



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION  
LEGISLATION COMMITTEE

ESTIMATES

**(Budget Estimates)**

FRIDAY, 3 JUNE 2005

CANBERRA

BY AUTHORITY OF THE SENATE



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**SENATE**  
**EMPLOYMENT, WORKPLACE RELATIONS,**  
**AND EDUCATION LEGISLATION COMMITTEE**

**Friday, 3 June 2005**

**Members:** Senator Marshall (*Deputy Chair*), Senators Barnett, Johnston, Stott Despoja and Troeth

**Senators in attendance:** Senators Barnett, George Campbell, Kirk, Marshall and Troeth

**Committee met at 9.04 am**

**EMPLOYMENT AND WORKPLACE RELATIONS PORTFOLIO**

Consideration resumed from 2 June

**In Attendance**

Senator Abetz, Special Minister of State

**Department of Employment and Workplace Relations**

**Portfolio overview and major corporate issues**

Mr Finn Pratt, Deputy Secretary, Workplace Relations

Mr Jeremy O'Sullivan, General Manager, Corporate

Ms Vanessa Graham, Chief Financial Officer, Financial Management Group

Mr Simon Gotzinger, Assistant Secretary, Legal Branch, Corporate

**Outcome 2—Workplace Relations**

Mr James Smythe, Chief Counsel, Workplace Relations Legal Group

Mr Bob Bennett, Assistant Secretary, Legal Policy Branch

Mr Leigh Quealy, Assistant Secretary, Building Industry Branch

Mr Craig Symon, Group Manager, Workplace Relations Implementation Group

Mr Paul Dwyer, Team Leader, Office of the Federal Safety Commissioner

Ms Sandra Parker, Group Manager, The Office of the Australian Safety and Compensation Council

Ms Helen Bull, Assistant Secretary, National Strategy and Information Branch

Mr Nigel Hadgkiss, Director, Building Industry Taskforce

Mr John Kovacic, Group Manager, Workplace Relations Policy Group

Mr Steve Kibble, Assistant Secretary, Workplace Services Group

**National Occupational Health and Safety Commission**

Mr Tom Fisher, Acting Chief Executive Officer

**Department of Employment and Workplace Relations**

**CHAIR (Senator Troeth)**—The committee will continue the examination of the Employment and Workplace Relations portfolio. We are considering output 2.2, Workplace relations implementation, and specifically the Building Industry Taskforce, the Australian Safety and Compensation Council and the office of the Federal Safety Commission. I welcome back Senator Eric Abetz and officers of the Department of Employment and

Workplace Relations. The committee has fixed Friday, 22 July 2005 as the date for the submission by the department of written answers to questions on notice. I remind officers that in its orders of continuing effect the Senate has resolved that there is no area in connection with the expenditure of public funds where any person has the discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise.

I also remind officers that they shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. I also remind you that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. I remind participants that oral evidence and documents in estimates proceedings are part of the public record. The committee will now continue questions relating to outcome 2. Senator Campbell?

**Senator GEORGE CAMPBELL**—Mr Pratt, can you advise us how many written advices have been provided to employers by the responsible officers within the department on whether existing or proposed enterprise bargaining agreements do or do not comply with the National Code of Practice for the Construction Industry and/or the guidelines attached to the code?

**Mr Pratt**—I will call forward the officers who could assist us with that.

**Mr Quealy**—We do not have those numbers to hand.

**Senator GEORGE CAMPBELL**—You do not have those numbers?

**Mr Quealy**—No.

**Senator GEORGE CAMPBELL**—You do not know how many times you have responded to requests for advice from employers?

**Mr Pratt**—As I understand your question, you are looking for the number of times we have had enterprise bargaining agreements or certified agreement proposals put to us for assessment of compliance with the building code and implementation guidelines. Is that correct?

**Senator GEORGE CAMPBELL**—And the guidelines; that is correct.

**Mr Pratt**—Over what period?

**Senator GEORGE CAMPBELL**—I am coming to the period. I was going to ask you what the period was over which you have received them.

**Mr Pratt**—We have been assessing proposals of that sort since January 2004, I believe. So it is since the inception of the—

**Senator GEORGE CAMPBELL**—Since inception.

**Mr Kovacic**—Since around about mid-2000, once the government announced its response to the Cole royal commission. Since then there has been a more rigorous application of the code and guidelines by Australian government agencies. What that has resulted in is a number of building contractors/employers coming to us on a fairly regular basis seeking advice and assistance in terms of whether their existing workplace relations arrangements comply with

the code and guidelines. As Mr Quealy has indicated, we certainly do not have the total number of assessments that we have done over that period, but it is fairly considerable.

**Senator GEORGE CAMPBELL**—We are talking specifically about enterprise agreements.

**Mr Kovacic**—I understand.

**Senator GEORGE CAMPBELL**—When did you start to do that assessment?

**Mr Kovacic**—It probably would have been in the second half of 2003.

**Senator GEORGE CAMPBELL**—In the second half of 2003?

**Mr Kovacic**—That is correct.

**Senator GEORGE CAMPBELL**—Is that when you started assessing whether or not they complied with the building code?

**Mr Kovacic**—That is when contractors started coming to us and seeking advice on those issues.

**Senator GEORGE CAMPBELL**—And you say you do not know how many advices you have provided?

**Mr Pratt**—We would have to take that on notice, because it is quite a few, apparently.

**Senator GEORGE CAMPBELL**—Can you take that on notice and give us the response to that. How many enterprise agreements are there in the industry?

**Mr Kovacic**—We would have to take that on notice as well.

**Senator GEORGE CAMPBELL**—You are not aware of how many enterprise agreements exist in this industry?

**Mr Kovacic**—No. I think one of the issues here is that there is complexity, given that there is a combination of both federal and state agreements operating in the sector. There are also a number of contractors that do not rely on agreements as well. In terms of the precise form of workplace relations arrangements, I could not give you a sense of the total number. It would be a large number.

**Senator GEORGE CAMPBELL**—Can you tell us what the average time is that it takes to provide such advice when you are requested for advice?

**Mr Pratt**—It can take from a week or two through to a number of weeks. It depends on the complexity of the agreement which is being assessed. It varies considerably.

**Senator GEORGE CAMPBELL**—Do you have an average?

**Mr Pratt**—I do not believe we have ever calculated what that average may be.

**Senator GEORGE CAMPBELL**—Departments are usually pretty good at working out averages and the time it takes them to do this, that or the other.

**Mr Pratt**—This is probably not an area that we have measured so specifically.

**Senator GEORGE CAMPBELL**—You say that the period is from mid-2003 onwards. What is the estimated cost of providing such advices?

**Mr Pratt**—We do not know. Again, that would go to the average time involved—the number. We would have to work that out.

**Senator GEORGE CAMPBELL**—Can you take both of those questions on notice, Mr Pratt, and advise us what the average time is and what the average cost is of providing those advices?

**Mr Pratt**—We will take that on notice.

**Senator GEORGE CAMPBELL**—Can you tell us how many such advices have been provided to the employee parties to these agreements over the same period?

**Mr Pratt**—We will take that on notice.

**Senator GEORGE CAMPBELL**—I thought that would have been an easier figure for you to—

**Mr Pratt**—I am aware that there is a number, but over the period since 2003 there may be a considerable number. Do we have any idea?

**Mr Kovacic**—I think there is a number there, but I am not quite sure what the precise number would be.

**Senator GEORGE CAMPBELL**—We understand that on 8 September 2004 the CFMEU wrote to the Building Industry Branch Workplace Implementation Group asking that it be given an opportunity to be heard on the question of whether an enterprise agreement to which it was a party did or did not comply with the code. No response has yet been forthcoming. Why not?

**Mr Pratt**—What was the date of that?

**Senator GEORGE CAMPBELL**—September 2004.

**Mr Kovacic**—I think the advice you have there is incorrect, because I can recall the correspondence and I can recall responding to the correspondence.

**Senator MARSHALL**—8 September 2004.

**Mr Kovacic**—It would be approximately that timing.

**Senator MARSHALL**—Can you provide to us a copy of your response?

**Mr Kovacic**—I do not think we have that here. We will take that question on notice in terms of whether we can provide it.

**Senator GEORGE CAMPBELL**—Can you tell us what the response was?

**Mr Pratt**—This does go to communications of an individual nature between the department and an organisation seeking an assessment of an agreement. We would need to get the agreement of the party to release our response to you, I believe.

**Senator GEORGE CAMPBELL**—I think it is the party who is seeking to find out what was in the response, because they have not received a response, according to them.

**Mr Pratt**—Mr Kovacic has testified that a response was sent.

**Senator GEORGE CAMPBELL**—Does Mr Kovacic recall to whom he sent the response?



**Mr Kovacic**—I think it would have been either Andrew Ferguson or Peter McClelland.

**Senator GEORGE CAMPBELL**—Why would you have sent it to them when the correspondence was addressed to you from the national secretary, Mr Sutton?

**Mr Kovacic**—I may stand corrected. I do not have the correspondence here. It may indeed have gone to John Sutton.

**Senator GEORGE CAMPBELL**—But Mr Sutton advises us that he has not received any response.

**Mr Pratt**—In an attempt to clarify this we are seeking the correspondence right now, and hopefully across the course of the next half an hour or so we might have it in our hands and will be able to confirm to whom it went.

**Senator GEORGE CAMPBELL**—We might come back to that. On 6 May the *Australian Financial Review* reported that the minister had written to the President of the Australian Industrial Relations Commission in relation to the role of commission members in advising on whether enterprise agreements complied with the code. Did the department play any role in drafting that letter?

**Mr Pratt**—Yes.

**Senator GEORGE CAMPBELL**—How many times has the minister written to the AIRC seeking information about the role played by commissioners in resolving cases?

**Mr Pratt**—I do not know and we would not be able to tell you. We do not know how many times the minister might write to the president of the commission.

**Senator GEORGE CAMPBELL**—Can you tell us how many times the department was involved in preparing letters for the minister? Was it only the one?

**Mr Pratt**—I seriously doubt that. I think the minister and the president communicate on a regular basis about a range of matters.

**Senator GEORGE CAMPBELL**—And the department would be involved in assisting in the preparation of those?

**Mr Pratt**—In some of those, yes.

**Senator GEORGE CAMPBELL**—How many seminars has the department conducted for the Master Builders Association and/or its members on the code?

**Mr Quealy**—It has conducted a number of seminars. I cannot give you a precise number off the top of my head. I do not have that information here, but it has conducted seminars in a number of capital cities and regional centres.

**Senator GEORGE CAMPBELL**—Mr Quealy, how long will it take to you get that information?

**Mr Quealy**—I could obtain that information fairly readily.

**Senator GEORGE CAMPBELL**—Can you obtain it and let us know this morning?

**Mr Quealy**—Yes.

**Senator GEORGE CAMPBELL**—We did give you notice that we would be asking questions relating to this specific area. I assumed that you would have done your homework in this area before you came here.

**Mr Pratt**—We certainly attempt to prepare as well as possible to aid the committee in its inquiries. There is an enormous range, though, of questions that you can ask and we cannot anticipate them all.

**Senator GEORGE CAMPBELL**—I thought a lot of these would have been fairly predictable.

**Mr Pratt**—The number of seminars? That is a little bit from left field.

**Senator Abetz**—That is applicable coming from Senator George Campbell.

**Senator GEORGE CAMPBELL**—Over what period and at what cost have the seminars been conducted?

**Mr Quealy**—I would have to check on precisely when we started these, but they started earlier this year, I think—possibly late last year. Typically, they involve one or two officers. I cannot give you a cost on that.

**Senator GEORGE CAMPBELL**—Can you get that information readily while you are getting this other information?

**Mr Pratt**—Costing information we would take on notice. We can advise, though, when the seminars started, the number of them and when they were completed.

**Senator GEORGE CAMPBELL**—Have there been seminars conducted for other employer organisations?

**Mr Quealy**—There have been presentations provided by the department to other organisations, yes.

**Senator GEORGE CAMPBELL**—What are those other organisations?

**Mr Quealy**—I would have to check again on the range of presentations we have given, but they would include some of the major employer organisations.

**Senator GEORGE CAMPBELL**—Could you provide us with a list of those organisations?

**Mr Quealy**—Yes.

**Senator GEORGE CAMPBELL**—I ask you to take on notice the cost of conducting those seminars.

**Mr Quealy**—Yes.

**Senator GEORGE CAMPBELL**—How many seminars on the code has the department conducted for the construction industry unions and/or their members?

