a case we get external legal advice from external counsel.

Senator CAMERON—I will come to the legal advice. Take it on notice that I am going to ask you about the legal advice. What I am asking you now is do you not believe the individual and organisation that was subjected to this misconceived case should be entitled to an apology? It is a simple question. Yes or no?

Mr Lloyd—No.

Senator CAMERON—Why not?

Mr Lloyd—As I say, the case was commenced after a thorough investigation, consideration of the evidence and the receipt of external counsel advice. It was gone into carefully and I do not share the views of the judge about whether the case was misguided or not.

Senator CAMERON—Have you conducted a review of this case?

Mr Lloyd—We are aware of it.

Senator CAMERON—No. I am asking whether you have you conducted a review of the case.

Mr Lloyd—A review of the case?

Senator CAMERON—A review. Given that the judge made such serious statements about, basically, the professionalism of the ABCC, did you then conduct a review of that case?

Mr Lloyd—We were familiar with the case and why we commenced it. I have not gone back and conducted, if you like, a review, as to what we did. We considered it as we were going through the case as to what the prospects of success were and what the views of counsel were. We have received advice of counsel about matters that transpired during the case. That

might constitute a review, but I am confident that we followed the legal services directions fully and carefully before we commenced the case.

Senator CAMERON—I will come to the legal issue. Do you not have a responsibility as the chief executive officer of the commission to conduct a review so that you do not make these types of mistakes again? Whether that is a review of your internal processes, your investigation processes or your legal advice, is that not the proper and professional thing to do? This is public money on cases that are of no merit. Surely, this is of concern and you should professionally conduct a review.

Mr Lloyd—We do not treat the comments lightly.

Senator CAMERON—You just dismissed them.

Senator Ludwig—The witness should not be interrupted. The witness is providing an answer.

CHAIR—Senator, give the witness the opportunity to fully answer your question.

Senator CAMERON—I am sorry.

Mr Lloyd—As I say, we continuously review our procedures, how we go about things and our compliance with the requirements to bring the proceedings. We take the comments of the judge seriously but I have not conducted—and quite frankly do not see the need to conduct—a thorough detailed review of this case.

Senator ARBIB—Mr Lloyd, can I just jump in? You said that you do review your operations?

Mr Lloyd—Yes.

Senator ARBIB—Can you explain how you would go about doing that?

Mr Lloyd—In the nature of any organisation you are continuously looking at ways to improve how you go about investigations, how you bring proceedings and the efficiency of doing that. We have a prosecutions committee that meets before we commence proceedings to consider external legal advice. It is just the nature of any organisation that you do not stand still. You are always reviewing and looking to improve what you are doing.

Senator ARBIB—Do you have any examples of recent reviews that you have undertaken?

Mr Lloyd—Yes. On a regular basis we conduct what we call a quality assurance review of our investigations. That is normally done by two officers of the operations group, and they review the procedures, the investigatory activity of the investigators and how they go about their job.

We have reviewed our section 52 powers. There is a report of I think it is called the Administrative Review Council into the use of coercive powers by bodies, not the ABCC. That review enunciated 20 principles that should be followed where those powers exist, so we reviewed how we conduct our compulsory examinations against those principles. So, those are the sorts of things that do come up and you do as a normal part of running the business.

Senator ARBIB—How about in terms of legal proceedings? Have you conducted any reviews apart from this case in relation to legal proceedings that you have undertaken?

Mr Dalglish—It is fair to say that, routinely, the executive reviews the outcomes of all litigation.

Senator CAMERON—Do you provide a report to government on those reviews?

Mr Dalglish—The annual report includes a description of the cases.

Senator CAMERON—That is not what I asked you. I am not asking for a description of the cases. I am asking do you provide government with detailed analysis of the failed cases that the ABCC takes to court.

Mr Lloyd—No, we do not.

Senator CAMERON—Do you not think you should?

Mr Lloyd—No.

Senator ARBIB—Mr Dalglish, did you just say you do undertake reviews of your legal cases?

Mr Dalglish—The executive reviews all the litigation that the ABCC is involved in on a monthly basis.

Mr Lloyd—For example, we recently reviewed a major case in Perth. It was the Perth Mandurah railway case. There was a review conducted of that case, how we went about it and any lessons we can learn from it. That was a major case, so we felt it was appropriate that we have a look at it, review it and see if there was anything we can learn from it if we have a similar case of similar dimension.

Senator ARBIB—But you did not see it as appropriate to review the case that Mr Cameron is talking about?

