



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION
LEGISLATION COMMITTEE

ESTIMATES

(Supplementary Budget Estimates)

THURSDAY, 3 NOVEMBER 2005

CANBERRA

BY AUTHORITY OF THE SENATE

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SENATE

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

Thursday, 3 November 2005

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

Senators in attendance: Senator Troeth (*Chair*), Senator Marshall (*Deputy Chair*), Senators Barnett, George Campbell, Joyce, McEwen, Siewert and Wong

Committee met at 9.05 am

EMPLOYMENT AND WORKPLACE RELATIONS

Consideration resumed from 2 November.

In Attendance

Senator the Hon. Eric Abetz, Special Minister of State, representing the Minister for Employment and Workplace Relations

Portfolio overview and major corporate issues

Dr Peter Boxall, Secretary

Mr Graham Carters, Deputy Secretary, Workforce Participation

Ms Malisa Golightly, Deputy Secretary, Employment

Mr Finn Pratt, Deputy Secretary, Workplace Relations

Ms Vanessa Graham, Chief Financial Officer, Financial Management Group

Ms Lyn Valentine, Assistant Secretary, Financial Policy, Processing and System Support,
Financial Management Group

Mr Jeremy O'Sullivan, General Manager, Corporate Group

Mr Brian Quade, Assistant Secretary, Parliamentary Performance and Communications
Branch, Corporate

Mr John Burston, Chief Information Officer, IT Services Group

Ms Michelle Baxter, Assistant Secretary, Legal Branch, Corporate

Mr Simon Gotzinger, Assistant Secretary, Legal Branch, Corporate

Mr Dudley Grounds, Senior Executive Lawyer

Mr Henry Carr, Senior Executive Lawyer, Legal Branch, Corporate

Ms Rowena Barrell, Assistant Secretary, Human Resources Branch, Corporate

Mr Shayne Howard, Acting Assistant Secretary, Fraud and Investigations Branch, Corporate

Ms Diane Merryfull, Assistant Secretary, Legislation Reform Branch

Mr Peter Cully, Assistant Secretary, Legislation Reform Branch

Mr David Bohn, Assistant Secretary, Legislation Reform Branch

Outcome 1: Employment

Mr Stephen Moore, Group Manager, Employment Systems Group
Mr Michael Manthorpe, Group Manager, Employment Business Services Group
Ms Meredith Fairweather, Assistant Secretary, Employment Communications Branch
Ms Cathy Walters, Acting Assistant Secretary, Employment Pathways Branch
Ms Margaret Kidd, Acting Group Manager, Specialist Services and Income Support Group
Mr Pete Searle, Assistant Secretary, Working Age Payments and Assurance Branch
Mr Phil Brown, Assistant Secretary, Payments Projects and Coordination Branch
Ms Jennifer Chadwick, Assistant Secretary, Disability Employment Services Branch
Ms Cathy Walters, Acting Assistant Secretary, Employment Pathways Branch
Ms Janine Pitt, Assistant Secretary, Work Experience Branch
Ms Jo Caldwell, Group Manager, Intensive Support Group
Mr Ted Cole, Principal Advisor, Workplace Relations Policy Group
Mr Anthony Parsons, Group Manager, Job Search Support Group
Mr Matthew James, Assistant Secretary, Employment Exchange Branch
Mr Tony Waslin, Assistant Secretary, Transition and Participation Branch
Ms Joan ten Brumelaar, Assistant Secretary, Centrelink and Stakeholder Management Branch

Outcome 2: Workplace Relations

Ms Jenet Connell, Group Manager, Workplace Relations Services Group
Mr Tom Fisher, Federal Safety Commissioner, Office of the Federal Safety Commissioner
Mr Craig Symon, Group Manager, Workplace Relations Implementation Group
Mr Michael Maynard, Principal Advisor, Workplace Relations Implementation Group
Ms Tulip Chaudhury, Acting Assistant Secretary, Public Sector Branch
Mr Leigh Quealy, Assistant Secretary, Building Industry Branch
Ms Jacinta Galluzzo, Acting Assistant Secretary, Industries Branch
Ms Helen Bull, Acting Group Manager, Office of the Australian Safety and Compensation Council
Mr John Kovacic, Group Manager, Workplace Relations Policy Group
Mr John Stewart, Director, Training and Skills Formation Section, Workplace Relations Policy Group
Mr Brant Pridmore, Acting Assistant Secretary, Strategic Policy Branch
Ms Anna Clendinning, Assistant Secretary, Strategic Policy Branch
Mr Bob Bennett, Assistant Secretary, Legal Policy Branch
Mr David De Silva, Assistant Secretary, Legal Policy Branch
Ms Melissa Ryan, Director, Workplace Relations Reform Implementation Taskforce, Workplace Relations Policy Group
Ms Louise McDonough, Assistant Secretary, Wages and Conditions Policy Branch
Mr Les Andrews, Acting Assistant Secretary, Wages and Conditions Policy Branch
Mr George Brennan, Assistant Secretary, Workplace Relations Reform Implementation Taskforce
Ms Anya Moore, Assistant Secretary, Workplace Relations Reform Implementation Taskforce
Mr Alfred Bongi, Assistant Secretary, Employee Entitlements Branch

Mr Stewart Thomas, Acting Assistant Secretary, Employee Entitlements Project Branch
Mr Steve Kibble, Assistant Secretary, Workplace Services Branch
Mr James Smythe, Chief Counsel, Workplace Relations Legal Group
Ms Sherry Pullen, Head of Secretariat, Awards Review Taskforce Secretariat, Workplace Relations Policy Group

Outcome 3: Workforce Participation

Mr Bob Harvey, Group Manager, Indigenous Employment and Business Group
Ms Lynne Curran, Group Manager, Research, Evaluation and Legislation Group
Mr Barry Sandison, Acting Group Manager, Working Age Policy
Ms Mary Anne Sakkara, Assistant Secretary, Community Development Employment Project, Future Directions Branch
Ms Jody Hamilton, Assistant Secretary, Business and Policy Development Branch
Ms Christine Langsford, Assistant Secretary, Community Development Employment Project, Business Development Branch
Mr Bruce Whittingham, Principal Adviser, Working Age Policy
Ms Alison Durbin, Manager, Working Age Taskforce
Ms Susan Devereux, Project Manager, Working Age Taskforce
Ms Jennifer Taylor, Group Manager, Labour Market Strategies Group

Office of the Employment Advocate

Mr Peter McIlwain, Employment Advocate
Mr David Rushton, Senior Legal Manager
Ms Ann Skarratt, Corporate Director
Mr Geoffrey Casson, Deputy Employment Advocate, Client Service Network

Equal Opportunity for Women in the Workplace Agency

Ms Anna McPhee, Director

Comcare

Ms Barbara Bennett, Chief Executive Officer
Mr Noel Swails, Deputy Chief Executive Officer
Ms Janette Davis, General Manager, Occupational Health and Safety (Commonwealth Employment) Act Policy and Support
Mr Stewart Ellis, General Manager, Injury Management
Mr Matt Goldrick, General Manager, Claims Policy and Systems Improvement
Mr Terry Langton, General Manager, Corporate Management Division
Ms Jane Romeyn, General Manager, Research and Strategy

Australian Industrial Registry

Mr Nicholas Wilson, Industrial Registrar
Mr Terry Nassios, General Manager, Statutory Services

Indigenous Business Australia

Mr Ron Morony, General Manager
Mr Ian Myers, Deputy General Manager
Mr Ivan Parrett, Assistant General Manager, Indigenous Economic Development Branch
Mr Colin Clements, Assistant General Manager, Home Ownership Programme
Ms Kaely Woods, Assistant General Manager, Policy and Partnerships
Mr Anthony Lovell, Chief Finance Officer

Australian Building and Construction Commission

Mr Nigel Hadgkiss, Director, Building Industry Taskforce

The Hon John Lloyd, Australian Building and Construction Commissioner, Office of the
Australian Building and Construction Commission

Ms Heather Hausler, Assistant Commissioner, Office of the Australian Building and Construction Commission

Department of Employment and Workplace Relations

CHAIR—The committee will now continue the examination of the employment and workplace relations portfolio. I welcome back Senator Eric Abetz and officers of the Department of Employment and Workplace Relations and agencies. The committee has fixed Monday, 5 December 2005 as the date for the submission by the department of written answers to questions on notice. Today's proceedings will be suspended for breaks as indicated on the agenda. I also ask you to note that the committee will adjourn at 12 noon and return from lunch after 1.30 pm. As you would know, the Senate is sitting today and we will need to await deliberations in the Senate. But I fully expect that the committee will return after 1.30 pm. I remind participants that oral evidence and documents in estimates proceedings are part of the public record. The committee will now continue to questions relating to outcomes 1 and 3.

Senator WONG—Dr Boxall, subsequent to the events last night, I sought advice from the Clerk of the Senate. I understand that you have been provided with a copy, subsequent to a resolution of the committee—is that correct?

Dr Boxall—Yes.

Senator WONG—The advice makes it clear that questions about the timing of cabinet discussions have been routinely asked and answered in estimates hearings and elsewhere and that it is difficult to see how the claim for immunity in this case could reasonably be made. In light of the advice, I ask again for the occasions on which the Welfare to Work package has gone to cabinet between February and these hearings.

Dr Boxall—And the answer is that we are taking that on notice.

Senator WONG—On what basis, Dr Boxall?

Dr Boxall—I do not know how many times it went to cabinet between February and now, so we have to check. Sometimes things are discussed in cabinet without my knowledge and without the department's knowledge.

Senator WONG—I want to clarify whether the minister or Dr Boxall is making a public interest immunity claim in relation to this question.

Senator Abetz—It is interesting that the Clerk's letter says 'it is difficult to see how a claim for immunity could reasonably be made'. I will have to check the *Hansard* but I do not think the word 'immunity' was ever used by Dr Boxall last night, so it will be interesting to see. Once again, with great respect—and I understand where the Clerk is coming from—I trust that no prejudgment has been made in relation to the arguments that may or may not be forthcoming when we are gratuitously told it is difficult to see how a claim could reasonably be made. That is indicating where somebody is going to set the high bar before he is even

apprised of any of the arguments, which I do not think is helpful. Having said all that, it has been taken on notice. The reason it has been taken on notice has been indicated by Dr Boxall.

Senator WONG—There are three issues, Minister. One is that I do not know why you as a minister continue to smear an independent public servant by suggesting bias or prejudice. This is a person who cannot defend himself. It is beneath a minister of the Crown to do that.

Senator Abetz—Excuse me, but—

Senator WONG—I have not finished.

Senator Abetz—He has accused me of corruption under parliamentary privilege.

Senator WONG—It is beneath contempt that you would smear an independent public servant who is held in the regard that the Clerk is on both sides of the Senate—

Senator Abetz—Your colleague Senator Bolkus tried to have him sacked!

Senator WONG—and who is somebody who cannot defend himself against this imputation of bias. It is entirely inappropriate. Second, if you look at the second paragraph of the letter, the Clerk specifically refers to what Dr Boxall said—that he was not at liberty to disclose this information without giving a specific reason but presumably intended to make a public interest immunity claim because he mentioned the word ‘cabinet’. So he is quite clear about the basis of his advice. The third issue—

Senator Abetz—No.

Senator WONG—The third issue is—

Senator Abetz—No, it is not clear.

Senator WONG—This is not about the Clerk; this is about the procedures of the Senate.

Senator Abetz—When you use the word ‘presumably’ it means that you are not clear on your advice. You are making assumptions or presumptions to come to a certain conclusion. Those presumptions may well not be correct, and that is why I made the comment that I did—

Senator WONG—Smearing the Clerk.

Senator Abetz—That is not a smear.

Senator WONG—That is what you do—

Senator Abetz—Alleging somebody is corrupt is a smear.

Senator WONG—If you are happy to do it on the public record, you are happy to do it here.

Senator Abetz—To question the clarity of this advice—I think the Clerk is quite correct in using the phraseology that he is making certain presumptions or assumptions. As a result, that advice may well have to be reconsidered after those presumptions are either confirmed or debunked.

CHAIR—Minister and Senator Wong, Senator Wong has asked for the advice to be provided. Dr Boxall has indicated that he is unable to do so and that, as far as I am concerned, is the answer to the question.

Senator Abetz—Hear, hear!

CHAIR—I ask you to proceed.

Senator WONG—I ask if the minister is making a public interest immunity claim in refusing to answer the question. Is that the basis on which the refusal is made?

CHAIR—You have asked the question to Dr Boxall, and I think it is for him to provide the answer.

Senator WONG—Then I am asking Dr Boxall: are you making a public interest immunity claim on the basis of cabinet deliberations?

Dr Boxall—Madam Chair, I have already answered this question.

Senator WONG—I do not think you have and I would like to hear it. What is the answer?

Dr Boxall—The answer is in *Hansard*. The answer is that I do not have the number of times it was discussed by cabinet. It is exactly the same answer I gave five minutes ago.

Senator WONG—Do I take from that that you are not making such a claim?

Dr Boxall—I am silent on the issue of immunity and I have never mentioned it.

Senator WONG—I look forward to provision of the answer. Mr Carters, last night I raised with you that I wanted to talk about the answers which were provided by Treasury in the last estimates as to the modelling of people with a disability moving from welfare to work, which presumably underpins the figure of 109,000 that DEWR provided in answer to a question on notice in the same hearings.

Mr Carters—If you can give me the question and the figures, I can see if I can answer it.

Senator WONG—2006-07, 38,000; 2007-08, 18,000; 2008-09, 18,000. This was the modelling of people with a disability moving from welfare to work. It is consistent with the DEWR answers.

Mr Carters—Those figures are correct. That is the flow of people with disabilities.

Senator WONG—Can you explain to me how in the 2006-07 year the government is modelling in excess of double the number of people with a disability in subsequent years moving from welfare to work? Why is it going to be two and a bit times as good as any other year?

Mr Carters—I will have to take that on notice. We do not have the detail of how that figure was constructed.

Senator WONG—This is the breakdown of the figure that you have already supplied.

Mr Carters—I have the figure; I do not have how it was constructed.

Senator WONG—Presumably, DEWR had some input into it.

Mr Carters—It would have been part of the task force, yes.

Senator WONG—Is it the case that in 2006-07 a decision has been made to require the transition group we were discussing last night to go through a review during that period?

Mr Carters—The review has been stated as occurring normally in a two- to five-year time frame.

Senator WONG—That is normally. I am asking, in relation to the transition group—given that, on the government’s modelling, there will be over double the number of people with a disability moving from welfare to work in that 2006-07 year—whether the intention is to require that they go through a CWCA in that financial year.

Mr Carters—There is no requirement for them to do that.

Senator WONG—Is it the intention that the normal review, which would usually be after two to five years, in fact will be brought forward for the transition group?

Mr Carters—No, there is no intention to bring it forward for the transition group.

Senator WONG—Ms Golightly, I think we were discussing the email of 5 October.

Ms Golightly—Yes, Senator.

Senator WONG—Are you in a position to give me some advice on that?

Ms Golightly—I do not have yet a copy of the exact email, but I have got some more information about the matter generally. As Ms Caldwell mentioned yesterday, a Job Network member may have a contract with us and they may also have a contract with the New South Wales state government workers compensation organisation, or with any other state government for that matter. If a person is eligible for Job Network services—that is, they are on income support—then of course they can be serviced by the Job Network member under our contract. However, it is also the case that a client may be seeing that organisation as part of its contract with the New South Wales state government and, if that job seeker is not eligible for Job Network services, they may be being seen by that Job Network member but not under our contract. So it is entirely possible that the same organisation may be servicing a particular individual but under different contracts. If we do find evidence that there is a claim being made under both contracts, then that would be investigated under our contract, pursuant to the clause I mentioned last night.

Senator WONG—The concern I have got is that the minister appears to have been advised of this—subject to the email address being correct; I was copied in—on 5 October. The allegation that is made in the correspondence, or the suggestion that is made—and obviously I am not in a position to confirm or deny that—is that there is double dipping. I understand what you are saying: it is quite possible for the same organisation to provide different services and be paid separately for the different services, depending on which contract they are being paid under. I think the concern was that the same activity was potentially being paid for by both the New South Wales workers compensation scheme and the federal government.

Ms Golightly—Certainly, and now that we are in receipt of those details we will be looking into that.

Senator WONG—Have you not received them before?

Ms Golightly—I have not.

Senator WONG—Has anyone in the department received a copy of that email?

Ms Golightly—I would have to check. I am told that it has been received in the department and that it is already being looked into.

Senator WONG—Can you tell me the date on which it was received and what action has been taken?

Ms Caldwell—It is not clear from the copy I have available to me the exact date that it was received in the department. It was shortly after 5 October. The departmental date stamp on that appears to be 7 October. What we would routinely do—

Senator WONG—I am not asking what the process is. I am asking what has actually happened in relation to this.

Ms Caldwell—If you want details as to the handling of this particular piece of correspondence, I would need to take that on notice. In broad terms, the national contract management framework would mean that we would routinely look into the matters raised.

Senator WONG—Do we have the person here who has dealt with this?

Ms Caldwell—It is my group within the department that is looking into it. They are currently looking at the handling—

Ms Golightly—And we can get the details for you.

Ms Caldwell—and we can get the details. I do not have them in the room.

Senator WONG—Thank you. In relation to the periodical assessment of existing DSP recipients—not the transition group, Mr Carters, but the so-called grandfathered group, who are all still subject under the current legislation to a periodic review—is it the intention that they would have a comprehensive work capacity assessment but with a different hour measure?

Mr Carters—No, the existing recipients of disability support pension will continue into the future to be assessed on the basis of the 30-hour rule.

Senator WONG—Yes, I understand that. I was asking whether they would still go through CWCA but with a 30-hour parameter as opposed to a 15-hour one. You are changing the assessment process. I am asking whether you will have two streams or whether it will be the same assessment process but with different parameters for the grandfathered group.

Mr Sandison—Yes, they will follow through the CWCA process, which will replace the other mix of assessments and be the comprehensive assessment for everybody but under the old DSP rules.

Senator WONG—Has there been consideration of how to deal with sole parents who are victims of domestic violence? Presumably an allegation or evidence of the existence of domestic violence would generally be a ground for exemption from the work test, wouldn't it?

Mr Carters—Yes, it would in general.

Senator WONG—Are there any guidelines as to how long that would be the case?

Mr Carters—That is being developed now.

Senator WONG—By whom?

Mr Carters—The department.

Senator WONG—In conjunction with anyone? Is there any consultation with external groups?

Mr Carters—That has been part of our general consultations, which we have referred to before.

Senator WONG—If a person left a violent relationship post July 2006, would the fact of the existence of domestic violence alter the income support payment onto which they would be put?

Mr Carters—No.

Senator WONG—So they would go onto Newstart if their youngest child was six, as with anyone else?

Mr Carters—Yes, if they were a new applicant and the youngest child was over six.

Senator WONG—What is the consideration about how multiple children—large families—will affect mutual obligation requirements?

Mr Carters—Like other families, that is a case by case determination.

Senator WONG—So there will not be a clear guideline as to how larger families will be dealt with?

Mr Carters—There will be guidelines but, as always, there is subjectivity involved.

Senator WONG—When will those guidelines be finalised?

Mr Carters—We do not have a set date for that.

Senator WONG—Before or after the legislation is tabled?

Mr Carters—I cannot comment on when the legislation will be tabled.

Senator WONG—I am not asking you when the legislation will be tabled; I am asking about the sequence of events. A legislative change is coming and there are also various administrative changes. Is it the intention that the administrative changes will be made public only after the legislation has been passed?

Mr Carters—There is no clear intention to do anything in any particular order.

Senator WONG—Is the personal support program DEWR's?

Dr Boxall—Yes.

Senator WONG—I want to ask some questions about the Brotherhood of St Laurence report that was released last month. Ms Kidd or Ms Golightly, has someone in your area within the department undertaken an analysis of this report?

Ms Kidd—We have seen a copy of the report and have undertaken some preliminary analysis.

Senator WONG—Does the department disagree with the finding by the brotherhood's report—it is the brotherhood plus Hanover for our Homelessness and Melbourne Citymission—that 90 per cent of case managers reported difficulty, in almost 90 per cent of cases, in delivering the required assistance?

Ms Kidd—Was that in terms of funding?

Senator WONG—Yes. I am reading from VI in the introduction, which is headed Program delivery. It says:

... the most significant concern is the inadequate program funding to assist a client group facing such significant disadvantage (recently announced small funding increases may improve this situation but are insufficient). This is evident in case managers reporting difficulties in almost 90% of cases in delivering the required assistance due to cost and their numerous comments about the resulting frustration of being unable to provide the assistance required because of cost.

Ms Kidd—I think what the report was getting at is the amount of funding available to spend directly on participants in the PSP program. The comment was made that that was insufficient.

Senator WONG—Correct.

Ms Kidd—The personal support program does not have an allocated set of funding per participant. There is a pooling arrangement that providers can use, within their outcome fees that they get for all participants, that they can pool and choose how much to spend on each individual participant. The report was, I think, citing \$120 per participant, which is not actually correct.

Senator WONG—So you dispute the findings of the report.

Ms Kidd—I dispute the \$120 figure.

Senator WONG—What do you say it is?

Ms Kidd—That there is a pool available.

Senator WONG—What is the pool?

Ms Kidd—The pool comes from the fees that we pay providers. We pay around \$3,600 for an outcome. It may be higher or lower than that. From within those fees, it is up to the provider to decide how much they spend on each individual participant.

Senator WONG—So you are suggesting that providers are not managing this program properly? I am not quite sure what the suggestion is about that pool.

Dr Boxall—The suggestion is that the \$120 figure is not right and that the providers have a pool to access, and Ms Kidd has just outlined the extent of that pool.

Senator WONG—What does the department say about the comment in the report that:

Waiting lists for services were a problem for all providers, and reported as a difficulty in providing required assistance in almost 50% of cases.

Has the department done an analysis of the waiting lists and the unmet demand in this program?

Dr Boxall—It is a capped program, and there may from time to time be a waiting list.

Senator WONG—Has the department done any analysis of the unmet demand in this program?

Ms Kidd—We know the extent of the waiting list.

Senator WONG—Tell me what the extent of the waiting list is.

Ms Kidd—Currently it is around 11,000.

Senator WONG—Eleven thousand—before the Welfare to Work changes?

Ms Kidd—That is right. That is current.

Senator WONG—Remind me of the number of PSP places currently funded in this financial year.

Ms Kidd—It will be 37,000 this financial year.

Senator WONG—And the 11,000 figure is predicated on what?

Ms Kidd—Current wait lists.

Senator WONG—With current providers?

Ms Kidd—That is right.

Senator WONG—I am just not sure how it works administratively. You speak to the providers, or they give you that data about how many people they have on a waiting list for this service. Is that how it works?

Ms Kidd—You enter PSP via a referral from Centrelink and then through an assessor. The assessor will refer you on to PSP and then you get on a waiting list. It is that information that we capture.

Senator WONG—This is a program for people with significant non-vocational barriers to employment.

Ms Kidd—That is right.

Senator WONG—There are significant numbers of homeless people, people with a physical disability, drug and alcohol problems—

Ms Kidd—That is right.

Senator WONG—Family breakdown is identified by 66 per cent of the clients as being one of the barriers that they encounter, while for 78 per cent it is a mental health problem.

Ms Kidd—Senator, I am not sure where your figures are from.

Senator WONG—From page Roman numeral v of the report.

Ms Kidd—I do not have the Brotherhood of St Laurence report in front of me.

Senator WONG—Do you disagree with their figures? This is what they say:

Around 50% of the sample have been homeless in the past five years ...

Ms Kidd—The brotherhood report is a survey. We have some actual figures which are pretty similar to the brotherhood figures.

Senator WONG—They also say:

... 70% have year 11 or less as their highest level of education ...

Ms Kidd—Are you asking me to confirm that?

Senator WONG—I am asking whether the department agrees or disagrees with the figure.

Ms Kidd—I can take you through the five most common barriers for the PSP participants according to our figures: mental health problems, 45 per cent; drugs and alcohol, 32 per cent; family relationship breakdown, 20 per cent; physical or intellectual disability, 11 per cent; and homelessness, nine per cent.

Senator WONG—They are significantly lower than the brotherhood's figures. For example, in the brotherhood's figures—and I appreciate it was a survey—78 per cent are identified as suffering from a mental health problem. It is a far higher figure.

Ms Golightly—We don't know how Brotherhood of St Laurence got their figures. We have figures that we track, and Ms Kidd has just given those to you.

Senator WONG—Where do you get your figures from?

Ms Kidd—Our figures are from the Centrelink data.

Senator WONG—So what you are telling me is that, before the Welfare to Work changes—it is just a point-in-time figure—there are currently 11,000 people on the waiting list.

Ms Kidd—That is right.

Senator WONG—And, even on the government's own figures, around 45 per cent of them have mental health issues, 32 per cent have drug and alcohol problems—and what was the disability figure, 20 per cent? No, it was lower.

Ms Kidd—That was family relationship breakdown, 20 per cent, and physical or intellectual disability, 11 per cent.

Senator WONG—And homelessness was nine per cent, was it?

Ms Kidd—Nine.

Senator WONG—Have you done any analysis of how the welfare changes will affect the demand for this program? Has the government done any analysis on that?

Ms Kidd—Additional places were announced in the budget for the personal support program to meet the welfare to work flows.

Senator WONG—So they were predicated on the analysis done by DEWR, presumably, of the projected need?

Ms Kidd—Yes.

Senator WONG—So what were the additional numbers for PSP?

Ms Kidd—In the order of 25,000 places over three years.

Senator WONG—Are they going to be available to the 11,000 currently on the waiting list or are they allocated specifically to the people subject to the new obligation requirements under Welfare to Work?

Ms Kidd—There is no separate allocation or quarantining within PSP.

Senator WONG—None at all?

Ms Kidd—None at all.

Senator WONG—So does the department intend to evaluate and consider the issues raised in this fairly lengthy report by the Brotherhood of St Laurence?

Ms Kidd—We are looking at the brotherhood report. We are always interested in independent research to feed into our program.

Senator WONG—Sorry?

Ms Kidd—We are always interested in independent research as input into our program design.

Senator WONG—So what is the process for that? Is there going to be some sort of response to the report?

Ms Kidd—We have not decided whether there will be a formal response. The brotherhood submitted this during our exposure draft process.

Senator WONG—I want to come back to the issue of wage subsidies, or Wage Assist, but before we do that, I want to go back to the PSP. I think on the last occasion I asked whether or not there was a distinction between places and participants. Ms Wilson indicated to me that it is not a one-for-one equivalent: a participant and a place. The ratio given was about 1.3 or 1.4. Explain to me how many participants there will be if there are 25,000 places.

Ms Kidd—We are expecting in the order of 30,000.

Senator WONG—If it is 1.3 or 1.4, it is not the other way around? I do not understand that.

Ms Kidd—There are more participants than places.

Senator WONG—Is the 11,000 a direct head count?

Ms Kidd—Yes.

Senator WONG—I will return to Wage Assist. Mr Carters, on the last occasion—I am reading from the *Hansard* of 30 May, page 183. I asked:

How are you going to ensure that beyond six months you do not just get an employment termination after the wage subsidy finishes? What measures are proposed to be in place to ensure you do not get a churning effect after six months?

You said:

There will be a few measures put in place to ensure that that does not occur.

Can you tell me what those measures are?

Mr Carters—That is a question that will need to be answered by Ms Golightly in terms of implementation.

Senator WONG—I do not mind who answers it.

Ms Golightly—First of all, the wage assistance will not be paid until the person has done their 13 weeks. I think we also mentioned last time that we would have our normal contract monitoring and management practices, which would track either providers or employers who may not be behaving appropriately, and that action would be taken where evidence of that was found.

Senator WONG—So what you are telling me is that the measures to ensure that this is not abused or there is not simply churning, where an employer gets a subsidised employee for a period of time and the employment does not continue beyond the period of subsidy, your normal contract management process will deal with that.

Ms Golightly—That is correct.

Senator WONG—So there is no change in the structure of how the subsidy would be put in place.

Ms Golightly—No, we would manage that.

Senator WONG—How many people would be working on the contract management?

Ms Golightly—All of our state offices and regional offices, as well people in the national office, work on contract management.

Senator WONG—How many in the national office are on contract management? Can you give me a round figure?

Ms Golightly—Just while we are getting the figures, we have a dedicated branch in national office. Also, the people who work in our program areas—whether it be Job Network or PSP—also have an eye to contract management. We can give you the figures of the dedicated branch.

Ms Kingston—In contract management branch we have 40 staff.

Senator WONG—How many Wage Assist places are there over the three years?

Ms Golightly—I think it is 15,000 but we will just check that for you.

Senator WONG—So these 40 staff plus people in the state offices in terms of your normal contract management process?

Ms Golightly—Yes.

Senator WONG—Is there a proposal to put in place some sort of system to check? For example, is it going to be policy that an employer who has a Wage Assist subsidised employee cannot simply replace them with another Wage Assist subsidised employee? Is that going to be something that the department implements?

Ms Golightly—Yes. That will be a requirement of the contract with our providers.

Senator WONG—With the Job Network provider?

Ms Golightly—With the Job Network provider, yes. We do already have in place systems which track which job seekers are being placed by whom, and we can use that information to drill down to find out where they have been placed and how often and go from there.

Senator WONG—Just to clarify, there will be a requirement that a Wage Assist place cannot be used with an employer who has recently concluded or terminated the employment of a person on Wage Assist?

Ms Golightly—We certainly will have contract provisions which prevent churning.

Senator WONG—I want to know what they are. I understand that is the objective.

Ms Golightly—The contract is only in draft form at this stage. Wage Assist has not been finally developed in its detail, so that will emerge over the next few months.

Senator WONG—So you cannot tell me whether or not there will be a protection against somebody simply replacing one with another.

Ms Golightly—I think I have answered that. There will be a protection. I cannot give you the exact words.

Senator WONG—You cannot tell me how it will happen. Given you mentioned contract management, we will turn to the Audit Office report on the DEWR oversight of Job Network services. Would you agree with the Audit Office's indication that the audit sample demonstrated that there was often failure to meet the contractual obligations—for example, levels of contact between Job Network members and job seekers rarely met contractual obligations?

Dr Boxall—Which audit report is this and which page?

Senator WONG—DEWR's oversight of Job Network.

Dr Boxall—Which page?

Senator WONG—I am reading off my own notes. I assume you would have read the Audit Office report.

Dr Boxall—As you know, the department has already given its views on the Auditors-General's recommendations, and these are recorded in our audit response. We would not have anything to add in terms of commentary on the Auditors-General's recommendations that we have not put in the response.

Senator WONG—The report states that levels of contact between Job Network members and job seekers rarely met contractual obligations. Is that not a concern for the department—that you are not getting what you paid for?

Dr Boxall—I have the report in front of me. I cannot find a recommendation on that.

Senator WONG—No, it is some commentary on that.

Dr Boxall—It is commentary in the report?