**Mr Quealy**—We have, to my knowledge, not conducted any seminars.

**Senator GEORGE CAMPBELL**—You have not conducted any?

**Mr Quealy**—None have been requested.

**Senator GEORGE CAMPBELL**—Have you only conducted seminars on the basis of them being requested or have you offered your services to the employer associations?

**Mr Quealy**—To the best of my knowledge, we have made it clear that we are always willing to talk to parties, whether they are employer associations, unions or whoever.

**Senator GEORGE CAMPBELL**—But were the seminars that you conducted for the Master Builders Association and other employer associations requested by them or did you offer to go and talk to them?

**Mr Quealy**—We have discussions from time to time with these associations. Often they will request us to come and talk to them. I think in most instances, if not all, we would have responded to specific requests from those associations.

**Senator GEORGE CAMPBELL**—Have you had conversations with the construction unions?

**Mr Quealy**—We have had a conversation. I think we had a meeting with the New South Wales CFMEU in 2004 and we indicated that we were more than happy to talk to them about the code.

**Senator GEORGE CAMPBELL**—Did you offer them a briefing on the—

**Mr Quealy**—I cannot recall the specific contents of the discussion now. But we would be prepared to give them a seminar if they requested one.

**Mr Pratt**—It is a matter of there being a standing offer available. It is a general thing. We do not go to an organisation and say, ‘Can we come and give you a seminar?’ If any parties that we are dealing with make a request for or indicate an interest in getting a more comprehensive briefing from the department, we will provide that.

**Senator GEORGE CAMPBELL**—That is what I was trying to find out. Who initiated it? Did the department initiate it or did the individuals initiate contact with the department?

**Mr Pratt**—Mr Quealy was saying that, from his recollection, in almost all cases, if not all cases, it came from the receiving organisation.

**Senator GEORGE CAMPBELL**—Is the department aware of any Commonwealth funding, direct or indirect, in either grants or loans to the Housing Industry Association Ltd or any of its subsidiaries in the course of the current and preceding financial years?

**Mr Pratt**—No.

**Senator GEORGE CAMPBELL**—You are not aware or there were not any?

**Mr Pratt**—Not to the knowledge of the people here.

**Senator GEORGE CAMPBELL**—Can you take that on notice?

**Mr Pratt**—Yes.

**Senator GEORGE CAMPBELL**—Are you aware of any projects jointly funded by the Commonwealth and the HIA in the current and preceding financial years?

**Mr Pratt**—No, we are not aware of any projects of that sort.

**Senator GEORGE CAMPBELL**—Are you aware of any in respect of the Master Builders Association and the Chamber of Commerce and Industry?

**Mr Pratt**—In relation to the building industry?

**Senator GEORGE CAMPBELL**—Yes.

**Mr Pratt**—Apparently there was a question on notice in the House on this. So we will have a response there. But as to the knowledge of those here, we are not aware of any in the building industry.

**Senator GEORGE CAMPBELL**—I was not aware of the question on notice in the House, so you might take my question on notice and provide us with whatever the appropriate answer is.

**Mr Pratt**—Yes.

**Senator MARSHALL**—And if it is a positive answer, could you identify the amounts and the purposes for which such money was provided?

**Mr Pratt**—Yes.

**Senator GEORGE CAMPBELL**—How many complaints were received by the department regarding noncompliance with awards and/or certified agreements during last year's compliance campaign in the building and construction industry?

**Mr Kovacic**—We do not have those details but we can seek to obtain them during the course of the morning.

**Senator GEORGE CAMPBELL**—Can you tell us how many staff have been involved with the compliance campaigns?

**Mr Kovacic**—Again, I would have to seek that further information.

**Senator GEORGE CAMPBELL**—What steps were taken to investigate such complaints?

**Mr Kovacic**—Again, I would have to come back to you on the details of those once I receive that later this morning.

**Mr Pratt**—The officers who would be able to answer these questions work in our workplace relations services area. They were here on Tuesday, but unfortunately they are not here today. They do not work specifically on building matters. So we will have to try and get the information from them and we will see if we can get the relevant officer to come up.

**Senator GEORGE CAMPBELL**—Can you tell us how many prosecutions were initiated by the department in response to such complaints and what have been the results of any prosecutions?

**Mr Kovacic**—Again, when we get the information and the officer we will be able to answer those questions.

**Mr Pratt**—Would it be more helpful if we were to attempt to get the relevant officer to come along and directly respond to these questions?

**Senator GEORGE CAMPBELL**—I think it would be extremely helpful.

**Mr Pratt**—We will do that.

**Senator MARSHALL**—What is the total funding now allocated for the Australian Building and Construction Commission?

**Mr Pratt**—In 2005-06 it is \$22.276 million. The funding for the Building Industry Taskforce and the ABCC is identified on page 48 of our portfolio budget statement, under table 3.1.2.

**Senator MARSHALL**—Are you in a position to provide a detailed budget allocation for the commission?

**Mr Pratt**—The detail of the allocation for the commission?

**Senator MARSHALL**—Yes.

**Mr Pratt**—That is the amount.

**Senator MARSHALL**—Yes. So that is the best detail we are able to be provided with?

**Mr Kovacic**—There is no further break-up of those figures largely because the establishment of the ABCC is contingent on legislation being passed to establish the commission, and that is obviously still subject to introduction and parliamentary passage, so the timing is unclear.

**Senator MARSHALL**—I guess that is a point I was coming to. Why has an additional \$20 million been allocated to the commission even though the legislation has not passed through the parliament? Surely you must have some idea now—

**Mr Kovacic**—It was allocated in the 2004 budget—funding for the ABCC and other elements of the government's response to the Cole royal commission.

**Senator MARSHALL**—Can you tell me what that \$20 million was earmarked for and how it was spent?

**Mr Pratt**—It is earmarked for the establishment and operation of the commission. So it would cover everything involved in operating a commission looking into the building industry.

**Senator MARSHALL**—But you have the money? The legislation has not been passed yet. But you must be in a position to know what you are going to spend the \$20 million on.

**Mr Kovacic**—I think the point that Mr Pratt made in mentioning the figures is that it is for the Building Industry Taskforce and the Australian Building and Construction Commission. So the task force is—

**Senator MARSHALL**—It is just in the bank, is it?

**Mr Kovacic**—The task force is continuing to operate and it will continue to operate until the commission is established. In the interim, the money will be expended relating to the task force's activities.

**Senator MARSHALL**—That is where I am going to. The \$20 million has been allocated to the commission in last year's budget, as you said. The legislation has not been passed to create it. You are saying to me that, even though it has been earmarked for the commission, it is being spent by the task force?

**Mr Kovacic**—No, the point I was making is that it is funding for the Building Industry Taskforce and the Australian Building and Construction Commission.

**Senator MARSHALL**—Can you break up what has been spent and where that \$20 million is being used at the moment? You are telling me it is not just there sitting in the bank waiting for the establishment of the commission.

**Mr Kovacic**—In terms of next year's financial allocation, the money will be spent by the Building Industry Taskforce in terms of its activities pending the establishment of the ABCC and will continue to be spent by the ABCC once up and running.

**Mr Pratt**—We do not actually get that money until next financial year. Part of that money goes to the ongoing operations of the Building Industry Taskforce. When the legislation is passed, if the legislation is passed, the Building Industry Taskforce will transform into the ABCC. Then the funding will be spent on the ABCC.

**Senator MARSHALL**—All right. I still do not think I have a complete picture, though. Maybe I am just getting confused from what I read in the budget papers. You are saying you do not actually have the \$20 million yet. It has not been spent. I thought Mr Kovacic was saying—

**Mr Pratt**—If we take you to page 48 maybe this will help. At about the middle of the page you will see output 2.2.7, the Building Industry Taskforce.

**Senator MARSHALL**—Yes.

**Mr Pratt**—You will see that in 2004-05 we estimate expenditure on the Building Industry Taskforce at 9.2 million. That will rise to—this is our estimate—\$22.276 million in 2005-06. You can see that the Building Industry Taskforce, if the legislation is passed, will expand into the ABCC. But you can see what our funding is for 2004-05.

**Senator MARSHALL**—Where is the rest of the \$20 million?

**Mr Pratt**—That will be spent on the Australian Building and Construction Commission as it is established.

**Senator MARSHALL**—So where is that money now? It has not been allocated yet?

**Mr Pratt**—The money has—

**Senator MARSHALL**—I am sorry, I am no accountant, nor am I necessarily an expert. I am just trying to find out where that money is.

**Mr Pratt**—I have some sympathy.

**Mr Pratt**—I have some sympathy. This is an estimate for next financial year's funding. The money has yet to be appropriated. It will be appropriated at the beginning of the next financial year. At this stage that \$22.276 million is an estimate of the funding that we will have for next financial year to operate the Building Industry Taskforce until the legislation is passed, if it is passed, and then to establish and run the Australian Building and Construction Commission from that point in time.

**Senator MARSHALL**—Can you tell me what properties are being considered for the commission, how many and where?

**Mr Kovacic**—We have established an internal working group to prepare for the establishment of the commission. I am not sure how advanced it is in terms of identifying particular properties but certainly the intention was that the commission would have offices in most if not all major cities. But I will get that further information and provide that later this morning.

**Senator MARSHALL**—Who is making up the internal working group?

**Mr Kovacic**—It is a combination of people from our corporate area in the sense of property people, our financial management area, as well as the Workplace Relations Implementation Group and the Building Industry Taskforce.

**Senator MARSHALL**—Is that a full-time working group?

**Mr Kovacic**—No, it is not.

**Senator MARSHALL**—Can you give me a picture of the amount of resources that have been put into it?

**Mr Kovacic**—It is a group that meets on an as-needed basis in essence to tease out the sorts of establishment issues that need to be progressed to ensure that, should the legislation be passed and the ABCC established, it all happens fairly smoothly. I think it involves about a half-a-dozen people, as I said, on an ad hoc basis.

**Senator MARSHALL**—Across different departments?

**Mr Kovacic**—Not across different departments, across different areas of DEWR.

**Senator MARSHALL**—About a half-a-dozen people are involved?

**Mr Kovacic**—In that sort of order, yes.

**Senator MARSHALL**—Who is in charge of that?

**Mr Quealy**—Craig Symon is chairing that group.

**Senator MARSHALL**—I want to come back to the money—reluctantly. How does the \$24 million allocated to the commission in the 2005-06 budget sit with the earlier specified amount? You may have explained this to me, but I will ask that as a specific question which may help me.

**Mr Pratt**—Certainly. It is \$22.276 million for both the task force and the commission. My understanding is that is the amount that was also flagged in the 2004 budget.

**Mr Kovacic**—It would be a similar order but a recognition that the ABCC will not be operating for the full 2005-06 financial year. So there is a slight variation there. But, by and large, it represents the money that was allocated in the 2004 budget.

**Mr Pratt**—I have a slight qualification on that advice. The original allocation was in the order of \$24 million. That was at that stage in 2004, on the assumption that the commission would commence from 1 July, whereas the \$22 million here is adjusted for the fact that it is expected that the commission will not commence until the passage of the legislation later this calendar year.

**Senator MARSHALL**—So the \$2 million difference has not been allocated, or has it?

**Mr Pratt**—It has not been allocated.

**Mr Kovacic**—Can I come back to the question about the correspondence from John Sutton and whether the department had responded. I can advise that I responded on behalf of the department on 22 November 2004 to Mr Sutton.

**Senator MARSHALL**—Are we in a position to go back to all of those questions yet?

**Mr Kovacic**—That is the only one I can answer at this stage.

**Senator MARSHALL**—I just want to ask a few questions now about the building industry code of practice and implementation guidelines. How often are the code and the guidelines rewritten or amended?

**Mr Quealy**—To my knowledge, the only revision to the guidelines occurred in late 2003.

**Senator MARSHALL**—So there has been one amendment?

**Mr Quealy**—That is to my knowledge. I do not know what, if any, variations occurred in previous years.

**Mr Kovacic**—I think the revisions that Mr Quealy is referring to are the only ones that have occurred in terms of the guidelines, and they were again part of the government's response to the Cole royal commission and involved the extension of the application of the code and guidelines to indirectly funded projects, subject to certain financial thresholds.

**Senator MARSHALL**—Could you get me the date on which that single change was made, or confirm that there has been one change and let me know when that was?

**Mr Kovacic**—We will confirm that. The change came into effect on 1 January 2004, with the revisions to the guidelines being issued in December 2003.