Mr Lloyd—No.

Senator CAMERON—Could you provide us copies of the reviews that you have undertaken internally?

Mr Lloyd—Of?

Senator CAMERON—Of failed legal cases.

Mr Lloyd—Yes. We will take that on notice.

CHAIR—Just before you move on, Senator Cameron. You mentioned a review that you conducted under principles suggested relevant to the use of coercive powers?

Mr Lloyd—Yes.

CHAIR—Who had suggested those principles?

Mr Lloyd—It was an administrative review council which is a body set up to review administrative law and how it operates in the Commonwealth jurisdiction. They conduct a series of reviews and this was one which was undertaken and published, I think, this year.

CHAIR—Have you reported the outcome of your review of those guidelines?

Mr Lloyd—We issue an industry update to 2,000 recipients in the industry and we did cover it in that industry update.

CHAIR—You covered it or did you—

Mr Lloyd—We mentioned that we had done the review. The review found that we complied with the 20 principles. We took a few minor adjustments and amendments to our procedures but they were very minor.

Senator ARBIB—I do apologise; I am just trying to get my head around this one. Mr Dalgleish says that you do review legal proceedings and then we have a situation where a Federal Court judge has given a scathing report about the operations of the ABCC. You have said yourselves that you were concerned about the issue of even-handedness. But then no action was taken—no internal review and no review of internal practices in terms of this case. I find that hard to understand.

Mr Lloyd—Obviously, the comments caused concern and dismay. We do not share the view of the judge on a number of those. The case has been closely looked at. The counsel involved provided us with advice of his views of the case, how it was conducted and some concerns that he had. So, the nature of that approach is a review, I suppose, but I have not said we are going to conduct a formal review of the case.

Senator ARBIB—Are you confident, given there has not been a review, that the same problems will not reinvent themselves going forward?

Mr Lloyd—Yes, I am confident and, as I say, we strictly follow the requirements of the legal services direction for a body like ours before we commence proceedings. As a brief of evidence is carefully assembled, if we consider there is a prospect of a serious contravention which warrants proceedings it is sent to external counsel. External counsel provides advice on reasonable prospects of success. We cannot proceed unless the advice is that we have reasonable prospects of success, and then that advice is considered by a prosecutions committee before we commence proceedings.

Senator ARBIB—I accept that, but given you are—and you have stated this—concerned about the even-handedness, what steps are you taking to ensure that your organisation rectifies that going forward?

Mr Lloyd—We are even-handed. It is fundamental. Our functions are to investigate any complaint and to take proceedings against any building industry participant which we consider contravenes the law. We are in this day in, day out. We have taken cases against employers and we have won most of the cases we have taken.

Senator ARBIB—Has no action been taken to rectify what the justice said in terms of a failure to be even-handed?

Mr Lloyd—I beg your pardon?

Senator ARBIB—I am referring back to the court case and your concerns from the judgement about even-handedness.

Mr Lloyd—I am not too sure I can add much more.

Senator ARBIB—Thank you.

Senator CAMERON—Justice Spender raised the need to take proceedings not necessarily confined to civil and industrial law against a company, Underground, and its managing

director and possibly another director. His Honour said that this was a matter requiring thorough investigation. What steps have been taken by the ABCC as a result of these observations by Justice Spender?

Mr Draffin—I can answer that question for you. We only earlier this week have launched an investigation into that very issue.

Senator CAMERON—Have you also undertaken an investigation of Underground in relation to other aspects that Justice Spender raised when he suggested ‘sham, bogus and fraudulent arrangements, the purpose of which were to disguise a breach of industrial law’?

Mr Draffin—All allegations are being investigated.

Senator CAMERON—They are currently being investigated?

Mr Draffin—They are currently being investigated.

Senator CAMERON—Are they being investigated by the same officer who investigated—

Mr Draffin—No, they are not.

Senator CAMERON—Could you provide this committee a copy of your legal advice in relation to this case and in the context of such a failure?

Senator Ludwig—Chair, it is not the usual—

Senator ABETZ—There is an investigation underway—

Senator CAMERON—On a different matter.

CHAIR—Order! Let us firstly hear from the minister and if you think there is anything further you need to reflect on, Senator Abetz, I will come to you.

Senator Ludwig—In fact, there are two matters that I was going to. Firstly, I was not sure of the level of investigation that was being conducted, but if it related to an ongoing investigation in relation to a proceeding then I think we should be very cautious about the direction we are going. Secondly, the longstanding policy around the request for legal advice in these committees is that it is not provided. Of course, it does not rule out that—

Senator ABETZ—Despite Senator Wong’s protestations whilst you were in opposition.