Senator WONG—Yes. You are familiar with some of the criticisms in the report of DEWR's oversight of the Job Network, I presume.

Dr Boxall—I am familiar with the report. I am not aware that there were criticisms that have not been addressed.

Senator WONG—You do not believe there were any criticisms by the Audit Office?

Dr Boxall—There were no criticisms that have not been addressed by the department. We have addressed all the criticisms. We have been given a chance to respond to the Auditors-General's report and there is a response in here.

Senator WONG—What have you done to ensure that the levels of contact between Job Network members and job seekers meet contractual obligations, given that the report found that they rarely did so?

Dr Boxall—We have to respond to recommendations. If the Auditor-General made an observation like that and they did not think it was worthy of a recommendation—

Senator WONG—There is a general recommendation.

Dr Boxall—Which recommendation?

Senator WONG—There are a range of recommendations about the management of Job Network. I am asking what you have specifically done in relation to ensuring that the levels of contact between Job Network members and job seekers meet the contractual obligations.

Ms Caldwell—You are asking what we do to ensure that Job Network members meet their contractual obligations.

Senator WONG—Let us do it this way—have there been any changes to your contract management procedures given the two Audit Office reports about your management and implementation of the Job Network?

Ms Golightly—We have taken the action we identified in the report, and we are always improving our procedures.

Senator WONG—Tell me what action you have taken.

Ms Golightly—That was not a specific recommendation of the report relating to that item. There was an item about a recommendation. The one that most closely related was to do with risk management, and our response is in the report.

Senator WONG—Have you taken any action subsequent to the Audit Office report to ensure that the levels of contact between Job Network members and job seekers meet contractual obligations? Have you altered your systems in any way?

Ms Golightly—Recommendation 4 is the one that most closely relates to that area of the report. In our audit response we said that we agreed with that recommendation. Basically that means that we are increasing the monitoring visits and contract management work that we do. We specifically look at, among other things, the contacts that Job Network members have with their job seekers.

Senator WONG—I take you to paragraph 47 on page 22 of the report. It says:

Levels of contact between JNMs and job seekers rarely met contractual specifications, for a range of reasons. The level of contact and associated payment arrangements needs to be clarified;

What action has the department taken given that finding?

Dr Boxall—That finding is most related, I think, to recommendation 4, which Ms Golightly just read out. We agree with that. We have always been trying to improve this, and we continue to try and improve it.

ACTING CHAIR—The question is how. Just saying you are improving it really does not answer the question or make a serious attempt to answer it.

Ms Golightly—When we go out to do what we call monitoring visits, we look at various—

ACTING CHAIR—It is Senator Wong's question. As acting chair, I am just trying to encourage you to respond appropriately.

Ms Golightly—Certainly. When we do our monitoring visits, we look at compliance with the contract terms and conditions. We might not look at every single term and condition every time we do a monitoring visit—otherwise we would be there all day—but that is one of the things that we do look at.

Senator WONG—I am asking a very specific question. The Audit Office has said that the levels of contact rarely meet contractual obligations. That means that the public are paying for a service that is not being met in accordance with the contract obligations. I am asking a very specific question about what, since this report has been provided to DEWR, DEWR has put in place to ensure that in fact occurs—that taxpayers get what they have paid for.

Dr Boxall—The point is, I am advised, that it is not a recommendation. The reason why it is not a recommendation is that apparently the Audit Office conducted such a small sample that they did not think it was robust enough to turn it into a recommendation. What the department does is respond to recommendations. If there are findings which give forth a recommendation, the department responds. All departments respond to recommendations. On recommendation 4, which is the closest that is relevant to paragraph 47, Ms Golightly has explained what we are doing.

Senator WONG—I would like you take on notice, so I can have it clear, exactly what actions the department has taken in relation to recommendation 4.

Ms Caldwell—I am happy to answer it now. We do not need to take it on notice.

Senator WONG—The reason is that I have 10 minutes left and I want to move on to the next bit.

Dr Boxall—In that case, in the interests of time, we will take it on notice.

Senator WONG—I appreciate that. Dr Boxall, I want to get clear what your previous answer meant. Should I therefore understand your response to be that this was not a big enough concern for it to be made a recommendation so you do not believe the department needs to respond to that specific dot point in paragraph 47?

Dr Boxall—No, that is not what I said.

Senator WONG—What are you saying about it?

Dr Boxall—What I said was that I am advised that the sample underpinning the conclusion in paragraph 47 was so small that the Auditor-General did not—sorry, that is our view.

Senator WONG—I was going to say that they did not put that in the report, Dr Boxall.

Dr Boxall—No. The point is that it has not been turned into a specific recommendation. That is the point.

Senator WONG—Does the government consider it a concern if contractual obligations are not met on services that taxpayers are paying for?

Dr Boxall—Of course. That is why we have a contract management process—to make sure that service providers are delivering the services that they have been contracted to provide and that they are paid appropriately. That is why we do that, so the government has a concern—

Senator WONG—They are not doing well, with respect, Dr Boxall, according to the Audit Office: ‘Rarely met contractual specifications’. Those are not my words.

Dr Boxall—But the point is that there is no recommendation to do anything about it apart from recommendation 4, which we are responding to and have taken on notice in the interest of time.

Senator WONG—Has the department changed its contract management procedures at all since the provision of this report, particularly in relation to ensuring that Job Network members meet their contractual specifications in terms of contact with job seekers?

Ms Golightly—Yes, because we are continually upgrading our contract management procedures. That includes that issue as well as any other issue that we come across.

Senator WONG—Do you keep a record of the incidents of failure to meet a contractual obligation?

Ms Golightly—Yes, where we find that.

Senator WONG—Across the system?

Ms Golightly—Yes.

Senator WONG—How often do you get that? Is it quarterly, monthly?

Ms Golightly—Our contract monitoring visits are happening every day of every week, so if they turn up something that is of a serious nature then we formally review that.

Senator WONG—What is of a serious nature, Ms Golightly? Is a failure to meet level of contact in accordance with your contract something you would record?

Ms Golightly—We would if that was a serial failure, yes.

Senator WONG—Only if it was a serial failure?

Ms Golightly—Perhaps I should have said a significant failure.

Senator WONG—I am not clear what a significant failure is. There is a legal obligation to do certain things with job seekers. Is a significant failure only missing one of the contacts or is it missing one with lots and lots of job seekers? What is a significant failure?

Ms Golightly—I think these things are always matters of judgment for our contract managers who go out and do these visits. If a contract manager is out at a particular Job Network site and sees lack of documentation recording any visits, that is obviously a significant failure and would be reported. If there was an indication that perhaps one or some other visit was not met then that would be raised with the Job Network member. I also need to point out that with the level of visits, we contract Job Network members to tailor their services to job seekers and if they need the job seeker to visit every day of every week, they are meant to do that.

Senator WONG—Nobody is disputing that. The issue is that the Auditor-General has found that the level of contact rarely met contractual specifications. There are a range of other things—for example, the contractual requirement to document assessment of job seekers’ barriers to employment was limited. Paragraph 50 in the overall conclusion says:

The ANAO concluded that DEWR, as the purchaser of Job Network programme services, required additional assurance that job seekers were being provided with key aspects of employment services as intended by the department.

Ms Golightly—That specific conclusion led to recommendation 4, which is the one about risk management and monitoring visits, which I think we have already indicated we agreed with and have actioned.

Senator WONG—Okay. Paragraph 52 states:

... DEWR's ability to gain assurance that job seekers receive high quality services from JNMs—
Job Network members—

is limited by the lack of objective and measurable performance indicators relating to DEWR's specified service standards.

Could you take on notice whether or not, since the provision of this report, DEWR has developed objective and measurable performance indicators, as outlined in paragraph 52?

Ms Golightly—I will take that on notice but, from memory, that was a recommendation that we only agreed with in part because we do already have KPIs. But I will take on notice what we have done on that recommendation.

Dr Boxall—That is recommendation No. 7, where the DEWR response is 'agreed in part'. So we do not agree fully with that recommendation.

Senator WONG—Can we go back to contractual breaches. You indicated that was recorded, Ms Golightly. The reason I am asking how is that I am trying to frame a question on notice that is reasonable. Otherwise, I will just ask for every contractual breach of every Job Network member over the last 12 months. So I am trying to work out if there is a report process—quarterly, monthly or something like that—that would be an easier way to collect that data.

Ms Golightly—Certainly. To help answer the question, it is a very legal determination, shall I say, to get to a position where somebody has legally breached the contract, and that follows a very lengthy process. Those I can give you. There would be any number of issues—and this is what I was trying to explain before—that we raise with Job Network members on a daily or weekly basis which they immediately rectify, and then there are others that are in between in the spectrum. I will provide whatever information I can that is sensible in terms of those things which would go to a serious issue regarding the contract.

Senator WONG—What I would also like to know is what the department determines as being serious or not.

Ms Golightly—We will do that for you.

Senator WONG—You used the words 'serious', 'substantial' or 'significant'. I want to know what the internal definition or guideline is of what constitutes serious, significant or substantial, which I think were the words you used—I could be corrected—in order to take action. Precisely what happens to breaches or concerns about performance which do not fall into those categories? Could you also let me know about recommendation 7, which you said you agreed with in part and that you have undertaken certain measures to deal with. Are you able to tell me what those measures are?

Ms Golightly—That was recommendation 7 and I think also recommendation 3. Perhaps in the interests of time I can take that on notice and give you a list.

Senator WONG—Have you reviewed your complaint data entry process?

Ms Golightly—Certainly we have.

Senator WONG—Subsequent to this report?

Ms Golightly—Yes. In fact, during the audit we were doing that.

Senator WONG—Have the issues which were identified regarding inconsistency in the recording of complaints been resolved and, if so, how? If you want to take these on notice—

Ms Golightly—I believe the answer to that question is yes, it has, but I am just checking with somebody else in the room.

Senator WONG—And how, but I am happy for you to take it on notice.

Ms Golightly—The question of how, yes.

Senator WONG—Has the current complaint classification system been reviewed, and has a structure been established to provide a more accurate reflection of the key complaint sources in the Job Network programs and the frequency with which job seekers complain about them?

Ms Golightly—Yes.

Senator WONG—Perhaps we should just make it easier and you could indicate in addition to that what action has been taken in relation to the other recommendations of this report.

Ms Golightly—To all of the recommendations?

Senator WONG—There are only eight.

Ms Golightly—I am sorry; I could not quite hear whether you said the other or all.

Senator WONG—The other.

Ms Golightly—Yes.

Senator WONG—I am sorry; I am jumping around a little bit here but I think this is for you, Mr Carters—full-time Work for the Dole, which someone can be required to do if they are ‘not genuine’. I think that is the phrase. Is that what was used in the budget announcement?

Mr Carters—Not a genuine job seeker, yes.

Senator WONG—Is it Centrelink who will determine the genuineness?

Mr Carters—No. The Job Network members will determine that.

Senator WONG—What sort of appeal right is there from that, or is there none?

Mr Carters—There is no appeal as such against participating in full-time Work for the Dole; however, full-time Work for the Dole, like other activities, is written into an activity agreement, which is negotiated and agreed with the job seeker. There are appeal rights associated with the activity agreement.

Senator WONG—With regard to the Employment Innovation Fund, which was discussed on the last occasion—the person who answered my questions last time was Ms Taylor—have any further grants been made?

Mr Boxall—Is this the Employment Innovation Fund?

Senator WONG—Yes.

Mr Boxall—This is Ms Kingston.

Senator WONG—I am sorry; Ms Taylor answered my questions last time.

Ms Golightly—I am not sure that was the Employment Innovation Fund.

Senator WONG—They were, I guess, the Employment Innovation Fund guidelines. That was the answer Ms Taylor gave me, so I was just going off that.

Ms Golightly—From memory, I think the context was referring to guidelines—

Senator WONG—It is no criticism of anyone. I just want to know if there has been any further grants.

Ms Golightly—There has been in the Employment Innovation Fund, yes.

Senator WONG—On the last occasion we talked about the National Retail Association, \$95,000; the Gippsland Area Consultative Committee, \$25,000; and the Mental Health Council project, \$75,900. Those, at that stage, were the only projects currently funded out of that \$200,000.

Ms Taylor—If I could clarify the information to that particular amount of money—

Senator WONG—I remember.

Ms Taylor—that was the total amount for that allocation. The Employment Innovation Fund is a different fund. So that was all of the money and accounted for that.

Senator WONG—Is the Employment Innovation Fund part of the employer demand strategy?

Ms Taylor—No. The Employer Demand and Workplace Flexibility Strategy is a separate allocation to the Employment Innovation Fund.

Senator WONG—Okay. Have any grants been allocated out of the Employment Demand and Workplace Flexibility Strategy?

Ms Taylor—Yes, they have. They are on our web site. There are four of them.

Senator WONG—Could you remind me what they are?

Ms Taylor—There is one to the Building Service Contractors Association of Australia. Do you just want the names?

Senator WONG—And the amounts, please.

Ms Taylor—\$98,750—do you want to know what they are about as well as the detail of the project?

Senator WONG—Yes.

Ms Taylor—To train, recruit and place up to 90 parenting payment recipients and other job seekers into positions of 15 hours a week within the cleaning industry in Victoria and Queensland. The Canberra Institute of Technology, \$33,275—that is in conjunction with the ACT network of employment and training association, the disability open employment service providers and Clubs ACT. They are combining to provide training and employment opportunities for 15 disability support pensioners and people with a disability in the ACT as part of the first course. Course 2 will have a similar number. There is the Ready and Able 2 sustainability pilot in Brisbane—the National Retailers Association, \$56,100, to train and place 45 disability support recipients into work in the retail industry in south-east Queensland. The Replay Group Pty Ltd, \$89,450, is designed to adapt a model which has been successful in the aged care industry to provide sustainable pathways to improving participation of Indigenous workers in the child-care industry.

Senator WONG—Who is Replay?

Ms Taylor—Replay is an organisation—I do not have the detail of that. They are the Replay Group Pty Ltd.

Senator WONG—You do not know what they do.

Ms Taylor—No.

Senator WONG—You do not have any details. Are they an employer?

Ms Taylor—No. I presume they are an organisation that provides training but I will get that information—they are a registered training organisation.

Senator WONG—An RTO. How much more needs to be allocated within this financial year?

Ms Taylor—There was a total in that part of the project of \$2.1 million for this financial year.

Senator WONG—Do you have a number of other applications you are considering?

Ms Taylor—Yes, we have received 22 applications so far. It is a rolling process throughout the year.

Senator WONG—Have you got written guidelines about the allocation of these funds?

Ms Taylor—Yes, those guidelines are published on our web site.

Senator WONG—Who is the determining body?

Ms Taylor—The determining body is the department.

Senator WONG—Not the minister.

Ms Taylor—No.

Senator WONG—Who in the department is that—you or Dr Boxall?

Ms Taylor—That is me.

Senator WONG—The minister gave a speech on 6 September 2005 in which he refers to the Employer Demand and Workplace Flexibility Strategy, saying:

... industries and individual employers will develop, with small grant funding, innovative recruitment, employment and retention strategies to increase the participation of people with a disability

... ..

Industries will develop 'best practice' models for work force flexibility in their industry.

Are any of the allocations you have just described to me of the four intended to develop best practice models for work force flexibility?

Ms Taylor—No. There are, as I understand it, two separate parts of the Employer Demand and Workplace Flexibility Strategy that deal with first of all the retail industry. That part builds on some work that was previously done in that industry sector, and I will just get the details of the other part of that project—in the retail industry, as I said, and in the restaurant and catering industry.

Senator WONG—Have grants been allocated to those two sectors?

Ms Taylor—No.

Senator WONG—But they have been identified as sectors.

Ms Taylor—Yes.

Senator WONG—Is that the component of the funding to which the minister is referring in that speech? I am trying to work out whether that refers to the grants you have talked about or whether there is another stream.

Ms Taylor—I am not sure exactly what the minister was referring to. I do not recall the speech.

Senator WONG—So you think 'best practice models for work force flexibility' refers to the two sectors?

Ms Taylor—Yes.

Senator WONG—Has any funding gone to them already in relation to that?

Ms Taylor—No.

Senator WONG—Has any money been provided for small grant funding which would look at innovative recruitment, employment and retention strategies?

Ms Taylor—I am assuming, from what you have read out, that the minister, in talking about small grant funding, was in fact referring to the employer demonstration projects—the details of the four of which I just gave you.

Senator WONG—The paragraph begins 'As part of the workplace demand and flexibility strategy'. That is why I have gone to you.

Ms Taylor—Yes, they were the four. In relation to small grant funding, as part of the employer demand and workplace flexibility strategy, four grants have been made, which we discussed before.

Senator WONG—Dr Boxall, is IT procurement cross-portfolio?

Dr Boxall—Is it with respect to the Job Network?

Senator WONG—I am not sure. It is more general.

Dr Boxall—Perhaps if you asked the question we might be able to answer it.

Senator WONG—Is it the case that, under the FTA obligations, there is an obligation to put projects to open tender if their value is greater than \$80,000?

Dr Boxall—That is definitely cross-portfolio. I think the answer is yes, but we will confirm that during the cross-portfolio session.

Senator WONG—I am happy to wait until then.

Proceedings suspended from 10.12 am to 10.30 am

Senator WONG—I have a couple of quick questions on this before we move to 1.2 and 3.2. There was a document with—

Ms Golightly—A graph.

Senator WONG—Is it a graph? I suppose it is. Little pyramids: parenting payments, total job placements et cetera. I do not believe that has been formally tabled.

Ms Golightly—Senator, it was provided to the secretariat to do that but, if that is not the correct procedure, through the chair—

Senator Abetz—Does somebody have to say that it is tabled? Is that what you are saying?

Senator WONG—Yes.

Senator Abetz—All right, consider it said.

Senator WONG—Thank you. I was not sure with the discussion that occurred in relation to this whether the data and the exact figures that that represents had been tabled as well.

Ms Golightly—Yes, we still will provide the information you asked for on notice.

Senator WONG—On the double-dipping issue, are you able to come back to me on that yet, Ms Golightly, or do we want to defer that?

Ms Golightly—I will just check. I am advised that people in the department that are looking at this have followed up with the JNMs concerned in the first instance and are currently looking at the information provided. So the review or investigation is in progress.

Senator WONG—I do not understand what that means.

Ms Golightly—It is a contract management issue, so we seek to look for the full details of the situation. As part of doing that, we contact various parties and to date we have contacted the Job Network members involved.

Senator WONG—So have the three—I will not mention them at this stage—Job Network providers which are identified in the correspondence been contacted?

Ms Golightly—That is my understanding. I will check whether all three have been.

Senator WONG—And the dates?

Ms Golightly—I do not have the dates here with me, but I can get them on notice for you.

Senator WONG—Do we know for all three?

Ms Golightly—I will have to take that on notice.

Senator WONG—And you are not able to tell me whether or not there is in fact any double-dipping occurring.

Ms Golightly—The review is still in progress, Senator.

Senator WONG—Thank you.

Ms Golightly—Senator, I also have a part answer to a question you had last night, if the chair is happy for me—

Senator WONG—Sorry, we have been distracted by the provision of some correspondence—just one moment.

Ms Golightly—Last night, you asked if we could provide updated figures for the number of people who are receiving Newstart allowance and Youth Allowance for one year, two years, five years or more. We answered that that was an annually produced figure and it is correct, but I am advised that is a series of data that we update in June each year, so we can provide you with those as of June this year. I do not have them with me, but we will provide them on notice.

Senator WONG—So you will provide the total data set. FaCS used to produce that document, I think—labour market payments or incomes—I cannot remember what the title was. But you can provide me with an equivalent document across—

Ms Golightly—My understanding is that document is still produced, but I will check—yes.

Senator WONG—Right, so you can provide me with an equivalent document.

Ms Golightly—I think that particular document was produced monthly and still is.

Senator WONG—Is that available on the DEWR web site? It is quite a large document.

Ms Golightly—Yes, it is.

Senator WONG—Chair, I propose to raise the issue of the correspondence that has been received by the Clerk in relation to the remarks made by Senator Abetz, in which the Clerk responds to Senator Abetz's assertion that Senator Abetz had accused the Clerk of corruption.

Senator Abetz—No.

Senator WONG—Sorry, Senator Abetz—asserted that the Clerk had accused him of corruption. As you know, the letter goes on to say:

This is a gross distortion of the submissions which I made to the Finance and Public Administration Committee in the course of its inquiry into government advertising—

Senator Abetz—He can defend himself. Isn't that interesting?

CHAIR—Senator Abetz, Senator Wong has the floor.

Senator WONG—You might think this funny, but actually a lot of people do not.

CHAIR—Senator Wong, would you please proceed if you have comments to make on this.

Senator WONG—The letter says:

This is a gross distortion of the submissions which I made to the Finance and Public Administration Committee in the course of its inquiry into government advertising, as I have pointed out to that

committee. I invite members of your committee to read those submissions, written and oral, which are on the website of the Finance and Public Administration Committee.

Chair, it is a real concern to me—and, I am sure, to other members of the committee—that Senator Abetz has used these estimates to make such an allegation in relation to the Clerk.

Senator Abetz—Chair—

Senator WONG—I have not yet finished.

Senator Abetz—Sorry; I thought you had.

Senator WONG—I also want to point out that the advice the Clerk has given on this occasion is, as always, predicated on resolutions of the Senate and previous practice, which has been supported both in terms of resolutions and practice by members of the coalition as well as members of the opposition. In those circumstances, that is the basis on which the advice should be considered. I place on record my concern that this public forum has been utilised by Minister Abetz, yet again, to engage in an attack on the Clerk of the Senate.

CHAIR—Thank you for drawing that to the attention of the chair, Senator Wong.

Senator Abetz—If I might respond to that, Chair—

CHAIR—Yes.

Senator Abetz—very briefly, the headlines at the time indicated that the Clerk was asserting corruption, and that is how things were interpreted. It is now nice to know, courtesy of Senator Wong, that the Clerk is not making such an assertion, and it would be great if he could clarify that for the committee.

Senator WONG—That is what he said in his letter.

Senator Abetz—But that, Madam Chair, with great respect, is not the business of this committee in any way, shape or form. What is, however, is the second paragraph:

In relation to Senator Abetz's remarks about my 'presumption', the committee should refer to the terms used by Dr Boxall last night.

But, of course, what he conveniently confirms in this second paragraph is that the word 'immunity', which the Clerk used in his first letter, he now—

Senator WONG—It is the same as in his current letter.

Senator Abetz—no longer asserts in this second letter. He is now using interesting wording to get around the term 'immunity', which was, of course, the basis of the technical discussion this morning. So I am delighted that the Clerk does not assert that the word 'immunity' was used last night, which is what Dr Boxall said as well. So it looks as though we are getting into heated agreement with the Clerk: no allegations of corruption anymore, and no suggestion that the secretary used the word 'immunity'. Things are looking very good.

CHAIR—Thank you for that, Minister. As you correctly remarked, the business of the Finance and Public Administration Committee is nothing to do with this committee. I consider the question of Senator Wong's question to Dr Boxall and his response to have been dealt with. I allowed Senator Wong to bring this letter to the attention of the committee; we have now done that, and I consider that we should move on with questions.

Senator Abetz—Good idea.

Senator WONG—There are some things that the minister has just said which I am going to respond to, Chair. The first is that the issue of the Clerk was brought into this committee by the minister's inappropriate comments. The second issue is that, if the minister actually took the trouble to read the first letter, he would see that the second letter from the Clerk in relation to what Dr Boxall said is exactly the same. He does not assert that Dr Boxall used the word 'immunity', as far as I can see. The third issue is that it is not me making any indication as to what the Clerk says about whether or not any allegation of corruption was made—it is the Clerk in his letter.

CHAIR—Thank you, Senator Wong. We will now move on to—

Senator Abetz—If I may very briefly, Chair, and I am sorry to detain the committee: the second sentence of the second paragraph of the letter says:

Dr Boxall responded that he was not at liberty to disclose this information, without giving an explicit reason but presumably intending to make a public interest immunity claim because you mentioned the word 'cabinet'.

There you have it from the Clerk's own pen. The word 'immunity' is then referred to in the last line on the first page of the Clerk's letter as well. It is dissembling in the extreme to suggest that the Clerk did not use the word 'immunity'.

CHAIR—Thank you, Minister.

Senator WONG—I was responding to the allegation that you made that the Clerk had said that Dr Boxall had used the word 'immunity'.

CHAIR—Senator Wong, you are out of order. We will not proceed any further with this matter, which I consider peripheral to the business of the committee.

Senator Abetz—Hear, hear!

CHAIR—Senator Wong, I would like to ask you to proceed with questions.

Senator WONG—So it works like this: the minister, when he responds, Madam Chair, is in order; but if I respond to the minister's inaccuracies—

Senator Abetz—It is my right of reply.

CHAIR—I have allowed you both a considerable latitude in replying and I would now ask you to proceed with questions to the department.

Senator WONG—I have finished with outcome 1. I would like to move now to Indigenous employment services and CDEP management. Apart from that, I have questions on the cross-portfolio matters.

[10.41 am]

CHAIR—We are now at Indigenous employment services under output 1.2, Labour market program management and delivery.

Senator WONG—I understand Senator Crossin has a range of questions but will put them on notice. I have one small set of questions in relation to this.

Dr Boxall—Can we take it that all the staff, apart from the staff dealing with Indigenous matters in outcomes 1 and 3, can go?

CHAIR—Are there other senators with questions? That appears to be the case. Thank you.

Senator WONG—Firstly, what is DEWR's involvement in the COAG community trials?

Dr Boxall—In the COAG trials, DEWR was the lead agency for two of the seven COAG trials. In particular, for the COAG trial in Queensland at Cape York and also the COAG trial in Shepparton in Victoria we were the lead agency.

Senator WONG—As the lead agency, were you responsible for measuring the success of the trials for which you were the lead agency?

Dr Boxall—This issue has come up before, and I appreciate it was not with you. The evaluation of the COAG trials is being handled by the OIPC, the Office of Indigenous Policy Coordination.

Senator WONG—Which is in which portfolio?

Dr Boxall—DIMIA.

Senator WONG—Presumably you have some input into DIMIA's—

Dr Boxall—No doubt they will consult us but they are responsible for that, and that has been the answer given both orally and on notice, I think.

Senator WONG—Has the department undertaken any analysis of the Eureka Project report, *Measuring success: sharing power and accountability with Shepparton's Aboriginal people*?

Mr Harvey—We have had a brief look at the Eureka Project one.

Senator WONG—What does 'a brief look' mean?

Mr Harvey—A brief look means that we have done an analysis of the report and we understand the conclusions of that report.

Senator WONG—The analysis was done in-house, presumably?

Mr Harvey—Correct.

Senator WONG—In your division or branch?

Mr Harvey—No, it was done in Victoria.

Senator WONG—By whom?

Mr Harvey—It was done by our state manager. Eureka has released a couple of reports over the last couple of years.

Senator WONG—Yes. The one I am specifically referring to, I am told, is called *Measuring success: sharing power and accountability with Shepparton's Aboriginal people*.

Mr Harvey—That is correct.

Senator WONG—So that is the report on which you have done an analysis. Is that analysis a written document?

Mr Harvey—No, it is just a brief overview of the comments. The Eureka Project tends to do a very quick analysis of a range of things and then draw a whole range of conclusions that are generally not particularly founded on fact. In trying to deal with that, we have found that there is not a lot of fact associated with the reports that are put out. They tend to be judgments about issues on the basis of a few conversations with individuals within communities.

Senator WONG—Are you dismissing the report?

Mr Harvey—I am not dismissing the report; I am saying that it is not generally founded on fact or information and it tends to be based on conversations with a range of people.

Senator WONG—Have you informed the preparers of the report in writing about your concerns about what you say is a lack of factual basis for the assertions?

Mr Harvey—No.

Senator WONG—Do you have any written documentation which sets out your concerns about the report arising out of the evaluation?

Mr Harvey—We just have general internal briefings.

Senator WONG—Are you able to provide, on notice, documentation which outlines your concerns about the report?

Mr Harvey—What we could provide on notice would be comments along the lines of the statement I have just made. We really have not put a lot of time into the Eureka Project report.

Senator WONG—The report states that there is no agreed baseline data, for example, on employment statistics for use in measuring the success of the trial. Has DEWR identified a baseline data set?

Mr Harvey—As the secretary indicated, there is evaluation work being undertaken by OIPC and that will set the formative basis for evaluations. Those evaluations will be undertaken over a period of time with initial work being completed in early 2006.

Senator WONG—As the department responsible for both Indigenous employment and employment policy more generally, have you been asked to provide to OIPC in relation to baseline data on employment?

Mr Harvey—At this stage we are just participating. The framework has been drawn up. At this stage we have not provided baseline data. What tend to be drawn on for baseline data are the ABS statistical surveys. Unfortunately, the last one was in 2001. At this stage we are not providing baseline data but I am sure we will be called on to provide information.

Senator WONG—So as yet you have not?

Mr Harvey—No.

Senator WONG—Have you tracked any data in preparation for developing this baseline data?

Mr Harvey—As part of our ongoing review of the COAG sites, and as part of our ongoing monitoring of our employment services program, we track employment outcomes in Shepparton and a range of other regions. So we know, generally, how employment programs are operating. We know about that and we know that since the COAG trials there has been a

significant improvement in the number of Indigenous people who are getting into jobs in the region.

Senator WONG—I would like copies of the documentation or analyses that enable you to make that assertion. Are you able to provide that?

Mr Harvey—Yes.

Dr Boxall—On notice.

Senator WONG—What would that comprise?

Mr Harvey—It would provide on notice an indication of the performance of our Job Network providers in the CDEP and the STEP project that was run in Shepparton.

Senator WONG—Would this be both pre and post the trial?

Mr Harvey—At this stage we have been tracking what occurred during the COAG trial, so it would not be pre the COAG trial, no.

Senator WONG—So the development of performance indicators for the trial is not a matter for DEWR?

Mr Harvey—It is a matter for OIPC. DEWR participates with OIPC in the activities, but it is not specifically a matter for DEWR, no. It is a responsibility of OIPC.

Senator WONG—Has DEWR provided any performance indicators to OIPC?

Mr Harvey—Not at this stage. The general thing that we will be looking at is employment outcomes. I can make that statement because—

Senator WONG—How do you know things are improving if you do not have a baseline data set for prior to the trial?

Dr Boxall—We know because we have been tracking the employment outcomes for Indigenous people with the Job Network, the IEC and the STEP project. We can report that the job placements of Indigenous people in Shepparton by Job Network members are higher relative to the number of Indigenous people on the books than for non-Indigenous people.

Senator WONG—As I understand Mr Harvey's evidence, the issue is that DEWR has only been tracking that data for the period of the trial, so you are not comparing it with what occurred before the trial.

Dr Boxall—We have been tracking the data and watching the improved performance—

Senator WONG—From when?

Dr Boxall—From the beginning of the trial, and we have been watching the improved performance of Job Network members in placing Indigenous people in the Shepparton area.