**Senator MARSHALL**—Mr Kovacic, you wrote to, presumably, a range of employers advising them on 18 March that the Minister for Employment and Workplace Relations, the Hon. Kevin Andrews, wrote to you advising inter alia of the review currently being undertaken of the Australian government implementation guidelines, the guidelines which underpin the national code of practice for the conduct of the industry, and seeking their views in respect of a number of matters and inviting them to provide feedback by 6 May. Did you receive feedback?

**Mr Quealy**—Yes, we have received some limited feedback.

**Senator GEORGE CAMPBELL**—Are you saying that that feedback did not have any impact upon the guidelines or lead to a review of any of the guidelines?

**Mr Kovacic**—That review has not concluded yet.

**Senator GEORGE CAMPBELL**—It has not concluded?

**Mr Kovacic**—No.

**Senator GEORGE CAMPBELL**—Have you written to them subsequent to that?

**Mr Quealy**—I think there has been correspondence to the industry subsequent to 18 March.

**Senator GEORGE CAMPBELL**—Correspondence on 22 April?



**Mr Quealy**—Yes.

**Senator GEORGE CAMPBELL**—From the minister?

**Mr Quealy**—The minister wrote to the industry on 22 April.

**Senator GEORGE CAMPBELL**—So that is still active? You are still seeking advice from the industry in respect of the guidelines?

**Mr Kovacic**—No, I think we invited comments from the industry by late April or early May, and those views are now being considered as part of the review of the guidelines which the department is conducting.

**Senator GEORGE CAMPBELL**—You said you had a limited response, Mr Quealy. How many responses did you receive to that?

**Mr Quealy**—I do not have that information with me.

**Senator GEORGE CAMPBELL**—Can you get that information?

**Mr Quealy**—Yes.

**Senator MARSHALL**—Going back to the industry code of practice and implementation guidelines, can you tell me what organisations' input is received, how such input is received and how it is solicited?

**Mr Quealy**—Sorry, I did not catch that question?

**Senator MARSHALL**—With the change or with your ongoing monitoring of the guidelines, can you tell me what organisations' input is received and how you solicit such input?

**Mr Kovacic**—In terms of the current review?

**Senator MARSHALL**—Yes. And previous reviews.

**Mr Kovacic**—In terms of previous reviews, I think the previous review was a government decision to extend, as I mentioned before, the application of the code and guidelines to indirectly funded projects. So I am not sure that there was, I suppose, a similar process adopted to the current review of the guidelines. There was one where the government certainly communicated the change to the guidelines to, I would imagine, key stakeholders. In terms of the current review, the initial sort of advice was contained in correspondence from the minister to key industry stakeholders alerting them to a review of the guidelines being conducted by the department and flagging the key areas to be explored as part of that review and inviting comment on those issues. That has subsequently been followed up, and reiterated in subsequent ministerial letters to the industry, but also I think in the letter that Senator Campbell was referring to previously which I wrote to industry stakeholders, which identified an additional issue that was being canvassed as part of the review and again invited comment on that particular issue as well.

**Senator MARSHALL**—When you say 'industry stakeholders', who do you mean?

**Mr Kovacic**—In this case it has been key employer organisations, major contractors and also Australian Public Service agencies who all have a key role in terms of application of the code and guidelines.

**Senator MARSHALL**—So you do not write to the unions?

**Mr Kovacic**—I do not think we did in this instance.

**Senator MARSHALL**—So you do not advise the unions of any updates or changes to the guidelines?

**Mr Kovacic**—At this stage, as I mentioned before, the review is still yet to be concluded. So it is not finalised. So there have not been any changes as such.

**Senator MARSHALL**—Can you tell me how much government money is contingent on compliance with the code?

**Mr Kovacic**—My understanding is that the Commonwealth construction budget—and these figures are somewhat dated—is annually in the order of about \$5 billion.

**Senator MARSHALL**—\$5 billion?

**Mr Kovacic**—Yes.

**Senator MARSHALL**—According to *Workplace Express*, Victorian construction employers and the CFMEU reached an agreement on a three-year bargaining deal on 20 April. The parties, as I understand it, are still waiting for DEWR approval as to whether this deal is compliant with the national code of practice and implementation guidelines. How many bargaining agreements do you have currently before you for assessment as to their compliance with the national code of practice and implementation guidelines for the construction industry?

**Mr Pratt**—A general estimate is about 25 on hand at the moment.

**Senator MARSHALL**—How many agreements have already been assessed?

**Mr Pratt**—That I think goes back to the earlier questioning, where we were attempting to get those numbers for you.

**Senator MARSHALL**—I am specifically talking about that current round I mentioned as well as that which *Workplace Express* talked about—ones that would have been put up since 20 April.

**Mr Quealy**—Since 20 April. I do not think we have finalised any of those assessments.

**Senator MARSHALL**—So none have been finalised. Then you will not have a view on whether any are compliant or noncompliant at this point in time?

**Mr Quealy**—No.

**Senator MARSHALL**—Why is it taking so long?

**Mr Pratt**—These assessments, particularly the ones on hand at the moment, are quite complex, and a number of them, as I understand it, are interrelated. As we talked about earlier, the assessment can range from several weeks to quite a few weeks. Obviously, these ones are in the latter category.

**Senator MARSHALL**—How complex is the code that it takes so long? We have a position where the employers and employees have reached agreements together and they send

it off to you and get your advice on whether it complies with your code, if we assume some have come in as early as April?

**Mr Pratt**—Yes. As I understand it, some of them have had different variations submitted. There have been meetings with the organisations involved. In fact, the department was meeting with a number of contractors on their proposals as recently as yesterday.

**Senator MARSHALL**—So none have been finally assessed?

**Mr Quealy**—No advice has been finalised.

**Senator MARSHALL**—So do you know when it might be? How close are you?

**Mr Quealy**—I would hope that very shortly it would be finalised.

**Senator MARSHALL**—Will we take this to be the normal period of time or would you hope to expedite this progress?

**Mr Pratt**—We try to get these things through as quickly as practicable, and it is impossible to anticipate. It depends on the complexity of the proposal.

**Senator GEORGE CAMPBELL**—Are there any matters being considered in respect of these agreements that are not currently provided for in the code of conduct?

**Mr Quealy**—No. The agreements are currently being assessed against the existing national code of practice and implementation guidelines.

**Senator GEORGE CAMPBELL**—So some of the matters raised in Minister Andrews's letter are not being also considered in the context of these agreements?

**Mr Quealy**—No.

**Senator MARSHALL**—My understanding of the Workplace Relations Act is that once an agreement has been made it has to be lodged with the commission within 21 days for certification.

**Mr Kovacic**—That is correct.

**Senator MARSHALL**—How are people able to comply with the Workplace Relations Act if you cannot give an indication of whether the agreements comply with your code in the same period of time?

**Mr Kovacic**—Our understanding is that individual contractors have not actually signed up to the agreement, if I can put it in those terms, until the department's assessment of the agreement for code compliance is completed.

**Mr Pratt**—In other words, the 21-day rule does not apply?

**Mr Kovacic**—The clock has not started ticking, to put it in the vernacular.

**Senator MARSHALL**—Can you give me an indication of the cost from the department of the assessments or the assessment process?

**Mr Pratt**—We will attempt to do such a thing. We will take that on notice.

**Senator MARSHALL**—Given what you have said, what you are really doing is vetting the agreements prior to their being made. Is that right?

**Mr Pratt**—The contractors involved are seeking an assessment of code compliance before they make the agreements. That is what is happening.

**Senator MARSHALL**—Do the contractors put to you an agreement? Do they say, ‘Look, we would intend to make this agreement if it complies’?

**Mr Kovacic**—That is correct. In this particular case, one of the key issues for contractors in the industry in Victoria, one of the key requirements, I suppose, that they have been wanting, is an assurance that the agreement is code compliant. I understand, based on advice from them, that they have made it clear in the negotiations with building industry unions in Victoria that code compliance is an essential prerequisite. They have approached the department seeking an assessment of the draft agreement that they have negotiated with the building industry unions in Victoria, and that is what is currently being undertaken by the Building Industry Branch.

**Senator MARSHALL**—To your knowledge, there is no dispute about that between the parties; they are both trying to put to you a code compliant agreement?

**Mr Kovacic**—As I have said, certainly from the employer perspective, that has been a key requirement or threshold issue. My understanding is that they have made that quite clear in negotiations with the building industry unions leading up to the draft agreement that is currently with the department for assessment.

**Senator MARSHALL**—You talk about a draft agreement. Is there one agreement before you?

**Mr Kovacic**—If I were to characterise it, it is probably a pattern agreement. But what is then required will be individual contractors to agree to that agreement or to enter into that agreement or a variation thereof to suit their particular needs and circumstances with the relevant building industry unions.

**Senator MARSHALL**—But, once the bulk of the work is done on the draft, it is like the Office of the Employment Advocate when they vet AWAs: if it is a brand-new one from a new employer there is more time spent, but once they are familiar with the processes and the clauses they do not go back reinventing the wheel, and the process speeds up. If you deal with the draft agreement then you can look at the variations as they come and it should not take so long, should it? If you are really looking at one agreement, again, I have to ask: why is it taking so long? I thought you said you were dealing with a number earlier.

**Mr Quealy**—There are a number of agreements. I think they are essentially, as Mr Kovacic said, more or less the same pattern agreement.

**Senator MARSHALL**—The same.

**Mr Quealy**—But I am not sure that it is absolutely identical. I think some of the versions may be earlier versions and so on.

**Senator MARSHALL**—Essentially, it is the one agreement you are looking at for compliance, is it not?

**Mr Kovacic**—There are probably areas of commonality. But equally, as Mr Quealy has just alluded to, there may be areas of difference.

**Senator MARSHALL**—But I thought you said you were looking at a draft agreement.

**Mr Quealy**—We are. I should have used the plural. I was perhaps a bit lax in my language.

**Senator MARSHALL**—I thought you were now presenting to me an argument that there is not pattern bargaining happening in the industry.

**Mr Kovacic**—I am not suggesting there was.

**Senator MARSHALL**—Can you tell me how these actions do not actually represent third party interventions?

**Mr Kovacic**—The code is an expression of the government saying that we are prepared to do business with, I suppose, contractors that meet particular standards. It is an element of government procurement policy, and in that sort of context it is really then up to individual contractors to make a decision about whether they wish to bid for Commonwealth work in the clear understanding of what the requirements from the purchasers' perspective are.

**Senator MARSHALL**—Thank you. Have any DEWR officers contacted building and construction industry employers with the intention of persuading them not to settle agreements with employees and their representatives?

**Mr Quealy**—Not to my knowledge.

**Senator MARSHALL**—Anyone else?

**Mr Kovacic**—Not to my knowledge. Can I just elaborate perhaps on an answer I provided previously. You asked when the correspondence to the industry about the review of the guidelines went to union bodies. I was subsequently advised that the ACTU was advised of the review and invited to comment on the issues as part of the review.

**Senator MARSHALL**—Was that in the same, or similar, terms to the letter that went to employers?

**Mr Kovacic**—It would have been in the same terms.

**Senator MARSHALL**—Thank you for clarifying that.

**Senator GEORGE CAMPBELL**—I have some questions for the Building Industry Taskforce.

**Mr Pratt**—Before we move on to that, we have some answers to your earlier questions about seminars.

**Mr Quealy**—In relation to seminars, I can run through a list of seminars that we have presented/delivered. We would have to take the costs on notice. I understand that we gave a presentation to the MBA in around February 2004. That was, I think, an MBA in New South Wales. A number of workshops were delivered to MBA members in 2005. They were in Newcastle in February 2005, Sydney in March 2005, Brisbane in March, Canberra in April, Darwin in April, Melbourne in April and Sydney in May. I do not have precise dates. As to other employer groups, we gave a presentation to the Construction Contractors Federation in Sydney in July 2004 and a presentation to the Master Plumbers and Mechanical Services Association of Australia in Melbourne in February 2005 and in May 2005. We have also delivered presentations to government departments and agencies.

**Senator GEORGE CAMPBELL**—That is the sum total of the seminars that you have run?

**Mr Quealy**—That is the information I have to hand.

**Senator GEORGE CAMPBELL**—You would not happen to have to hand the number of people who attended those seminars?

**Mr Quealy**—No.

**Senator GEORGE CAMPBELL**—What about the other information you sought, Mr Pratt, about the average time taken to provide advice on the code of conduct and guidelines?

**Mr Pratt**—No, we will have to take those on notice. We will need to do some work to get that information.

**Senator GEORGE CAMPBELL**—Just coming back to the letter that you sent to Mr Sutton. can you recall the contents of that letter?