Senator Ludwig—We all do that.

Senator ABETZ—I have not.

Senator Ludwig—I am not sure I have either, but there you go. There may be a transcript out there where I have asked, so I will not go there.

Senator ABETZ—You can ask for it, but most ministers think it is appropriate for it not to be given.

Senator Ludwig—Yes. I was only cautioning you in that.

Senator CAMERON—I am being extremely cautious because I am not asking about those matters that are currently under investigation. I am trying to look at a matter that has been settled against the ABCC. A matter that was settled is a different story.

CHAIR—You can ask, Senator.

Senator CAMERON—I am asking. Can you supply it?

Mr Dalglish—No.

Senator CAMERON—You are aware it is a criminal offence for company and/or directors to establish schemes that are designed for the purpose of avoiding their obligations under the tax laws?

Mr Dalglish—It is an extremely serious offence. In relation to the allegations by the judge that this consisted of dishonest behaviour and fraudulent behaviour by Underground, I am just astounded at those allegations because Underground was not present, Underground was not represented.

Senator CAMERON—Are you doing a defence of Underground? I am not asking you to do a defence of Underground; I am asking questions on specific matters. If you want to defend Underground and you want to spend public money doing that, do it in the courts, not here. Okay?

Mr Lloyd—Mr Dalglish is attempting to answer the question.

Senator CAMERON—No, he is not answering my question. I have dealt with public servants before him. He is not answering the question.

Mr Lloyd—He is. He is attempting to answer the question.

Senator CAMERON—Has the ABCC referred these comments of Justice Spender to the Taxation Office for investigation?

Mr Draffin—Not as yet.

Senator CAMERON—Why not?

Mr Draffin—As I said before, we are currently doing our own investigation and when that—

Senator CAMERON—Into tax matters? Do you know how to do tax investigations?

Mr Draffin—No, we do not do tax investigations, but we are launching our own investigation. Invariably when we do these sorts of investigations they sometimes touch upon tax matters and evidence of tax breaches becomes obvious to us. If that becomes obvious to us then we will refer it on to the ATO.

Senator CAMERON—Even though a senior judge—

Senator ABETZ—Can I raise a point of order? I would have thought that just what has transpired over the last few minutes will alert, if they are not already aware of it, a particular company that an investigation is about to take place into certain matters and I would have thought that that may well be prejudicial to the whole investigative process, whether the ABCC undertakes it or indeed the ATO, et cetera. I just think it is an unwise area to canvass.

Senator CAMERON—Given that a Federal Court judge has raised the issue I do not think this is new. I am just astounded that the ABCC, after these comments by a senior Federal Court judge, has not referred this to the Taxation Office. I will say no more about that. I am

just absolutely astounded. I am not asking you a question about it. I have other questions I would like to ask.

Senator ABETZ—Chair, they are entitled to respond—

CHAIR—Yes, I am afraid, Senator Cameron, that if you make a point the officers do have an opportunity to respond.

Senator CAMERON—Go for it.

Mr Dagleish—Thank you. The remarks that were made about dishonesty and fraud are ones which should only have been made on notice to the party against whom the allegations were to be made and should have afforded Underground the opportunity to be heard. There was no evidence before the judge of these matters. His statement was made when he was *functus officio*, after the case had concluded. The discontinuance had been filed and you have got to have some evidence to refer anywhere, not some allegation by a judge.

Senator CAMERON—But this is an experienced, senior Federal Court judge. He must have had some reason to do this. Did he just make this up? Is that what you are saying?

Mr Dagleish—There was no evidence before the judge to support those allegations.

Senator CAMERON—Was there any evidence before the judge that made him describe the managing director of this company that was involved in this case as a ‘foul-mouthed cowboy’?

Mr Dagleish—Yes, there was evidence, and the evidence was that the particular person from Underground gave evidence that the union official swore at him and he responded in kind. The respondent then gave evidence that that was not the order in which things happened, and no doubt His Honour formed the opinion that the respondent should be believed ahead of the witness from Underground. That is the reason that he came to that conclusion.

Senator CAMERON—In response to a question from Senator Abetz earlier in your evidence you indicated there were four cases. Senator Abetz asked about four cases that were ongoing. Did you receive legal advice on the prosecution of those cases from the same law firm or lawyer who gave you the advice that led to this debacle?

Mr Dagleish—It was a different counsel in each case.