Senator WONG—What data will you provide me to demonstrate the assertion Dr Boxall has just made, Mr Harvey?

Dr Boxall—We will take that on notice and provide you with the relevant data.

Senator WONG—What is that likely to comprise?

Mr Harvey—Placement by Job Network and by—

Dr Boxall—By the other organisations.

Mr Harvey—the other organisations in the region.

Senator WONG—So the trial has been going for three years and the government actually has not done any considered evaluation of the trial.

Dr Boxall—No. The trial has been going for three years and OIPC is responsible for the evaluation of the trial. As was discussed during the last Senate estimates, they are the appropriate organisation to ask questions of. The government, through the department, has been tracking the performance of Job Network providers and related bodies in placing Indigenous people in jobs in the Shepparton area, which is most impressive.

Senator WONG—Mr Harvey, has the information you are going to provide me been provided to OIPC?

Mr Harvey—Not at this stage, I do not believe.

Senator WONG—Have they requested any of this employment data?

Mr Harvey—Not at this stage, no.

Senator WONG—Over any of the three years of the trial?

Mr Harvey—In discussions with them we have indicated the performance, but we have not provided it to them. We have meetings and we discuss the outcomes, but we have not formally provided them with employment data.

Senator WONG—Have you identified performance indicators for the trial?

Dr Boxall—OIPC's job is to evaluate the trial. What Mr Harvey said is correct. They, of course, are aware of the superior performance of organisations in the Shepparton area in placing Indigenous people, but they have not requested the hard data as yet.

Senator WONG—They have not yet requested the hard data. Mr Harvey, you said that you had raised this with them but there has not been a handover of the hard data. I am not trying to verbal you; I am just trying to clarify that that is the situation.

Mr Harvey—In the context of the evaluation that is correct, yes.

Senator WONG—Thank you. When was the information as to the performance of the trial verbally provided to OIPC?

Mr Harvey—We meet on a regular basis with OIPC to discuss a range of issues. In those meetings we discuss COAG pilot activities and a range of things and convey what is happening in the regions. It was a part of those meetings.

Senator WONG—Were minutes taken of those meetings?

Mr Harvey—I am not sure. I do not think so, no.

Senator WONG—No minutes?

Mr Harvey—No.

Senator WONG—Is there any documentation to establish when that was and what was actually reported by DEWR to OIPC in relation to the Shepparton area performance?

Mr Harvey—I am not sure if there were minutes of when we actually spoke about it, no. They are just departmental meetings where we talk about the performance. We talk about issues associated with a whole range of issues.

Senator WONG—Has DEWR prepared any written documentation reporting to the OIPC or the secretary's group on the progress of the trial?

Mr Harvey—We provide information to the secretary's group and others on the progress of the trials, yes.

Senator WONG—Could you please take on notice the dates of such reporting. I am also requesting a copy of such reports.

Mr Harvey—Yes, Senator.

Senator WONG—Mr Harvey, are you aware that the community has recently instituted an independent scorecard?

Mr Harvey—Yes, I am aware of that.

Senator WONG—Doesn't the department think that is a concern—that the community actually want some sort of performance indicator and they are not getting one from the government?

Dr Boxall—The department cannot give views on the community's initiative in this regard. What is more, as was discussed at a Senate estimates—possibly the one before last or even the one before the last two—with the setting up of OIPC and the Indigenous coordination centres, the issue of the leadership in the COAG trial sites is gradually being handed over to OIPC. That is certainly the case both in the cape and in Shepparton.

Senator WONG—What do you mean by 'gradually being handed over'?

Dr Boxall—It is exactly what was provided at the last—

Senator WONG—You keep referring to that, Dr Boxall. As you know, I was not the senator asking those questions, so I would ask if you could possibly—

Dr Boxall—I am aware of that, Senator Wong, but the fact is that the answer to this question is recorded in *Hansard*, and it is to the effect that there is a sort of gradual phase-down of the lead agency role in COAG trial sites, which is then being taken up by OIPC. That was the whole reason for establishing OIPC and the Indigenous coordination centres. It is not an idea where the government decides to establish OIPC and Indigenous coordination centres and keeps cranking up the COAG trial sites. The COAG trial sites were a forerunner to the establishment of the Indigenous coordination centre network. I think that question was answered in the last Senate estimates, but I am not sure. It was certainly answered in one of the last three.

Senator WONG—What is the implication—you do not want me to ask it now?

Dr Boxall—No. The implication is that asking questions about what we are doing now—

Senator WONG—I am a senator in the Australian parliament. I can come here and ask questions even if they have been asked before, Dr Boxall. So let us not have this—

Dr Boxall—I know, Senator Wong. You asked me a question and I responded. I do not mind not responding.

Senator WONG—What is the issue?

Dr Boxall—You asked me what was the implication of my comments and I was giving a response, but I am happy not to give a response.

Senator WONG—Can you give me a time frame for when the lead agencies will hand over this process to the OIPC—or has it already occurred?

Dr Boxall—In the case of DEWR, basically it has been handed over.

Senator WONG—When do you date that from?

Dr Boxall—There is no specific date, because, as I explained to you, it was a gradual process. In the case of some of the other COAG trial sites, they are on a different timetable.

Senator WONG—When did the gradual process commence?

Dr Boxall—From our point of view, with the establishment of the Indigenous coordination centre network.

Senator WONG—And when was the process finalised?

Dr Boxall—I would say it is virtually finalised now, but it is a question of degree.

Senator WONG—Surely there has to be an indication of who in government is in fact responsible. When did the handover occur?

Dr Boxall—Senator Wong, this is a gradual process as we move—

Senator WONG—But who is responsible?

Dr Boxall—I am explaining that. As the government moves from the COAG trial sites, which were the forerunners to the Indigenous Coordination Centre network, different lead agencies have approached it in different ways, and what has been done with DEWR was very early on in the establishment of the Indigenous Coordination Centre network. We said to OIPC, ‘We are comfortable with you gradually assuming the role in the case of Shepparton and the cape,’ and that is what they have done. Of course, we still work closely with them, as do other agencies, because that is part of the whole-of-government approach.

Senator WONG—So can you explain to me why DEWR made the decision to hand over responsibility for their trial, while other departments—on the basis of answers provided to Senate estimates—have not done so?

Dr Boxall—I do not know why other departments did not do something. I can tell you why DEWR did it. DEWR did it because our main emphasis is on employment under the new approach to servicing Indigenous communities, and we believed and we agreed with OIPC that their responsibility is the overall conduct of the Indigenous Coordination Centres and so we thought it was appropriate that they take the lead.

Senator WONG—Was this arrangement that you have discussed the subject of correspondence between you and the DIMIA secretary?

Dr Boxall—No.

Senator WONG—Was it the subject of discussions between you and the DIMIA secretary?

Dr Boxall—It was the subject of discussions between DEWR and the Office of Indigenous Policy Coordination, and it is a position which has been confirmed at the Indigenous secretaries meeting.

Senator WONG—And when was that confirmed?

Dr Boxall—Most recently, in about May or June.

Senator WONG—Can I have minutes of that meeting?

Dr Boxall—We would have to take that on notice, because they are not ours to give.

Senator WONG—Does the community know about the handover—that DEWR is no longer the responsible agency in terms of evaluating the trial? Have they been informed?

Dr Boxall—The community is aware that we have gradually passed over responsibility to the OIPC, but they are also aware that because we have responsibility for Indigenous employment and economic development we are still very active in these communities, as we are in many others.

Senator WONG—Could you provide on notice copies of all correspondence or public information provided to the community which indicate the handover to which Dr Boxall is referring, please. Mr Harvey, how many people work in your area?

Mr Harvey—In the group in Canberra, 61, Senator.

Senator WONG—It was stated in the *Melbourne Age* on 22 September of this year that the minister was examining the report, the report being *Measuring success* by the Eureka Project. Was any written advice prepared for the minister in relation to this report?

Mr Harvey—With regard to that report?

Senator WONG—Yes.

Mr Harvey—I don't believe so, Senator.

Senator WONG—Has any request for advice been received by the department?

Mr Harvey—No.

Senator WONG—Thank you very much, Dr Boxall. I have concluded questioning in that area.

Dr Boxall—Thank you very much, Senator Wong. So is that it for outcomes 1 and 3, Acting Chair?

ACTING CHAIR—It is, Dr Boxall, and I think, as we previously advised, there will be some questions on notice. We are happy to move to the Office of the Employment Advocate now.

[11.07 am]

Office of the Employment Advocate

CHAIR—Good morning, Mr McIlwain. Senator Marshall, I understand, has questions for you.

Senator MARSHALL—Mr McIlwain, in the last round of budget estimates we talked about the approval process for AWAs, and you indicated at that time that the Employment Advocate could revisit the approval process if there had been an error of fact or law. Can you tell the committee how many requests have been made to your office to revisit the approval process?

Mr McIlwain—Not off the top of my head, but what I could tell you is that it would be less than 20 in the last 12 months—20 workplaces where AWAs have been approved.

Senator MARSHALL—Twenty workplaces—so there might be multiple AWAs, or would it be the same AWA you are talking about?

Mr McIlwain—It could be possibly a number of AWAs in that workplace or it may be one single AWA in that workplace.

Senator MARSHALL—Would you be able to get the details of those numbers for us?

Mr McIlwain—Yes, I believe we will be able to provide that.

Senator MARSHALL—Can you tell me what have been the outcomes of the revised decisions?

Mr McIlwain—Generally, I can say that the outcomes fall into several categories. One outcome may be that I decide that an error of fact has occurred and the approval of the agreement or agreements affected by that error of fact should be revoked, or I may decide that there is no error of fact or, in some instances where a significant period of time might have elapsed and the agreements perhaps are no longer in operation, I might decide that an error of fact has occurred but there would be no practical benefit to the employee in going ahead with a revocation because, in some circumstances, the agreement no longer operates because the employment relationship has ceased.

Senator MARSHALL—Could you describe the process that you would go through—how, and by whom, are you contacted in the first place and then what are the steps and outcomes?

Mr McIlwain—The usual sequence of events would be that an employee makes an inquiry or complaint to one of our offices around Australia. There would be an initial investigation into the complaint and if prima facie there is evidence that there may have been an error of fact in the approval of an AWA, or AWAs, we would conduct a more extensive investigation. A report would be provided to me before any final view was formed. If I believed there was evidence that an error of fact had occurred, I would write to both parties—the employee and the employer—advising them of the outcome of the investigation and of my concerns, and inviting them to provide, within a prescribed period of time, any further information or comments they may wish to make in regard to my preliminary findings, before I go ahead and make a final decision. There would be an opportunity, if the complaint had been made against

the employer, for the employer to have natural justice—to put his or her case. I would then consider any material that came from either party and make a final finding and decision.

Senator MARSHALL—It says at page 19 of the Work Choices booklet that the current approval process for individual and collective agreements will be replaced by a statutory declaration from the employer, on lodgment, attesting that the agreement was negotiated in compliance with the law. Given that change, how will the Employment Advocate check to ensure that agreements meet the five legislated minimum conditions?

Mr McIlwain—The proposed legislation sets out quite clearly the Employment Advocate's responsibilities in the changed agreement making system. Agreements will become operational on lodgment, as you have just read. The employer lodging an agreement is required to make a statutory declaration attesting that the legal requirements concerning the negotiation, lodgment and content of the agreement have been met. If that declaration is made, the agreement is lodged and it becomes operational. The Office of the Employment Advocate—I and my delegates—have prescribed responsibilities under the proposed legislation to deal with prohibited content in agreements post lodgment. We do not step in and approve agreements as is currently the arrangement under the 1996 legislation. The proposed legislation establishes an enhanced enforcement and compliance regime. There are significant penalties on employers for breaching the law covering the negotiation, lodgment and content of agreements and also for making a false declaration that the agreement complied with the law at the time it was lodged.

Senator MARSHALL—Will there be a process that your office actually checks that the stat decs are correct? I ask that given the recent declarations on AWAs from Merbein Mushrooms in Victoria where a declaration was made that they met the current test and they clearly did not.

Mr McIlwain—Without going into the Merbein Mushrooms situation, because there were several issues there, the office will need to ensure that the declaration has been made correctly and is present with the agreement as lodged for the lodgment to be an effective one. So we will have a process to ensure that the declaration is present and has been completed.

Senator MARSHALL—Checking that the declaration has been made correctly is quite different from testing whether the declaration is true.

Mr McIlwain—I understand the difference; however, the proposed legislation establishes a lodgment-only process. The onus is placed on the employer to attest that the legal requirements have been met. Our concern will be to confirm that, when an AWA or collective agreement is lodged, that declaration has been made correctly and is present with the agreements as lodged.

Senator MARSHALL—Do you have any proposals to do some random testing of the accuracy of declarations?

Mr McIlwain—We expect to be involved in a targeted quality assurance process on the papers, which will specifically look at agreements to see whether, in a particularly industry sector, they are complying with the Australian fair pay and conditions standard. However, we do not envisage conducting a process to go through each of the requirements for correct legal negotiation, lodgment and drafting of the agreement to check those at the time of lodgment.

Senator MARSHALL—I understand you are not going to do that for every agreement. My question was: are you going to conduct any random sampling to apply that test?

Mr McIlwain—The legislation does not set out that responsibility for us. I think it is still too early in our consideration of how we most effectively implement the legislation to say one way or the other whether our quality assurance processes will involve checking of declarations post facto.

Senator GEORGE CAMPBELL—Going back to the first question about the number of complaints you receive with respect to the lodgment of AWAs, there are two tables in appendix 7 of your annual report which outline the number of complaints you have received over the 2003-04 and 2004-05 financial years. Would those complaints that you have received with respect to the lodgment be included in those tables?

Mr McIlwain—They would be. If you look at table 10, they would be included in the first complaint type: Australian workplace agreements. I will just explain for clarity. ‘Coercion in agreements’ refers not to Australian workplace agreements but in fact collective agreements and the responsibility that the office has to administer section 170NC of the act, which deals with the coercion in the making of certified agreements. Any complaints, whether they are to do with a breach of the content or a breach of the processes for the negotiation, offer and lodgment of an AWA, would be included in that first complaint type.

Senator GEORGE CAMPBELL—You told us that there would be fewer than 20 workplaces. Do those figures there refer to individual AWAs or do they refer to workplaces?

Mr McIlwain—They refer to complaints. Some complaints would concern an individual AWA; some complaints might concern several AWAs.

Senator GEORGE CAMPBELL—So this number does not relate to the number of Australian workplace agreements that there have been complaints about; it relates to the number of complaints that there have been?

Mr McIlwain—That is correct.

Senator GEORGE CAMPBELL—So that figure could cover 1,000 workplace agreements?

Mr McIlwain—It could, but I can tell you that it did not. There was no complaint concerning thousands of workplace agreements in this financial year.

Senator GEORGE CAMPBELL—If you can tell me it did not, can you tell me how many it did concern?

Mr McIlwain—I do not have that figure with me, but I think we would be able to calculate that.

Senator GEORGE CAMPBELL—I would appreciate it if you would take that on notice and provide us with that information.

Senator MARSHALL—Under the recently announced Work Choices, people under the age of 18 would require their parents’ or guardian’s signature on an AWA that they have been offered and accepted. Can you tell me why that provision was introduced?

Mr McIlwain—You are asking me if I can tell you why it was introduced?

Senator MARSHALL—Yes.

Mr McIlwain—I believe it was introduced because the government thought it was a good idea.

Senator MARSHALL—Was it introduced in recognition of the fact that young people were signing contracts that they may not understand?

Mr McIlwain—I am not able to say whether that was in the government's collective mind when it made that decision.

Senator MARSHALL—Could the measure have been introduced in recognition of the fact that young people have been exploited under AWAs?

Senator BARNETT—Chair, I believe that question is out of order.

Senator MARSHALL—Why?

CHAIR—It does invite Mr McIlwain to speculate on the reasons for policy, which I believe is beyond his considerable brief.

Senator MARSHALL—You are ruling that the question is out of order, Chair?

CHAIR—Yes, I believe it asks him to speculate on policy.

Senator MARSHALL—How many complaints about AWAs have you had from people under the age of 18?

Mr McIlwain—I do not have that figure with me today.

Senator MARSHALL—Can you take that on notice?

Mr McIlwain—We can.

Senator MARSHALL—What will happen to the AWAs of people already under the age of 18 when the new IR changes come into force?

Mr McIlwain—Their agreements under the transitional arrangements, as I understand them in the proposed legislation, will continue to run to their nominal expiry date.

Senator MARSHALL—Will their AWAs be reviewed?

Mr McIlwain—I do not believe the legislation proposes that.

Senator MARSHALL—Will their AWAs then require the signature of parents or guardians?

Mr McIlwain—If an employee under the age of 18 makes an AWA following the introduction of the new system, their AWA will also require the signature of their parent or guardian. AWAs approved under the current legislation do not require the signature of a parent or guardian where the employee is under the age of 18.

Senator MARSHALL—If someone signs up to an AWA today and the new legislation comes in, say, at Christmas time, their AWA potentially has more than two years to run. Obviously, there was a reason why the government thought that a parent or guardian should countersign an AWA for someone under the age of 18. There is no provision to review those AWAs for that reason?

Mr McIlwain—There is no requirement in the current legislation for an AWA entered into by a person under the age of 18 to be also signed by a parent or guardian.

Senator MARSHALL—Are you aware that many awards contain different pay scales for young people and that some of those include pay rises after each birthday up until the age of 21?

Mr McIlwain—Yes.

Senator MARSHALL—Given this, and given that AWAs are valid for up to three years, how does the OEA apply the no-disadvantage test to workers under 21 years of age, given that the award pay will differ over the three years of the agreement?

Mr McIlwain—The legislation as it now stands requires that the NDT be conducted against the relevant or designated award as the award stood on the day before the agreement was made. As to whether prospective pay increases on the basis of birthdays or other events figure in the NDT depends critically upon the actual wording of the award. In some situations, the wording may be such that those prospective increases are taken into account. In other situations, depending upon the wording, it may not figure in the NDT or may not be applicable in the NDT.

Senator MARSHALL—When you calculate the no-disadvantage test, do you use only the pay rate applicable at the age of the employee at the time the no-disadvantage test is conducted?

Mr McIlwain—Again, it will depend on the terms of that actual award in regard to prospective increases—whether they are related to an employee's age, the anniversary of employment or some other event. It will depend upon how award is termed as to whether those prospective increases figure in the NDT or are part of that calculation. Sometimes they may be or they will be; on other occasions they will not. It is not possible to give a definitive answer because of the many thousands of awards that we apply in conducting the no-disadvantage test, the multitude of forms that their provisions take and the significant differences in the drafting of those.

Senator GEORGE CAMPBELL—Can I just ask you that question in a slightly different form. I am trying to understand what it is that you are trying to say to us. Say I am a 15-year-old, and the relevant award I am employed under provides for wage increases at 15, 16, 17 et cetera. If I enter into an AWA with an employer which provides for the rate of pay to be that of the 15-year-old in the award—and that is the only provision it makes—presumably that AWA would meet the no-disadvantage test because that the pay rate that would be applicable to me if I were under the award; is that right? All other things being equal.

Mr McIlwain—That is exactly what I was going to say. It is a global test. 'All other things being equal' is in fact quite pertinent. But if the award clearly stated that, when an employee turned 15, 16, 17 or whatever and prescribed increased pay rates at that time, without being specific to an actual award, I believe that we would factor in those increases on the anniversary of the employee's birth when calculating the advantage or disadvantage to the employee provided by the AWA. In the example that you have described, without reference to a specific award, we would take into account that the award provided for pay increases on the

employee's birthday. The AWA would have to compensate, either in pay or in some other form, globally at least, for that increase that the award provided.

Senator GEORGE CAMPBELL—Given that AWAs run normally for three years, do many AWAs contain escalation clauses?

Mr McIlwain—Some AWAs provide for an increase to pay rates on an annual basis, some refer to national wage case increases, some refer to CPI increases, some refer to performance reviews on an annual basis that lead to increased pay and some provide for no increases over the duration of the AWA.

Senator MARSHALL—Is it possible under the new Work Choices legislation that the AWA for a 15-year-old would only need to meet the five legislated minima, including the legislated minimum wage for a 15-year-old?

Mr McIlwain—As I understand the proposed Work Choices legislation, in addition to the requirement that an agreement meets the Australian fair pay and conditions standard, there are also protected award conditions. If that 15-year-old were covered by a relevant award, those award conditions would be protected. They would default in the agreement, unless the agreement specifically modified or removed those protected award conditions. I suppose my answer is no, that is not strictly true because that 15-year-old covered by a relevant award, if offered an AWA or indeed a collective agreement, would have those additional award conditions protected unless he or she, and under the proposed legislation their parent or guardian, agreed to their modification or removal in the agreement.

Senator MARSHALL—Yes, but a 15-year-old could be offered an AWA that included only the minimum wage and the five minimum conditions provided by the legislation. That is true, is it not?

Mr McIlwain—They could be offered an agreement in those terms, but if the agreement was silent on the protected award conditions—public holidays, rest breaks including meal breaks, incentive based payments and bonuses, annual leave loadings, allowances, penalty rates and shift or overtime loadings—the agreement would default to those conditions covering those areas in the relevant award for that employee, if those conditions were present in that award.

Senator MARSHALL—As long as an AWA includes the five minimum conditions, if it then goes on to say, 'These are the totality of the terms of employment,' would that then exclude all the award provisions you just talked about?

Mr McIlwain—The agreement will need, as I understand the proposed legislation, to expressly exclude or modify those terms. Mr Rushton will possibly refer to the bill. I may be able to provide you with some further advice on that, but my clear understanding is that there must be an express removal or modification for those conditions.

Senator MARSHALL—How can that be done? Can it simply be done as a statement saying, 'No other terms or conditions apply,' or do you have to go to each specific topic and expressly exclude it? What sort of language needs to be used to do that?

Mr Rushton—Apologies, Senator. I am just trying to find that section in the proposed legislation. It is section 101B in the proposed legislation, ‘Protected award conditions’. It is in the agreement-making section of the proposed legislation. It states:

(2) Those protected award conditions:

- (a) are taken to be included in the workplace agreement; and
- (b) have effect in relation to the employment of that person; and
- (c) have that effect subject to any terms of the workplace agreement that expressly exclude or modify all or part of them.

Senator MARSHALL—I guess that begs the question: if the agreement includes the five minimum conditions and the minimum wage, will a statement saying that these are the only terms and conditions of employment that apply expressly exclude the award provisions?

Mr Rushton—I can do no more than refer to the words in the proposed legislation.

Senator MARSHALL—I understand that. I have not gone through all the detail of the legislation either. In terms of incremental wage increases based on age, and given that AWAs under the legislation, as I understand it, can go for five years, is it possible that a 15-year-old could enter into an AWA at the 15-year-old rate of pay and still have that same rate of pay being applied when he or she is 19 or 20?

McIlwain—That will depend on the relevant minimum award classification pay rate, which will be part of the Australian fair pay and conditions standard, and that will be set by the AFPC.

Senator MARSHALL—Yes, but what I am trying to find out is whether, at the time the declaration is made by the employer—when the employee is 15—the rate of pay applies, meaning that the declaration is correct. However, five years later, when the employee is 19 or 20, the pay rate may not be correct and the declaration, if it was being made at that time, would be incorrect. How are we going to deal with that?

McIlwain—The proposed legislation requires that the agreement comply at all times with the Australian fair pay and conditions standard. So the minimum award classification pay rate relevant to that employee, as varied by the Australian Fair Pay Commission, must always apply. So the standard, as it changes—if it changes in relation to the employee covered by that agreement—must always be met by the employer. In the example you gave, it will depend upon the determinations of the Australian Fair Pay Commission. But whatever they are, in relation to the employee and their pay, the employer must continue to meet that standard—whether it changes or not.

Senator MARSHALL—Just so I am clear about this, if we are assuming that an AWA excludes all the other award provisions and contains the minimum five provisions and the minimum rate, that can be entered into and the only wage increases will be those that are determined as the minimum rate by the commission. So increases will change as that rate changes throughout the life of the agreement.

McIlwain—Yes. The legal requirement is to comply at all times with the standard, one part of which will be the minimum award classification rate. So, if that rate is changed by the AFPC—for example, if, for argument’s sake alone, it determines rates for a 15-year-old, a 16-

year-old, a 17-year-old and so on—the requirement would be for the employer to continue to comply with the determined rates for the life of the AWA, or indeed any other form of agreement.

Senator GEORGE CAMPBELL—If the minimum rate of pay determined by the Australian Fair Pay Commission is lower than the rate of pay for an 18-year-old or a 19-year-old, which rate of pay would apply?

Mr McIlwain—The legal requirement is to comply with the standard as a minimum.

Senator GEORGE CAMPBELL—So the minimum rate of pay established by the AFPC would be the benchmark against which you would measure what they are being paid?

Mr McIlwain—Above that, an employer may offer, as they currently do, conditions in excess of the minimum that is required for the agreement to be, at the moment, legally approved and, in the future, lodged and operational. So, in an agreement that provided a higher rate of pay, if a rate of pay higher than the standard were not paid, that would be a breach of the agreement. That is the nature of an agreement. It would be a breach of the terms of the agreement.

Senator GEORGE CAMPBELL—We are talking about an agreement for a 15-year-old who joins the work force and is offered the bare minimum rate of pay plus the five minimum conditions. It excludes all other provisions. That minimum may be below the rate provided for in the award for a 19-year-old. I asked you which rate of pay would apply, and you said it would be the minimum.

Senator Abetz—I want to get this clear because I am a bit confused. You are talking about a 15-year-old and an award provision for a 19-year-old. Did I hear that correctly?

Senator GEORGE CAMPBELL—Yes. We are talking about a set of circumstances in which a 15-year-old enters the work force and signs up to an AWA for three, four or five years on a rate of pay. Presumably, he will be paid the rate for a 15-year-old but, at some point, because there is a graduated scale within the award, the rate of pay, as he goes through the agreement, may escalate. But, if the provision in the agreement is to pay only the minimum, there may be a time at which the rates cross. Would the requirement on the employer be to pay the rate of pay for the 19-year-old or the rate of pay which equates to the minimum provided under the Australian Fair Pay Commission?

Mr McIlwain—If I understand it correctly, as the employee aged—as they went through successive birthdays—the requirement would be that the employer meet whatever the Fair Pay Commission said was the minimum award classification rate for an employee of that age doing that work.

Ms GEORGE—That would be separate and distinct from the minimum pay rate determined by the Fair Pay Commission?

Mr McIlwain—Indeed, it is. The component of the Australian fair pay and conditions standard is the minimum award classification rate as distinct from the minimum wage rate. For example, an employee working under a shops award—I will not be specific; this is for the purpose of the argument only—at the age of 15 would have an applicable award classification rate determined by the AFPC. The agreement runs for five years and the employee has a

birthday every year. The employer would be required to pay whatever the AFPC said the award classification rate was for that employee and, if there were junior rates, those junior rates are, at that time, for the duration of the agreement. Mr Rushton has handed me an extract from the bill, section 89A, describing the operation of the Australian fair pay and conditions standard. I refer you to subsection (2).

Senator GEORGE CAMPBELL—Have you got a page number there?

Mr McIlwain—Page 65, subsection (2) says:

The Australian Fair Pay and Conditions Standard prevails over a workplace agreement or a contract of employment that operates in relation to an employee to the extent to which, in a particular respect, the Australian Fair Pay and Conditions Standard provides a more favourable outcome for the employee.

Senator GEORGE CAMPBELL—That is where it provides a more favourable outcome, but what if the standard set by the Fair Pay Commission provides a less favourable outcome?

Senator Abetz—Then the workplace agreement stands.

Mr McIlwain—If the agreement has the more favourable outcome, it will apply.

Senator GEORGE CAMPBELL—But the agreement may simply refer to the Australian fair pay, the minima plus the five conditions—

Senator Abetz—If it has that then it cannot be contradictory.

Mr McIlwain—The requirement is—

Senator GEORGE CAMPBELL—It can be contradictory, let me tell you, Senator Abetz. Don't show your ignorance about industrial relations.

Senator Abetz—Let us get this clear: you have been trawling through trying to come up with a hypothetical and, just so I have not misunderstood you, you are referring to where the AWA is more favourable—is that right?—than what the Australian Fair Pay Commission might come up with.

Senator GEORGE CAMPBELL—No.

Senator Abetz—Is that right?

Senator GEORGE CAMPBELL—No. What I am saying is that, because there are anniversary dates for young people entering the work force, there will be a crossover between the minimum standard provided by the Australian Fair Pay Commission—the minimum rates of pay—and those provided for in an award. What happens in those circumstances—

Senator Abetz—I think we have been talking about the Australian workplace agreement and the standard of the Australian Fair Pay Commission, and that is why we have been talking past each other, so thanks for that clarification. I think Mr McIlwain may have been labouring under that misapprehension as well.

Senator GEORGE CAMPBELL—What happens in those circumstances? Is the employer only required to meet the minimum provided by the Australian Fair Pay Commission?

Mr McIlwain—For the agreement to comply with the law on lodgment and to operate, its conditions must meet the minimum standard provided by the Australian fair pay and

conditions standard. However, if the employer provides a standard above that—as is currently the case with an abundant number of AWAs and collective agreements—the employer is bound to comply with the agreement and those higher rates or conditions contained within the agreement. If an employer, though, pays only the minimum award classification pay rate relevant to that employee as determined by the AFPC and the employee has anniversaries—birthdays—and the AFPC in its determinations provides for increases according to age, then the employer must, regardless of what is in the agreement, continue to meet those increased pay rates as determined by the AFPC.

By way of example, say \$100 a week is the minimum standard at the time the agreement is lodged. If that is then increased to \$150 by the AFPC, at that time the employer must then comply with that higher pay rate. However, if the pay rate is already higher in the AWA or the collective agreement, the employer must continue to comply with that higher pay rate as described in the agreement. If at some point the AFPC minimum award classification rate exceeds the initially higher rate in the agreement, from that moment onwards the employer is bound to pay the higher AFPC determined rate.

Senator GEORGE CAMPBELL—Let me put it in another way. You are providing an answer which is not really relating to the question I am asking. Let us take a person 15 years of age who enters a work force and signs an AWA with his employer which provides for the minimum standards. That young person's equivalent award—and let us say the minimum wage provided by the AFPC is \$400—provides for \$150 when he is 15, \$250 when he is 16, \$350 when he is 17 and \$450 when he is 18. If the minimum standard is provided, does the employer have to pay the \$400 for all of the period he is engaged or can he pay the lesser rate which equates to the age level of the employee? When he reaches 18, is he required to pay him the \$450 or only the \$400 minimum wage set by the Fair Pay Commission?