**Mr Kovacic**—I can.

**Senator GEORGE CAMPBELL**—What were the contents?

**Mr Pratt**—My earlier answer was that it is not appropriate for to us disclose information between the department and another organisation.

**Senator GEORGE CAMPBELL**—Can I ask you to take on notice to make a copy of the correspondence available to the committee. I accept that you will have to go to the other party to seek their approval.

**Mr Pratt**—We will look at that on notice.

**Senator Abetz**—If you were to ask the recipient of the letter, they would be free to make it available to you.

**Senator GEORGE CAMPBELL**—I am asking the department to make available the copy of a letter that they sent.

**Senator Abetz**—Yes, but the department have indicated to you the difficulties. They are taking it on notice, right, and they are going to consider it. So I do not want to make a major point of this. But I think it has been indicated to whom the letter was sent and on that basis you might be able to get a copy of the letter a lot quicker. That is all I am suggesting.

**Senator GEORGE CAMPBELL**—It may well be, but I would like the letter from the department.

**Senator Abetz**—It has been taken on notice and will be considered.

**Mr Pratt**—Senator, you also wanted to get some information about building industry letters that went out earlier last year on the compliance program. The relevant officer has now arrived and is available to answer questions on that.

**Senator GEORGE CAMPBELL**—Who is the officer? I cannot see a name.

**Mr Kibble**—Steve Kibble, Assistant Secretary, Workplace Relations Services Group.

**Senator GEORGE CAMPBELL**—Can you advise us how many complaints were received by the department regarding non-compliance with awards and/or certified agreements during last year's compliance campaign in the building and construction industry?

**Mr Kibble**—There are two aspects to this. We, pursuant to the royal commission's recommendation, conducted a targeted education and compliance campaign, which the minister announced in May. In a sense, we are not receiving complaints; we are initiating inspections. During that process, in the compliance phase the department conducted an inspection of the time and wages records of a sample of over 300 employers in New South Wales, Victoria and Western Australia.

**Senator GEORGE CAMPBELL**—How were those 300 identified?

**Mr Kibble**—A combination of random selection from respondents to the National Building Construction Industry Award and the national plumbing award. There was also a number of employers who had previously been found to be in breach of awards or certified agreements, and we included them in the list as well, in a sense to follow up to see if they were still complying.

**Senator GEORGE CAMPBELL**—You were going to offer something else?

**Mr Kibble**—No.

**Senator GEORGE CAMPBELL**—How many staff were involved with the compliance campaign?

**Mr Kibble**—It is difficult to estimate in the sense that the campaign, as I said, had two elements, the education phase and the compliance phase. It involved a range of people both within the Canberra office, the National Office of Workplace Services, and then in our state offices compliance officers were involved. So it varied over that period from May up to now. There are still some people, a small number, working on the campaign. So it would vary and it is difficult to estimate an actual number.

**Senator GEORGE CAMPBELL**—At its peak what would have been the numbers involved?

**Mr Kibble**—Probably 15 officers.

**Senator GEORGE CAMPBELL**—Fifteen officers?

**Mr Kibble**—At its very peak, yes.

**Senator GEORGE CAMPBELL**—Across the three states?

**Mr Kibble**—Yes.

**Senator GEORGE CAMPBELL**—What steps were taken to investigate the complaints?

**Mr Kibble**—The normal steps in a targeted campaign. The employer was asked to provide a sample of their time and wages records. Those records were examined. Then, if there were any alleged breaches found or any possible breaches found, they went back to the employer and sought an explanation. If the explanation was not satisfactory, then we recorded a breach against them. Under the normal approach to compliance matters, they are given the

opportunity to voluntarily comply to rectify the breach. And if not, then we have prosecution action as a possibility.

**Senator GEORGE CAMPBELL**—Do you know how many random audits of the time and wages records were conducted?

**Mr Kibble**—That goes back to my earlier answer. As part of that process we had examined the records of over 300 employers. I think the number was actually 315.

**Senator GEORGE CAMPBELL**—So you have done all 315?

**Mr Kibble**—Yes, we looked at the time and wage records of all 315.

**Senator GEORGE CAMPBELL**—How many prosecutions were initiated by the department in response to this activity?

**Mr Kibble**—To date, as at the end of April, all employers found in breach have remedied the breach, with 98 per cent of those doing so voluntarily. Some employers are still being followed up, a very small number. But at this stage no prosecutions by the department have been approved, although such proceedings may arise out of the few cases we are still following up.

**Senator GEORGE CAMPBELL**—How do you satisfy yourself that the breaches have been rectified?

**Mr Kibble**—If it involved a technical breach in terms of their time and wages records or pay slips, we examine the records, the amended records or the amended pay slips. If it is a monetary breach, then through voluntary compliance, the money has been paid to the employee.

**Senator GEORGE CAMPBELL**—In the 98 per cent of cases in which you say you find breaches, do you know how many of those were for underpayments?

**Mr Kibble**—A total number of 145 employers had a breach recorded against them. Of those, there were 68 monetary breaches recorded.

**Senator GEORGE CAMPBELL**—That is underpayments?

**Mr Kibble**—Underpayments, yes.

**Senator GEORGE CAMPBELL**—At this stage you said there have been no prosecutions initiated?

**Mr Kibble**—No departmental prosecutions were approved, no.

**Senator GEORGE CAMPBELL**—How much money has the compliance campaign recovered for employees?

**Mr Kibble**—As at the end of April, \$84,063.

**Senator GEORGE CAMPBELL**—In the examination of these 315 employers did you find any evidence of employees being incorrectly classified as independent or dependent contractors?

**Mr Kibble**—Not that I am aware of, no.



**Senator GEORGE CAMPBELL**—Not that you are aware of. Is this compliance plan still under way?

**Mr Kibble**—As I mentioned, there are a couple of employers we are still chasing up and are still yet to be finalised. By and large, the compliance phase, bar those exceptions, has been finalised. Many of the breaches found were technical breaches in terms of pay slips and time and wages records. We will be looking to improve the information we provide to the industry and we are working with the employer associations to improve the information that we provide to employers in the industry about the keeping of time and wages records and also the requirements in terms of pay slips.

**Senator GEORGE CAMPBELL**—How much did the compliance campaign cost?

**Mr Kibble**—That sort of breakdown, as with a lot of the departmental activities, is difficult to estimate given the involvement of staff time. People come and go quite often and are working on a range of tasks, not just on this. I would not be able to have a detailed breakdown of the campaign as a whole.

**Mr Pratt**—Mr Kibble's point on the difficulty in assessing these things is a good response generally to the issues of the cost of managing mail-outs and seminar series and things like that. It is actually quite difficult to finally distinguish what the actual cost of such an exercise was, because people work on more than one thing. I will just flag that, in terms of our future answers on this, it is difficult for us to actually come up with a specific cost.

**Senator GEORGE CAMPBELL**—I understand, Mr Pratt. You are able to give ballpark figures?

**Mr Pratt**—And that is what we had attempted to do.

**Senator GEORGE CAMPBELL**—Mr Kibble, you said that there is no plan in prospect for a further compliance run?

**Mr Kibble**—Not at this stage, no.

**Senator GEORGE CAMPBELL**—Why is that?

**Mr Kibble**—In its compliance processes the department undertakes a range of targeted campaigns across a range of industries. We have had this major campaign in the building industry. That is not to say we will not return to the building industry at some stage in the future. But it is certainly not on the agenda in the very short term.

**Senator GEORGE CAMPBELL**—Out of the 315 companies that you examined, were any referred to the Australian tax office?

**Mr Kibble**—I can take that on notice, but I am not aware of any. That is not to say that it did not happen. We routinely refer matters that are uncovered in our compliance investigations to the relevant authority, whether it is the tax office or Immigration, as it may be. We do not typically record those numbers, we just refer them to the relevant authority for their investigation.

**Senator GEORGE CAMPBELL**—Who in the department, Mr Pratt, is actively working with the tax office on issues such as phoenix companies, tax avoidance, et cetera?

**Mr Pratt**—I am not aware of who specifically is doing that. I know that a number of parts of the department has discussions with the tax office and Treasury on a range of issues in relation to those sorts of matters. But I do not think we have got anyone specifically dedicated to that task.

**Senator GEORGE CAMPBELL**—I should put it another way: which section of the department is conducting that?

**Mr Kovacic**—Perhaps I could add to what Mr Pratt has said. Arising out of the Cole royal commission, the Australian tax office has set up a number of fora, including a building and construction industry forum that has a number of working parties attached to it. One of those working parties relates to the cash economy and another, I think, is looking at the issue of phoenix companies. The department is a member of the construction industry forum and relevant areas of the department are also involved in some of the subcommittees of that sort of forum. The area of the department that would be the focal point, if I can put it that way, would be the building industry branch in the workplace relations implementation group. The issues that are involved are part of the government's response to the findings of the Cole royal commission.

**Senator GEORGE CAMPBELL**—Is that building task force involved with the tax office or not?

**Mr Kovacic**—I think they attend meetings—

**Senator GEORGE CAMPBELL**—Or should I ask that question of the building task force group?

**Mr Kovacic**—No, from memory certainly the department in the broader sense is represented and I think the task force participates in some of those meetings as required.

**Senator GEORGE CAMPBELL**—Can we move on to the building task force now?

**Mr Pratt**—We have some further information for you from our earlier discussion around the review of the code and guidelines.

**Mr Kovacic**—In total, 11 responses have been received in the context of the current review. Two of those have been from employer associations in the industry, the Master Builders Association and the Australian Industry Group; one from a construction company, the John Holland Group; and the remaining eight are from public sector agencies that have responsibility in terms of construction activity. Perhaps in a broader sense I will mention that we have had discussions with a number of state governments, for instance, South Australia, New South Wales and Queensland, relating to the application of the code and guidelines to indirectly funded projects. We are currently seeking to have discussions with Victoria in the context of the review of the code, given that Victoria has agreed to apply the code and guidelines to indirectly funded projects in that state.

Coming back to the issue of consultation as part of the review, as we have previously mentioned there is an open invitation to any industry body to, in the widest possible sense, contribute views as part of the review. But clearly the focus of the invitations is on those bodies that the Commonwealth actually uses in terms of construction activities, primarily key contractors, subcontractors and so on.

**Senator MARSHALL**—The \$23 million allocated to the Building Industry Taskforce in the 2005-06 budget compared with the \$9 million in previous years will obviously fund greater and expanded activities. Can you give us some specifics about the new activities and programs and the number of personnel that will be deployed in this?

**Mr Kovacic**—As we have previously indicated, the resource allocation for the 2005-06 year is not only for the Building Industry Taskforce but also is to fund the operations of the Australian building and construction commission once established. In terms of the activities of the Building Industry Taskforce, they will continue as they have in this year to focus on pursuing breaches of workplace relations legislation in the building industry and bringing those matters to conclusion.

**Senator MARSHALL**—There are no new initiatives, it is just doing more of the same?

**Mr Kovacic**—It is business as usual, if I can put it that way.

**Senator MARSHALL**—So no new programs?

**Mr Kovacic**—No.

**Senator MARSHALL**—More personnel?

**Mr Kovacic**—As I mentioned before—

**Senator MARSHALL**—You have to tell me some way you are going to spend all of this extra money.

**Mr Kovacic**—It certainly is envisaged that the Australian building and construction commission, once established, will be a larger organisation than the existing Building Industry Taskforce.

**Senator MARSHALL**—But we have already established that a lot of the \$23 million allocated will end up with the task force.

**Mr Pratt**—The task force will effectively turn into the commission and it will grow in size.

**Senator MARSHALL**—One day.

**Mr Pratt**—That is right.

**Senator MARSHALL**—But I thought we established that you were not just going to sit on the money until that happens?

**Mr Pratt**—Certainly, there will be work involved with the actual establishment of the ABCC, the task force that we mentioned earlier. The implementation task force will do its work—

**Senator MARSHALL**—Yes, but you are not telling me all of the extra expenditure is going to be on the development of the new commission, surely?

**Mr Pratt**—No. Much of the expenditure will be on another—

**Senator MARSHALL**—That would lead on to another path and a lot of questions. Surely you must have some idea about where the extra money is going to be spent and how until the establishment of the commission?

**Mr Pratt**—Generally, the money will be spent as additional people come on who staff up the commission. It will be spent on the usual range of things which government agencies have expenditure on, such as accommodation and IT, in addition to staffing.