Senator CAMERON—At least there are some small mercies here. I want to move on to another issue, your 2008 annual report.

Mr Lloyd—We have not tabled it yet.

Senator ABETZ—They are very proactive, but not that proactive.

Senator CAMERON—Sorry; the report is the *Economic analysis of building and construction industry productivity* 2008 report.

Mr Lloyd—The Econtech report.

Senator CAMERON—Yes, the Econtech report. Mr Lloyd, were you involved directly in commissioning this report?

Mr Lloyd—I approved the commissioning of the report, yes. We commissioned a report in 2007 and then we decided to update it in 2008.

Senator CAMERON—In that report, on the fourth paragraph of page 2—it is the second block—

Mr Lloyd—I do not have a copy of the report with me.

Senator CAMERON—You do not have the report? I will read it to you. It is quite easy.

Senator Ludwig—In fairness to the witness, can a copy be made so the witness can see the particular words?

Senator CAMERON—Yes, I can get copies made. When did the ABCC decide to commission the Econtech report?

Mr Lloyd—The 2008 report?

Senator CAMERON—Yes.

Mr Lloyd—It was about midyear. We made a request that the report be updated on 1 July 2008.

Senator CAMERON—When did the ABCC actually decide to get Econtech to carry out the report?

Mr Lloyd—I said when the first report was delivered in 2007 that I would, when it was appropriate, get the data updated, so it was always my intention. It was always in my mind to do that, so I cannot do much more than that.

Senator CAMERON—When did the ABCC become aware that there were major errors in the 2007 report?

Mr Lloyd—When they reported one error.

Senator CAMERON—You say one error.

Mr Lloyd—There was one error which was admitted to in the report.

Senator CAMERON—A major error.

Mr Lloyd—An error, yes.

Senator CAMERON—A major error? That is what I am asking.

Mr Lloyd—There is an error.

Senator CAMERON—No, I am asking whether it is a major error or not.

Mr Lloyd—It is an error in one of the data.

Senator CAMERON—All right. I am going to pursue this because I think you are being quite evasive on this; you are not being frank in this. This is a major error.

Senator ABETZ—How dare you accuse somebody of not being truthful?

Senator CAMERON—No, I said ‘frank’.

Senator ABETZ—This is outrageous. I hope Mr Swan calls a press conference about this.

Senator ARBIB—Mr Lloyd, the error affects the whole substance of the argument, does it not?

Senator ABETZ—It has the ring of truth, whatever that meant.

Senator ARBIB—The figures that you have provided—

Senator CAMERON—Can I take you to some—

Senator Ludwig—I would like someone to ask a question, and then the witness can be responsive to that rather than have this general hubbub.

Senator CAMERON—We will do that. Can I table this document?

CHAIR—Are we moving back to this document now?

Senator CAMERON—No. It is a different document from the one before.

Senator ABETZ—For Hansard, what is this document called?

Senator CAMERON—This document consists of extracts from the ABCC Econtech report 2007. There are two extracts from that report and two extracts from the Econtech 2008 report.

CHAIR—We have only three copies at the moment—is that right?

Senator CAMERON—No, there is—

CHAIR—Pass them here, please. You will need to wait until we pass them up, too.

Senator CAMERON—You released a backgrounder to this economic analysis in 2007.

Mr Lloyd—Yes.

Senator CAMERON—In that backgrounder you claimed credit for improved productivity and lower costs in the industry. Is that correct?

Mr Lloyd—The backgrounder, as I recollect, said that the report said that. I do not recall saying that I claimed it. The backgrounder would have been commenting on what was in the report and the conclusions in the report.

Senator CAMERON—You quoted the findings of that report, and the findings of that report were that the ABCC was responsible for improved productivity and lower costs in the industry. You claimed that as a document that could be put out in the public arena and be relied upon. Is that right?

Mr Lloyd—Yes. I issued a backgrounder about what the report's findings were.

Senator CAMERON—So when did you find out that there was a major error in the report?

Mr Lloyd—I found out there was a major error in the report—well, not a major error; there was an error in the report—when it was presented.

Senator CAMERON—So it was presented to you and you found out it was a major error—is that right? But you still put a public press release out on this report?

Mr Lloyd—I beg your pardon?

Senator CAMERON—You said you found out there was a major error when it was presented.

Mr Lloyd—Which report are you talking about?

Senator CAMERON—October 2007.

Mr Lloyd—No, there was no error in the 2007 report when it was presented to me. No, I thought you meant 2008.