Mr McIlwain—As I understand the responsibility of the AFPC, it sets a minimum award classification rate in every award. The relevant rate for the standard for, for example, a 15-year-old, will be whatever the AFPC sets in that award as the minimum rate relevant to that 15-year-old doing that particular work. If an agreement initially sets a higher rate, the employer must pay that higher rate until the AFPC determined rate reaches that higher rate and then, if the AFPC rate exceeds the rate in the agreement, the employer must pay that higher rate. With regard to the issue of age rates, if the AFPC sets minimum award classification rates by age, the employer will be bound to comply with those. For example, if there was a rate for the employee when he was 15—and that increased when he was 16 and so on—the employer would have to continue to comply with the standard by paying those increasing age rates. However, if the employer was already paying more in the agreement reached with the employee, he would continue to pay more until at some point the AFPC determined rate exceeded the rate in the AWA, at which point he would be bound by the law to pay the higher minimum award classification rate as determined by the AFPC.

Senator Abetz—If I may, I will try to assist here. On page 13 of the Work Choices booklet—

Senator GEORGE CAMPBELL—Which one—the shortened version or the long version?

Senator Abetz—The revised standard version, which has about 68 pages. On page 13, dealing with the Australian Fair Pay Commission, there is a helpful box at the bottom of the first column, which says:

The Fair Pay Commission will:

Set and adjust the federal minimum wage;

Set and adjust minimum award classification rates of pay;

Set and adjust federal minimum wages for juniors, trainees (including school based apprentices) and employees with disabilities;

Set and adjust minimum wages for piece workers; and

Set and adjust casual loadings.

I think that may be of some assistance. In the introduction on page 13 it does say that the government will set up the Fair Pay Commission to:

... set and adjust a single minimum wage, minimum wages for award classification levels, minimum wages for juniors, trainees/apprentices and employees—

as I read before. It continues:

Minimum and award classification wages will be protected at the level set after the inclusion of the increase from the AIRC's 2005 Safety Net Review case. Minimum and award classification wages will be locked in and cannot fall below this level and will increase as decided by the Fair Pay Commission.

Senator MARSHALL—We might just leave that there for the moment. I can probably fit in one question before lunch. It is about the Bakers Delight case, which is something Senator Abetz and I have been discussing regularly in the chamber.

Senator Abetz—‘Which one or ones?’ is the big question, isn't it, Senator Marhsall?

Senator MARSHALL—Let us try to sort that out today, Senator Abetz.

Senator Abetz—We were told about a case, which then turned out to be 49 cases—

Senator MARSHALL—It is the same case, as you well know.

Senator Abetz—but let us go through them.

Senator MARSHALL—We can repeat our debate for the purposes of the committee, if you like. I am sure you are familiar with the case in South Australia of Bakers Delight where a 15-year-old signed an AWA, which paid her only \$8.35 per hour. Although that AWA was found to be invalid on a technicality, it was suggested that your office approved 50 identical AWAs for this business. Have you approved AWAs which pay \$8.35 per hour for Bakers Delight employees?

Mr McIlwain—I can tell you that we have approved 38 AWAs for that particular workplace. I do not have the rate in front of me but the AWAs which were approved all met the no disadvantage test. A confusion that has arisen from the outset in this matter is that the employees were thought to be casual employees. They are, in fact, not casual employees; they are permanent part-time employees, and it is incorrect in calculating the no disadvantage test to apply casual pay rates for the purpose of that calculation. I suspect strongly that that is where a view has developed in some quarters that the employees were disadvantaged by these AWAs.

Senator MARSHALL—Wasn't there a legal decision in relation to the disadvantage?

Mr McIlwain—There was but, with respect, the court was mistaken on that point.

Senator MARSHALL—Are you appealing that decision?

Mr McIlwain—No. We have no intention. We were not party to that action.

Senator MARSHALL—So the court was wrong.

Mr McIlwain—With respect, I believe the court misunderstood that.

Senator MARSHALL—But the decision stands, doesn't it?

Mr McIlwain—The decision stands, but it is the OEA's position that the employees are permanent part-time employees and, in correctly applying the global no disadvantage test, it is incorrect to apply casual award loadings.

Senator MARSHALL—We might come back to that after lunch.

CHAIR—We will resume on the same topic. I understand Senator Siewert also has some questions on this topic.

Proceedings suspended from 11.59 am to 1.32 pm

Senator MARSHALL—I go back to an answer to a question I asked earlier, which was about how award provisions would be excluded from AWAs. I asked you whether, apart from the five minimum and the minimum wage, that would be enough to render all the award provisions or to take them out of application. You indicated that you were not quite sure whether it would or would not, but it occurred to me over the lunch break to ask: isn't it going to be the OEA that makes that decision? Aren't you still going to need to approve or not approve AWAs?

Mr Rushton—The OEA's role will be determined by the legislation, which has not been passed as yet. The provisions of the proposed legislation I suppose speak for themselves. I did refer you to the provisions of awards prior to lunch and really cannot take it any further than that.

Senator MARSHALL—Who else is going to determine it if it is not the Office of the Employment Advocate?

Mr McIlwain—The Office of the Employment Advocate's role in the proposed legislation is quite clear—that is, to administer the system for the lodgment of workplace agreements, AWAs and collective agreements. The responsibility of the employer lodging is also quite clear in having to make a declaration attesting that all of the legal requirements for the negotiation, lodgment and content of the agreement have been met. When it comes to issues regarding the enforcement of that compliance, the OEA does not have an enforcement responsibility; that is proposed to be the responsibility of the Office of Workplace Services.

Senator MARSHALL—Yes. We are not there yet. I am not trying to be difficult; I am just trying to understand how this will practically work. At the moment, you get an AWA, you give it the global test and then you approve it. The way I understand it is going to operate is that, as long as the employer gives a stat dec to say that they have complied with the legal requirements, you are not going to then check the AWA itself, but, if it is silent, the award

provisions will also apply unless they are expressly excluded. What I am trying to find out is: how will that take place? Can it be a simple statement to say that no other provisions apply? How will people know? If people are signing stat decs on that basis to say that in their view it applies, how will we ever know? How will that ever be tested is really the question I am asking—or can it never be tested?

Mr McIlwain—I think what we need to say is that we can tell you what is in the proposed legislation, and the legislation is currently subject to debate in the parliament. It is not really appropriate for us to speculate further on the final form of that legislation or the terms of that legislation while it is before the parliament.

Senator MARSHALL—I am not really asking you to speculate. There is a set of words that are there. How will those words be applied? That is what I am asking you. I am not really asking you to speculate.

CHAIR—Senator Marshall, I think Mr McIlwain has made his position clear: until the final form of the legislation emerges from the parliament, it is not possible for him to go through the exact application of the wording in the legislation.

Senator Abetz—I can assist—very briefly, if I may, Chair—in relation to that. Page 22 of the *WorkChoices* booklet, the one we referred to prior to lunch, in paragraph 4.4 talks about protecting award conditions in bargaining:

These award conditions can only be modified or removed by specific provisions—

plural—

in the new agreement. If these award conditions are not specifically referred to in the new agreement, these award conditions will continue to apply.

My reading of that—I do not know if it matches the legislation; one assumes it would—is that it says these award conditions are not specifically referred to, so you cannot just say that all award conditions are set aside. You would have to deal with public holidays, rest breaks, incentive, annual leave loadings, allowances, penalty rates and whatever else and specifically refer to each one that may be in the award—but that is my reading of the booklet. I do not know if it matches the legislation. I confess I have not looked at that as yet. Mr Rushton, do you know?

Mr Rushton—Yes, it does appear to match the legislation—

Senator Abetz—That was lucky.

Mr Rushton—as I read out earlier.

Mr McIlwain—If I could just add to what the minister has said: the second example provided under 4.4, on page 23 of the *WorkChoices* booklet, would suggest that the minister's interpretation is correct. It refers to a provision expressly stating that a particular protected award condition is modified or excluded:

The new agreement must remove the penalty rates by expressly stating that the agreement intends to modify or exclude the award conditions dealing with—

in this particular example—

penalty rates.

Senator MARSHALL—Thank you. We did get there in the end. Again I am unclear. Your office will have no role in determining whether that is being done properly or not, or legally or not. How then would someone test that? You indicate that it would be Workplace Services. Are they going to actually have a role in determining that?

Mr McIlwain—The enforcement responsibilities under the proposed legislation will rest with the Office of Workplace Services, and that includes issues to do with the enforcement of AWAs or, in fact, all agreement contents. For example, a complaint about an alleged breach of an AWA—or a collective agreement, for that matter—would be investigated by the Office of Workplace Services. Also, and Mr Rushton may assist me here, I understand the legislation provides for expanded opportunities for parties and their representatives to seek enforcement.

Mr Rushton—I believe that is the case.

Senator MARSHALL—Back onto the process of lodgment, during the last budget round you indicated that you send a genuine consent letter to employees during the approvals process for the AWAs. You believed that that was sufficient to determine whether that employee had genuinely consented to the AWA. Given the proposed changes, will you continue to send out genuine consent letters, or will there be a new process of determining whether someone has genuinely consented to an AWA?

Mr McIlwain—Again, I do not want to speculate too far on what precisely our processes will be, but what I will say is that the legislation makes it quite clear that agreements will be operational on lodgment and the onus falls on the employer to make that statutory declaration. We will need to think about what administrative processes are necessary to properly implement the system that the legislation provides for when it is passed, but I am not really able to speculate further. The process as intended is clearly one where the agreement operates on lodgment.

Senator MARSHALL—I understand that, but it is about ensuring that there is consent. I may be wrong, but I have not noticed anything. I have not been through all the legislation detail as yet, as you can appreciate, but I have not noticed anything that would legislatively require a test for genuine consent, and I do not think it is in the existing act either. Yet you have a test. We have argued whether it is appropriate or not but that is the test you apply. My question really is: do you intend to continue with a test of genuine consent in some form, and when would you apply that?

Mr McIlwain—Under the current legislation, I am required to be satisfied that the employee genuinely consented to the agreement. I do not believe that I will have that requirement placed on me in the legislation as it is proposed.

Senator MARSHALL—Will anyone else have that requirement placed upon them?

Mr McIlwain—I do not believe there is that provision. Again, what I will say is that the employer must attest in a statutory declaration that all of the legal requirements have been met.

Senator MARSHALL—Is the employee required to give any undertakings in respect of genuine consent? Or will the fact that that they have signed the AWA be assumed to mean that there is genuine consent?

Mr Rushton—I think the act requires that the employer lodge a declaration—

Senator MARSHALL—Sorry—the employer or the employee?

Mr Rushton—The employer lodges a declaration.

Senator MARSHALL—And there is no obligation on employees, apart from signing the AWA?

Mr Rushton—No.

Senator GEORGE CAMPBELL—Mr McIlwain, where an employer lodges an agreement or an AWA with your office and you find out subsequently that the employee has not given consent to that AWA, given that it takes effect from the point of lodgment, what happens to that AWA or that agreement? Does it continue to have effect or is it rubbed out as a result of that?

Mr McIlwain—The agreement operates on lodgment. If there were subsequently a complaint concerning the process, it is open, as I understand it in the proposed legislation, for the parties to take action, for their representative to take action or for the Office of Workplace Services to take action.

Mr Rushton—That is so, as I understand the proposed legislation. There are a number of penalty provisions in the bill about not complying with the various steps. An action could be taken by the Office of Workplace Services in relation to those provisions. There is also a provision in the bill for action to be taken in certain circumstances, such that a court can then order that the AWA no longer operate. If the appropriate steps have not been taken, there is a capacity for the court to make those orders.

Senator GEORGE CAMPBELL—In those circumstances, what would happen to the wages and conditions of the employee?

Mr Rushton—I believe it is proposed in the legislation that the AWA operate up to the time of the order.

Senator GEORGE CAMPBELL—Irrespective of whether the individual agreed with the AWA or not, the period from lodgment until the order is issued would govern their wages and working conditions?

Mr Rushton—That is how I read the legislation.

Senator GEORGE CAMPBELL—What would they revert to, or would that be something taken up in determining the order?

Mr Rushton—I am not 100 per cent certain what they would revert to.

Senator GEORGE CAMPBELL—You are not certain what they revert to?

Mr Rushton—They would revert to at least the fair pay standards.

Senator GEORGE CAMPBELL—Then they would go back to the minimum?

Mr Rushton—They would revert to the fair pay standard.

Senator GEORGE CAMPBELL—If they were an existing employee, they would not revert to the standards that they were on prior to the AWA being lodged?

Mr Rushton—I would have to check that. I am not across that.

Senator MARSHALL—I understand that it is going to be unlawful to include certain prohibited clauses in agreements, including providing a remedy for unfair dismissal. Would a clause stating that the employer will treat the worker fairly at all times be considered a prohibited clause?

Mr McIlwain—We are not able to answer that question today.

Senator MARSHALL—When will you be able to answer it?

Mr McIlwain—All I am able to tell you today is that the clauses that cannot be included in agreements are those which prohibit AWAs; restrict the use of independent contractors or on-hire arrangements; allow for industrial action during the term of an agreement; provide for trade union training leave, bargaining fees to trade unions or paid union meetings; provide that any future agreement must be a union collective agreement; mandate union involvement in dispute resolution; and provide a remedy for unfair dismissal and other matters proscribed by regulation or legislation.

Senator MARSHALL—How will you check agreements to determine whether or not they contain any prohibited provisions, given that you have already told me that your role is not to actually check agreements but to simply lodge and register them?

Mr McIlwain—My role is not to check agreements on lodgment. However, the Employment Advocate and his or her delegates will have the power to identify and remove from agreements prohibited content. When the legislation is passed, we will consider how best administratively to discharge that responsibility—what kind of system we need to set up to effectively and cost-effectively discharge that responsibility.

Senator MARSHALL—So you have not turned your mind to that at all yet?

Mr McIlwain—We have given it some preliminary thought but it is still in a nascent form.

Senator GEORGE CAMPBELL—Given that there is reference all through this to regulations, when will the draft regulations be available?

Senator Abetz—As I understand it, the other matters proscribed by regulation and legislation would be, I assume, an ongoing process when and as issues arise over the length of the legislation. If the government is of the view that something would be prohibited, a new regulation may well be introduced. I am not sure that there is going to be a date on which regulations are going to be introduced and then that is it. The ones that we have thought of are those specified on page 23, though what the legislation does allow is for other matters to be proscribed by regulation or indeed legislation which, of course, would mean an amendment to the legislation.

Senator GEORGE CAMPBELL—But that was not necessarily the question I was asking. When you look through the explanatory memorandum and the bill there are a variety of areas that refer to regulations. When will those draft regulations be available? You cannot read the bill without reading the regulations.

Senator Abetz—I had understood your question to follow on from our discussion on prohibited content.

Senator GEORGE CAMPBELL—No, it was general.

Senator Abetz—I understand that. I do not know when all the regulations will be drafted or whether it will be necessary to have regulations immediately. I can potentially take that on notice and see what the view of the minister's office is. Hopefully they are listening in somewhere and they might have an answer for us.

Senator MARSHALL—What will happen to existing agreements which may contain prohibited content?

Mr McIlwain—Mr Rushton will check the legislation and see whether we can provide you with a clear and definitive answer drawn from the legislation.

Senator MARSHALL—While he is doing that, can I ask: who is responsible for imposing fines in respect of prohibited clauses?

Mr McIlwain—It would be the courts. Penalties, we believe under the proposed legislation, such as fines, would arise through an application by the Office of Workplace Services to a court. The parties may also have rights to bring applications that might result in penalties.

Senator MARSHALL—You said earlier that you would have the ability to remove prohibited clauses from agreements. Would that then necessitate a prosecution as well—will that be automatic?

Mr McIlwain—I am not able to say whether it would be automatic. The proposed legislation does provide for penalties of up to \$33,000 for seeking to include prohibited content. The OEA does not itself have any power to make applications.

Senator MARSHALL—So who would do that—Workplace Relations?

Mr McIlwain—Again, all of the enforcement and compliance responsibilities will be vested in the Office of Workplace Services.

Senator Abetz—I can assist, if I may, in relation to the timetable for regulations and a commencement date for the bill. I have a lengthy page in front of me, if you will bear with me. Many regulations will need to have commenced at the time the act commences, and that includes transitional and consequential amendments to other Commonwealth legislation. Settled versions of regulations and accompanying material need to be cleared et cetera. Based on meeting schedules of previous years, Exco will probably sit on the second and fourth Thursdays of February and March. We are not sure what the Commonwealth Games are going to do to that. It seems that some of these regulations clearly will need to be ready by the time the legislation comes into being. We do not have a slated commencement date as yet. I am not sure that that necessarily helped all that much.

Senator GEORGE CAMPBELL—Does that mean—

Senator Abetz—Two things, if I may. The government has not yet determined an exact date as to when the legislation will take effect, and therefore the date any regulations might take effect will be based on that. Can I suggest—this is the second point—that, in relation to the detail of the draft bill and timetables et cetera, we might wait for the department to come back in, because it is not fair on the Office of the Employment Advocate to be asked about all

the aspects of the legislation and when regulations et cetera might come into play. If we can limit questions to the Office of the Employment Advocate, that may be of some assistance. Those other questions can of course be asked of the department when they reappear.

Senator GEORGE CAMPBELL—Is that a guarantee from Mr Pratt that we will get an answer?

Senator Abetz—Of course. Of course you will get an answer.

Senator GEORGE CAMPBELL—That is why we asked the question of you, Minister.

Senator Abetz—The question is whether you will like the answer or not.

Senator GEORGE CAMPBELL—We did not ask the question of the Employment Advocate; we asked it of you.

CHAIR—Perhaps we could resume questions.

Senator MARSHALL—I turn to the compliance function. What was the rationale for moving the compliance function out of your office into a new office?

Mr McIlwain—That goes to policy. I am not able to speculate on the reasons for policy.

Senator MARSHALL—Can you tell me what the budget implication of the move is on your office?

Mr McIlwain—Sorry, the budget implication of—

Senator MARSHALL—Taking the compliance function out of your office and moving it into someone else's office.

Mr McIlwain—We have costed a small decrease to the OEA's operating requirements as a result of the transfer of our current compliance responsibility.

Senator MARSHALL—How much is that?

Mr McIlwain—We will take that on notice so we can be precise in our answer.

Senator MARSHALL—What will the funds usually budgeted for compliance be spent on instead?

Mr McIlwain—The OEA has estimated its requirements going forward to discharge its responsibilities under the new legislation. The funding that the OEA is provided as a result of those new responsibilities will be expended on managing the system for the lodgment of agreements and providing advice and assistance to employers and employees and their representatives regarding agreement making. It will be spent on the new responsibilities the OEA has to provide advice on collective agreements as well as individual agreements. There will be an expenditure or a cost involved in the new functions that the OEA takes on in regard to applying the public interest tests to proposed multibusiness agreements and the new function of removing prohibited content from workplace agreements.

Senator MARSHALL—Are any staff going to transfer from your office to the Office of Workplace Services?

Mr McIlwain—That is a possibility, but at this stage it is too early to speculate about any formal arrangements for that. It may be something that occurs informally as a result of

opportunities arising in the Office of Workplace Services for staff who are particularly skilled, experienced or interested in compliance and enforcement functions.

Senator MARSHALL—I understand some people may leave voluntarily. I was wondering whether the function in there is going to be transferred as a function, or are they your staff and so, if they apply for new jobs, they will go, or will you end up with too many staff?

Mr McIlwain—We do not expect that as a result of the passage of the legislation we will have surplus staff. We do not expect that there will be a formal transfer of OEA staff to the Office of Workplace Services. I should say that, technically, staff of the Office of the Employment Advocate are staff of the Department of Employment and Workplace Relations, so even if there were to be a decision to move staff en masse, it would not be a machinery of government change because they are already technically employed by the secretary. But at this stage we have no plans to formally transfer staff from the OEA to the Office of Workplace Services.

Senator MARSHALL—How many staff do you have working in compliance now?

Mr McIlwain—We have no staff who work only on compliance matters. We have 61 staff who in 2004-05 spent a proportion of their time on compliance matters. Of their aggregated time, approximately 13 per cent was expended on compliance matters.

Senator MARSHALL—Mr Rushton, you were working on an answer for me?

Mr Rushton—My review of the legislation as it is stated is that there is no prohibited content in regard to pre-existing agreements, so it is neither void nor capable of being removed by the office.

Senator MARSHALL—So they will neither be void nor capable of being removed?

Mr Rushton—Yes, as I read the legislation.

Senator MARSHALL—If you are correct, existing agreements will carry on being enforceable in the way they are until they expire. Is that right?

Mr Rushton—Or until they are replaced.

Senator MARSHALL—I understand that that is on your reading at the moment. At some point in time will you be double-checking that? If you are not correct, will you advise the committee?

Mr Rushton—I will. I add again that it is a bill, it is not the legislation.

Senator MARSHALL—Last time, we talked about community partners for the OEA. Are you able to provide the committee with a sample of a contract between the community partners and the OEA?

Mr McIlwain—Unless Mr Rushton advises me otherwise, I think we could. The funding arrangements are already on the public record. I do not believe there are any commercial-in-confidence issues, so we can provide you with a copy.

Senator MARSHALL—What actions are you taking to find a replacement for the New South Wales Working Women's Centre as a community partner?

Mr McIlwain—We are taking no action at the current time to replace the New South Wales Working Women's Centre. There are other community partners available in New South Wales to advise employees. The reason we are taking no action at the moment is that we are waiting for the passage of the legislation so that we can be certain of our responsibilities in the future and make whatever change might be necessary to the contracted services that we seek from a replacement. Once the legislation has been passed, we will seek a replacement for the New South Wales Working Women's Centre. However, in the meantime, as I say, there are other service providers contracted to us to provide advice to employees.

Senator McEWEN—I would like to ask a few questions about pattern AWAs. On 26 June, Workplace Express reported that, in response to a question about whether, in the light of the government's push to ban pattern bargaining, the government would move to impose similar restrictions on individual contracts, Minister Andrews said:

There will be some similar restrictions in relation to that. I mean, what we want to bring about is a situation in which the individual circumstances for each worker within a business can be taken into account. That's the great advantage of having AWAs.

How does the OEA define a pattern AWA?

Mr McIlwain—We have not seen a pattern AWA. AWAs, by their very nature, are agreed between an employer and an individual. It may be that the terms of more than one AWA are the same, or similar, because they meet the same needs shared by different employees. The distinction that we draw between pattern agreements and AWAs in the same form, or indeed our own template or framework AWA, is that, as we understand it, pattern agreements are imposed without the opportunity for one or other of the parties to change their terms, while AWAs, whether they are a template AWA, a framework AWA or an agreement arrived at through discussions between an employer and an employee, are open at all times to take whatever form the parties choose or decide best suits their respective needs. The AWA templates and frameworks that we make available to employers and employees are made available on the basis that they contain conditions of employment that the parties can adopt, if they decide they meet their needs. However, it is entirely open to them to change them in whatever way they choose to, or indeed to start with a blank piece of paper. So we do not believe that our framework or template agreements can be described as pattern AWAs.

Senator McEWEN—But it would be possible for an industry or an employer to offer pattern AWAs?

Mr McIlwain—It would be open to an employer to offer an AWA in the same terms as one that he or she has offered before, or indeed in the same terms, or similar terms, to one offered by a different employer to his or her employee. But it is entirely up to the parties to decide what best suits their needs. There are no requirements at all, except the legal test, for AWAs to be in any particular format. In fact, they are documents that appear in a multitude of formats.

Senator McEWEN—Why do you offer template AWAs on your web site?

Mr McIlwain—We offer them as a service principally to small business employers and employees, who may not have easy access to expert advice on workplace relations matters. They are offered as agreements that can be adopted if they suit the needs of the employer and

the employee. However, they can be changed in whatever way the employer and the employee wish. They are provided as a guidance and an aid to small business workplaces.

Senator McEWEN—Do you offer template collective agreements for small businesses that may wish to enter into collective arrangements with their employees?

Mr McIlwain—We have no responsibility under the current legislation for collective agreements.

Senator McEWEN—Is it intended that that service will be provided to employers who might want to enter into collective agreements?

Mr McIlwain—I am not able to say definitely at this stage, but we have been advised by employers of all sizes over the last eight years that the advice and assistance we have been able to give in the form of model agreements, model clauses, templates and frameworks has been of great help to them. If it seems that adopting that approach for collective agreements would also be helpful, we will certainly give it a lot of consideration.

Senator McEWEN—Are you going to put any restrictions or measures in place to ensure that pattern AWAs are not offered?

Mr McIlwain—Again, because AWAs are individual agreements—

Senator McEWEN—So are you saying that the Bakers Delight case that was discussed earlier, where, I think you said, 30-something employees had signed the same agreement, was not a pattern AWA because of this fine distinction that employees had to sign them individually?

Mr McIlwain—They remain, because of their construction in the legislation, individual agreements. It is not for me to tell an employer and an employee what best suits them, nor is it for me to argue with them about their right to have an agreement in whatever form they prefer. That is not my role. My role is currently to file and approve AWAs. In the current legislation, there is a responsibility for employers to have regard to comparable employees and to offer agreements in the same terms to comparable employees. If an employer is discharging that obligation by providing to a number of employees the same agreement, they are simply complying with the law.

Senator McEWEN—Is the OEA aware of various industry associations promoting standard AWAs, some of which are from your web site?

Mr McIlwain—The OEA is aware that industry associations, some of which are OEA industry partners, are providing services to their members in the same way as they are providing assistance and guidance on agreements that will meet the no disadvantage test; facilitate workplace flexibility; and, in many cases, promote a family friendly workplace—again, if agreements in those terms meet the needs of the employer and the individual employee.

Senator McEWEN—But where an employer offers the same agreement to all its employees, particularly on the basis of take it or leave it, which is going to be allowable under the legislation, how can you say that that is not pattern bargaining? How is that consistent with flexible and individual arrangements when, as we have heard in evidence before various

committee inquiries, employees are given an agreement and told: ‘This is what you have to sign. Everybody else is on the same’?

Mr McIlwain—I do not know what particular set of circumstances you are referring to there. All I can do is say again that AWAs are individual agreements. It is entirely open to an employer and an employee to make an agreement in whatever form they choose. Every employee can have a different agreement if they choose, but it is not a mandatory requirement of the legislation, the 1996 act. In deciding the form of agreements to offer to employees, employers must also have regard to the requirement that employees performing comparable work—comparable employees—are offered agreements in the same terms. So that is in many workplaces going to be a requirement that will lead to agreements being in similar or the same terms.

Senator GEORGE CAMPBELL—When you use the term that employees can have their AWAs varied if they choose, that is not entirely correct, is it?

Senator Abetz—You need two to tango; I think we are all agreed on that.

Senator GEORGE CAMPBELL—Pardon?

Senator Abetz—I think we are all agreed on that.

Mr McIlwain—The current legislation provides for variation agreements to an AWA that has already been approved. However, and you are correct if I understand your drift, that does require the agreement of both the employer and the employee to vary the agreement. Perhaps my language was imprecise before. I was referring to a situation where AWAs are being offered in a workplace. It is entirely open to an employee to ask the employer to negotiate with the employee individual terms in their AWA, if that is what they wish, but it requires the agreement of both parties.

Senator GEORGE CAMPBELL—The reality is that it requires the agreement of the employer.

Mr McIlwain—And of the employee.

Senator GEORGE CAMPBELL—But if an employee seeks to have an AWA varied, it requires the agreement of the employer. If the employer says no then that is the end of it.

Senator Abetz—The valid point you made before is right and it is just as right in relation to the employer. I tried to put it in more folksy terms when I said it takes two to tango: you need both the employee and the employer to agree.

Senator GEORGE CAMPBELL—The employer has got the veto over it. In respect of new employees there is no choice. That has been acknowledged by the Prime Minister as late as yesterday in question time. It is take it or leave it.

Mr McIlwain—That has been the case for eight years and, if I may say, that is a position that has been confirmed in at least two court judgments.

Mr Rushton—That has been confirmed by the Federal Court in the Shanker decision.

Senator GEORGE CAMPBELL—I am well aware of the decision.

Senator Abetz—Of course it is also the same at the moment if there is an award applicable and the employer says to a potential employee, ‘Sorry, I don’t offer AWAs. I employ everybody under the award. Take it or leave it.’

Senator GEORGE CAMPBELL—But, Minister, you can at any time seek to vary an award.

Senator Abetz—Sorry?

Senator GEORGE CAMPBELL—You can at any time seek to vary an award; you cannot seek to vary an AWA if it has got a three-year life, which most of them have.

Senator Abetz—Why not?

Mr McIlwain—Senator Campbell, you can make a variation agreement to vary an AWA that has already been approved.

Senator Abetz—And good luck to an individual trying to change an award, as opposed to an AWA.

Senator GEORGE CAMPBELL—They can.

Senator Abetz—That is why I said good luck to them.

Senator GEORGE CAMPBELL—If they are party to an award, that opportunity is available to them.

CHAIR—I think we have dealt with that point now. Can we have the next question. Senator McEwen, you were asking questions.

Senator GEORGE CAMPBELL—Don’t you like our questions?

CHAIR—No, I am simply asking you to move along to the next one.

Senator Abetz—We love them, George; that is why we are here.

Senator GEORGE CAMPBELL—It is a central issue of this whole legislation.

CHAIR—You asked the question, it was answered. Can we have the next question?

Senator McEWEN—I will go to the next section—the government funding for AWA businesses. The subscription news site Workplace Express, reported on 30 September about the use of AWAs by Red Scooter, a Melbourne function centre. According to the article, the managing director of Red Scooter, Mr Eamonn Hamilton, said:

... the most significant advantage was the federally-funded training assistance the company received if it moved to an AWA (the funding was not available if the company was award-covered, he said, and the move to common rule awards in the State would have led to the business being covered).

Is the department aware of any training assistance funded by the federal government which is available to organisations who use AWAs over organisations that operate under different industrial instruments?

Mr McIlwain—I am not able to answer that question. It is outside my area of responsibility.

Senator Abetz—But you can ask it under the general departmental area.

Senator McEWEN—Yes, but you are unable to answer that?

Mr McIlwain—I simply do not know what arrangements are available for funding for trainee programs.

Senator McEWEN—But isn't one of your responsibilities to provide AWAs? Wouldn't somebody in your department have an idea of what assistance is available to employers to do that?

Mr McIlwain—My responsibility is to promote better work and management practices through Australian workplace agreements. That I do. However, I have no knowledge of what arrangements other government agencies might have in place for access by business to assistance for traineeship programs.

Senator Abetz—I am sorry, did we misinterpret your question? I thought your question was a broader question and that is why I intervened. If I misunderstood it, my apologies, do you want to reread the question?

Senator McEWEN—I am happy to leave that for someone else in the department.

Senator GEORGE CAMPBELL—I think the question really was whether there was any funding for training provided through the Office of the Employment Advocate.

Mr McIlwain—I can be categorical on that. The OEA provides no funding to employers adopting AWAs for any reason.

Senator GEORGE CAMPBELL—Do you provide any funding to employees?

Mr McIlwain—No.