**Mr Kovacic**—Can I also point out a comparison of the role of the Building Industry Taskforce relative to the Australian building and construction commission. If one looks at the Building Construction Industry Improvement Bill 2003 and the provisions relating to the ABCC and its role, it is certainly a role which involves a range of things that currently the task force is not empowered to do. So it is a more significant role, if I can put it that way, in addition to being envisaged to be a much larger organisation than is currently the case in respect of the task force.

**Senator MARSHALL**—So there are no new programs or initiatives on the drawing board at the moment that you can point to?

**Mr Kovacic**—No.

**Senator MARSHALL**—I think we have well and truly established that the ABCC will subsume whatever is the balance of the \$23 million that is being allocated to the Building Industry Taskforce once it is created? Is it envisaged that the task force will then, I guess, seamlessly disappear as the ABCC comes into force or will we have two organisations running simultaneously?

**Mr Pratt**—No, we will not have two organisations running simultaneously.

**Senator MARSHALL**—How many prosecutions has the task force initiated from matters referred by the Cole royal commission to date?

**Mr Hadgkiss**—That figure for the task force is one.

**Senator MARSHALL**—Sorry?

**Mr Hadgkiss**—The figure is one.

**Senator MARSHALL**—One?

**Mr Hadgkiss**—Yes.

**Senator MARSHALL**—And how many of those ‘one’ have been successful?

**Mr Hadgkiss**—All of them.

**Senator MARSHALL**—One out of one. Very good. Are there any still under investigation by the task force?

**Mr Hadgkiss**—No.

**Senator GEORGE CAMPBELL**—Mr Hadgkiss, what was the cost to the taxpayer of the matter of Hadgkiss v PG and LJ Smith Plant Hire Pty Ltd and CFMEU and Others [2004], 330?

**Mr Hadgkiss**—What was the what?

**Senator GEORGE CAMPBELL**—What was the cost to the taxpayer?

**Mr Hadgkiss**—Approximately \$287,000.

**Senator GEORGE CAMPBELL**—Was the plaintiff company in the above proceedings required to contribute to these costs or was the company indemnified by the Commonwealth?

**Mr Hadgkiss**—It was indemnified by the Commonwealth.

**Senator GEORGE CAMPBELL**—So the Commonwealth picked up all of the cost?

**Mr Hadgkiss**—Yes.

**Senator GEORGE CAMPBELL**—What process was undertaken by the task force prior to the decision to initiate these proceedings?

**Mr Hadgkiss**—This was a 12-month investigation. Very early on, the task force deemed it appropriate to have the services of a Queen's Counsel, an instructing barrister and an external law firm.

**Senator GEORGE CAMPBELL**—Who gave final approval for commencement of the proceedings?

**Mr Hadgkiss**—I did.

**Senator GEORGE CAMPBELL**—Did any legal advice obtained prior to the commencement of the proceedings identify a risk that the court might determine the matter to be one that was hopeless and without reasonable cause?

**Mr Hadgkiss**—No.

**Senator GEORGE CAMPBELL**—That is what was ultimately determined by the Federal Court, was it not?

**Mr Hadgkiss**—We lost the case, yes.

**Senator MARSHALL**—Did the \$287,000 include the cost of the investigation or was that just purely the legal costs?

**Mr Hadgkiss**—In addition to that, there would have been the cost of an investigator.

**Senator MARSHALL**—Can you tell me what that may have cost? You said it went for 18 months?

**Mr Hadgkiss**—A 12-month investigation—

**Senator MARSHALL**—I thought you said it went for 18 months?

**Mr Hadgkiss**—No, for 12 months.

**Senator MARSHALL**—How much do you think it might have cost?

**Mr Hadgkiss**—I would have to take that on notice. A portion of the salary of an investigator, I would assume.

**Mr Kovacic**—I think Mr Pratt mentioned before that it is very difficult to assess the administrative costs associated with these sorts of activities given that people are not necessarily working full time on these particular projects.

**Senator MARSHALL**—If you could take that on notice and give us a figure based on what you could ascertain that would be appreciated.

**Mr Pratt**—Yes.

**Senator GEORGE CAMPBELL**—Mr Hadgkiss, what is the annual cost of maintaining the task force web site?

**Mr Hadgkiss**—I would have to take that on notice.

**Senator GEORGE CAMPBELL**—Can you tell us why the task force web site makes no mention of the decision in the matter of Hadgkiss v PG and LJ Smith Plant Hire Pty Ltd?

**Mr Hadgkiss**—Firstly, it is being considered by the task force that it would be defamatory to perpetuate the names of the parties to that proceedings where an allegation was not upheld by the court. It is frequently referred to in my addresses to industry bodies, and it is the first and only prosecution mounted by the task force to date in which we have been unsuccessful. We have won all of the remaining 11 cases to date.

**Senator GEORGE CAMPBELL**—Why would it be defamatory, Mr Hadgkiss, to put it up on the web site and not be defamatory to mention it to if you are addressing a group of employers?

**Mr Hadgkiss**—I do refer to it. It is in fact mentioned as an action that we have lost in our statistical output.

**Mr Pratt**—Just so we are clear on that. There is a difference. With the discussions with or the presentations to employers, while the case may be named, it is not the individuals which are being detailed.

**Senator GEORGE CAMPBELL**—As a summary of the case outcome on a web site, where would that be defamatory? I am not a legal person. There are plenty here who are.

**Mr Hadgkiss**—My primitive legal understanding would be that our web site is a public document—people can go into it. If they see the name of defendants in actions that were subsequently acquitted, to continue having that name on our web site, as I say, has been considered somewhat defamatory—potentially defamatory.

**Senator GEORGE CAMPBELL**—Is not a decision of the court a public document?

**Mr Hadgkiss**—If people want to see it they are welcome to go to the holdings of the Federal Court and seek access to the court records.

**Mr Kovacic**—I think what Mr Hadgkiss is talking about is minimising the potential for presentation of the name to be misconstrued.

**Senator KIRK**—There is no reason why you could not put out a summary of the case and the outcome there and then, if people are interested, then they can take the course of going to the court documents and viewing them if they wish to.

**Mr Hadgkiss**—I will take further legal advice on the consequences of that.

**Senator GEORGE CAMPBELL**—Mr Hadgkiss, in answer to question W085-05, 31 May and 1 June 2004, the task force advised that there had been no authorisation issued for any covert recordings by task force officers. Is this still the case?

**Mr Hadgkiss**—I think you said June. To my knowledge, there have been no authorisations.

**Senator GEORGE CAMPBELL**—None. Were the secret tape-recordings referred to by the Federal Court in the matter of *Ponzio v Multiplex Ltd*, 381 of 2004, FCA, dated 3 May 2005, authorised by the task force in accordance with its policy and procedures manual?

**Mr Hadgkiss**—My understanding is that took place before the policy was established, but I will take it on notice.

**Senator GEORGE CAMPBELL**—Is the task force policy that its officers can recommend to others—

**Mr Hadgkiss**—Sorry, before we go on, I do not exactly think the facts are as you say—that Ponzio or the office that you named made covert recordings. We should not be speculating about a matter that is currently before the court.

**Senator MARSHALL**—No, that was not said. What was the case? We were talking about the secret tape-recordings referred to in the Federal Court matter of *Ponzio v Multiplex Ltd*. No-one went further than that, Mr Hadgkiss.

**Senator GEORGE CAMPBELL**—Were they authorised by the task force in accordance with its policy and procedures manual?

**Mr Hadgkiss**—I really should answer that it is an operational matter which will be scrutinised by the court, and I think it would be improper for me to canvass matters currently before the court.

**Senator GEORGE CAMPBELL**—Is it task force policy that its officers can recommend to others and be complicit in secret tape-recordings, provided the task force officer himself or herself does not actually do the recording and that such action does not require authorisation?

**Mr Hadgkiss**—That is a question that, if it arose, our in-house lawyers would provide advice on as to the legal propriety of the proposed actions.

**Senator GEORGE CAMPBELL**—So you are saying that that may in fact be possible?

**Mr Hadgkiss**—I am definitely not saying that. I am saying it is a matter that would be referred to the in-house legal officers for adjudication as to the appropriateness of that action and whether it breached relevant legislation or required access to the in-house policy of the task force.

**Senator GEORGE CAMPBELL**—Will secret recordings that have not been authorised by the task force but have been made by others with task force officers' approval and encouragement continue to be pressed as evidence in future court proceedings?

**Mr Hadgkiss**—Again, this is a matter that would depend on the circumstances of each case, and legal advice would be sought.

**Senator GEORGE CAMPBELL**—Have there been any instances where task force officers have taped conversations without authorisation and contrary to task force guidelines?

**Mr Hadgkiss**—Not to my knowledge, no.

**Senator MARSHALL**—Let us just talk about the policy for a moment. I understand your answer to the question about getting some legal advice at the time, but I want to specifically

ask: is it task force policy that its officers could recommend to others and be complicit in secret tape recordings provided that the task force officer, himself or herself, did not actually do the recording and that such action did not require authorisation?

**Mr Hadgkiss**—From what I glean from that, again, my answer cannot change. It would depend on the circumstances of each case.

**Senator MARSHALL**—It is certainly your policy to disallow it?

**Mr Hadgkiss**—Again, it would depend on the propriety of the actions, the jurisdiction, the law prevailing in that jurisdiction and the advice obtained from in-house legal officers.

**Senator MARSHALL**—I just want to be clear. You may do it depending on what your advice is and the circumstances at the time?

**Mr Pratt**—This is highly speculative. There is nothing in the task force's policy that actually covers this. What Mr Hadgkiss is saying is that if a circumstance were to arise where it might even be considered that this was an appropriate action—and we are not saying that it would—we would have to take legal advice on it. But there is no part of the task force's policy which actually authorises this in any circumstance.

**CHAIR**—So this is a hypothetical situation?

**Mr Pratt**—It is a hypothetical situation.

**Mr Hadgkiss**—I do not wish to appear evasive, but these are issues currently being canvassed before the Federal Court in this very case to which the honourable senator has referred.

**Senator GEORGE CAMPBELL**—We understand that. I suppose the point that we are coming from, Mr Hadgkiss, is the reverse, and that is whether or not it is standard practice for you not to secretly record?

**Mr Hadgkiss**—It is not standard practice, because it is not a thing that arises, to my knowledge, in day-to-day activities of the task force.

**Senator GEORGE CAMPBELL**—But it has arisen in fact in this case?

**Mr Hadgkiss**—And that matter is currently being contested before the Federal Court.

**Senator GEORGE CAMPBELL**—Is there any potential set of circumstances where officers under you could be complicit in conducting—

**CHAIR**—Senator Campbell, that is a totally hypothetical situation and asks the officer to speculate on future circumstances, which I do not think is appropriate.

**Senator GEORGE CAMPBELL**—I am not asking him to speculate; I am asking in which circumstances where officers under Mr Hadgkiss could be doing it without his knowledge.

**CHAIR**—I do not think that is appropriate.

**Senator GEORGE CAMPBELL**—That is not a speculative question.

**CHAIR**—It is a speculative question.



**Senator MARSHALL**—Let me ask a specific question: is it task force policy to enable covert taping by others?

**Mr Hadgkiss**—No. It is not addressed in policy, as Mr Pratt said.

**Senator GEORGE CAMPBELL**—Is it your attention to address it in policy, Mr Hadgkiss?

**Mr Hadgkiss**—Following the decision of the Federal Court on the propriety of the actions—and indeed, again, Queen’s Counsel is representing the task force in this matter—so far His Honour Justice Ryan has ruled in favour of the task force. That is a matter that will go to trial. He is not excluding the evidence that we are now speculating upon.

**Senator GEORGE CAMPBELL**—Does the task force operate in accordance with the prosecution policy of the Commonwealth?

**Mr Hadgkiss**—Yes.

**Senator GEORGE CAMPBELL**—In the same way as the Commonwealth DPP or some other policy?

**Mr Hadgkiss**—Yes.

**Senator GEORGE CAMPBELL**—It does?

**Mr Hadgkiss**—For criminal matters, yes.

**Senator GEORGE CAMPBELL**—Does the task force have a zero tolerance approach to breaches of industrial laws within its area of responsibility?

**Mr Hadgkiss**—Where legal advice received from external advisers is to the effect that sufficient evidence exists and it is in the public interest to proceed, then based upon that legal advice I will make a decision to prosecute.

**Senator GEORGE CAMPBELL**—How does the zero tolerance policy and the decision to prosecute in the matter of *Pine v Seelite Windows and Doors Pty Ltd* square with the prosecution policy of the task force?