Senator CAMERON—So this is more errors?

Mr Lloyd—No. There is no error in 2007.

Senator CAMERON—No. There is an error in 2007.

Mr Lloyd—No, there is not. I misunderstood what you said.

Senator CAMERON—Just tell me very quickly what the errors are in the 2008 report, because I am going back to 2007. What are the errors in the 2008 report?

Mr Lloyd—No, the 2008 report indicated there was an error in the 2007 report.

CHAIR—I might be coming in quite late, Mr Lloyd, but a moment ago you indicated that there was not an error in the 2007 report.

Mr Lloyd—The question was whether I knew about it when I received it.

Senator CAMERON—No, it was not. You said you found it. I asked you if—

Mr Lloyd—I misunderstood your question. I thought you were asking me about the 2008 report.

Senator CAMERON—We are at cross purposes. If I confused you, I am sorry.

CHAIR—You are at cross purposes and it is almost 11 o'clock at night.

Senator CAMERON—I just want to go to this. You would concede these reports were designed to say, 'We're doing a good job.'

Mr Lloyd—No.

Senator CAMERON—The reports, then, said you were doing a good job, and you put that into the public arena.

Mr Lloyd—I reported on what the report's findings were, yes.

Senator CAMERON—Even though they were flawed?

Mr Lloyd—I put the findings in the public domain in 2007, and I considered the report to be fully accurate and reliable when I did that.

Senator CAMERON—But you found out there were flaws in the report after that was put out?

Mr Lloyd—In 2008.

Senator CAMERON—Why did you not then put out another backgrounder?

Mr Lloyd—I did. I issued a backgrounder with the 2008 report.

Senator CAMERON—Tell me what you said about the flaws in the report.

Mr Lloyd—The backgrounder quotes the cost difference between commercial building and domestic residential building and it highlights what is said in the report. I am just trying to pick it up here.

Senator CAMERON—I am just asking: go to the exact—

CHAIR—Give him time, Senator.

Senator CAMERON—I am just trying to help Mr Lloyd.

CHAIR—He is in the process of answering.

Senator CAMERON—I just do not want Mr Lloyd wasting his own time on this. Just go straight to the point where you said there was an error in the report and you put that out publicly.

Mr Lloyd—Yes. In the backgrounder it says in a part of that in discussing this particular measure:

Econotech reviewed its use of the Rawlinsons data and removes anomalies. In the 2007 report some data was inadvertently juxtaposed in manually extracting it from Rawlinsons hard copy publications. The recording of incorrect data for 2007 has been rectified.

Senator ABETZ—So, you did.

Senator CAMERON—And that was the only comment you made?

Mr Lloyd—Yes. That was in the backgrounder.

Senator ABETZ—The accusation was you did not—now it is not enough.

Senator CAMERON—So, just let me go to chart 1. This is what went out and this is what Econotech was claiming was ABCC's improvement to the building industry in terms of cost differences between building and domestic.

Mr Lloyd—Yes.

Senator CAMERON—This is not accurate, is it?

Mr Lloyd—There was an error.

Senator CAMERON—Let me go to Table 5.1, which is the next one. How would you describe the error—minor or major, or not significant?

Mr Lloyd—There was an error.

Senator CAMERON—I am entitled to ask you, is it minor, major or not significant?

Mr Lloyd—I am entitled to say there is an error.

CHAIR—But how significant was the consequence of that error on the data presented?

Mr Lloyd—There is an error in the data.

CHAIR—But of what significance?

Mr Lloyd—It is an error. Other measures show that productivity has improved markedly, as does—

CHAIR—As reported, how significant was the error in terms of the data presented? Was it a five per cent difference; was it a 10 per cent difference? How significant?

Mr Lloyd—It is very hard to say in percentage terms because there has been a discontinuity.

Senator CAMERON—Can I help you on this?

Mr Lloyd—I am just trying to answer. There has been a discontinuity in the data.

Senator CAMERON—Can I answer—

Senator ABETZ—The question was asked of Mr Lloyd and you do not like other people answering Mr Lloyd's questions.

Mr Lloyd—There has been a discontinuity in the data, so it is hard to ascribe a percentage figure to it. It is an error but the measure is being corrected and the other measures point to an improvement in productivity. That is why I am not prepared to say it is a major error; I am saying there is an error.

Senator CAMERON—Even though there is an error, are you claiming all the improvement in productivity, all the improvement in costs in the building and construction industry, are because of ABCC?

Mr Lloyd—No, I am not claiming that.