Senator GEORGE CAMPBELL—Mr McIlwain, you have indicated that from July 2004 to May 2005, 9,300 AWAs were approved for people under the age of 18, including I think 689 for people under the age of 15—that is, young workers of 14 years or under. They should be still in school, but that is another issue. According to your web site, in response to a question on age of consent to sign an AWA, your office said:

It is important to remember that an AWA is a legal document. Your signature means that you agree. Therefore, you must make sure that you read it, understand what it means and genuinely agree to making it.

Given that 13- and 14-year-olds are not permitted by law to vote, to get a credit card, to drive or to drink alcohol, how does the OEA consider these children are able to understand and genuinely agree to an AWA?

Mr McIlwain—Firstly, with regard to your comment that these young workers ought to be at school, in fact, I suspect that most of these young workers are at school because AWAs are used for school based traineeship programs where there is attendance at school and then a traineeship component.

Senator GEORGE CAMPBELL—There are a lot of them used in the fast food industry too.

Mr McIlwain—They are used for school based traineeship programs. We have thought long and hard about how to make certain that young employees understand their obligations and their rights when working under an AWA or being offered an AWA. For that reason, we have created a youth web site, which is a separate web site, designed specifically to appeal to

young people. In fact, in the 2004-05 financial year, there were nearly 650,000 session hits on that web site. Additionally, we have provided for parents, guardians and bodies working with young people, particularly trainees, a suite of information documents explaining AWAs and their interrelationship with traineeship arrangements—particularly on a state basis, because that is how traineeship arrangements are usually comported.

In all of those documents, we stress that it is important that young people, when offered an AWA, talk to a parent or guardian or any trusted adult about the AWA and have that person read it before they themselves decide whether or not they wish to enter into the AWA. We understand that young people occasionally may not, for whatever reason, have easy access to a trusted adult, so since 1998 we have funded community legal centres and working in women's centres in every state and territory in Australia to provide a telephone advice service for several groups—one of which is young people, apprentices and trainees—so that they are able to seek advice independent of their employer, independent of their family, if they wish, and independent of a government agency, through a community legal centre.

Then, of course, the OEA also has its own telephone advice service, to which anybody—certainly, a young person—regardless of where they are in Australia, may make a call for the cost of only a local call and seek advice direct from the OEA about their rights and obligations when offered an AWA. So we have gone to some lengths to make sure that young people are properly advised. We have also worked with the youth employment law centre to develop—this is going back some years; I think it was in the year 2001—a web page, I believe, and possibly also—my memory fails me on the detail—a printed publication designed specifically for young people, again telling them about their rights and obligations when offered an AWA.

So, Senator, we do take it seriously. We understand that there is a particular responsibility on me and my staff to make sure that young people are properly informed and advised before they make this important decision, and that is what we have done about it.

Senator GEORGE CAMPBELL—That is all very commendable, Mr McIlwain, but do you genuinely believe that young people of this age are capable of negotiating their wages and conditions with experienced businesspeople?

Mr McIlwain—I believe that young people, properly advised under the current legislation, are able to make an informed decision to the extent that their consent is genuine.

Senator McEWEN—In response to questions on women's earnings under AWAs in the initial round of budget estimates this year, the OEA noted that a report was due in the following 12 weeks, analysing the statistics on industries and types of employment for women on AWAs. Has that report been prepared and, if so, could you table it?

Mr McIlwain—I am not sure what report you are referring to, or where that reference comes from.

Senator Abetz—Was this from a previous—

Senator McEWEN—Round of estimates hearings? Yes.

Senator Abetz—What page number would it be on?

Senator McEWEN—I have not got the page number. Do you have that, Gavin?

Senator MARSHALL—No, I do not at the moment but we can get that for you.

Senator McEWEN—So you are not aware of a report along those lines?

Mr McIlwain—Each time the ABS employee earnings and hours report is published, we obtain unpublished data from the Bureau of Statistics and analyse that. We have analysed it. Some of it deals with women's earnings. As far as we are concerned, it is available on the public record. We make it available to anyone who asks. If you would like a copy of that analysis, we would be happy to provide it. It includes information on women's earnings.

Senator McEWEN—On gender?

Mr McIlwain—Yes, and possibly also gender gap analysis as well.

Senator McEWEN—I am sure we will be able to find that. The OEA, on page 4 of its annual report for 2004-05, states:

A simpler, easier-to-understand and less costly system of agreement-making will encourage Australian businesses, especially small businesses, to be more innovative, to grow and to offer more employment opportunities.

Can you explain how the OEA's proposed changes to agreement making will make Australian businesses more innovative? In particular, can you provide us with any research, reports or studies which support that claim?

Mr McIlwain—At the time that the annual report was published and now—this is my personal opinion—it is self-evident that a simpler, streamlined approach to agreement making will encourage more agreement making, but particularly in small business, because small business is the sector that—again, in my opinion—has required the greatest assistance under the current legislation to take advantage of individual agreement making. That is what I know about to this point and that is the basis of my comment.

In fact, we did some research recently that asked small business in particular what AWAs had done in their workplaces. I am pleased to report that 82.1 per cent of small business employers agreed that the introduction of AWAs into their workplace had improved flexibility, 53.7 per cent of small business employers agreed that AWAs had improved competitiveness and 59.5 per cent of small business employers agreed that AWAs had improved productivity. I note that those productivity results are uncannily the same as those that were revealed by the OEA's employer survey conducted in the year 2000 when the number of AWAs was a fraction of the number of AWAs that have been made up to this point. So the inference we draw from that is that, with AWAs over the last five years increasing coverage of salary and wage earners dramatically and appearing in at least 10,000 more workplaces since that 2000 survey, the results remain the same positive, encouraging results—nearly 60 per cent of employers say that AWAs have improved their productivity.

Senator McEWEN—Did you say 60 per cent? You surveyed 10,000 workplaces, 10,000 employers?

Mr McIlwain—No, what I said—

Senator McEWEN—How many employers were surveyed?

Mr McIlwain—There were 603 for the 2005 research. We will get you the survey sample size for the 2000 research.

Senator McEWEN—The extent of the research, reports and studies that you have to justify the claim that you made in the annual report includes: a survey of some 600 employees who already have AWAs; your opinion, which I am sure is a very valuable opinion; and, your statement that it is self-evident that this system will be good for Australia. Surely there must be some more extensive research that you have undertaken to justify such broad-ranging claims that this system will make small businesses ‘innovative, grow and offering more employment opportunities’?

Senator Abetz—The evidence is there that those employees who have taken on AWAs—the 600 or however many there were—have said that about themselves. I think it stands to reason that one can extrapolate that, if others were to take it upon themselves as well, they would also get the benefits of innovation, flexibility, productivity and the matters referred to by Mr McIlwain.

Senator McEWEN—So now we have extrapolation but still no research?

Senator Abetz—This morning—I think, under Welfare to Work—we were referred to a report which, when I had a look at it, referred to 23 recipients being the basis of the research and the assertions. You are never able to talk about every single player in the field, and so you have to cast your net a certain way. But I would have thought 600 is a pretty good sample.

Senator MARSHALL—Is that the extent of the research that you are relying on? We can argue about the merits and quality of the survey, which I will ask you about in a moment, but is that the extent of it?

Mr McIlwain—The survey of employers was undertaken in 2000 and the client service survey was undertaken in 2005.

Senator MARSHALL—Are you able to table the 2005 client service survey?

Mr McIlwain—We will look closely at it and, if we can find a way of tabling the report without identifying AWA parties, we will. If it is necessary to provide a summary of the report to avoid identifying AWA parties, I will do that.

Senator MARSHALL—We will get the complete summary, though, if that is all you are able to provide. I am interested in the nature of the questions that were asked, the extent of the coverage and the responses.

Mr McIlwain—Sure. We will provide you with that information and with other information we can provide, without risking identifying the parties.

Senator GEORGE CAMPBELL—Your office approved an AWA for workers at Bushman Tanks in Terang which, for the purposes of meeting the no disadvantage test, was assessed against the plastics, resins and rubbers award of 1999 instead of, as I understand, the correct award which was the rubber, plastic and cable award of 1998. Calculations have been done that the impact on those employees, who worked four 12-hour shifts a week, was in the order of between \$90 and \$300 a week worse off. Have you since reassessed the AWA and found that there was indeed an error of fact?

Mr McIlwain—We believe that there was an error of fact with regard to the relevant award for the purpose of the no disadvantage test. That belief was based on the information provided by the employer about its award coverage. I am advised that those two awards provide for coverage of workers making plastic water tanks. I think that is where the confusion arose in the information provided to the OEA.

We have conducted an investigation, and we have in fact made a site visit to Terang. The employer and the employees through their bargaining agent, the National Union of Workers, have been invited to make submissions to the OEA regarding the process described at the very beginning of my comments this morning—my preliminary view that the AWA should be revoked. The employer is confident that its employees have been paid above award wages since the AWAs were implemented, notwithstanding the issue with the incorrect relevant award. But the NUW has claimed otherwise. We have very recently received submissions from the parties on a number of matters, and a joint meeting between the parties is being convened by the OEA on 7 November. I would expect to receive a report in the week following, and I will then make a decision on whether those AWAs should be revoked.

Senator GEORGE CAMPBELL—So are those workers still operating under the AWA?

Mr McIlwain—Yes. The AWAs are still in operation.

Senator GEORGE CAMPBELL—What will happen if you find that that AWA is illegitimate?

Mr McIlwain—If we find that the AWAs were approved on the basis of an error of fact and if that is my final view, having seen the submissions that have just come in and following a meeting next week with the parties, the approval for those AWA will be revoked.

Senator GEORGE CAMPBELL—What redress do those workers have for any disadvantage they may have suffered during the period of operation of this AWA?

Mr McIlwain—The legal situation is that, because the revocation would be on the basis of an error of fact, agreements would be revoked and stop operating from the day of that decision. It would not be retrospective.

Senator GEORGE CAMPBELL—So they have no redress for any disadvantage they have suffered under the period of its operation.

Mr McIlwain—There would be no liability to the employer because the agreements would have been in operation until the date of their revocation.

Senator GEORGE CAMPBELL—And the union is claiming that there could have been losses of up to \$300 a week.

Mr McIlwain—Yes, the NUW has made submissions on that. However, as I said, the employer is also asserting that employees have in fact suffered no disadvantage in comparison with the correct relevant award. That is one of the issues that is the subject of submissions at the moment and will be further worked through. I am advised by Mr Casson that the employer asserts that the employees have from day one been paid at rates higher than those provided for in the AWAs, and that is one of the matters that we are looking at the moment.

Senator GEORGE CAMPBELL—So have you already made an assessment as to whether or not they have been—

Mr McIlwain—We have received further submissions from all the parties. They are being considered at the moment and will be looked at further at a joint meeting of the parties and their representatives convened by the OEA next week.

Senator GEORGE CAMPBELL—If you revoke the agreement, what will be the status of coverage of these employees?

Mr Rushton—They would revert back to the award.

Senator GEORGE CAMPBELL—So they would be covered by the award.

Mr Rushton—Or, if there was a certified agreement that covers them—and I do not think there is; no—they would be covered by the award that binds the employer.

Senator GEORGE CAMPBELL—But there is no remedy for them in terms of any losses they might have suffered or accrued while this AWA was in operation?

Mr Rushton—Not under the legislation, no.

Senator GEORGE CAMPBELL—And that is exactly the same position that will prevail under the new legislation?

Mr Rushton—I would have to check that.

Senator GEORGE CAMPBELL—I appreciate that you probably have not read all 600 or 1,200 pages, because neither have we.

Mr Rushton—I am sorry, Senator. I could take that on notice.

Senator MARSHALL—Senator McEwen asked you earlier, Mr McIlwain, about the report which, as you indicated in the May budget estimates, you were going to publish in the next 12 weeks or so. That was on Tuesday, 31 May; it is on pages 99 and 100 of the *Hansard*. We will give you a chance to look at that and maybe come back to it a little bit later.

Senator Abetz—Chair, whilst people are gathering their thoughts: for what it is worth, 600 employers were referred to by Mr McIlwain—that is out of a total of about 15,500 employers that have Australian workplace agreements. I am therefore advised—and I did law because I was not good at maths, so I rely on advice on this—that that represents a sample of 3.8 per cent, which, I think, is a fairly good sample.

Mr McIlwain—Our *Hansard* seems to have different pagination.

Senator MARSHALL—Maybe I can just give you my copy and that will explain.

Senator Abetz—That might help, if you identify whereabouts.

Mr McIlwain—Senator, this is the same analysis that I offered to provide to Senator McEwen, so we can take that on notice and provide you with a copy of that analysis. It is an analysis of ABS employee earnings and hours and survey data. The ABS publishes its report every two years, and every time that is published we obtain unpublished data that does not appear in the ABS published report. We then do further analysis of that unpublished data and compile a report. It is used extensively in my public comments, so I am happy to provide a copy to the committee.

Senator GEORGE CAMPBELL—Can that be made available later today, Mr McIlwain?

Mr McIlwain—We will try to have it emailed.

Senator GEORGE CAMPBELL—Mr McIlwain, page 24 of the Work Choices booklet, at 4.5, states, ‘There will be penalties of up to \$33,000 for seeking to include prohibited content in an agreement or lodging an agreement containing prohibited content.’ It then goes on to say, ‘It will be a defence to such penalties if the employer has obtained advice from the OEA prior to lodging the agreement that the content is not prohibited content.’ Can an employee seek advice from the OEA prior to the lodging of an agreement?

Mr Rushton—I do not think there is any prohibition on an employee seeking advice.

Senator GEORGE CAMPBELL—If they do so, would that be a defence for them against prosecution or seeking to include content?

Mr Rushton—I think the breach of the legislation would be against the lodger of the document.

Senator GEORGE CAMPBELL—I thought the penalties were there for whoever sought to include the prohibited content.

Mr Rushton—I will just check that.

Mr McIlwain—It seems to me that the critical issue will be who signs the declaration, and you would expect the person signing the declaration to be the employer or a representative of the employer. I think that explains where the penalty is going to fall.

Senator GEORGE CAMPBELL—Are you saying that in all instances it would be the employer or a representative of the employer?

Mr Rushton—That seems to be the way section 99B reads—lodging of workplace agreement documents with the Employment Advocate. It refers to the employer.

Senator GEORGE CAMPBELL—So an individual employee or a union on behalf of an employee could not be prosecuted under this section, because they would not be the lodger of the agreement.

Mr Rushton—I think that follows.

Senator GEORGE CAMPBELL—I am sure they will be pleased to hear that.

Senator MARSHALL—It is not a separate offence for seeking to include a prohibited clause.

Mr Rushton—I would have to check on that.

Senator MARSHALL—Thank you.

Senator GEORGE CAMPBELL—Are you aware of evidence that was presented to the industrial agreements inquiry by Job Watch—an employee advice service that operate in Victoria; I am sure you are familiar with them? Their evidence suggests that many employees sign under duress or otherwise mention some defect in the process through which their AWA was negotiated and filed, yet they do not wish to complain for fear of rocking the boat or losing their job. Would you agree that simply sending a letter asking the employee to reply if

there is a problem does not really get to the point of ensuring that people are not being forced to sign these agreements under duress?

Mr McIlwain—If that is all we did you might have a point, but that is why we fund Job Watch, amongst others, to provide advice and assistance to employees offered AWAs so that employees who are reluctant, for whatever reason, to contact a government agency may contact an independent community legal centre. I think we have in place a number of measures that allow us to be satisfied, as the current legislation says, that an employee has genuinely consented to their agreement—unless they complain to us, Job Watch or one of the other advisory services.

Senator GEORGE CAMPBELL—So if Job Watch come to you and say, ‘We have been dealing with person X in respect of an AWA and we believe that they have been put under duress to sign,’ you would accept their advice.

Mr McIlwain—We would investigate that allegation in the way we investigate all allegations, including those that come directly to us.

Senator GEORGE CAMPBELL—Would you do that in the context of maintaining the anonymity of the individual?

Mr McIlwain—We ask a standard question: do you wish to remain anonymous in this matter or are you as the employee prepared to be identified, if that is necessary, in the investigation of your allegations? That question is always asked. We investigate all matters where there is prima facie evidence of a problem, regardless of whether the employee gives that consent to be identified or not. However, like all bodies charged with investigatory and compliance functions, we find that there are unfortunate practical limitations sometimes to how far a matter can be taken when it is impossible, because of lack of consent, to identify in the investigation and in your questioning the individual.

Senator GEORGE CAMPBELL—At the end of the day, how do you satisfy yourself that the individual who receives a letter from you genuinely understands the contents of the letter or of the AWA that it is referring to?

McIlwain—Our letter, known as the genuine consent letter—I should stress that I am talking about the current legislation and our current responsibilities—is accompanied by a community language attachment. It is in 14 community languages. It is on the basis of ABS data that we have chosen those languages. It invites the recipient, if they cannot read English or they do not have the assistance of someone else to read the letter to them, to contact the telephone interpreting service and have them call the OEA for assistance.

Senator GEORGE CAMPBELL—That is primarily an issue for people from non-English-speaking backgrounds, which is and has been a particular problem in this area. That has been pointed out in the past. But it is also the case, is it not, that many people who do read and write English may have difficulty comprehending the letter or understanding the contents of the AWA?

McIlwain—That is why we go to extreme lengths to draft our letters to employees in plain English, but it is also why we provide the OEA’s contact number prominently. It is why on our web site we have links to our community partners, the community legal centres. It is why

we have established the Youth Services web site. We are aware that some employees may need further assistance to understand their AWA or to understand the process. That is why we do those things—so they have access to that assistance.

Mr Casson makes a very good point: we go to those lengths to ensure that employees have access with regard to AWAs. Employees who have trouble understanding an AWA will probably have the same difficulty understanding any other form of industrial agreement. I can only speak about the assistance that is provided to employees to understand an AWA.

Senator GEORGE CAMPBELL—I understand the point that Mr Casson makes, and that is not the point that I am arguing. This is an individual agreement, signed by an individual, and your web site encourages people to be sure that they understand it—at least young people. I am asking you: how do you satisfy yourself to the extent that you can that, when you send the letter to someone, they do comprehend the contents of the letter and they do understand what it is they are signing up to? In that respect, if the OEA's operations are as open as you say they are—and I have no reason to doubt you—why do so many people go to organisations like Job Watch for assistance in this area?

McIlwain—With regard to people going to Job Watch, I do not have the figures with me but I am happy to provide to the committee the figures on the number of inquiries Job Watch has taken over in the last few years. They are relatively small numbers. So in my view it would be wrong to say that Job Watch has had large numbers of employees contacting it regarding problems with the offer of an AWA or a breach of an existing AWA.

Job Watch, along with the other community legal centres, is required to provide clear statistics to the OEA on a six-monthly basis as to the number of inquiries their service has taken with regard to AWAs. If my memory serves me correctly, the number of inquiries Job Watch has taken with regard to AWAs is small in comparison to the number of agreements entered into by Victorian workers, particular in the last 12 months and certainly over the last three years.

Senator GEORGE CAMPBELL—If you can provide us with that information, it would be useful. My recollection of the submission Job Watch made to the agreements inquiry was that the number of inquiries they were getting was very substantial. I will go back and check the *Hansard*.

Mr McIlwain—All I can do is tell you what Job Watch reports to us under the terms of their current contract for the provision of those services.

Senator GEORGE CAMPBELL—If you could make that information available, it would be useful, because we will check it back against the submissions they made to our inquiry.

Senator MARSHALL—Could you do that for all community legal centres that you have an arrangement with?

Mr McIlwain—Yes, the information is provided on a quarterly basis, so I think we could.

Mr Rushton—Senator Marshall, in response to your question before about prohibited content, the legislation provides that the employer must not lodge an agreement containing prohibited content. That is in section 101E. There is a brief provision there. There is also a

provision about seeking to include prohibited content in an agreement. Section 101E of the Workplace Relations Amendment (Work Choices) Bill 2005 says:

- (1) An employer contravenes this subsection if:
 - (a) the employer lodges a workplace agreement (or a variation to a workplace agreement); and
 - (b) the agreement (or the agreement as varied) contains prohibited content; and
 - (c) the employer was reckless as to whether the agreement (or the agreement as varied) contains prohibited content.

There is a civil penalty in relation to that. Section 101N is a provision about misrepresentations about prohibited content, which also has a penalty provision. It says:

- (1) A person contravenes this subsection if:
 - (a) the person makes a misrepresentation in relation to a workplace agreement (or a variation to a workplace agreement) that a particular term does not contain prohibited content; and
 - (b) the person is reckless as to whether the term contains prohibited content.

Mr McIlwain—I will provide further context with regard to complaints about AWAs. I think it is interesting to note that, in the 2004-05 financial year, AWAs which were the subject of a complaint comprised 0.2 per cent of all AWAs approved in that financial year.

Senator GEORGE CAMPBELL—Where are those figures?

Mr McIlwain—That figure is not in the annual report.

Senator GEORGE CAMPBELL—Can you make those figures available?

Mr McIlwain—Yes.

Senator GEORGE CAMPBELL—Can we have the number of AWAs that were approved and the number on which you had complaints?

Mr McIlwain—The number of AWAs approved was around 205,000. I will give you the exact figure from 2004-05. In 2004-05, 205,865 AWAs were approved.

Senator GEORGE CAMPBELL—And what is 0.2 per cent?

Mr McIlwain—That 0.2 is on the basis of the number of complaints. Some of those, of course, as I said before, will involve more than one AWA but rarely more than 20. There were, as reported in the annual report for 2004-05, 300 or so.

Senator GEORGE CAMPBELL—So the complaints figures are in the annual report?

Mr McIlwain—Yes.

Senator GEORGE CAMPBELL—Of the 205,000 that were approved, how many were public and how many were private?

Mr McIlwain—It was about 90 per cent private sector and 10 per cent public sector.

Senator GEORGE CAMPBELL—How many of them were AWAs that had been renewed?

Mr McIlwain—Some of them will be AWAs that were replacement AWAs.

Senator GEORGE CAMPBELL—How many?

Mr McIlwain—I cannot be exact.

Senator GEORGE CAMPBELL—Are you able to obtain that figure?

Mr McIlwain—I am not really able to add anything further to the evidence I have given at previous estimates hearings and more recently at the inquiry into industrial agreements in Sydney.

Senator GEORGE CAMPBELL—It seems to be a figure that you are very reluctant to give out.

Mr McIlwain—I am not able to add to the evidence I have already given.

Senator GEORGE CAMPBELL—You said that just before.

Senator MARSHALL—Mr Rushton, I will come back to you. Thank you for finding that extra information for me. I asked a question earlier about whether, if a clause said something along the lines that the employer will be obliged to treat the employee fairly at all times, that would be a prohibited clause.

Mr Rushton—I think the prohibited content is to be done by regulation, so I am not really able to answer that question.

Senator MARSHALL—How is that going to be done in the regulation? I do not understand. We already have the list of prohibited clauses.

Senator Abetz—Other matters can be added to it.

Senator MARSHALL—I am talking about unfair dismissal.

Senator Abetz—The existing list?

Senator MARSHALL—Yes.

Senator Abetz—Under the existing list, you would need to go through it and say that the requirement that employees be treated fairly is in breach of prohibiting AWAs and then you would go through them and check it off.

Senator MARSHALL—Well, would it be? I mean in terms of unfair dismissal. One of the prohibited clauses is any provision for unfair dismissal.

Mr Rushton—I am not really able to speculate.

Senator MARSHALL—But isn't it the OEA who is going to be giving advice on these matters—on what is or isn't a prohibited clause?

Mr Rushton—Once the legislation is passed.

Senator Abetz—I would have thought it would be a strange clause to have that the employer will treat the employee fairly. This is speculation by you, and now I am speculating on that. I would have thought that in most agreements it would be that both parties will treat each other fairly; it would be a two-way street.

Senator MARSHALL—That goes to the issue of fairness that I am trying to draw out. It is an offence to seek to insert a clause that is a prohibited clause, and it is an offence for someone to misrepresent a clause as a prohibited clause. If an employee sought to include those words that I have mentioned in their AWA and the employer said, 'No, that is a

prohibited clause,' we are getting into the realm of whether it is or is not. Someone has to make that determination. Whichever way it goes, whether it is determined that it is or it is not, someone has committed an offence.

Senator Abetz—At the end of the day, I suppose that is the case with any legislation. But the only possible prohibition at the moment would be providing a remedy for unfair dismissal. Saying that you would treat each other fairly of itself does not provide a remedy for unfair dismissal.

Senator MARSHALL—The remedy would be the enforcement of the agreement, wouldn't it? By default it provides a remedy, if the clause is in the agreement. It may be something you want to think about, Mr Rushton, and see if you can give us some advice on.

Mr Rushton—Unless I have misread the legislation, the list of prohibited conduct will be in the regulations. It is not in the legislation so I would obviously be speculating on whether clauses fall within or without until the legislation and regulations are passed. I cannot add any more than that.

Senator MARSHALL—According to page 19 of the WorkChoices booklet, the OEA will also be able to explain the content of agreements in ways appropriate to an employee's specific needs, including, for example, the circumstances of persons from non-English speaking backgrounds. Does this mean that the OEA will provide translators and interpreters to people from non-English speaking backgrounds?

Mr McIlwain—It means that on some occasions where that is necessary, the OEA may.

Senator MARSHALL—Will these translators and interpreters be paid for by the OEA?

Mr McIlwain—The OEA's services are free to clients, employers and employees.

Senator MARSHALL—So, if it is necessary, it will be provided, and it will be provided by the OEA.

Mr McIlwain—If it is necessary that an interpreter is provided in order that employees may understand the content of their agreement and they have sought that service from the OEA, the OEA will provide it.

Senator MARSHALL—Will AWAs be required to be provided in the employee's native language?

Mr McIlwain—That is not a requirement, as I understand it, in the bill. But again I would not rule out that the OEA, in discharging its responsibility when asked to explain an agreement in a way that an employee understands, would have an agreement translated.

Senator Abetz—Are any awards translated?

Senator MARSHALL—I do not know off the top of my head.

Senator Abetz—Fair enough.

Senator MARSHALL—Is the act going to be translated?

Senator Abetz—That was a rhetorical question.

Senator MARSHALL—Is the explanatory memorandum going to be translated? Is the WorkChoices booklet going to be translated?

Senator Abetz—It has been.

Senator MARSHALL—Good. I will look forward to receiving some copies in languages other than English.

Senator GEORGE CAMPBELL—Mr McIlwain, do you accept that in promoting the use of AWAs to members of industry associations—the case I am talking about is Restaurant and Catering Australia, who charge a fee for every AWA which is processed or which they handle—in fact you are effectively subsidising the industry associations' activities?

Mr McIlwain—Our arrangement with Restaurant and Catering Australia makes it abundantly clear that no fee may be charged for services provided by OEA staff seconded to the association's state associations.

Senator GEORGE CAMPBELL—But they are charging a fee for processing AWAs.

Mr McIlwain—Industry associations may charge of their members whatever fees they see fit. The OEA does not charge fees. Where the OEA assists an industry association, it is made abundantly clear that no fee may be charged of a member for those services provided by the OEA, whether they are provided to individuals or on a more general—

Senator GEORGE CAMPBELL—But, if you are providing a service to the RCA, providing personnel to the RCA to promote AWAs, and they receive a fee for each one they handle, isn't that a subsidy to the RCA?

Mr McIlwain—I do not see that it is a subsidy. What we do is provide assistance to the staff of restaurant and catering associations around Australia to skill themselves up with regard to AWAs. That is what the OEA does. Industry associations have whatever arrangements they do with their members, and it is something that the OEA has no involvement in and makes clear that it can have no involvement in.

Senator GEORGE CAMPBELL—In helping to promote the AWAs with RCA, you refer to the Restaurant and Catering Industry Action Agenda, which at 18.1 says:

Raise awareness of the benefits of individual and collective agreements amongst employers and employees.

How have you sought to promote collective agreements in the restaurant and catering industry?

Mr McIlwain—I do not have any responsibility with regard to collective agreements. It is the responsibility of the department to handle that recommendation of the industry action agenda.

Senator GEORGE CAMPBELL—The extract I have from the industry action agenda gives implementation responsibility to industry, DEWR and OEA.

Mr McIlwain—That is correct, and I am saying DEWR—

Senator GEORGE CAMPBELL—It does not distinguish—

Senator Abetz—Come on, Senator Campbell. The OEA clearly has responsibility for AWAs. DEWR has responsibility overall for the others, and it is quite clear that the OEA can only be held responsible for the AWAs.

Senator GEORGE CAMPBELL—So you have not provided any assistance at all in respect of collective agreements?

Mr McIlwain—No.

Senator Abetz—It is not in the charter.

Senator GEORGE CAMPBELL—Will that change under the new legislation?

Mr McIlwain—Under the new legislation, it is proposed that the OEA will be responsible for the administration of not only individual agreements but collective agreements as well. It will be responsible also for promoting better work and management practices through agreements. So, yes, the OEA will be, under the new legislation, approaching its responsibilities to collective agreement making with the same enthusiasm, professionalism and vigour that it has approached its responsibilities with regard to individual agreement making.

Senator GEORGE CAMPBELL—Can we assume that you will be even-handed in your promotion of collective and individual agreements?

Mr McIlwain—The legislation proposes no distinction in terms of preference for one agreement type over another.

Senator Abetz—This is about work choices. People are being given choices.

Senator GEORGE CAMPBELL—Very limited choices.

Senator Abetz—More choices than they have got at the moment.

Senator MARSHALL—According to page 15 of your annual report for 2004-05, you engage 132 industry partners and 13 community partners. That is correct, isn't it?

Mr McIlwain—I can give you an update: there are 137 industry partners and, with the demise of the New South Wales Working Women's Centre, 12 community partners.

Senator MARSHALL—Can you explain how this represents equal and fair access to information and assistance on negotiating AWAs for both employers and employees?

Mr McIlwain—It certainly does not denote unfair access. On the basis of the statistics reported by our community partners on a quarterly basis, there is no evidence that the funding currently provided by the OEA to those centres is inadequate for those centres to provide the service that the OEA contracts them to provide. On the other side, where an industry association or a consultant in a regional area makes out to the OEA, on the basis of its proven track record of helping workplaces make AWAs, that it should become an industry partner, that application is given serious consideration. I would say that the difference in the number of industry partners and the number of community partners should not be taken to be the whole story. The OEA itself provides very extensive services to employees seeking advice and assistance with regard to AWAs or indeed freedom of association matters.

We took a decision some years ago to leverage off the interest and expertise of industry associations and private consultants in the workplace relations field and use them to some extent to extend the OEA's reach throughout Australian workplaces on the industry side of the equation, if you will. Our resources were then freed up to ensure that services were available from within the OEA and from our contracted community partners to make sure that

employees had ready access to all the information they needed about their rights and obligations under the AWA agreement-making regime. That is the decision we took. I believe it has worked and that it is a system that delivers fair outcomes in terms of access to both employers and employees.