**Senator Abetz**—Wait a minute. The answer given by Mr Hadgkiss did not concede, as I understood it—I might be wrong and I may be embarrassed and corrected on this—that there was a zero tolerance policy.

**Senator GEORGE CAMPBELL**—I thought he did.

**Mr Hadgkiss**—A zero tolerance approach is that we will not necessarily act on every allegation made to the task force. That would be a capricious decision. As I say, all decisions to prosecute are not taken lightly and all decisions taken to prosecute are based invariably on counsel’s advice—certainly external law firms, not my own internal legal officer’s recommendation. Even then we are at pains to ensure that Commonwealth policy is being applied, it is in the public interest and, moreover, that there is sufficiency of evidence to have a large probability of success.

**Senator GEORGE CAMPBELL**—In the case of the *Seelite* matter, were you given advice to proceed with that?

**Mr Hadgkiss**—Yes.

**Senator GEORGE CAMPBELL**—You were?

**Mr Hadgkiss**—By external—

**Senator GEORGE CAMPBELL**—What was the cost to the taxpayer of the Seelite proceedings referred to above?

**Mr Hadgkiss**—\$7,700.

**Senator GEORGE CAMPBELL**—What was the outcome of the case?

**Mr Hadgkiss**—The outcome of the case was, as I understand Justice Finkelstein, the contractor concerned, that you have just named, pleaded to payment of strike pay. His Honour Justice Finkelstein recorded that fact.

**Senator GEORGE CAMPBELL**—But awarded no damages?

**Mr Hadgkiss**—He awarded no damages. He took into account that the defendant, Seelite Windows, had taken remedial action as a direct result of an initiation by the task force, and the fact that he had shown contrition.

**Senator MARSHALL**—I want to come back to the zero tolerance policy for a moment. I agree with what the minister said. What you have just described does not really sound like a zero tolerance position, but I thought the official position of the task force is zero tolerance. I know in previous estimates you have clearly put to the committee that you have a zero tolerance approach.

**Mr Hadgkiss**—In those circumstances, yes.

**Senator MARSHALL**—Can you explain to me the difference between a previous zero tolerance position you have had and the one you have got now?

**Mr Hadgkiss**—A lot has been placed on this expression ‘zero tolerance’. Some would have it that every time the task force receives a complaint we race out and prosecute, which is a zero tolerance approach. It is a zero tolerance in the sense that, once a matter is fully investigated, once my internal lawyers believe that there is a prima facie case, they then refer it to one of our six external law firms. Those law firms in turn may recommend that counsel’s advice be received. We take that recommendation on board. Following the advice, either from the law firm or from counsel, that there is, as I say, sufficient evidence and it is in the public interest, then there is a zero tolerance approach; yes, we will proceed based on that. We do not warn people. I understand the Office of the Employment Advocate, the OEA, had a philosophy of voluntary compliance. The approach of the task force has been prosecution in the circumstances I have outlined.

**Senator MARSHALL**—So the public interest aspect is determined by what?

**Mr Hadgkiss**—A number of factors, mainly enunciated in the DPP guidelines. For example, it is a deterrent effect in systemic conduct, such as the matter that Senator Campbell has referred to, the Seelite matter, that of strike pay.

**Senator KIRK**—How many cases have you referred to external advisers for advice where they have come back and said either that there is insufficient evidence and/or that it is not in the public interest?

**Mr Hadgkiss**—To put things in perspective, the task force has received nearly 3,000 inquiries. As of about a week ago, we had 119 investigations on board. That is just one snapshot of the task force. As I say, we have had a 2½ year history. It would be an extremely difficult figure to come up with for when we have gone for external legal advice. That is continually sought and where we have had advice that it is not appropriate to proceed—

**Senator KIRK**—So in the vast majority of cases you would have advice not to proceed?

**Mr Hadgkiss**—Definitely not. As I say, matters are handled by our in-house lawyers. They are experienced individuals. They would look at the evidence and they would make a preliminary recommendation to me that it was appropriate in their view to proceed and they would then go to an external law firm. That external law firm will prepare all of the necessary documentation for the statement of claim. Or in matters that have gone to the Director of Public Prosecutions they in turn would prosecute it on our behalf.

**Senator MARSHALL**—You mentioned a panel of external law advisers/legal advisors. Does that regularly change?

**Mr Hadgkiss**—No. That panel of six law firms, I understand, has been a regime in place for several years. I also understand that there is a re-tendering process under way at present.

**Senator MARSHALL**—Can you provide to the committee a list of the panel of external legal advisers and how much money has been paid to each one of them?

**Mr Hadgkiss**—By the task force?

**Senator MARSHALL**—Yes.

**Mr Hadgkiss**—Yes.

**Senator MARSHALL**—You can take that on notice.

**CHAIR**—At this point, we will break for morning tea.

**Proceedings suspended from 10.44 am to 11.02 am**

**Senator GEORGE CAMPBELL**—I just want to go back to *Ponzio v Multiplex*, Mr Hadgkiss, because I am a little bit confused. I think I understood you to say that in respect of the taping, that is something that the task force examines in the light of each set of circumstances and will take legal advice in respect of whether it should or should not proceed to do that. We were talking about whether the task force had a policy in this area. Before the *Ponzio v Multiplex* case, was there a policy in place by the task force on tape recordings?

**Mr Hadgkiss**—I really will have to take that on notice. Again, I am not sure of the date of that. Again, I am reluctant to—

**Senator GEORGE CAMPBELL**—It is 3 May 2005.

**Mr Hadgkiss**—I would imagine that the policy had not come into place at that time.

**Senator GEORGE CAMPBELL**—Had not come into place?

**Mr Hadgkiss**—No. It was being drafted at that time, I seem to recall.

**Senator GEORGE CAMPBELL**—So the task force was drafting a policy dealing with secret tape recordings, but it never got put into practice; is that what you are saying?

**Mr Hadgkiss**—Again, it is speculation on my part. The task force had not long been formed, based on the date that you referred to. It was only a matter of a few months. A whole deal of policy was being drafted at that juncture.

**Mr Pratt**—Which date are you talking about? I thought you said something about May 2005?

**Senator GEORGE CAMPBELL**—The case *Ponzio v Multiplex* is 381 of 2004, and there is a date in brackets of 3 May 2005, which I presume is when the case was heard?

**Mr Hadgkiss**—There was an application made by Multiplex to not have that evidence admitted. I have given you the results of His Honour's decision there. I thought you to say that this incident that you are referring to occurred in May 2003. It is when the incident occurred that is really an issue here.

**Senator GEORGE CAMPBELL**—It may well be that it occurred in 2003. The only date I have is 3 May 2005.

**Mr Hadgkiss**—As I understand it, the policy came in some time in the latter part of 2003.

**Senator GEORGE CAMPBELL**—So there actually was a policy in place in 2003?

**Mr Hadgkiss**—Certainly by the end of 2003, yes, but not specifically dealing with this issue.

**Senator GEORGE CAMPBELL**—Sorry, not specifically dealing with what issue?

**Mr Hadgkiss**—The issues to which you refer, this matter that is currently before the court.

**Senator GEORGE CAMPBELL**—The *Ponzio* one?

**Mr Hadgkiss**—Yes.

**Senator GEORGE CAMPBELL**—And presumably there was a general policy about—

**Mr Hadgkiss**—As Senator Marshall is aware, I have already tabled before the Senate the task force's internal policy.

**Senator GEORGE CAMPBELL**—Has he?

**Senator MARSHALL**—I do not think I have seen it, actually. Was that tabled after the last estimates?

**Mr Hadgkiss**—No, I think it was during the Senate inquiry into the Building and Construction Industry Improvement Bill in early June last year, when I think you were present. In a nutshell, Senator Campbell—

**Senator MARSHALL**—This is actually the legislation part of the references committee that did that inquiry. Senator Campbell is on it, too. We will get the committee secretary to see whether that was tabled. If it was, we will have it. If not, we will get you to give it to us again or for the first time. I again come back to the *Seelite* case. You gave us a view of what the Federal Court said. But did not the Federal Court say in its decision that it was much ado about nothing and the contravention of the law was so minor that no penalty was warranted? Would you agree with that statement?

**Mr Hadgkiss**—I understand that His Honour may have said words to that effect, yes.

**Senator MARSHALL**—He went on to say that the contravention was inadvertent and was unlikely to recur, that the wages paid were insignificant and in the circumstances it would be quite wrong to punish Seelite.

**Mr Hadgkiss**—He may well have said that, yes.

**Senator MARSHALL**—But given that is what the Federal Court did find, you say it was still in the public interest to prosecute in that case?

**Mr Hadgkiss**—Yes, because within a week his brother judge, on remarkably similar facts to the Seelite decision, fined the offenders \$900. That was Justice Ryan. Nowhere in His Honour's judgment did he say that it was an inappropriate or a trivial matter.

**Senator MARSHALL**—But that is a different case.

**Mr Hadgkiss**—If I may finish?

**Senator MARSHALL**—Yes.

**Mr Hadgkiss**—Indeed, a week later Justice Merkel heard a matter in similar circumstances as to Seelite, and again His Honour made no critical remarks. This is part of a large action, you must bear in mind. We have 37 respondents before the court, including Multiplex, the CFMEU, the ETU, the CEPU, 11 subcontractors, six shop stewards, two union organisers, a union delegate and a number of employees of Multiplex and two contractors. This follows a very large investigation by the task force into systemic payment of strike pay that occurs in Victoria on building sites. Seelite was one of, as I say, 37. So far at least five, to my knowledge, have pleaded guilty to the conduct in question, that of paying strike pay. Indeed, the feedback to the task force from the industry is that the effect of these prosecutions is that strike pay is hopefully now under control.

**Senator MARSHALL**—You think that is probably as a result of your zero tolerance policy?

**Mr Hadgkiss**—It is probably as a result of this large number of prosecutions mounted. As I say, there were 37 respondents and, indeed, more as we speak. Our legal advisers are telling us of other people to be prosecuted.

**Senator Abetz**—With regard to Seelite, let us not forget that that company, as I understand it, pleaded guilty to the charges.

**Senator MARSHALL**—Yes.

**Senator Abetz**—They must have come to their own decision on legal advice that there had been a breach of the law that was not so insignificant as would have allowed them to run a defence, one would imagine. I do not think we should necessarily by implication, as I am reading it, be critical of the task force for having brought the prosecution. I also indicate the experience of a lot of people, be it in industrial commissions, in courts of law, that with similar facts and circumstances, although it should not happen, different judges take a different view and make different comments on it. But I think the fact that the company pleaded guilty would indicate that the task force was on pretty strong ground to have brought the prosecution.

**Senator MARSHALL**—When the company pleads guilty I would say you are on very, very strong ground to be successful. In fact, I do not see how it could be otherwise, and I make no comment about the similarity or otherwise of other cases, but I suspect they are all different. I simply make the point, because it is relevant to the zero tolerance policy and your definition, Mr Hadgkiss, of the public interest. I just wanted to get your comments on the judge saying that the contravention of the law was so minor that no penalty was warranted and that the contravention was in fact inadvertent. I accept what the minister has said; they still plead guilty. But the contravention was inadvertent.

**Mr Hadgkiss**—In isolation, yes. But, as I say, when one looks at—

**Senator MARSHALL**—If you can expand further—

**Mr Hadgkiss**—Let me finish—

**Senator MARSHALL**—I want to give you the opportunity to expand further on the point you are going to make. You talk about the wider basket of prosecutions. But Seelite, in any event, fell into that, even though it was described as a very minor contravention.

**Mr Hadgkiss**—One important factor here is that by pleading guilty Seelite is now available to assist the prosecution and indeed the task force in giving evidence against others. I am not like the DPP; I cannot indemnify parties. We have to get a plea of guilty, as it were, in order to pursue potential further actions.

**Senator MARSHALL**—I am sorry, I do not understand.

**Mr Hadgkiss**—There are obviously other parties in this operation that will not be pleading guilty. As it is, those that plead guilty, of course, leave themselves open to then having to give evidence against other people by admitting the facts, and that is another factor that has to be taken into consideration.

**Senator MARSHALL**—Luckily, I am not a lawyer, but can you just explain it to me?

**Senator Abetz**—There are 37 respondents.

**Senator MARSHALL**—Did I see everyone groan in the room? Surely there are some other people in the room who are not lawyers?

**Mr Pratt**—There are a number of non-lawyers in here.

**Senator MARSHALL**—Thank you. I am relieved to know that.

**Senator GEORGE CAMPBELL**—There are some sensible people in the room.

**Senator MARSHALL**—Thank you, Mr Hadgkiss.

**Senator GEORGE CAMPBELL**—Mr Hadgkiss, does the task force maintain files, either hard copies or in electronic form, on individuals?