Senator CAMERON—Okay—

Mr Lloyd—Can I finish?

Senator CAMERON—You have answered my question and I have got about five minutes.

CHAIR—No, you have slightly longer but, Mr Lloyd, finish your answer.

Senator ABETZ—He is not filibustering by any stretch.

Mr Lloyd—I have forgotten the question. No, I am sorry, the answer has escaped my mind now.

Senator ABETZ—It was about productivity.

Senator CAMERON—Let me go to my next question then.

Mr Lloyd—Yes, we are not taking credit. That is right. The report is about the impact of the ABCC and other reforms on industry productivity. It is not just the ABCC. I have never claimed credit. I am just saying what the report reports.

Senator CAMERON—But surely an organisation like the ABCC does not simply say, 'This is what the report reports', and put it out under ABCC press releases, on your websites, in the public arena and backgrounders. Why did you do that when table 2.1, which is the last one, shows again that there is a significant manipulation of the figures by Econotech to try to put the best possible light on this major error? In table 5.1 the time sequence that is used for the modelling is between 1994 and 2007. Then suddenly in your next report, when all that is wrong, you forget about everything up to 2004, you look for the best possible analysis you can do and you go 2004 to 2008. Did you approve that shortening of the length of that model?

Mr Lloyd—No.

Senator CAMERON—So, you would agree then that there are significant differences in terms of the outcomes of the 2007 report to the 2008 report as tabled by me today? In 1.7 you say in the 2007 report that the ABCC was responsible for reducing the cost differential. Then you look and you manipulate the figures to try and get the best you can and, even with the best one you can, you can only achieve 3.9.

Mr Lloyd—It is not me. The reason for the change in the presentation of the data in that regard is that the base year changed because there is an apparent break in the Rawlinsons data series from 2003 to 2004. Some of the cost series spiked at the time of the series break, and that is why they have changed it. They are the experts in the Rawlinsons data. Rawlinsons data is a very thick, big document and that is why it was changed in that manner.

Senator CAMERON—Can I go to another issue on this. You have heard of the term ‘garbage-in, garbage-out’ in terms of econometric modelling—have you not?

Mr Lloyd—Any modelling I suppose has that caveat on it.

Senator CAMERON—That is good. Now, let me come to—

Senator ABETZ—They have stated their main error.

Senator CAMERON—Let me come back to this issue. Senator Abetz, we had an agreement.

Senator ABETZ—Which you broke.

Senator CAMERON—No, I do not break agreements.

CHAIR—Order!

Senator CAMERON—If you go to the factors that determine the outcomes on this modelling, did the ABCC provide Econotech with some examples that they should use in the modelling?

Mr Lloyd—No. It is a model, as I understand it, owned, operated and developed by Econotech.

Senator CAMERON—Are you aware that one of the inputs was from what was done by a person called Ken Phillips from the Institute of Public Affairs?

Mr Lloyd—I know the report. From my recollection they refer to a study that he did of projects in Melbourne, but I am not too sure of the extent to which that is fed into the modelling.

Senator CAMERON—I am sure. I have read what it says, and this is a major input. This Ken Phillips study says that the ABCC and the laws that were in place made a saving in that project of \$295 million and that was fed into this model. Are you aware of that?

Mr Lloyd—I am aware of the Ken Phillips study. I would be reluctant. I would have to look at the report. I am not sure that the Ken Phillips study was fed into the model. The model takes different variables of movements and various economic data.

Senator CAMERON—Can I assure you that it was and can I ask you: are you aware of any qualifications that Ken Phillips has in this area? You said you were aware of him. What are his qualifications?

Mr Lloyd—I am aware of his study.

Senator CAMERON—Are you aware of his qualifications?

Mr Lloyd—No. I do not know Mr Phillip’s qualifications.

Senator CAMERON—I think it would be hard to say it was a study; it was more like an essay. It is not a study. Have you read it?

Senator ABETZ—What qualification do you have to make that judgement?

Senator CAMERON—Years of experience.

Senator ABETZ—Spare us, spare us.

CHAIR—Senator Abetz, Senator Cameron, it is now 11 o'clock. The remainder of the questions to the ABCC will be placed on notice. I indicate that I will also place on notice, on behalf of the committee, the question not asked about the provision of legal advice that Senator Cameron asked and my question on that respect is to Mr Lloyd. Would you please furnish the committee with the reason why that legal advice cannot be made available. Any other questions will be placed on notice. Thank you. The committee stands adjourned.

Committee adjourned at 11.01 pm