Senator MARSHALL—I hear what you are saying, but I think it is drawing a fairly long bow to ask us to conclude that. I accept that the raw numbers do not necessarily tell the whole picture, but we are talking about 137 versus 12 across the country, which is less than two per state. So it is not only a question of resourcing it in a particular area; it is about access for employees as well. Explain to me again how the 12 industry parties are supporting people across Australia. Where are the community partners?

Mr McIlwain—There are four working women's centres, located in the Northern Territory, South Australia, Queensland and Tasmania, and eight community law centres: the Macquarie Legal Centre in Merrylands; the Western New South Wales Community Legal Centre in Dubbo; the Queensland Working Women's Service in Brisbane; the South West Brisbane Community Legal Centre in Inala; the Welfare Rights and Legal Centre in the ACT; the Employment Law Centre in Perth; the Northern Community Legal Service Inc. in Salisbury in the north of Adelaide; the Working Women's Centre in Adelaide; the Launceston Community Legal Service; the Tasmanian Working Women's Centre; the Northern Territory Working Women's Centre; and Job Watch in Melbourne.

Senator MARSHALL—And you are satisfied that that gives appropriate geographical coverage?

Mr McIlwain—Yes.

Senator MARSHALL—There are no plans to extend community partner arrangements?

Mr McIlwain—We have a current two-year contract arrangement with all of the community partners which expires on 31 August 2006. As we would have in any case, we will be reviewing the performance of the contracts and service providers against our needs, but we will also be reviewing them in the light of the new legislation. So I am unable to say at this stage whether the program will remain the same size, contract or expand, but we will go through a review process.

Senator MARSHALL—Do you have a budget allocation for that?

Mr McIlwain—For the contracts?

Senator MARSHALL—Yes.

Mr McIlwain—We do. Aggregated over the two years, it is \$1.46 million.

Senator MARSHALL—Is that for community partnerships or is that the total program including industry partnerships?

Mr McIlwain—That is the contract fee provided in aggregation of all the contract fees to community partners.

Senator MARSHALL—What is it for industry partners?

Mr McIlwain—Could I just be clear: industry partners receive no money from the OEA. There is no formal contractual relationship. There is no commercial relationship. They receive no money from the OEA.

Senator MARSHALL—You provide them staff, though, don't you?

Mr McIlwain—Community partners—

Senator MARSHALL—There is a cost, though, to your industry partners, isn't there?

Mr McIlwain—We have a secondment program, which has been in place since 1999—

Senator MARSHALL—That is worth something in dollar terms, though, isn't it?

Mr McIlwain—and we occasionally provide—it is not common—secondees to industry associations.

Senator MARSHALL—How much does it cost to provide that industry partnership?

Mr McIlwain—To administer the—

Senator MARSHALL—To administer it, and also the secondees. There are the costs of wages and other things that go into that.

Mr McIlwain—The secondees remain at all times employees of the OEA and subject to the OEA direction and management.

Senator MARSHALL—I understand that.

Mr McIlwain—The cost, therefore, is to the OEA, and it is in the provision of a service that the OEA believes it is of assistance to employers and employees making AWAs.

Senator MARSHALL—I understand that.

Mr McIlwain—The cost is the salary of those five employees—

Senator MARSHALL—Okay; we are getting there.

Mr McIlwain—and, over the entire period, which is 10 months, the salary costs of employees are budgeted at \$117,000. I am sorry; for the whole period it is \$195,000. That is for a 10-month period. The supplier costs, which are largely motor vehicle costs and travel allowance, are motor vehicles, \$58,000, and travel allowance and fares, \$27,000, making a total cost of \$280,000 for that secondment project.

Senator MARSHALL—Is the administration of that project included in those costs?

Mr McIlwain—The staff are self-administering.

Senator MARSHALL—How many of the 137 industry partners are registered employer organisations?

Mr McIlwain—I am sorry; I have confused the figures. Those figures were for the 2004-05 financial year and they are—

Senator MARSHALL—That is the \$280,000?

Mr McIlwain—Yes. If you will pardon me, for the 2004-05 and 2005-06 financial years, the total budget is \$420,000.

Senator MARSHALL—So how many of the 137 industry partners are registered employer organisations?

Mr McIlwain—Eleven.

Senator MARSHALL—How many of those 11 would have one or more than one seconded person from your office?

Mr McIlwain—Restaurant and Catering Australia, but in their state branches. They are all in Restaurant and Catering Australia branches: New South Wales, Victoria, South Australia, Queensland and Western Australia.

Senator Abetz—What about Tasmania?

Mr McIlwain—Tasmania is being looked after by Victoria.

Senator Abetz—Good.

Senator MARSHALL—You would be relieved, wouldn't you, Senator?

Senator GEORGE CAMPBELL—Who are the 11 registered organisations, Mr McIlwain; do you have a list of them?

Mr McIlwain—This was in our answer to question on notice No. 200 that you asked at the last estimates hearing, but for convenience I am happy to go through it again. They are: the Agribusiness Employers Federation, the Australian Meat Industry Council, Australian Petroleum Agents and Distributors Association, the Engineering Employers Association of South Australia, Primary Employers Tasmania, Restaurant and Catering Association, Tasmanian Logging Association, Territory Construction Association, Timber Trade Industrial Association, the Victorian Automobile Chamber of Commerce and the Victorian Employers Chamber of Commerce and Industry.

CHAIR—Thank you very much. There are no more questions for this group.

Mr McIlwain—Thank you.

Senator Abetz—Which one is next?

Senator MARSHALL—Cross-portfolio.

[3.35 pm]

CHAIR—We now move to cross-portfolio, followed by outcome 2.

Dr Boxall—Chair, Ms Golightly wants to clarify an answer given earlier to Senator Wong.

CHAIR—Please go ahead.

Ms Golightly—It is in relation to the questions about the workers compensation inquiry. I informed the committee that the department had commenced looking into the matter and had contacted the JNMs involved. However, I misunderstood the advice handed to me at the time. The correct situation is that the department has commenced its inquiries and these will include contacting JNMs. I thought that had already started; it has not, but we will still answer the question we took on notice, which was who we contacted and when we contacted them.

Senator WONG—So no contact has yet been made, Ms Golightly.

Ms Golightly—Not to my knowledge. It was due to start this week. I have yet to confirm that it actually did.

Dr Boxall—And Mr Carters wants to clarify an answer from last night.

Mr Carters—It was an answer to Senator Wong about whether the 137 Job Network places as a result of the Welfare to Work package had changed. The answer is that in fact it has changed. The dollars have not changed but that figure was incorrect. In question on notice W141-06 we have given you the new figure, which is 223,922.

Senator WONG—But the actual funding for that has not changed. Is that right?

Mr Carters—No, it was just an incorrect number. The dollars were always correct.

Senator WONG—I had assumed that that was cumulative on existing places. This is additional places.

Mr Carters—It is additional places.

Senator WONG—So the funding remains the same, but it is less per place.

Mr Carters—It is less per place because that is what it should be, yes. The unit cost for the Job Network places was always correct in terms of calculating the total figure. The figure that was given before was just an incorrect figure. Part of the reason was that a lot of new people will become eligible for a Job Network place because of the change in the taper rate, and that number had not been added on to the servicing of the other groups.

Senator WONG—So the total amount over the three years is 223,822.

Mr Carters—Yes.

Senator WONG—So what you are telling me is the 137 on budget night was incorrect.

Mr Carters—Yes.

Senator WONG—But the unit cost—

Mr Carters—Was correct.

Senator WONG—No-one went ‘unit cost times 137’ and checked if that meant—

Mr Carters—No, that was not correct. The unit cost by 223,822 gives the total that was provided on budget night—

Senator WONG—So what is the unit cost, then?

Mr Carters—which is also on this question on notice, which was \$638,546,000.

Senator WONG—What is the unit cost?

Mr Carters—I do not know offhand. Divide one by the other and—

CHAIR—Get the answer.

Senator WONG—I actually do not have a calculator. I am not very good at doing six-figure division in my head, but—

Senator Abetz—You should be able to do it with your laptop there.

Senator WONG—I am too busy reading things, Senator. Thank you, Mr Carters.

CHAIR—Senator Campbell, you were going to open the batting.

Senator GEORGE CAMPBELL—In one of the government's Work Choices advertisements it makes mention that there are 130 pieces of industrial relations legislation existent in Australia. Can the department provide us with a list of all of the workplace industrial relations legislation that exists in Australia, noting in which jurisdiction or jurisdictions the legislation has coverage?

Mr Pratt—We can do that. We would have to take that on notice.

Senator Abetz—You could also ask Bill Shorten, who also made that comment.

Senator GEORGE CAMPBELL—I did not ask Bill Shorten. I did not know he worked for the department. Does he? You have not employed him on an AWA, have you, in the past couple of days? It would be strange for you to employ an AWU person on an AWA, but that is a different issue.

Senator Abetz—The obvious point is that it seems to be accepted by both sides to be the correct figure.

Senator GEORGE CAMPBELL—The obvious point is that the government is making the claim that there are 130 pieces, and we would like to know what the 130 pieces are and what jurisdictions they operate in. And, given that the advertisement makes the point that 130 pieces of legislation are far too many, what proposals does the department have to reduce the number of workplace relations related pieces of legislation in Australia? Which pieces of workplace relations or IR legislation will be abolished and when?

Mr Pratt—The department is not proposing to do anything. The government's reforms, of course, will substantially reduce the amount of regulation which applies for the majority of employers by ensuring that they only operate under one main piece of legislation, which will be the amended Workplace Relations Act.

Senator GEORGE CAMPBELL—But if these other 130 pieces—and I do not which they all are that you are referring to—remain in effect then surely they will have some impact? Or are you saying that they will all be overridden by this bill?

Mr Pratt—It will vary—some will be overridden, others will not.

Senator GEORGE CAMPBELL—Perhaps you could, when you provide us with the list, identify the ones that will be overridden by the bill.

Mr Pratt—We will attempt to do that, Senator.

Senator GEORGE CAMPBELL—Thank you. Mr Pratt, you were here when I asked the question previously of the Employment Advocate about the regulations that will sit alongside this legislation. When will those draft regulations be available for scrutiny?

Mr Pratt—I will reiterate the answer provided by the minister, and that is that many of those regulations will be available by the time the legislation takes effect. Some may become available following that, and across the course of future years they will be amended from time to time. That was the answer the minister gave. At this stage we do not know when the date of effect will be; the government has not announced that and so I cannot tell you specifically when the regulations will be available.

Senator GEORGE CAMPBELL—But the date of effect will not be prior to the draft regulations being made available?

Mr Pratt—I expect the vast majority will be available at the time of the date of effect.

Senator GEORGE CAMPBELL—And they will be disallowable instruments?

Mr Pratt—They are regulations. Yes.

Proceedings suspended from 3.43 pm to 4.03 pm

CHAIR—The committee will resume. Senator Wong, I believe you are about to embark on a series of questions.

Dr Boxall—It would assist the department, if it is okay with the committee, if we could rule off on further questions which are cross portfolio for Ms Golightly and Mr Carters.

Senator WONG—I have questions which are cross portfolio. I am not in a position to determine whether they will be required for those. I assume it is probably corporate, but I am not sure.

Dr Boxall—Okay.

CHAIR—We will be breaking again at 6.30. We will have a much better idea by then, I am sure.

Senator WONG—To alleviate Mr Carters and Ms Golightly's anxiety, I can indicate it is not a very long session on the cross portfolio issues. I have some questions in relation to the advertising campaign—would that be a cross portfolio issue or outcome 2?

Dr Boxall—That is outcome 2.

Senator WONG—Briefly, I have a couple of questions on IT procurement. Firstly, I want to confirm—and you might want to take this on notice—how many IT contracts DEWR has let in the year to date and in the last financial year.

Dr Boxall—Indeed, we would need to take that on notice.

Senator WONG—Are you able to specify for me the criteria upon which DEWR is obliged to put such contracts to public tender?

Mr O'Sullivan—The criteria are essentially those set out in the Commonwealth procurement guidelines.

Senator WONG—Essentially? Is there any change or alteration from the guidelines?

Mr O'Sullivan—No. I should say the Commonwealth procurement guidelines.

Senator WONG—As a result of the US FTA, was there a change in these criteria?

Mr O'Sullivan—Yes, there was. However, the Department of Finance and Administration administer those guidelines. I probably should not answer any further questions in that regard.

Senator WONG—I am just asking in relation to how DEWR implements them. Does that mean that, in house, contracts in excess of a certain value must go to tender?

Mr O'Sullivan—Subject to certain exceptions, that is the general rule.

Senator WONG—What is the threshold?

Mr O’Sullivan—It is \$80,000.

Senator WONG—Who makes that decision?

Mr O’Sullivan—I understand that is set out in the Commonwealth procurement guidelines.

Senator WONG—Within the department, who makes the decision determining whether or not a contract under the guidelines must go to tender?

Dr Boxall—The relevant manager would make that decision. The guideline is clear and it is set out by the department of finance pursuant to the US free trade agreement. If a contract is above \$80,000, then it has to be put out to tender. If not, it does not have to be. There are one or two exceptions, such as ‘urgent’.

Mr O’Sullivan—I think there is an exception in relation to direct sourcing as well.

Senator WONG—But in relation to IT contracts, who in the department would make the decision as to whether or not something under the guidelines would need to go to tender—not Job Network?

Dr Boxall—If it is not Job Network then our chief information officer, Mr Burston, is in charge of that group.

Senator WONG—Would the decision as to whether or not the contract went to tender be entirely yours, Mr Burston, or would that be something people in your division or branch would decide?

Mr Burston—It would depend on the case. Typically, they would come to me, depending on the value of the contract. Alternatively, decisions would be made by other officers in my group and, depending on the nature of the procurement being sought, we would consult with the business areas that had the original requirement.

Senator WONG—If a contract goes to open tender, are there occasions on which, once it has been placed there, it is then withdrawn from tender?

Mr Burston—I cannot recall any, but it would be on a case-by-case basis. If the procurement could have been satisfied in other ways or if circumstances change as to the original business requirement, that is conceivable. But, as always, we are guided by the Commonwealth procurement guidelines.

Senator WONG—I refer specifically to a tender that I think is on your web site: ATM-RFT 04050022—for desktop computer associated peripherals and services. The contract tender date listed on the web site is 3 June 2005. Was that tender granted or was it withdrawn?

Mr Burston—I would have to take those details on notice. I am not familiar with it.

Senator WONG—On notice, could you provide details in relation to IT contracts awarded in 2004-05: the names of the contract, the value of the contracts and whether or not the contracts went to open tender?

Mr Burston—We will take that on notice.

Senator WONG—And any RFTs that were withdrawn and then awarded under a standing offer.

Mr Burston—I will take that on notice.

Senator WONG—Once a contract has been put to tender, would a withdrawal from tender be something that you would have to sign off on in relation to your area?

Mr Burston—It would depend on the dollar value in play. Typically, we operate on a system of delegations and, because of the scale of IT procurement, I certainly do not see all the material—I tend to see, obviously, the more valuable ones. If decisions along the lines that are behind your question have actually happened, the person making that decision would be determined by the value in play.

Senator WONG—What is to prevent—and this is a theoretical issue—if you have a large contract, splitting it up into smaller contracts to avoid going to tender?

Mr Burston—I am unaware of that practice in my group.

Senator WONG—No, I am not suggesting there is. That was not my imputation; I am asking what probity or other guidelines would be in place to ensure that did not happen.

Mr Burston—Typically, in IT the tenders boil down to two sets of requirements: one is equipment and software and the other is contractors. In respect of equipment and software, it would be irrational to split them in order to avert some sort of delegation limit. We are always after functional solutions, which typically come in a set of things, and by far the best way to hold people to account, if you can do it, is to have a single contract with all of that in one place rather than to buy things in dribs and drabs, if you like.

Mr O’Sullivan—Obviously, we have got a requirement under the financial management regulations to make efficient and effective use of Commonwealth resources. Clearly, if tenders of a like nature would be better off grouped together than that is how we would do it, just to make sure we comply with our obligations under the FMA regs.

Senator WONG—That is a theoretical answer; that is an answer about the macro level. I am asking: what specific measures are in place within the department to give effect to that? I am happy if you want to take it on notice, but that is my question.

Mr O’Sullivan—I am happy to take that on notice.

Senator WONG—Thank you. I have finished on that issue. In relation to the ABS biennial employee earnings and hours report: there was an announcement earlier this month that the ABS intended to remove its question on employees’ pay-setting arrangements in that report. Did any DEWR officers have any contact with the ABS in relation to this change?

Mr Pratt—That is an outcome 2 question. We would be happy to discuss that under outcome 2.

Senator WONG—Do you want me to say it again in about half an hour—is that what you are saying?

Mr Pratt—I will need to get the relevant officers up.

Senator WONG—They are not there?

Mr Pratt—Yes, they are in the background. They will need to come to the table. But we have had discussions with the ABS.

CHAIR—Do you want to ask that question now, Senator Wong?

Senator WONG—I am not sure what is happening now.

CHAIR—If you want them to, the officers can come to the table.

Senator WONG—No. I will ask it again in 15 minutes.

CHAIR—Ask it again in outcome 2.

Senator MARSHALL—It was reported in the *Australian* on 21 June that DEWR told 15 of its employees in Melbourne that if they wanted to continue working they would need to sign AWAs. It was also suggested that the department staff on fixed-term contracts were told they would have to sign AWAs if they wanted permanent positions. Does the department consider these actions to breach the Workplace Relations Act?

Dr Boxall—That report is not true.

Senator MARSHALL—Is it true in any part?

Dr Boxall—No.

Senator MARSHALL—Does the department, as a matter of policy, consider providing employment forms to staff with the ‘yes’ box already ticked to the following statement: ‘I acknowledge my commitment to sign an Australian workplace agreement’ as a form of duress or coercion?

Mr O’Sullivan—I think I know the matter that you are alluding to. The provision of forms, in that instance, was by mistake. It was a mistake that was picked up by the department and rectified. We do not, as a matter of course, do that intentionally. And, as I said, it was remedied almost immediately.

Senator MARSHALL—So you have taken steps to ensure that such an incident will not recur?

Mr O’Sullivan—Yes. And, indeed, no such incident has recurred.

Senator WONG—We will put the remainder of the cross portfolio questions on notice.

Dr Boxall—Thank you, Senator Wong.

[4.17 pm]

CHAIR—That section is then concluded, thank you. We now move to outcome 2.

Senator WONG—Dr Boxall, as I indicated a short time ago, I have some questions regarding advertising. Questions were asked in the PM&C hearing which confirmed that DEWR originally approached GCU with a budget of \$34 million for advertising only. Can you tell me how DEWR came to that figure of \$34 million?

Mr Kovacic—I think, as PM&C indicated in the estimates hearing on Monday evening, the process of developing the estimated costs of an advertising campaign is an iterative process, which is done in consultation with the Ministerial Committee on Government Communications and which evolves as consideration takes place of the nature of the campaign, in terms of its scope, duration and breadth. To be more specific: we actually seek advice from Universal McCann, which is one of the placement agencies that PM&C uses on a

whole-of-government basis for media placement purposes for communication campaigns conducted by government. We sought advice from Universal McCann on the costs of placing particular ads in different forms of media. That figure of \$34 million was a culmination of the nature of the campaign, the scope of the campaign, the different media that we proposed and the advice we received from Universal McCann on costs.

Senator WONG—When was that advice sought from Universal McCann?

Mr Kovacic—It would have been sought almost on an ongoing basis whilst the Ministerial Committee on Government Communications was considering the campaign.

Senator WONG—Did you receive that advice from Universal McCann in writing?

Mr Kovacic—Yes, we did.

Senator WONG—Could you table a copy of that.

Mr Kovacic—We will take it on notice.

Senator WONG—Was the figure of \$34 million that DEWR approached the GCU with based on the Universal McCann advice?

Mr Kovacic—It would have been one of the factors that were taken into account in that.

Senator WONG—But who determined that that would be the amount that DEWR would approach the GCU in relation to? Who in the department determined that—or was that a ministerial determination?

Mr Kovacic—The department provided advice and the minister subsequently sought authorisation from other senior ministers.

Senator WONG—So the \$34 million would have been from the minister to the ministerial committee?

Mr Kovacic—No. It would have been to other senior ministers.

Senator WONG—The \$34 million did not include call centres and booklets. Is that correct?

Mr Kovacic—At the time the approval was sought for that particular amount of money it was sought across the campaign.

Senator WONG—Did the \$34 million include funding for call centres and booklets?

Mr Kovacic—There would have been an element in there and for printing and distribution costs as well.

Senator WONG—And for call centres?

Mr Kovacic—Yes.

Senator WONG—We understand, from the answers given, that the figure was then worked up to \$44.3 million. Did DEWR provide advice to the minister in relation to that figure?

Mr Kovacic—The figure of \$44.3 million relates solely to advertising costs and consultancies associated with advertising—for instance, Creative Agency, the market research and public relations consultancy.

Senator WONG—Who were the contracts between in relation to the advice? Was it between DEWR and Universal McCann?

Mr Kovacic—DEWR does not have a contract with Universal McCann. It is a contract that PM&C has with Universal McCann, and it operates on a whole-of-government basis.

Senator WONG—Are you able to tell me the cost of the call centres and the booklet distribution?

Mr Kovacic—The notional budget for call centres was in the order of \$8.1 million.

Senator WONG—Over and above the \$44.3 million?

Mr Kovacic—That is correct. Two items were discussed in the estimates hearing earlier this week. There was an amount of \$34.3 million as the contingency fund or notional budget for the workplace relations advertising campaign, and there was a second component, for the Work Choices information and communications campaign, which amounted to \$10.8 million. That second component incorporated costs relating to the call centres and the printing and distribution costs associated with booklets and so on.

Senator WONG—So that was \$10.8 million and \$8.1 million?

Mr Kovacic—No. The \$8.1 million was part of the \$10.8 million. The \$10.8 million was comprised of a notional budget of \$8.1 million for call centres. The expected cost of the call centres is likely to be around \$4.7 million, so it has come down from \$8.1 million. The notional budget for printing and distribution costs is \$2.7 million.

Senator WONG—Who gave final approval for the budget of \$44.3 million? Where was that decision taken?

Mr Kovacic—Senior ministers gave approval for that amount.

Senator WONG—And that is to come out of DEWR's budget?

Mr Kovacic—That is to be paid for out of departmental operating expenses. But, as noted in the financial impact statement, which is at page 3 of the explanatory memorandum for the Work Choices bill, the department is seeking funding for costs associated with the reforms through the additional estimates process. Whilst that is yet to be finalised, we anticipate that it will be dealt with in that context.

Senator WONG—You will be seeking supplementation of your appropriation?

Mr Kovacic—That is correct.

Senator WONG—Of what amount at this stage?

Mr Kovacic—In terms of the workplace relations advertising campaign and the Work Choices information communication campaign, the amounts are specified in the financial impact statement: \$44.3 million and \$10.8 million.

Senator WONG—So you are seeking supplementation for the entirety of the campaign?

Mr Kovacic—Yes.

Senator WONG—Where would you have got the \$34 million from? Was it always intended, even when—

Mr Pratt—If the \$34 million had stayed at that amount, we would have sought supplementation of the \$34 million.

Senator WONG—So it was always the intention that you would seek supplementation—additional moneys?

Mr Pratt—Yes.

Senator WONG—Your answer is essentially that this will be additional moneys that you seek through the parliament?

Mr Pratt—Yes.

Dr Boxall—The government will seek this additional money from parliament to appropriate to DEWR to pay the bills.

Senator WONG—When was the decision taken to seek supplementation finance?

Dr Boxall—The government have considered for some time that they would seek additional funding through the additional estimates to fund these expenses.

Senator WONG—When was the decision made to seek additional supplementation as per the explanatory memorandum?

Mr Pratt—When the government took its decisions on its workplace relations reform package in May of this year, it also identified that there would be supplementation for the additional costs associated with introducing the reforms, including communications and other matters.

Senator WONG—Was that \$34 million identified at that point?

Mr Pratt—No, not specifically.

Senator WONG—When was the \$34 million developed by DEWR?

Mr Kovacic—It would have been about late August—perhaps early September.

Senator MARSHALL—What was the date that Universal McCann gave you the written advice about that cost?

Mr Kovacic—They provided written advice to the department and to MCGC consistently through the consideration of the campaign by MCGC. So it is several iterations.

Senator MARSHALL—I thought you indicated that the \$34 million came in the form of written advice. So it must have been at a specific time.

Dr Boxall—Mr Kovacic testified earlier that Universal McCann was giving advice over a period of time and that what emerged from that was a decision by the department and the minister to cost it at \$34 million.

Senator MARSHALL—So it was not advice from Universal McCann that put a figure on it?

Dr Boxall—The advice from Universal McCann was one of the inputs to the decision.

Senator WONG—Were they paid through GCU or through DEWR?

Dr Boxall—They are contracted by PM&C.

Mr Kovacic—They are contracted by PM&C. But in the context of this campaign, the costs of media placement and the services for Universal McCann for placing the advertising, if I could put it that way, would be costs that would be met out of the costs of the advertising campaign.

Senator WONG—The \$44.3 million would include that?

Mr Kovacic—Exactly. It would be part of that.

Senator WONG—Can I confirm the figures which we have: media buy \$36.8 million, call centres \$8.1 million and booklets \$2.6 million.

Mr Kovacic—That is correct for the media buy; that was the notional budget for the media buy. In terms of expected cost, it is now likely to turn out to be in the order of \$30.9 million.

Senator WONG—What is the cost to date?

Mr Kovacic—That is the expected cost of the—

Senator WONG—What is the cost to date?

Mr Kovacic—In terms of how much we have paid or how much we have been billed?

Senator WONG—Both.

Mr Kovacic—I am not sure we have been invoiced for the full amount of the \$30.9 million. In terms of the amount that we have actually paid to date on the media campaign or for the advertising, it is almost \$4.9 million. None of that amount has been paid to Universal McCann at this point. It relates to the consultancies that also occur under that workplace advertising campaign.

Senator WONG—Can you confirm that the following firms were also contracted in relation to this campaign—I do not know whether by DEWR or PM&C—Dewey Horton, Jackson Wells Morris and Colmar Brunton?

Mr Kovacic—Yes, I can.

Senator WONG—Are those contracts also with PM&C?

Mr Kovacic—No, they are contracts with DEWR.

Senator WONG—Are there any other contracts in relation to this campaign that DEWR is either a party to or is contributing to financially?

Mr Kovacic—Not that I am aware of.

Senator WONG—So it is Universal McCann, Dewey Horton, Jackson Wells Morris and Colmar Brunton?

Mr Kovacic—That is correct. There would be contracts in respect of the call centres. I apologise for that. There is a contract with Telstra and there were also contracts with the call centres, UCMS and Stellar. We also have printing and distribution contracts with Selmat for distribution and iPrint and McMillan for printing.

Senator WONG—Do you have a document which sets out all the contracts and the value of the contract in relation to this campaign?

Mr Kovacic—I do not have that with me.

Senator WONG—Are you able to provide that?

Mr Kovacic—I will take that on notice.

Senator WONG—You would have the ones with DEWR?

Mr Kovacic—Yes, we would be able to provide that information.

Senator WONG—Thank you. In relation to the sourcing of this expenditure, correspondence from the AGS to solicitors in relation to the High Court action—from the AGS to Mr Bornstein at Maurice Blackburn—it was indicated that the source of the funds was outcome 2 within the departmental appropriation.

Dr Boxall—That is correct.

Senator WONG—Is that 2.1 or 2.2?

Mr Pratt—This is a little bit technical. Can you tell us where in the letter it makes that point?

Senator WONG—It is at paragraph 15. In response to the question, ‘Please indicate which of the three outcomes of the department the expenditure is said to be referable to,’ paragraph 15 says, ‘Outcome 2, Higher productivity, higher pay workplaces.’

Ms Graham—The appropriation that we were relying on was our departmental appropriation. The expenditure would have been recorded under outcome 2.

Senator WONG—2.1 or 2.2?

Ms Graham—The appropriation is not provided at the output level or the output group level. In terms of allocating that expenditure, we would allocate it to one of those outputs. But the appropriation is not at that level.

Senator WONG—Which one are you allocating it to? These appropriations are listed separately in the PBS.

Ms Graham—They are line items that detail the expenditure under that appropriation, but they are not actually appropriations.

Senator WONG—Tell me which one they would be allocated to. Which of the line items in the PBS—the table on page 48—

Ms Graham—We would allocate the expenditure under 2.1.

Senator WONG—Isn’t the total appropriation for 2.1 \$24.9 million?

Ms Graham—The total expenditure in the portfolio budget statements for that particular output is that amount, but in terms of the total appropriation available under outcome 2, it is the total amount for outcome 2.

Senator WONG—You have just indicated to me in an answer that you are going to be referencing it to 2.1. Therefore I assume that means you are not taking, even notionally, the expenditure that is identified as being in output 2.2 for this campaign.

Ms Graham—The portfolio budget statements were based on the estimated expenditure under each of those outputs at that time.

Senator WONG—I am well aware of that.

Ms Graham—The line items or the outputs that had that expenditure allocated to them did not have the costs associated with the workplace relations reform.

Senator WONG—If cabinet or the government determined that, at least at that stage, they were going to agree to a \$34 million appropriation, why was there no indication of that through the budget process?

Dr Boxall—Because it was after the budget process.

Senator WONG—It was after the budget.

Ms Graham—Yes, that is right.

Senator WONG—How much did you say had been spent to date, Mr Kovacic?

Mr Kovacic—\$4.9 million.

Senator WONG—Mr Williams said the actual spend so far was \$45.7 million.

Mr Kovacic—I think what he might have been referring to was how much had been committed. But there is a difference between commitment and payment.

Senator WONG—So this is commitment versus actual spend.

Mr Kovacic—Exactly.

Senator WONG—But you might have bills for well more than \$4.9 million.

Mr Kovacic—As I mentioned before, for the advertising campaign that commenced on 9 October, the anticipated expenditure is \$30.9 million. So we would have committed that amount in terms of an advertising spend, but at this stage I am not sure that we have been fully invoiced and, if we have, we certainly have not paid that amount at this stage.

Senator WONG—So the \$30.9 million would be what you would understand is likely to be the expenditure on the advertising to date.

Mr Kovacic—That is correct.

Senator WONG—Was the company Brandmark also contracted to Dewey Horton for the purpose of this campaign?

Mr Kovacic—That is correct.

Senator WONG—Was DEWR aware of that?

Mr Kovacic—We were aware that Dewey Horton were using Brandmark, yes.

Senator WONG—Who else were Dewey Horton using?

Mr Kovacic—They would have used production houses in terms of producing the film advertisements for television, but I think that is more on an ad hoc basis rather than a subcontract basis as is the case with Brandmark.

Senator WONG—When was DEWR aware that Brandmark would be contracted by Dewey Horton?

Mr Kovacic—Shortly after the contract was awarded to Dewey Horton.

Senator WONG—Was any authorisation required from DEWR for that purpose?

Mr Kovacic—I would need to take that on notice to check the specifics of the contract.