**Mr Hadgkiss**—In what sense?

**Senator GEORGE CAMPBELL**—Do you keep files on individuals?

**Mr Hadgkiss**—No.

**Senator GEORGE CAMPBELL**—You do not?

**Mr Hadgkiss**—No.

**Senator GEORGE CAMPBELL**—For no purpose at all?

**Mr Hadgkiss**—If you are talking about profiling people—with the exception of certain union officials where the task force has current actions against them for revoking their permits. Obviously, their conduct has come into question and, yes, the task force would maintain a profile on that person in order to acquaint the commission or court of that person's indiscretions of the past.

**Senator GEORGE CAMPBELL**—For how long do you keep these files?

**Mr Hadgkiss**—Until the matter is determined.

**Senator GEORGE CAMPBELL**—And are they then destroyed?

**Mr Hadgkiss**—Then they would be filed and archived.

**Senator GEORGE CAMPBELL**—So you actually do have files on individuals?

**Mr Hadgkiss**—Where matters are being completed, as I say, in the circumstance as outlined.

**Mr Kovacic**—But I think the point that Mr Hadgkiss was making is that those files are in the context of investigations which the task force is conducting, as opposed to files on individuals per se.

**Senator GEORGE CAMPBELL**—Yes, I understand that. But they are still keeping files on individuals.

**Mr Hadgkiss**—In the circumstances—

**Senator GEORGE CAMPBELL**—Even after the case has been completed and the issue has been dealt with.

**Mr Pratt**—They are files on cases. Some cases will involve organisations and companies and some cases will involve individuals. They are files on cases.

**Senator MARSHALL**—Let us be clear about this. You are saying that there are no files in any form kept on individuals unless they are part of an investigation that has been initiated?

**Mr Hadgkiss**—Correct.

**Mr Pratt**—And this is consistent of course with DPP guidelines.

**Senator MARSHALL**—I am not getting into that, I am just asking what the task force does. Would it matter whether or not the individual was the subject of the investigation?

**Mr Hadgkiss**—Obviously they are the subject of an investigation for us to open a file. Where complaints have been made against individuals and it comes to the task force's attention that this person's name is continually the subject of complaint, obviously our lawyers will then consider the possibility of seeking an application to revoke that person's permit.

**Senator MARSHALL**—Let us just go a little bit beyond that. If you were investigating a union, for instance, or an employer organisation, would you keep a profile on the officers of that union or organisation?

**Mr Hadgkiss**—That is hypothetical. Because to date we have not investigated a union, as you say, or a members association.

**Senator MARSHALL**—You have taken unions to court?

**Mr Hadgkiss**—I am sorry?

**Senator MARSHALL**—You have taken unions to court, have you not?

**Mr Hadgkiss**—Yes, but we do not investigate the unions for the sake of it. It is merely when a union has transgressed or is alleged to have transgressed.

**Senator MARSHALL**—Yes, all right. If you believe a union or any other body has transgressed and you are investigating that transgression as a matter of course would you then keep a file of any form on the individuals or officers of that union?

**Mr Hadgkiss**—If we had in contemplation the revocation of their permits, yes.

**Senator MARSHALL**—So only in terms of the revocation of permits?

**Mr Hadgkiss**—To my knowledge, I cannot recall where we would open files on individuals for the sake of it.

**Senator MARSHALL**—No, I am not saying for the sake of it. I just want to be clear. You are saying the only knowledge you have of any files being opened on individuals is in respect of applications to revoke their permits?

**Mr Hadgkiss**—Or when complaints have been made against the individuals in the circumstances I have outlined.

**Senator MARSHALL**—Just tell me again what those circumstances are.

**Mr Hadgkiss**—If Mr or Mrs A made a complaint against Mr or Mrs B through our hotline or otherwise, that would be investigated. If the investigation were such that there appeared to be a prima facie case, then a file would be opened. Yes, there would be holdings on that file pertaining to the individuals.

**Senator MARSHALL**—So, even if you decided for whatever reason or for the public interest not to proceed with any prosecutions or that there was not enough evidence to proceed, that file would remain open and would be added to if there were further complaints?

**Mr Hadgkiss**—No. If there was nothing further to investigate, that file would be closed.

**Senator MARSHALL**—So if another complaint were made by, as you put it, Mr or Mrs A or B on the same individual, would a new file be opened or would you use existing information and add to it?

**Mr Hadgkiss**—In those circumstances the original file that was closed would be called for.

**Senator MARSHALL**—So a file is still kept; it is just archived and it can be called for at any time?

**Mr Hadgkiss**—Yes.

**Senator MARSHALL**—So it is a live file and that would be added to on an ongoing basis?



**Mr Hadgkiss**—No, it is not a live file. A file is closed. It is just that if it came to the attention of the task force that it was relevant to an investigation—

**Senator MARSHALL**—It is an existing file. I do not want to get caught up in the terminology as to what you and I consider as live.

**Senator Abetz**—Can I suggest that it is very important to get caught up with the terminology, because there is a vast difference between an archived file and a live file. It is very important that the officers do clear up any potential misunderstanding that might arise out of those.

**Senator MARSHALL**—Minister, I am very keen to find out the exact circumstances with these files. I thought we were going down the path of saying that there were not files kept on people. If you believe an archived file is a file that is not kept, then you are probably right; we need to get the terminology right.

**Mr Pratt**—It would actually probably be a breach of the Archives Act if we were to destroy files of that sort. There is a whole set of guidelines and requirements for government agencies for the management of files. We adhere to them, as do other agencies.

**Senator Abetz**—Without putting words into anybody's mouth, can I summarise by saying that, from the evidence we have heard thus far, files are only created on the basis of a complaint being received or an investigation being undertaken. Is that right?

**Senator GEORGE CAMPBELL**—What we are trying to understand is what the status of the file is once the investigation has been completed.

**Senator MARSHALL**—And if further complaints are received.

**Senator GEORGE CAMPBELL**—Mr Hadgkiss initially said, 'We don't keep them.' Then he said, 'We do keep them; they are archived.' It is the status of the file once it is archived.

**Senator Abetz**—The first question was a very important one: do we keep files on individuals? Mr Hadgkiss at first I think sort of said no, because the question was not put in any context, as in keeping files for the sake of keeping files. Then, when we moved further down the track, he said that yes, we do keep files on individuals, but only in the context of a particular complaint or an investigation. That is as I understand the state of the evidence thus far.

**Mr Hadgkiss**—That is correct.

**Senator MARSHALL**—As we move further down the track, it may open up even further.

**Senator Abetz**—Of course we may.

**CHAIR**—In that case we need some further questions, Senator Marshall.

**Senator GEORGE CAMPBELL**—We still keep the files on you, your six-packs and your five dollars. They are active files!

**Senator Abetz**—George, there are 100,000 workers on unemployment because of you—and that is not me saying that, that is Paul Keating, your former Prime Minister.

**CHAIR**—I feel sure that Senator Marshall has another question.

**Senator Abetz**—One hundred thousand employees.

**Senator GEORGE CAMPBELL**—It was John Howard as Treasurer who put them out of business, not me.

**CHAIR**—Senator Marshall?

**Senator MARSHALL**—I just want to get a feel for these files and how they would be reactivated or how you would get them out of the archives and under what circumstances. Let us assume that, as a result of a complaint or an investigation, a file is opened. The matter is then finalised, whether it resulted in action or not, and it is then archived. If that person became of interest to you again for whatever reason, would you know whether there was a file kept on them?

**Mr Hadgkiss**—Yes.

**Senator MARSHALL**—You would. So would you then retrieve that file?

**Mr Pratt**—It would depend. If we knew that the case or the complaint was a new complaint or a different complaint, it may be that a new file would be created on that case.

**Senator BARNETT**—Madam Chair, can I intervene and say that this question and a number of these questions are either hypothetical or bordering on hypothetical, and I do not think it serves the committee to be going around in circles on these questions.

**CHAIR**—We will see where the questions go.

**Senator MARSHALL**—I am nearly finished. It is of concern to me, in terms of general civil liberties, that files are being kept on individuals. I am simply trying to explore the extent of those files, how they are accessed and how they are used by this department. This is a department that has been involved in covert taping operations in the past. I must say that I am slightly distressed to find that they actually keep files on individuals.

**CHAIR**—I think we are getting a picture of it. Would you please continue with your questions.

**Senator MARSHALL**—Yes, we are getting a picture of it. Senator Barnett probably does not need to assist the department in this sense. But I probably have enough information now, thank you. We have talked a bit about covert taping. In answer to question W085 of 2005 the task force advised that there had been no authorisation issued for any covert recordings by task force officers. Is this still the case?

**Mr Hadgkiss**—To my knowledge, yes.

**Senator MARSHALL**—Specifically, does the task force have a file on Mr Michael Kennedy?

**Mr Hadgkiss**—No.

**Senator MARSHALL**—Do you know who Mr Michael Kennedy is?

**Mr Hadgkiss**—I am very familiar with Mr Kennedy.

**Senator MARSHALL**—You have had no reason to open a file on him?

**Mr Hadgkiss**—Absolutely not.

**Senator MARSHALL**—There is no investigation?

**Mr Hadgkiss**—When I say a file, he is sending me abusive emails; I have opened a personal directory and put them in there.

**Senator MARSHALL**—Right.

**Senator Abetz**—One question too many, I think, Senator.

**Senator GEORGE CAMPBELL**—Has any document been prepared by anyone else or an employee of the task force on Mr Kennedy?

**Mr Hadgkiss**—Mr Kennedy has given information to the CFMEU, defamatory material on myself, that has been republished in CFMEU publications.

**Senator GEORGE CAMPBELL**—Has any employee of the task force prepared any documentation on Mr Kennedy?

**Mr Hadgkiss**—I have.

**Senator GEORGE CAMPBELL**—You have yourself?

**Mr Hadgkiss**—Yes.

**Senator GEORGE CAMPBELL**—You do not regard that as keeping a file on him?

**Mr Hadgkiss**—It is not a file—not in the context of the task force. This is to do with Mr Kennedy giving evidence before a House of Representatives committee.

**Senator GEORGE CAMPBELL**—He is entitled to do that.

**Mr Hadgkiss**—There is no task force file on Mr Kennedy, no.

**Senator GEORGE CAMPBELL**—So it is a personal file?

**Mr Hadgkiss**—It is my file, yes.

**Senator GEORGE CAMPBELL**—It is your personal file?

**Mr Hadgkiss**—Yes.

**Senator GEORGE CAMPBELL**—Kept on your own personal computer?

**Mr Hadgkiss**—His emails are, but where I have been required to answer Mr Kennedy's allegations I have kept copies of that, the originals of which obviously went to the secretary of the parliamentary committee.

**Mr Pratt**—Senator, I want to clarify this situation. The task force does not keep a file on this gentleman. This may seem semantic, but Mr Hadgkiss is saying not that he has a file on this person but that he keeps records of correspondence which has occurred between this gentleman and himself. That is a quite different thing to a file, which has a more significant meaning.

**Senator GEORGE CAMPBELL**—I understand that. I would still call that a file. What I am really asking is: is it a personal file?

**Mr Pratt**—It is a record.

**Senator GEORGE CAMPBELL**—It is not a task force file or document?

**Mr Pratt**—That is correct.

**Mr Hadgkiss**—For the information of the other senators, Mr Kennedy was a former detective senior constable of the New South Wales police that I had charged in the late 1980s with perverting the course of justice, obstructing police et cetera. He subsequently pleaded guilty to those actions and he has made a number of complaints since.

**Mr Pratt**—I also need to point out that this has nothing to do with the operations of this department. This is a matter which relates to Mr Hadgkiss in his former employment, and I do not think it is appropriate for us to answer any more questions on this.

**Senator GEORGE CAMPBELL**—I understand that. I was just concerned about Mr Hadgkiss's reference to his giving evidence to a parliamentary committee which is privileged, as you would well understand. Every person is entitled to appear before any parliamentary committee to give evidence.

**Mr Pratt**—Certainly, but we have to answer questions on the administration of the department.

**Senator GEORGE CAMPBELL**—They have the protection of the parliament while they do that. Mr Hadgkiss, how many cases of underpayments of workers' entitlements, phoenix companies, sham independent contracting, abuse of illegal migrant workers, under- or non-payment of workers compensation premiums or cash-in hand payments has the task force found in the industry so far?