Senator WONG—What information, if any, was provided to DEWR by Dewey Horton in relation to the Brandmark contract?

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

Senator WONG—Is DEWR aware of the details of Brandmark's involvement and remuneration?

Mr Kovacic—No, that is a matter for Dewey Horton.

Senator WONG—I presume Colmar Brunton is doing the research.

Mr Kovacic—That is correct.

Senator WONG—Can you give me the disaggregated cost of the tracking and evaluation research?

Mr Kovacic—I would have to take that on notice; I am not sure whether the cost can be disaggregated to that extent.

Senator WONG—Can you tell me how and when it was conducted?

Mr Kovacic—I would have to take that on notice as well in terms of being comprehensive.

Senator WONG—You must know what you contracted with Colmar Brunton for.

Mr Kovacic—Colmar Brunton conducted a range of focus groups and also conducted a range of tracking research over an extended period of time. To not provide a misleading response, I would prefer to take that question on notice.

Senator WONG—What is the time frame for their contract?

Mr Kovacic—They were engaged on 21 July and the contract is due for completion on 31 January 2006.

Senator WONG—Could you take on notice the disaggregated cost issue, how and when the tracking and evaluation research was conducted, how many people were surveyed, what questions were asked—and provide a copy of the questions asked—and what are the results. I will ask you now when and to whom the tracking has been provided.

Mr Kovacic—It would have been provided to the department and the Ministerial Committee on Government Communications.

Senator WONG—When was it provided to the department?

Mr Kovacic—Shortly after it would have been conducted, so it really depends on the precise focus groups or the precise tracking that was undertaken.

Senator WONG—How many separate reports or pieces of written advice in relation to tracking research would have been received?

Mr Kovacic—Senator, that is a question I have taken on notice.

Senator WONG—I am just trying to get a feel for this: is it weekly you get this, or monthly?

Mr Kovacic—At different stages it may have been once or twice a week; in some instances it may have been at longer intervals.

Senator WONG—Right. And would DEWR be the first port of call in terms of the research being provided to them, or would it also have concurrently gone to GCU?

Mr Kovacic—It would have been provided to DEWR and DEWR would have forwarded it on to GCU and to MCGC.

Senator WONG—And it is to be concluded 1 January?

Mr Kovacic—31 January.

Senator WONG—Can you remind me which organisations have been contracted to provide the call centre and hotline services?

Mr Kovacic—Certainly. The three companies are Telstra, UCMS and Stellar.

Senator WONG—Stellar as in?

Mr Kovacic—Stellar.

Senator WONG—I was going to say stars or Tennessee Williams! And what is the value of those individual contracts?

Mr Kovacic—I would need to take that on notice, but collectively we anticipate the expense to add up to \$4.7 million.

Senator WONG—And what is the period of time for those?

Mr Kovacic—In terms of UCMS and Stellar, those contracts have now ceased. They were short-term contracts which were reviewed based on the call volumes that were received, and they only operated for a period of a week. The contract with Telstra is continuing and at this stage is proposed to continue through to late November, early December.

Senator WONG—Can we go back to the outcome 2 issue. The PBS for the department identifies \$24.9 million under output group 2.1, so what you are proposing to spend is almost double the appropriation.

Ms Graham—Double the estimated expenditure at that time.

Senator WONG—Double the estimated expenditure referable to that appropriation.

Ms Graham—That is correct, Senator.

Senator WONG—Where is the money currently coming from for what you are paying? What are you paying the bills out of?

Ms Graham—The bills are paid from the departmental appropriation.

Senator WONG—You have an estimated expenditure here. Tell me which particular output you are utilising to currently pay the bills you are receiving.

Ms Graham—The bills are paid from the total departmental appropriation. Those line items merely indicate the estimated expenditure against them. The appropriation is not divided up into those categories, so we are spending our total departmental appropriation.

Senator WONG—What is the date on which the supplementation will come before the parliament? Is that with this bill?

Ms Graham—It will be through additional estimates. I do not know the timing of the additional estimates bill.

Mr Pratt—Certainly, the departmental appropriation is adequate to cover the expected costs.

Senator WONG—Oh dear, where are you going to be taking money from, Mr Pratt, to pay for all these ads before you get additional money through the parliament?

Mr Pratt—We have sufficient cash to make the payments in anticipation of the extra money coming through.

Senator WONG—Where are the cash reserves?

Ms Graham—We have accumulated surpluses from previous years.

Senator WONG—So that is the cash to which you are referring, Mr Pratt?

Mr Pratt—If necessary, that is what we will use.

Senator WONG—Can you take on notice the amounts paid to date to Telstra, UCMS and Stellar. Can you also advise—perhaps you can tell me this now—how many calls have been taken by the call centre so far?

Mr Kovacic—I can advise that now. As of 1 November, the total number of calls received by the call centres was 44,191.

Senator WONG—When was the commencement date?

Mr Kovacic—It was 9 October.

Senator WONG—Do you receive a weekly report breaking down the numbers?

Mr Kovacic—Daily reports.

Senator WONG—Could you provide those for that period and to date please.

Mr Kovacic—Yes. I will have to take it on notice.

Senator WONG—What is the difficulty in providing that? Do you have that information here?

Mr Kovacic—I have. I can read it out if you like.

Senator WONG—What is the problem with providing it?

Mr Kovacic—I have an annotated copy with some scribbles over it.

Senator Abetz—Read them out. If that is how she wants to have them, that is fine.

Senator WONG—No, I do not want to do that. I would like to see a document rather than sit here and listen to it. Is it possible to get the document today, if you get these regularly? I appreciate that you do not want to give me the one you have with scribbled annotations on it.

Mr Kovacic—We will see if we can get a clean copy.

Senator WONG—I would appreciate that.

Senator GEORGE CAMPBELL—Dr Boxall, it was reported on Triple J radio on 27 October that call centre operators had, on 26 October, received a memo, which was subsequently leaked, threatening them with fines or imprisonment in the event they disclosed the nature of their work or released any documentation. When was the last time call centre operators working on Australian government information lines were issued with a threatening document of this nature?

Dr Boxall—I am advised that it was the Telstra management that issued that memo to the workers in the call centre, not the department.

Senator GEORGE CAMPBELL—Thank you for that; that is apparent from the memo. Are you aware of any other occasions when documents of this nature have been issued to call centre operators when they have been doing work for the Australian government?

Senator Abetz—They can only answer in relation to their own department.

Dr Boxall—We are not aware of any other instances.

Senator GEORGE CAMPBELL—Are you aware, Minister?

Senator Abetz—No, I am not.

Mr Kovacic—I would make the point that they are employees of the call centre operator, not the Australian government.

Senator GEORGE CAMPBELL—Yes, I understand that.

Senator WONG—Were the scripts for the call centres all approved by DEWR?

Mr Kovacic—Yes.

Senator WONG—Were they all prepared by DEWR?

Mr Kovacic—Yes.

Senator WONG—Whose decision was it to limit the information available to call centre staff to a 16-page booklet and a limited script?

Mr Kovacic—I understood that the only material they were provided was the script.

Senator WONG—Not even the booklet?

Mr Kovacic—The booklet is publicly available.

Senator WONG—It was not regarded as essential for their work?

Mr Kovacic—The scripts were developed in such a way that they would assist the call centre operators to answer the questions.

Mr Pratt—The call centre staff were contracted to provide basic information to callers and to provide access to the 16-page booklet. It would not have been appropriate for the call centre staff to attempt to handle more complex questions. There were arrangements in place for those questions to be fed back to more expert staff. So the call centre staff were basically doing what they were contracted to do.

Senator WONG—Can you confirm that the advertising campaign has been paused while the legislation is in the parliament?

Mr Kovacic—The advertising campaign concluded on Sunday.

Senator WONG—Will the same or a similar campaign recommence once the legislation has passed?

Mr Kovacic—That is a matter for government.

Senator WONG—Has a decision been made on that?

Mr Pratt—No decision has been taken on that, to our knowledge.

Senator WONG—Has the totality of the funds approved by senior ministers in terms of expenditure been expended on the advertising to date or is there allocation for advertising beyond today?

Mr Kovacic—There is no allocation for advertising beyond today. Indeed, in terms of those amounts that I referred to previously that are contained in the financial impact statement, the likelihood is that the full amounts, both in terms of the advertising campaign and the Work Choices information and communication campaign, will not be spent.

Senator WONG—I am sorry?

Mr Kovacic—It is unlikely that the \$44.3 million that is cited in the financial impact statement as being the national funding for the workplace relations advertising campaign will be expended in full. The actual expenditure is likely to be an amount more in the order of \$38.3 million. In terms of the \$10.8 million that is indicated in the financial impact statement for the Work Choices information and communication campaign, the likely spend there—

Senator WONG—Yes, I understood that. You have already given me that figure. What I am asking is this. You have already told me that the Colmar Brunton contract extends to 31 January.

Mr Kovacic—That is correct.

Senator WONG—In relation to the other contracts which we have discussed in relation to the advertising campaigns—not the call centres—when do those contracts extend to? Or have they terminated?

Mr Kovacic—The Dewey Horton contract runs until 9 November. In terms of Jackson Wells Morris, it runs through until 27 January 2006.

Senator WONG—If the advertising campaign is concluded, what work will they be doing until 27 January?

Mr Kovacic—They are working on public relations issues.

Senator WONG—What are they?

Mr Kovacic—Assisting with media monitoring, media management issues—

Senator WONG—Assisting whom? DEWR or ministers?

Mr Kovacic—The department. And government.

Senator WONG—Can you explain the nature of what Jackson Wells Morris will be doing from now until 27 January?

Mr Kovacic—Again, as I mentioned, they will be continuing in terms of media monitoring arrangements and developing assessment of that. But they would be largely restricted to those sorts of activities. The bulk of the work that they were contracted for has now been completed.

Senator WONG—What more?

Mr Kovacic—That, in essence, is it—largely media monitoring arrangements in terms of the public debate around the legislation.

Senator WONG—So they will—what?—help you fashion the message in response to the public debate?

Mr Kovacic—They may.

Senator WONG—And they will provide that to the department and to the minister?

Mr Kovacic—They will provide it to the department.

Senator WONG—Which you can provide to the minister.

Mr Kovacic—It may be used to provide advice to the minister.

Senator WONG—Tell me again what the total value of the Jackson Wells Morris contract is.

Mr Kovacic—Notionally it is an amount of \$580,000 but at this stage it is \$250,000

Senator WONG—And that is the contract which subsists until 27 January?

Mr Kovacic—That is correct.

Senator WONG—What has been their involvement in the advertising campaign to date?

Mr Kovacic—They have only been providing public relations support for the department; they have not been involved in the development of the creative advertising or, indeed, the placement or the market research.

Senator GEORGE CAMPBELL—The Prime Minister took a number of talkback radio calls from callers complaining about the tardiness in receiving copies of the booklet. On average, it seemed to be about two weeks. In one he took in Cairns, he actually agreed with the caller that two weeks was more than a fair time to get the booklet out to them. Was this caller's experience typical of the response time to post out the booklets?

Mr Kovacic—I am sorry; I missed the last part of the question.

Senator GEORGE CAMPBELL—Was that caller's experience typical of the response time for people seeking copies of the booklet?

Mr Kovacic—There were some practical difficulties early on after the announcement on 9 October in managing the distribution of booklets. I cannot comment on whether the delay that that particular caller referred to was general or not, but certainly we worked very hard in working with the distribution centre to try to rectify those problems. My understanding is that the issue is now pretty well on track.

Senator GEORGE CAMPBELL—What were the difficulties?

Mr Kovacic—There was an issue because there were two mechanisms for ordering the booklet. One was via a web site that had been established—the Work Choices web site—and the other one was via calls to the call centre. The difficulty was in downloading the orders that were taken from the call centre operation and transmitting that technologically—if I can put it that way—to the distribution centre. There were delays in downloading the details of the persons who had ordered the booklet very early on in the process.

Mr Pratt—Of course, people could access the booklet on the web site while they were waiting for their hard copy.

Senator GEORGE CAMPBELL—Thank you, Mr Pratt. I understand what you are saying about the call centre side of the operation. The minister did advise me to ring the 1300 number, which my staff did, and they were told that the booklet would not be out for a fortnight. They were specifically told it would take a fortnight to have it delivered. Pretty much to a day, it was a fortnight.

Mr Kovacic—I am sorry; I was not aware that call centre staff were making those sorts of comments.

Senator GEORGE CAMPBELL—This was on the 1300 number. I do not know if that was to the call centre or where it was. Did the Prime Minister ask you to find out what had happened with the delay?

Mr Kovacic—As soon as we became aware of the issue, we sought to identify where the issue was. We did that through discussions with Salmat, the distribution warehouse, and sought to ensure that those problems were rectified as soon as possible.

Senator GEORGE CAMPBELL—Were any quality control systems put in place to ensure that?

Mr Kovacic—I suppose the regularity of contact and certainly wanting advice back from Salmat as to what the problem was, what had been done to rectify the problem and, indeed, whether in fact it had rectified the problem.

Senator GEORGE CAMPBELL—How long is it taking now between receiving requests and the distribution of booklets?

Mr Kovacic—Once the order is received by Salmat, the distribution warehouse, it is processed within three working days, and then there is obviously postage time on top of that. If the order is placed with the call centre, it will be forwarded to Salmat at the end of that working day.

Senator GEORGE CAMPBELL—So on average three to five days?

Mr Kovacic—I would say probably four to five days.

Senator GEORGE CAMPBELL—What companies held the contracts for design, production and distribution of the Work Choices booklets?

Mr Kovacic—The design of the booklet was undertaken by Dewey Horton. Two companies were involved in the printing of the booklet—one was JS McMillan and the other was iPrint. In terms of distribution, it is Salmat.

Senator GEORGE CAMPBELL—Can you provide us with a breakdown of the value of these contracts?

Mr Kovacic—In notional terms, the contract with Dewey Horton is in the order of \$2 million. I might have to take the value of the contracts with the printers on notice. The contract with Salmat is just over \$800,000.

Senator GEORGE CAMPBELL—How many booklets have been printed?

Mr Kovacic—Six million.

Senator GEORGE CAMPBELL—How many of them were pulped ?

Mr Kovacic—There were in the order of 458,000 items pulped, which includes both completed and incomplete booklets.

Senator GEORGE CAMPBELL—Why were they pulped? And on whose authority were they pulped?

Mr Kovacic—It was a government decision.

Senator GEORGE CAMPBELL—When you say ‘a government decision’, do you mean the minister? Was it a cabinet level decision—Prime Minister and Cabinet?

Mr Kovacic—It was not a cabinet level decision.

Senator GEORGE CAMPBELL—It was a senior level decision.

Mr Kovacic—Yes.

Senator GEORGE CAMPBELL—What was the value of the wasted material?

Mr Kovacic—It was \$152, 944.

Senator GEORGE CAMPBELL—That was 458,000 out of six million? Is that right? Or is the six million over and above the 458,000?

Mr Kovacic—The six million is on top of the 458,000.

Mr Pratt—Also the 458,000 items were not all booklets, were they?

Mr Kovacic—Not all of them were completed booklets, if I can put it that way.

Senator GEORGE CAMPBELL—They were at various stages of the production process?

Mr Kovacic—Yes.

Senator GEORGE CAMPBELL—Can you confirm how many booklets have been distributed so far?

Mr Kovacic—Yes. Some 157,500 booklets have been ordered and just over 178,000 booklets have been dispatched—and that is of 1 November.

Senator GEORGE CAMPBELL—How many are still sitting in the warehouse?

Mr Kovacic—Based on that, it would be in the order of 5.8 million.

Senator GEORGE CAMPBELL—So there are no workers rushing to get hold of them?

Mr Pratt—Our education campaign will extend over a number of years, and that material will still be useful in future years when we go out and do seminars and things like that.

Senator GEORGE CAMPBELL—I know that you have to find a justification for it, Mr Pratt.

Senator MARSHALL—That is a lot of seminars.

Senator GEORGE CAMPBELL—This booklet was produced by the department? That is correct? Was there an initial distribution list? In other words, when the booklet was produced, did you send it out to a distribution list that you had in the community?

Mr Kovacic—No.

Senator GEORGE CAMPBELL—So it was not sent anywhere?

Mr Kovacic—There may have been some distribution to key stakeholders but by and large the key way of obtaining a copy of the booklet was by downloading a copy from the Work Choices web site or, alternatively, ordering copies from the call centres or, again, via the web site.

Senator GEORGE CAMPBELL—Were copies made available to the individuals who attended the briefing by the Prime Minister?

Mr Kovacic—No.

Senator GEORGE CAMPBELL—So no copies were made available on that day?

Mr Kovacic—No.

Senator GEORGE CAMPBELL—Can you tell us why copies were not made available to members of the parliament?

Senator Abetz—They were made available inasmuch as every member of parliament, courtesy of the taxpayer, has access to the internet and it was on the internet. I think I made that point at the same time as I drew your attention to the 1300 number. I think I also gave you the web site address.

Senator GEORGE CAMPBELL—No, you did not, Minister.

Senator Abetz—I did.

Senator GEORGE CAMPBELL—But I have asked the question: is there a reason why the booklets were not distributed to members of parliament?

Mr Kovacic—I have nothing to add other than what the minister has said.

Senator GEORGE CAMPBELL—Was that a conscious decision by the department or was that an oversight?

Senator Abetz—It was a conscious decision to make it available on the Net to every single person that wanted to access it. If a member of parliament or staff of that member of parliament make a conscious decision not to avail themselves of the services available to them, that is fine but it is a bit like receiving it in an envelope and then complaining that somebody had not opened the envelope for you. It was sitting there on the internet ready for you to access it.

Senator GEORGE CAMPBELL—Were copies of the booklet made available to any members of the government?

Mr Kovacic—I am making an assumption here, but it may have been distributed by the minister to members of the government. I am not entirely sure of that.

Mr Pratt—We do not know.

Senator GEORGE CAMPBELL—You don't know?

Mr Pratt—No.

Senator GEORGE CAMPBELL—You don't know whether bulk copies were made available to ministers in the government?

Mr Pratt—I do not know.

Senator GEORGE CAMPBELL—Can you take that on notice and see if you can find out for us?

Mr Pratt—Yes.

Senator MARSHALL—Who actually wrote the Work Choices booklet? I seem to recall Senator Abetz making the claim that he wrote it.

Senator Abetz—Absolutely; I take responsibility for its being written.

Senator MARSHALL—I think you were very specific about writing it.

Senator Abetz—Just as much as reports of Senate committees are reports of the chair—

Senator MARSHALL—That depends very much on the chair.

Senator Abetz—although I have got a funny feeling Mr Carter might undertake a fair bit of work in drafting them originally.

Senator GEORGE CAMPBELL—Yes, but you have to watch what he writes!

Senator MARSHALL—He provides copious assistance.

Senator Abetz—Absolutely—lots of assistance, very good assistance. I did not get writer's cramp doing it.

Senator GEORGE CAMPBELL—Dr Boxall, there have been stories raised in the media about people appearing in the campaign being misled over the purpose of the advertisements, particularly in relation to health and safety videos, as well as people who were nonactors being paid thousands of dollars as extras who did not participate in the ads; effectively, they just sat around for half a day. Was DEWR invited by Dewey Horton and officials to observe the production of the advertising material?

Mr Kovacic—Sorry?

Senator GEORGE CAMPBELL—Did you have observers there with Dewey Horton while these ads were being produced?

Mr Kovacic—We were invited but did not attend the actual filming of the television advertisements.

Senator GEORGE CAMPBELL—Why did you not attend?

Mr Kovacic—In terms of priorities, if I can put it that way—work pressures.

Senator GEORGE CAMPBELL—But you are aware that people were misled over the nature of the ads when they were asked to appear in them?

Mr Kovacic—Everyone who appeared in the ad actually signed the talent release form and it was made quite explicit in that release form who the ad was for and its nature.

Senator GEORGE CAMPBELL—Did the department investigate these reports that individuals were misled over the nature of the advertisements that were being made?

Mr Kovacic—Certainly. We took it up immediately with Dewey Horton as soon as it was brought to our attention.

Senator GEORGE CAMPBELL—What did these investigations reveal?

Mr Kovacic—They revealed that every individual involved in the ads had signed the release form and that those release forms made it clear that the campaign was for the Department of Employment and Workplace Relations and the subject matter was workplace relations.

Senator GEORGE CAMPBELL—Could you provide a copy of the release form to the committee?

Mr Kovacic—I have one which has an individual on it. I am happy to do that with the individual's name—

Senator Abetz—I have one here that is blank. I will make sure that the departmental officials check that to ensure that there are no telltale signs on it.

CHAIR—So you are providing that to the committee, Minister?

Senator Abetz—Yes.

CHAIR—Thank you.

Senator Abetz—It is something you and I will not be signing, Senator Marshall!

Senator MARSHALL—I am happy with the role I am already cast in, thank you!

Senator WONG—I am happy to move off advertising unless other senators have questions. I have some questions regarding Work Choices—the legislation and the booklet. Mr Smythe, under Work Choices, meal breaks are not obviously within the five minimum conditions

Mr Smythe—That is correct.

Senator WONG—Similarly there is the capacity under the legislation, is there not, for employees to cash in two weeks annual leave per year?

Mr Smythe—Yes.

Senator WONG—Does the government consider it safe for an employee to work an eight- or 10-hour shift without any breaks?

Mr Smythe—I cannot comment on that.

Senator WONG—Does the department consider it is safe?

Mr Smythe—I cannot comment on that.

Senator WONG—Why not?

Dr Boxall—Because it is asking for an opinion.

Senator WONG—Has the department done any analysis of the effect of removing rest breaks in terms of the occupational health and safety of employees?

Mr Smythe—My group has not done any.

Mr Kovacic—Not that I am aware of.

Senator WONG—Mr Kovacic, I am not sure what your position is in the department?

Mr Kovacic—It is Group Manager, Workplace Relations Policy Group.

Senator WONG—So there has been no analysis of any occupational health and safety implications for an arrangement, which is quite possible under this legislation, which could see employees working for eight to 10 hours without a break?

Mr Kovacic—As I mentioned a moment ago, not that I am aware of.

Senator WONG—Has there been any consideration of whether this is likely to increase the risk of injury, accidents or fatalities in the workplace?

Mr Kovacic—Not that I am aware of.

Senator WONG—Has DEWR conducted any research or studies or sought opinions of occupational therapists or medical practitioners about the effects of an employee trading in their breaks and annual leave?

Mr Kovacic—Not that I am aware of. I would make the point that there are already a number of employees who work shifts which extend beyond what might be a usual shift.

Senator WONG—There are 12-hour shifts. There are not many awards that I am aware of where a shift is worked without any break whatsoever. I could be mistaken, but that is not something I am aware of. Yet that is precisely what is possible under this legislation. If I am wrong, I will be pleased to hear it.

Mr Kovacic—There may indeed be people who have agreed to work on that basis.

Dr Boxall—It has to be agreed between employers and employees as to whether they want to pursue that avenue or not.

Senator WONG—Actually, all that is required is a provision in the AWA which removes the rest breaks provision.

Dr Boxall—No, it is not. It has to be agreed. The issue in the AWA, as was explained by the employment advocate, is that, in order to change the meal breaks, it has to be explicit. The employee and the employer have to agree to it.

Senator WONG—I suppose it depends on your definition of 'agree'. WorkChoices makes it very clear, as does the legislation—and I am happy to be corrected—that all that is legally required is a clause in the agreement which removes that entitlement. There is no requirement for any additional consideration to be given for that fact and there is no requirement for

anything to be given by the employer other than the five minimum conditions. If you want to call that agreement—

Dr Boxall—It is an agreement. There is no question about it.

Senator WONG—Yes, there is a question about it. It is a question about whether there is actually genuine choice and genuine agreement. Let us not spend the entire time discussing that. I am talking about the issue of health and safety. I want to know whether there has been any consideration of whether or not workers compensation claims are likely to increase under the government's industrial relations changes.

Mr Kovacic—Not that I am aware of.

Senator WONG—You have not undertaken any consideration of that?

Dr Boxall—No. We have not taken any consideration of whether they might well decrease either.

Mr Kovacic—The point that has just been made to me is that, indeed, there is nothing in the Work Choices legislation that would alter an employer's obligations under relevant occupational health and safety legislation in terms of providing a duty of care to their employees.

Senator WONG—But Work Choices legislation does permit rest breaks to be taken away.

Dr Boxall—It permits employers and employees to agree to modify the program of rest breaks.

Senator WONG—Rest breaks can be removed completely.

Dr Boxall—Only on agreement.

Senator WONG—Rest breaks can be removed completely under this legislation.

Dr Boxall—Only if it is agreed by both the employers and the employees. As Mr Kovacic just pointed out, there is nothing in the Work Choices legislation which diminishes employers' responsibility on occupational health and safety issues.

Senator WONG—But you have done no analysis whatsoever of what the removal of rest breaks from many employees' working conditions would do. You have done no analysis of the occupational health and safety consequences of such a move. How can you be in a position to possibly say that this is not a problem?

Dr Boxall—We did not say that. We said that there will only be a change to rest breaks if it is agreed between the employers and the employees. Indeed, this is one of the items that has to be agreed explicitly in an AWA or certified agreement. We have not done an analysis of the impact of Work Choices on occupational health and safety because Work Choices does not impact on the employer's responsibility under the Occupational Health and Safety Act.

Mr Pratt—Senator, your line of questioning also is predicated on the assumption that employers would want to have workers work extended periods without rest breaks. We have not done any studies—

Senator WONG—Then do not answer the question, Mr Pratt, if this is your opinion—

Mr Pratt—We have not done any studies of the extent to which employers would not want that to happen because it would result in unproductive staff. If you were to ask a number of employers and employer associations whether or not they wanted to have staff working for 12 hours without breaks I think you would find that the vast majority of them would say no.

Senator WONG—You have just indicated that you have not done any studies on that, so you have absolutely no idea—other than anecdotal evidence from discussion with ACCI, AiG and some of the other employer groups with whom you consult—what employers might be likely to do under this legislation.

Mr Pratt—That is correct. I am saying that this is another area where we have not done studies. There are lots of areas where we have not done studies.

Senator WONG—That might be something we agree on, Mr Pratt. I have a question about the corporations power. I understand that there are some businesses, such as pharmacies—and I have to say I was not aware of this until now—that are not permitted by law to become incorporated entities. Is that correct?

Mr Smythe—I understand that there is a New South Wales state law which places some constraints on pharmacies becoming incorporated.

Senator WONG—What provisions other than the transitional arrangements detailed in *Work Choices* will be available for these businesses to access the proposed legislation or the proposed jurisdiction?

Mr Smythe—None. The five-year transition period for non-corporations is the only access they will have to the federal system.

Senator GEORGE CAMPBELL—Mr Smythe, could you speak up a bit? I had difficulty hearing that.

Mr Smythe—I beg your pardon. I said that, apart from the five-year transitional period which is contained in the legislation, non-corporations will have no other access to the federal system.

Senator GEORGE CAMPBELL—I will move on to the Award Review Taskforce. According to page 9 of *WorkChoices*, the work of the Award Review Taskforce will not be an exercise in cutting award classification wages or conditions. It then goes on to say on page 34: The Award Review Taskforce will consider:

... ..

How award rationalisation can best be coordinated with award simplification (reducing the number of matters covered within awards)

Can you explain to us how reducing the number of matters that are covered within awards is not an exercise in cutting award conditions?

Mr Pratt—Reducing the number of matters in awards does not necessarily mean that people who are subject to those conditions will not still be subject to those conditions in the future. For example, in relation to the matters which have been frozen in awards—long service leave, superannuation, notice of termination and jury service—employees under

awards currently and into the future will still have access to those. That is an example of how that could work in the future.

Senator GEORGE CAMPBELL—Presumably if there are a number of other matters—penalty rates and so forth—that are eliminated from awards as a result of award simplification, they will no longer be available to the individual.

Mr Pratt—The point I am making is that there is a difference between removing them from awards and those conditions not being available for the people who currently have them. The government is quite clear that its award rationalisation process is not about removing conditions.

Senator GEORGE CAMPBELL—But if you are going to reduce the number of provisions in awards, how do those provisions still apply to the individual if they are moved out of the award?

Senator Abetz—Are you quoting from page 34?

Senator GEORGE CAMPBELL—Yes.

Senator Abetz—Is ‘reducing duplication’ the section?

Senator GEORGE CAMPBELL—No. It says:

The Award Review Taskforce will consider ...

Then it sets out—

Senator Abetz—It says:

... amalgamated/combined to avoid overlapping of awards and to minimise the number of awards ...

Senator GEORGE CAMPBELL—It says:

... reducing the number of matters covered within awards ...

Senator WONG—The penultimate paragraph in the box.

Mr Kovacic—The WorkChoices legislation takes a number of matters that are currently in awards and deals with them by way of the Australian fair pay and conditions standard. There are also a number of matters, such as long service leave and jury service, which are generally provided by way of other legislation. Indeed, those provisions will—in respect of new awards—come out of awards and be provided by way of that legislation. The point that Mr Pratt is making is that some of those conditions will be provided through different mechanisms, be that the Australian fair pay and conditions standard or, alternatively, legislation—be it state or federal—or through the award in the case of matters which remain allowable award matters.

Senator GEORGE CAMPBELL—I accept what you say—that there are a range of matters that are provided for within awards that are also provided for in other instruments—but there are a range of matters that are provided for in awards that are not provided for in other instruments. And there does not seem to be a limitation on what the task force can remove out of awards. So what happens in terms of provisions in those awards that are removed, which obviously are no longer available to the person who is working under that award? Isn't that a reduction of their conditions?

Mr Kovacic—Simplification is, as I have described, largely about giving effect to recognising the creation, or the establishment, of the fair pay and conditions standard. In terms of those other matters, such as long-service leave, jury service, et cetera, being provided by way of other legislation, there is also protection. Where particular areas—for instance, long service leave—are currently in an award, they will be preserved in an award, and will continue to be enjoyed by both current award-reliant employees and future award-reliant employees. The simplification process really is about ensuring that awards reflect the streamlined allowable award matters that are prescribed in the Work Choices legislation.

The other point I would make is that the task force is going to make recommendations to government in terms of the award rationalisation and simplification process. Government will then ask the Australian Industrial Relations Commission to actually undertake the process of rationalising and simplifying awards.

Senator Abetz—If you were to read page 35—it is always helpful, I have found, in question time as well, Senator Campbell, when people have quoted selectively out of this booklet, to keep reading—you would see, in the first column, two-thirds of the way down, under 6.5:

The award rationalisation process will not be an exercise in cutting award conditions (the Award Review Taskforce's recommendations will need to be consistent with the Government's commitment that award classification wages and benefits in awards will not be cut).

Senator GEORGE CAMPBELL—That is a nice little statement, Minister, but it is the outcome that we are concerned about, not what you write in your booklet.

Senator Abetz—So you do not rely on the Australian Industrial Relations Commission to undertake that task? Fair enough.

Senator GEORGE CAMPBELL—Not what you write in your booklet.