**Mr Hadgkiss**—I would have to take that on notice. As in 'allegations made' or as in 'we have investigated'?

**Senator GEORGE CAMPBELL**—Ones that you have investigated and you have found to be—

**Mr Hadgkiss**—We have no power to investigate a large number of these matters.

**Mr Kovacic**—Can I perhaps add to what Mr Hadgkiss is saying. Where the task force becomes aware of issues, for instance underaward payments, it would refer those matters to the Office of Workplace Services, or indeed to the relevant authority, for information and appropriate action which is determined by that agency.

**Senator GEORGE CAMPBELL**—A lot of that is in the state jurisdiction. Is that right?

**Mr Kovacic**—It could possibly be a state jurisdiction. It could be, as I mentioned, the Office of Workplace Services, which deals with federal awards and agreements. Or it could indeed be the tax office or Immigration, whoever the body might be, where the task force becomes aware of issues that might be of interest to that particular authority.

**Senator GEORGE CAMPBELL**—I was about to ask: what are done with them, what are the numbers and have any prosecutions been initiated as a result of these being referred to the various bodies?

**Mr Kovacic**—Once they have been referred to those other bodies, it is a matter for those bodies to pursue them and in essence—

**Senator GEORGE CAMPBELL**—Do you not track them?

**Mr Kovacic**—I would imagine not.

**Senator MARSHALL**—Can you list the referrals?

**Mr Hadgkiss**—We will take that on notice. Certainly, as Mr Kovacic has said, matters pertaining to phoenix companies are referred to the Securities Investment Commission. Matters pertaining to alleged underpayment of entitlements are referred to OWS of the department. Matters pertaining to illegal migration would be referred to DIMIA.

**Senator GEORGE CAMPBELL**—Perhaps, Mr Hadgkiss, if you can advise us of the referrals you have made we can then go to the other departments and find out what they have done with them?

**Mr Hadgkiss**—Yes, I will.

**Senator GEORGE CAMPBELL**—Is it the intention, Mr Hadgkiss, for the task force to investigate safety concerns in the industry?

**Mr Hadgkiss**—That is the province of the state.

**Senator GEORGE CAMPBELL**—What about the new federal commissioner?

**Mr Hadgkiss**—That is a province of the Federal Safety Commissioner, not the ABCC.

**Senator GEORGE CAMPBELL**—So it is going to be separate and distinct from the ABCC?

**Mr Kovacic**—That is correct.

**Senator GEORGE CAMPBELL**—Mr Hadgkiss, I just want to refer to the case of *Thorson v Pine* and the decision of Marshall J in the Federal Court. I understand that this is the Multiplex issue that you have referred to?

**Mr Hadgkiss**—It does have some bearing.

**Senator GEORGE CAMPBELL**—I understand it purported to require that the production of workers' private bank details?

**Mr Hadgkiss**—Yes.

**Senator GEORGE CAMPBELL**—I understand in questioning the notice Marshall J made the observation in his decision that roving inquiries may be an outwardly and opposite expression for broad-ranging inquiries into alleged tax fraud and the like under income tax legislation, but such notices are foreign to the workplace relations of civilised societies as distinct from undemocratic and authoritarian states. Is it true the task force did not appeal this decision and that the period for the appeal has lapsed?

**Mr Hadgkiss**—That is correct in one sense, but you must also bear in mind that his honour also heard a case called *Laing v Carroll*, again a Federal Court decision, whereupon he relied on his decision in *Thorson v Pine*, and we are appealing that matter. It is now before the full court of the Federal Court. We are saying that the learned trial judge, Justice Marshall, erred in law in that he failed to find that *Thorson v Pine* was incorrectly decided. I am loath to go any further as this matter is now being canvassed before the full court of the Federal Court.

**Senator GEORGE CAMPBELL**—You did not appeal this particular decision, but you are appealing—

**Mr Hadgkiss**—Because soon thereafter his honour heard a similar matter—as I say, it is called *Laing v Carroll*—where we have an action against the Victorian government and he relied upon his decision in *Thorson v Pine*. As I say, we are alleging that his honour erred in law in the circumstances, as I have said, that he failed to find that *Thorson v Pine* was incorrectly decided.

**Senator GEORGE CAMPBELL**—When is that case likely to be determined?

**Mr Hadgkiss**—As I understand it, it has been heard and their honours are due to make a decision soon.

**Senator GEORGE CAMPBELL**—We might come back to you when we see what the court's decision is in that matter.

**Mr Hadgkiss**—Yes.

**Senator GEORGE CAMPBELL**—An article in the *Australian Financial Review*, page 7, 26 April 2005, stated that Minister Andrews directed the task force to collect information and evidence for prosecutions against unions for industrial action in the pursuit of new enterprise agreements, based on the retrospective elements of the building legislation. Mr Hadgkiss, what direction was given to the task force to collect evidence against unions for prosecutions based on their pursuit of these enterprise agreements with building and construction companies?

**Mr Kovacic**—Can I answer that question. What the department has done post the introduction of the Building and Construction Industry Improvement Bill 2005 is to put in place arrangements which are designed to track behaviour that may potentially be in breach of the provisions of the unlawful industrial action elements of the bill, with a view to, should that bill become legislation, being positioned to make a decision as to whether or not to prosecute those breaches. The article refers to a letter I think that the minister wrote to, again, industry stakeholders advising them of the arrangements that the department had put in place to monitor industrial action that may potentially be in breach of the provisions of the act should it become law.

**Senator GEORGE CAMPBELL**—I understand that, but I am asking Mr Hadgkiss what directions were given to the task force to collect information in this area.

**Mr Kovacic**—As I said, the department put in place arrangements that were developed internally between the department and the task force as to how it would monitor compliance with the provisions of the bill in the expectation of that bill becoming law.

**Senator GEORGE CAMPBELL**—Are you saying that the task force is involved in the monitoring of that information?

**Mr Kovacic**—The task force is part of the department.

**Senator GEORGE CAMPBELL**—How is it proposed to conduct that?

**Mr Kovacic**—Where the department becomes aware of industrial action which may potentially be in breach of the provisions of the bill, invariably an approach may be made to the relevant contractor seeking the voluntary provision of information relating to the industrial

action, and that information will be, I suppose, kept should it be necessary to further consider it.

**Senator GEORGE CAMPBELL**—Has the task force collected any such evidence?

**Mr Hadgkiss**—Yes.

**Senator GEORGE CAMPBELL**—Has the department collected any such evidence?

**Mr Pratt**—By definition, yes. The task force is one of the output groups of the department.

**Senator GEORGE CAMPBELL**—I am treating them as two separate identities for the purposes of these questions. Where has such collection been undertaken?

**Mr Hadgkiss**—Throughout Australia.

**Senator GEORGE CAMPBELL**—In all states?

**Mr Hadgkiss**—To my knowledge, yes, wherever potential breaches of the legislation to which you refer have been brought to the attention of the task force.

**Senator GEORGE CAMPBELL**—How has such evidence been collected?

**Mr Hadgkiss**—Complaints from the industry. Complaints of coercion.

**Mr Kovacic**—Or through, for instance, media reports in terms of industrial action. There may be follow-up in terms of the task force or, I should say, the department contacting the relevant contractor, seeking the voluntary provision of further information or details about the reported industrial action.

**Senator GEORGE CAMPBELL**—How many officers are involved in such collection?

**Mr Hadgkiss**—Potentially all of them. It is on a case-by-case basis. They are all familiar with the provisions of the bill.

**Senator GEORGE CAMPBELL**—So all of your officers?

**Senator Abetz**—I think we had better be careful here. These investigations might lead—I do not know if they will—to possible actions and prosecutions. If we go canvassing it too much, then certain prosecutions might be prejudiced.

**Senator GEORGE CAMPBELL**—I have not asked, Minister, who is being contacted, who is being pursued; I have asked how many officers are involved in the pursuit of this information.

**Senator Abetz**—No, but you have gone into operational matters such as—

**Senator GEORGE CAMPBELL**—No, I have not.

**Senator Abetz**—‘Has it occurred in every state?’ Answer: ‘Yes.’ Chances are even that amount of information should not have necessarily been given out.

**Senator GEORGE CAMPBELL**—Nonsense.

**Senator Abetz**—These are operational matters and I think we have to be careful.

**Senator MARSHALL**—You are not actually investigating anything that is illegal right now in this context, though, are you?

**CHAIR**—That in itself—

**Senator Abetz**—That begs the question, does it not?

**Mr O’Sullivan**—The danger—and I am just flagging it as a danger—is that when we do get into evidence as to possible investigation processes or what we have done now that may be used as evidence in future prosecutions a defendant might wish to claim that the evidence given today may be helpful to their defence, and because the questions you ask and the answers we give are subject to parliamentary privilege, their inability to adduce that evidence in any subsequent criminal prosecution could prejudice their fair trial. Given that we are talking about offences under an act, courts would be more likely than in a civil matter to take that into account when considering whether a fair trial could proceed. That is the danger, and it is a serious danger.

**Senator MARSHALL**—That is not our intention to do that.

**Senator Abetz**—We accept what your intentions are. We are not seeking to assert that you are trying to pervert the course of justice by your questions. All we are doing is flagging the potential difficulty. We accept it is not your intention.

**Senator MARSHALL**—We are happy to hear that. But I think we also ought to be able to consider that. We do not want to do that, but we also do not want to be unduly restricted in the information we are able to obtain from the officers before us. We will just take a minute to consider some of the questions that we were proposing and see whether we may ask them or reconfigure them.

**Senator GEORGE CAMPBELL**—I just make the point, Minister, that there is nothing in the questions that we are asking here—

**Senator Abetz**—Keep asking your questions and we will consider each one. We are just flagging the concern.

**Senator GEORGE CAMPBELL**—I just want to make the point that there is nothing in the questions here that we are asking that go to the substance of any case that might occur.

**Senator Abetz**—We will make that determination.

**Senator GEORGE CAMPBELL**—Essentially our questions go to the resources that the department is allocating to this task. There would be nothing in that that would prejudice any case, to my knowledge, in any court in the country.

**Senator Abetz**—It depends, but I am sure Mr O’Sullivan—

**Senator MARSHALL**—I think we got to the question of how many officers had been involved in such collection, and I think the answer was potentially all.

**Mr Hadgkiss**—Potentially all, but to my knowledge—

**Mr Kovacic**—Can I perhaps say that there are no dedicated resources but the activities in this regard would be part of the ongoing responsibilities of departmental officers.

**Senator MARSHALL**—Good answer, Mr Kovacic.

**Senator GEORGE CAMPBELL**—Presumably, the costs and hours involved in doing it will depend on how many of those officers at any given point in time are involved in the process. So it could be anywhere from minimal to substantial?



**Mr Kovacic**—And also the number of matters that they may be investigating.

**Senator MARSHALL**—Can we take it that the collection of evidence is ongoing?

**Mr Hadgkiss**—Yes.

**Mr Kovacic**—I think I would characterise it at this stage as the collection of information, particularly given that at this stage we are talking about the provisions of a bill which is yet to be passed by the parliament.

**Senator MARSHALL**—Yes. It is clear that if the retrospective nature of that bill does in fact pass the parliament it is then that the evidence or the information you are collecting becomes an issue.

**Senator GEORGE CAMPBELL**—Presumably, you will continue to collect it until such time as the bill becomes law?

**Mr Hadgkiss**—For those parties who want to surrender it, yes.

**Mr Kovacic**—To volunteer it.

**Senator GEORGE CAMPBELL**—It depends on how you define ‘volunteer’.

**Mr Hadgkiss**—We have no powers.

**Senator GEORGE CAMPBELL**—When I did my National Service everyone was a volunteer! I have one final question. You may or may not be able to answer it. Mr Hadgkiss, of these issues that the task force has uncovered, have some matters been referred to ASIC?

**Mr Hadgkiss**—Yes, phoenix companies.

**Senator GEORGE CAMPBELL**—Have all of the phoenix companies been referred to ASIC?

**Mr Hadgkiss**—We have no power, again, to investigate.

**Senator GEORGE CAMPBELL**—Do you know how many fall under that category? I know it was raised in the Treasury estimates yesterday, but I did not get there in time to hear the answer.

**Mr Kovacic**—Just in terms of the number of referrals, Mr Hadgkiss took that question on notice before.

**Senator GEORGE CAMPBELL**—And you will provide us with that answer?

**Senator MARSHALL**—Thank you.

**CHAIR**—Thank you. That is excellent.

**Committee adjourned at 11.45 am**