Senator WONG—I think the point, Minister, and I think what Senator Campbell was pointing out, is the inconsistency between the paragraph that you just read out and reducing the number of matters covered within an award. Isn't that 'cutting'?

Mr Bohn—No, it is not.

Senator WONG—If you reduce the number, how else is one—

Senator Abetz—It was just explained to you. How obtuse can you be!

Mr Bohn—Senator, perhaps I can assist. Award simplification and award rationalisation are separate processes. Award simplification is the process of ensuring that what is in awards reflects the list of matters that are set out in the legislation. Award rationalisation is the process whereby the Award Review Taskforce is asked to recommend to government how the number of awards might be reduced. And the particular bit of the terms of reference that you are talking about is how those two processes, as a procedural thing, might best be coordinated. That is what the Award Review Taskforce has been asked to advise on.

Senator GEORGE CAMPBELL—But isn't the Award Review Taskforce also going to look at issues such as classification structures in awards?

Mr Bohn—Yes, it is, as part of the advice that it provides to the Fair Pay Commission.

Senator GEORGE CAMPBELL—Isn't it fair to make the point that there is a potential in that process for pay structures to be cut?

Mr Bohn—The legislation expressly guarantees that that not be allowed to happen—that, as part of any adjustment to classification structures, the amount of pay that someone in a classification gets, say, two years down the track, in the equivalent job, is not allowed to be reduced below the level that they would have been paid, in that equivalent position, on day 1.

Senator GEORGE CAMPBELL—On day 1?

Mr Bohn—On day 1.

Senator GEORGE CAMPBELL—That is right—on day 1. What happens on days 2, 3, 4, 5 and 6 is another matter.

Mr Bohn—No, they cannot be reduced, on days 2, 3, 4, 5 or 6, below the level that they were at on day 1.

Senator GEORGE CAMPBELL—But the changes to the classification structures, Mr Bohn, could finish up having that effect.

Mr Bohn—Under the legislation, that is not permitted, Senator.

Senator GEORGE CAMPBELL—I suppose we will have to wait and see what the practical outcome of this is rather than what your perceived outcome is, but some of us have been through some of these processes in the past and we know what can actually occur.

Senator Abetz—The loss of 100,000 jobs.

Senator WONG—You always go personal.

Mr Bohn—I understand that, Senator Campbell, but the Fair Pay Commission is required to ensure that that not happen.

Senator WONG—Senator Abetz's comment was entirely inappropriate, Chair. Senator Abetz, you always have to go personal if you cannot win the policy debate.

Senator Abetz—No. It was Mr Keating who made that allegation against Senator Campbell.

Senator WONG—You cannot help yourself, can you?

Senator GEORGE CAMPBELL—If it was Mr Keating who made it, why do you keep repeating it?

CHAIR—Order! I wish to allow the officer to proceed to finish answering his question.

Senator Abetz—What a good idea.

Senator WONG—Why don't you just keep the personal stuff to yourself. If you cannot manage to win the policy argument—

Senator GEORGE CAMPBELL—If the minister's snide commentary stayed out of it, we might get through it a lot quicker.

Senator WONG—If you can't win the policy argument, you have always got to take the low road.

Senator Abetz—I think somebody mistreated the senator as a puppy; she snaps and snarls at everything.

Senator WONG—I just object to the way you—

CHAIR—Order, Senator Wong! Senator Campbell has asked a question.

Senator WONG—He calls me a puppy and you think that is okay? This is just unprofessional behaviour from a minister. We had him today calling the Clerk corrupt and he now makes personal comments—

Senator Abetz—No, I did not. Withdraw that immediately.

Senator WONG—Sorry; I withdraw that.

Senator Abetz—Thank you. See, that is what happens when you get too angry.

Senator WONG—He makes false allegations—

CHAIR—Order! Minister and Senator Wong, would you please come to order.

Senator WONG—It demonstrates you cannot win the policy argument.

CHAIR—Both of you. Senator Campbell has asked a question. I would like the officer to proceed to answer it. If you need the question asked again, I am happy to ask that that be done. When this line of questioning is concluded I propose to call both Senator Joyce and Senator Siewert, who have other questions in this area. Would you like the question asked again, Mr Bohn?

Mr Bohn—No, thank you. I had actually provided all the information I had, in that the legislation ensures that the adjustment of classification structures does not result in salary—

Senator GEORGE CAMPBELL—I understand what you are saying, Mr Bohn. Will the Award Review Taskforce have the power to make recommendations on the rationalisation and simplification of state awards?

Mr Bohn—It will have the power to make recommendations in that area in relation to classification structures but not in relation to the awards themselves.

Senator GEORGE CAMPBELL—Not in relation to—

Mr Bohn—Not in relation to the matters that are left remaining in awards.

Senator GEORGE CAMPBELL—Under what power will the Award Review Taskforce be able to do that?

Mr Bohn—The power to make recommendations is an administrative matter. It is the Fair Pay Commission that will then have regard to those recommendations and give appropriate effect. The award review mechanism is the Fair Pay Commission.

Senator GEORGE CAMPBELL—If the Award Review Taskforce recommends that some state awards be rationalised and simplified and that is accepted, what will happen to employees whose state award conditions were made into transitional agreements under the federal system?

Mr Bohn—I think we might be talking slightly at cross-purposes. The rationalisation process does not go to classifications and wages. Classifications and wages are removed from

awards by force of the legislation on day one. Those matters go to the Fair Pay Commission and that is the subject of some recommendations of the Award Review Taskforce. The question of rationalising awards only relates to federal awards.

Senator GEORGE CAMPBELL—So the rationalisation will not apply to state awards?

Mr Pratt—Attachment A, on page 61 of the *WorkChoices* booklet, makes it clear that the focus of the Award Review Taskforce will be federal awards only—in relation to the rationalising of awards.

Senator GEORGE CAMPBELL—Where particularly?

Mr Pratt—At point (ii) on the right-hand side.

Senator Abetz—The first bullet point there.

Senator GEORGE CAMPBELL—So it only applies to federal awards.

Mr Pratt—That is correct.

Mr Bohn—There are two processes here. There is the wages and classifications process and the award process. The award rationalisation process is only related to federal awards.

Senator WONG—I think the subsequent point under (ii), which talks about the state awards, may well have been the issue. Is it intended that the task force only look at state awards for the purposes essentially of rationalising into federal awards?

Mr Bohn—Yes. It will look at the state awards in making those recommendations, but the process itself only relates to federal awards.

Senator WONG—What does the phrase ‘preserved award entitlements’ mean?

Mr Bohn—I was just about to get to that. There are some matters in both federal and state awards that are preserved—essentially frozen—and those matters are incorporated by force of the act into any rationalised award.

Senator WONG—There is a definition of preserved award entitlements in relation to state awards in the legislation.

Mr Bohn—There is. It is in schedule 15.

Senator WONG—Can you give me a page number, Mr Bohn?

Senator GEORGE CAMPBELL—Is it on page 627: ‘Preserved notional terms taken to be included in awards’?

Mr Bohn—It is from page 624 onwards. It is clause 45 onwards in that schedule. There are equivalent provisions in the federal awards part of the act as well. That part of the act starts on page 282, but the relevant provisions are a little further along than that. In relation to federal awards, it is page 294 and onwards. Essentially, what happens with those subject matters is that clauses in awards that deal with those are frozen. Irrespective of what happens in the rationalisation process, those are preserved in respect of those employees and employers who were subject to them before the rationalisation process.

Senator GEORGE CAMPBELL—How is that done?

Mr Bohn—The preserving happens by force of the legislation.

Senator GEORGE CAMPBELL—So it will be a provision of this act.

Mr Bohn—The act says that they continue to be taken to be included in the award before it is rationalised and are taken to be included in any rationalised award.

Senator GEORGE CAMPBELL—And they apply to any person who is covered by that award, current and future?

Mr Bohn—Yes. In respect of a post-rationalisation award, the terms that were included in the pre-rationalisation award apply to the employees and employers to whom they applied before, so their coverage is preserved.

Senator GEORGE CAMPBELL—I am just being careful. You said ‘to whom they applied before’.

Mr Bohn—The groups of employees to whom they applied before. So the people who would have been covered by the old award continue to have access, whether they were employed before or after.

Senator GEORGE CAMPBELL—Does it also apply to people who subsequently become covered by that award, by virtue of their employment?

Mr Bohn—It applies to people who come within the coverage of those provisions, if I can put it that way. You might have a situation where you get a number of federal awards, each with the preserved entitlements, that are rationalised into one. In respect of the preserved entitlements that were in each of those pre-rationalisation awards, they retain that existing coverage of the classes of employees and the employers to whom they applied. In a post-rationalisation award you might have half-a-dozen or more clauses that deal with the same subject matter because they all provided for different entitlements in the pre-rationalisation awards.

Senator GEORGE CAMPBELL—Setting aside whether it is a state or federal award, if I am a fitter working on the waterfront, employed under a maritime industry award, who then goes and gets a job in the metal industry and is employed under the metal industry award, those preserved notional terms of that award would apply to me.

Mr Bohn—No. They do not apply to individuals, nor do individuals carry them around with them. What happens is that the people who come into the classes to whom that previous award applied become entitled to those conditions. If there were some preserved conditions under the metals award, you, in moving jobs, would become entitled to those conditions in the same way as would happen now.

Senator GEORGE CAMPBELL—So if I went and got a job with a company that was party to the metal industry award, those provisions would apply.

Mr Bohn—Yes.

Senator GEORGE CAMPBELL—Why are we taking them out of the awards if they are going to continue to have faults?

Mr Bohn—There are two categories of these matters: there are those that are being dealt with in the fair pay and conditions standard—annual leave, personal carers leave, parental leave. What has happened is the standard has been establishing those entitlements but if—

Senator GEORGE CAMPBELL—Does that mean that those standards are going to be common across all employees?

Mr Bohn—All employees within the constitutional scope of the bill, yes. Those matters are being preserved to the extent that, if they are more generous in the award, the employee retains access to that rather than the standard. The other category of matters is long service leave, notice of termination, jury service and superannuation, and they have been removed from awards because they are dealt with by other legislation. Again, on the same basis that if people had pre-existing entitlements before the legislation comes into effect, they retain those.

Senator GEORGE CAMPBELL—If they are provided for in other provisions or acts, why is there a need to keep them preserved in this act?

Mr Bohn—To ensure that people who had entitlements at a particular level before the legislation comes into effect do not on day one lose access to those entitlements.

Senator GEORGE CAMPBELL—Wouldn't that be guaranteed by the other instruments that are provided for?

Mr Bohn—The standard for the various entitlements is set at a particular level. People might have in an award something that is more generous than that, and the legislation ensures that that more generous—

Senator GEORGE CAMPBELL—So this is a way of preserving the more generous provision.

Mr Bohn—Yes, the more generous provision in respect of the matters that are covered by the standard. In respect of long service leave, notice of termination, jury service and superannuation, it preserves those at the level they were at before, and people retain access to what they had under the award before. It interacts with the pre-existing jury service legislation or the termination of employment legislation in the same way that it does now.

Senator GEORGE CAMPBELL—I know what you are saying.

Senator JOYCE—I want to clarify a couple of things that have been brought up and get your opinion on them. With the unfair dismissal laws, for someone who has up to 100 employees is it possible that related entities all controlled by the one person would be able to manufacture a way that each one of their entities has 100 employees or less so that they are able to be exempt from the unfair dismissal laws?

Mr Smythe—Put it this way: there is nothing in the legislation which seeks to prevent avoidance mechanisms from being utilised.

Senator JOYCE—What does that mean?

Mr Smythe—Yes is the answer.

Senator JOYCE—In an AWA, who can assist or review a person who first takes out an AWA and are there any penalties involved for the employee in this regard if they were to contravene a law? Are there any penalties for an employee in setting up their AWA if they were to engage the wrong person?

Senator Abetz—What do you mean by engaging the wrong person?

Senator JOYCE—In reviewing an AWA, if you first go into the work force and you are setting up an AWA—I am an employee; I have left school—are there any potential penalties for me, the employee, because it is an assertion that has been given to me and I want to dispel it?

Mr Smythe—I cannot think of any immediately but I will ask one of my colleagues who has worked on the issue. There are some general prohibitions on making false or misleading statements or seeking to include prohibited conduct in an AWA, but it strikes me as extremely unlikely that an employee would be doing that.

Senator JOYCE—Or that an employee would be covered by them. That is the main point I want to dispel.

Senator Abetz—For what it is worth, in the legislation, under division 10, there is prohibited conduct:

... A person must not apply duress to an employer or employee in connection with an AWA.

So, technically, I suppose it could be an employee. It further states:

A person must not coerce, or attempt to coerce, an employer or employee in relation to an AWA:

(a) to appoint, or not to appoint, a particular person ...

I must say that the chances of a situation occurring whereby an employer appoints somebody to do the negotiation on the employer's behalf and then the employee starts behaving in a particular way are very limited indeed, and the vast majority of the assertions seem to be against the employer.

Senator JOYCE—The assertion that was made to me—and I just want to dispel this—by a group which has been lobbying me is that there is a penalty of up to six months imprisonment if they get a union group to review their AWA or have any involvement. I thought that that was obviously ridiculous.

Senator Abetz—Six months?

Senator JOYCE—Imprisonment. I do not believe it.

Senator Abetz—As I understand it, there are usually civil remedies.

Mr Smythe—Most of the penalties in this act are civil penalties—

Senator Abetz—Which are only financial.

Mr Smythe—There are a few provisions which provide criminal penalties, but they are not in relation to this part of the—

Senator JOYCE—So it is a false assertion? That is my main point.

Senator GEORGE CAMPBELL—It is six months imprisonment for someone who releases information about an AWA and—

Mr Smythe—That is right. It is the same as what presently exists in the act.

Senator GEORGE CAMPBELL—That is right. Does that apply to the situation where, if I am down the pub on Saturday night—

Mr Smythe—No, it does not apply to an individual employee disclosing the contents of their own AWA.

Senator GEORGE CAMPBELL—Who does it apply to?

Mr Smythe—It applies to employees of the Employment Advocate and the Industrial Relations Commission.

Senator GEORGE CAMPBELL—It is public servants?

Senator JOYCE—On the Fair Pay Commission, what is to stop representatives on the Fair Pay Commission from all being union members?

Mr Kovacic—In fact, the person who has been appointed as chairperson at this stage is drawn from an academic background. But, notionally, I think the legislation makes it clear that persons are to be drawn from a business, a commerce or a community services background—

Senator JOYCE—Or a union representative?

Mr Kovacic—There is nothing there to preclude—

Senator JOYCE—There is nothing to stop the whole Fair Pay Commission from being stacked up with all union representatives in the future?

Senator Abetz—That indeed is the possibility with the AIRC now. I think that is potentially the case even with the High Court of Australia. There is nothing to stop a future government, if it wanted to, from appointing only trade union officials to the High Court.

CHAIR—Indeed, Minister, we at the table were just discussing that prospect.

Senator GEORGE CAMPBELL—I can't say the government is doing a good job of stacking the High Court of Australia!

Senator Abetz—It is a very good court at the moment, I must say. It is improving all the time.

Mr Kovacic—The only requirements, in terms of persons who are appointed, are that they must have experience in one or more of the following areas: business, economics, community organisations or workplace relations.

Senator JOYCE—I am aware of that. Can an employer who currently has a work force of, say, 76 or 80 people terminate them all after this and then re-employ them under AWAs without breaking any law?

Mr Smythe—There is a provision in the freedom of association provisions. It is presently section 298L(I)(h) of the existing act—I think it will be 254L(1)(y) of the new act—which prevents an employer from dismissing people because they are entitled to the benefit of an industrial instrument. So, if the motivation were to take them off their present industrial instrument and put them on an AWA, they would be breaching that law.

Senator JOYCE—That is what I want to get across, because it is another assertion that has been in the paper. Clearly, if you did it, it would be illegal.

Mr Smythe—Yes.

Senator JOYCE—Finally, what mechanisms are there to assist a first-time entrant in bargaining for an AWA?

Mr Kovacic—The entrant would be able to approach the Office of the Employment Advocate for advice on understanding an AWA that may be offered to them. Again, the individual could appoint a bargaining agent to represent them in negotiations with the employer relating to the AWA. That could be anyone, whether it is a union official, a parent or a solicitor.

Senator Abetz—Or an accountant.

Mr Kovacic—Or an accountant.

Senator JOYCE—They cost too much.

Mr Kovacic—If the individual is under 18, the AWA would also need to be signed by an appropriate adult before it could be lodged with the Employment Advocate. They are some of the key protections.

Senator SIEWERT—I have questions about 2.2. I am not sure which output the Work Choices help line comes under.

Dr Boxall—That is under 2.1, but we can take it now.

Senator SIEWERT—Is it correct that, if a woman lost her job because she had a child to care for—she was dismissed—and then needed assistance to deal with this, she would get legal aid to cover all her costs and that this is unlimited?

Mr Kovacic—The government has announced a scheme to assist people who claim that they may have been unlawfully dismissed. There are a number of prerequisites, if I can put it that way, in the sense that, as is currently the case under the Workplace Relations Act, the application would initially need to be the subject of conciliation before the Australian Industrial Relations Commission. If that conciliation failed to resolve the matter, the commission would be required to issue a certificate to the individual indicating that conciliation had failed to resolve the issue and that there was merit in the application. Once that was the case, the individual would be able to approach the Office of Workplace Services, which will be administering the scheme, to seek assistance under the scheme. If they are deemed to be eligible—and the eligibility revolves around having that certificate the commission issues that I mentioned and also having to meet a financial criterion—they will be able to receive up to \$4,000 worth of advice on the merits of their claim.

Senator SIEWERT—So there is a cap, as I thought, of \$4,000.

Mr Kovacic—Yes, that is correct.

Senator SIEWERT—It is not unlimited and it is not legal aid—is it?

Mr Kovacic—It is an amount of money for them to get legal advice. It is not legal aid.

Senator Abetz—Just for the record, I know of no grant of legal aid ever that has been unlimited.

Senator SIEWERT—In that case, why did the Work Choices help line tell a lady exactly that—that she would be entitled to legal aid and that it would be unlimited?

Mr Kovacic—I am sorry, I would have to follow that up. I would have to take that on notice.

Senator SIEWERT—Okay. The point is that there appears to be highly inaccurate information being given out over the help line, and I had that information directly from somebody who had got that advice from the help line.

Mr Kovacic—I will take that on notice and we will see what we can do to verify and correct that if that is the advice that is being provided.

Senator SIEWERT—I want to move on to the Office of Workplace Services, which you just mentioned. Is there a web site for the office?

Mr Pratt—Yes. You can access information about the Office of Workplace Services through the workplace portal.

Senator SIEWERT—When I tried to, I could not access it, despite quite an extensive search. Then I got my officers onto trying to access it and they could not. Then we rang the minister's office to try and access it and find out where it was, and they were struggling as well. Is it planned that it will be put in a place where it is easily accessible?

Mr Pratt—We are certainly looking at means to enhance the access to that web site.

Senator SIEWERT—Why isn't it accessible at the moment?

Mr Pratt—Without wanting to be argumentative, the OWS has a web site called WageNet which is a highly accessed, very popular web site, so I am not sure that I agree with your contention. We are certainly looking at ways in which we can promote the availability of the services of the OWS under the Work Choices package, and we will be doing whatever we can to try and make it much easier for people to get access to it.

Senator SIEWERT—How many complaints did the office receive last year?

Mr Kibble—In the financial year 2004-05 we received 6,686 claims of underpayment of wages.

Senator SIEWERT—How many of these have been resolved?

Mr Kibble—We finalised, in the same period, 6,584.

Senator SIEWERT—You said that they were finalised. In what manner were they finalised?

Mr Kibble—In a range of ways. Some were not proceeded with. Some were finalised because they were not sustained—we investigated and there was actually no breach. A proportion—about 62 per cent—was sustained; we investigated and there was a breach.

Senator SIEWERT—What happens when there is a breach?

Mr Kibble—A range of things. Typically, most of those breaches are resolved on a voluntary basis by the employer. For example, if it was an underpayment of wages, the employer agrees to make good the underpayment. In certain cases the matter is resolved through litigation, either through the department's prosecution or a small claims application.

Senator SIEWERT—How many were resolved in that manner?

Mr Kibble—In 2004-05, there were nine departmental prosecutions, and 243 were recommended for small claims proceedings.

Dr Boxall—The important point is that the bulk—94 per cent—of those cases which are sustained are settled voluntarily. Only six per cent go on either to the small claims court or to litigation. There are a few cases where the department prosecutes.

Senator SIEWERT—In the cases where there has been a breach and the matters are resolved voluntarily, what incentive is there for the employer not to do it again, other than the fact that they got caught and had to repay wages?

Mr Kibble—They had already been caught once. We follow up to ensure that they are complying.

Senator SIEWERT—Are these cases publicised so it is known that you are taking action?

Mr Kibble—Yes; certainly with respect to the departmental prosecutions, where a matter has been finalised either the minister or the department would put out a media release.

Senator SIEWERT—Are there no fines for employers who have breached but have paid voluntarily?

Mr Kibble—Generally speaking, there is no litigation action taken against those who have paid voluntarily. Certainly, it is not beyond the bounds that we would take the matter to court, particularly if they were a serial offender. Litigation action may be recommended for a range of other reasons, but generally speaking if there was voluntary compliance that is the end of the matter.

Senator SIEWERT—How many serial offenders are there?

Mr Kibble—At least nine in the last financial year.

Senator SIEWERT—Have you taken action against any of those nine serial offenders?

Mr Kibble—With regard to the nine departmental prosecutions, one of the factors taken into account in approving their litigation may well have been their record.

Senator SIEWERT—So those nine are ones that you have prosecuted. The serial offenders are the ones that you have prosecuted.

Mr Kibble—Yes. Their record in compliance is a factor taken into account in prosecuting them. My answer was slightly flippant, but in terms of launching prosecution action against them, their previous conduct would be a factor.

Senator SIEWERT—Is there a one strike and you are out rule or a three strikes and you are out rule?

Mr Kibble—We have prosecution guidelines. It is not as black and white as that. It is a range of factors that the delegate takes into account before approving departmental prosecution.

Senator SIEWERT—How many cases have you got outstanding at the moment? Sorry, I am not adding up real quick.

Mr Kibble—Looking at the financial year ending 30 June, we had 1,019 claims on hand.

Senator SIEWERT—What is the average time of resolution of cases?

Mr Kibble—Our KPI is 80 per cent of claims finalised within 90 calendar days.

Senator SIEWERT—Are you meeting your KPI and, if not—

Mr Kibble—We did meet our KPI in 2004-05. You will appreciate there are a range of dates. Some will be finalised quite quickly and others will take longer than the 90 days. As I said, we do try to do 80 per cent within 90 days, and most are done well in advance of that 90 days.

Senator SIEWERT—How many on-site inspections have you done or do you do in the checking of cases?

Mr Kibble—I do not have that figure and I doubt that we would record that figure. We try to resolve each case in the most effective, efficient and fair way. There are a whole range of mechanisms we can use to resolve a claim. One of the methods we use is on-site visit to look at the workplace, look at the record or interview the employee and employer, but we certainly would not track the number of on-site visits we take in a year.

Senator SIEWERT—What percentage of cases would you do on-site inspections for? Is it the norm, or is it rare?

Mr Kibble—I would say it would be the norm. Not in every case but in quite a large proportion of cases.

Dr Boxall—In the annual report, we do actually report the indicators, including on the web site. These performance indicators are reported on pages 140-143.

Senator SIEWERT—With regard to the new inspectors that you will be getting, where will they be based and how do you decide that?

Mr Pratt—The new inspectors will be based all around Australia, largely in the metropolitan capitals but also in a number of regional areas. We have not yet determined which regional areas these extra inspectors will be based in. The basis for determining that will be based around our analysis of the number of employers and employees in locations and that sort of thing. It will also look at the extent to which we can build on our existing infrastructure in terms of accommodation we may have in those regional areas.

Senator SIEWERT—Do you get them up to remote mines, for example?

Mr Pratt—That will be possible, as necessary.

Senator SIEWERT—So they have a travel budget to get around?

Mr Pratt—Yes.

Senator SIEWERT—I have some safety questions. Has there been any analysis or review done of the impact on safety from moving to individual agreements?

Mr Pratt—We took a substantial line of questioning on this a few minutes ago. No is the short answer.

Senator SIEWERT—Sorry?

Mr Pratt—The short answer is no.

Senator SIEWERT—If you have answered any of these questions before, just tell me and I will go and look up the—

Mr Pratt—There is a rather interesting discussion on this issue in the *Hansard*.

Senator SIEWERT—So you have not generally done a review. Have you looked at the impact on safety when the WA workplace agreements were introduced?

Mr Pratt—I will just check, but I doubt it.

Mr Kovacic—Not that I am aware of, Senator.

Senator SIEWERT—Have you looked at the Ritter review? Again, I apologise if somebody else has asked these questions. Have you actually looked into the Ritter inquiry into the death at the BHP Billiton operation?

Mr Pratt—A general comment: the occupational health and safety matters are actually the responsibilities of the state governments, not the Commonwealth government.

Senator SIEWERT—Except that there are a number of changes that are being made through the introduction of the industrial relations legislation that will, I think, impact on safety. So they are federal laws that impact on safety.

Mr Pratt—Nothing that the Work Choices amendments will do will actually change employers' obligations to maintain safe and health workplaces for their employees under state laws.

Senator SIEWERT—They do impact on how workers can negotiate with employers over safety. That is the point I am trying to get to. The point I was making under the Ritter inquiry is that that did show that there was an impact from individual agreements on the abilities of workers to negotiate safety. That is why I am pursuing this line of questioning.

CHAIR—If I could just interrupt, I have heard your views on this before, in our industrial agreements inquiry, and perhaps you could give the officers a brief synopsis of your theory. They may care to comment in light of any federal impact on this. That might be the most helpful way of doing it.

Senator SIEWERT—Okay, point taken. I was trying to get there with the Ritter inquiry. That indicated that there was an impact from the workers going onto individual agreements, rather than collectively agreeing and working on safety. They found a link between individual agreements and impact on safety, where those accidents occurred. I am asking: is that being taken into consideration when you are looking at the development of individual agreements? I am also asking this because there are changes coming to the NOHSC legislation that also impact on who is involved in negotiations around safety.

Mr Pratt—I can address that second proposition first, and one of my colleagues might think about the first issue. The changes being made to the NOHSC legislation should not have any impact at all on this issue. NOHSC is being abolished and replaced by the Australian Safety and Compensation Council, which will do very much what NOHSC has done, but will also in the future look at workers compensation matters around Australia. The Commonwealth, together with the states, employee representatives and employer representatives, will be looking at ways in which, jointly, they can improve the application of

occupational health and safety standard across the country and workers compensation arrangements in a more consistent fashion. That is the objective of that. It is the government's hope that that will happen in a faster fashion than it has in the past, but there is nothing in the NOHSC legislation that will impact on the issues you have raised—other than, hopefully, positively.

Senator SIEWERT—However, it does take out union involvement in that process.

Mr Pratt—No, not in relation to the NOHSC legislation.

Senator SIEWERT—Not NOHSC, no, because that has been repealed, but it does into the new commission.

Mr Pratt—Not necessarily, because with the negotiation of individual agreements it is open to employees to use a union as a bargaining member if they wish to. My colleagues will correct me if I am wrong, but I am not aware of anything in the work choices legislation which will actually negatively impact on occupational health and safety matters for employees under AWAs.

Senator SIEWERT—I would like to know whether you have looked at the Ritter inquiry and what your opinion is on that. My understanding is that it does show some connection; it draws some connection between the two.

Mr Kovacic—We are aware of the inquiry and the report. In terms of the extent to which we have considered it, so on and so forth, I think the key point is the one that Mr Pratt has already made. The work choices legislation certainly does not diminish or impact on an employer's obligations to their employees in terms of occupational health and safety—to provide a safe and healthy working environment for those employees. That obligation applies irrespective of whether the employees are employed under a collective agreement or, alternatively, individual agreements. As Mr Pratt has mentioned before, responsibility for OHS issues is a state issue.

Senator MARSHALL—Could you take me through section 83BS, which is something that you touched on as a result of Senator Joyce's questions.

Mr Smythe—Of the current act?

Senator MARSHALL—No, proposed in the bill, saying that the identity of parties to an AWA are not to be disclosed.

Ms Merryfull—The key is the way that it has been structured. It relates to the disclosure of information that is protected information. There are a number of other requirements before the offence is committed. The person has to disclose the information, and the information has to be protected information.

Senator MARSHALL—What actually is protected information?

Ms Merryfull—Protected information is information that the person who is disclosing it acquired in the course of performing their duties as a workplace official. That means that they work for the Employment Advocate.

Senator Abetz—Whereabouts is that?

Ms Merryfull—It is on the next page.

Senator MARSHALL—So that does not go so far as to cover a negotiating agent?

Ms Merryfull—‘Protected information’ means either information a person got in their job working for the Employment Advocate or information that they got from somebody who got it from the Employment Advocate. So it is not any old person; it is protected information. That is the way it is drafted. You have to read down to the definition of ‘protected information’.

Senator MARSHALL—I think you have probably now answered this question. Section 83BS only applies to officers of the Employment Advocate.

Ms Merryfull—Or somebody who gets the information from the Office of the Employment Advocate.

Senator MARSHALL—That is the part I am concerned about. What circumstances are we looking at there?

Ms Merryfull—I am not saying that anybody in the Employment Advocate’s office would do this, but say they leaked to information to somebody else, such as a journalist.

Senator MARSHALL—There must be a reason this clause is here. I am wondering—

Ms Merryfull—That is what I am thinking about. This goes to when the Employment Advocate has told a somebody something that they should not have told them. The Employment Advocate has breached the section and, if that other person has met all the other requirements of the offence, they would also have breached the section. But they have to get it from the Employment Advocate or the staff of the Employment Advocate.

Senator Abetz—I think there are similar provisions in general terms in relation to Centrelink staff et cetera. If they come across information in the course of their employment and then divulge it, it will attract certain penalties. The officials indicated to us what protected information is. It is in the course of performing functions or duties or exercising powers as a workplace agreement official. It then goes on to tell us what ‘workplace agreement official’ means. It means the Employment Advocate, a delegate of the Employment Advocate or a member of the staff assisting the Employment Advocate. So it is pretty limited.

Senator MARSHALL—I guess what concerns me a little is how proposed subsection (1)(c) links into that because that is really about identifying people having been party to an AWA.

Senator Abetz—You have to add them all together.

Ms Merryfull—So there is nothing in this that prevents a person who is party to an AWA from disclosing that.

Senator MARSHALL—Okay.

Ms Merryfull—If I am party to an AWA and I tell somebody else that I am party to an AWA there is nothing to prevent them from telling somebody something like that. It is more about protection when people gain the information in the course of their duties.

Senator MARSHALL—What are the confidentiality arrangements around AWAs under the proposed act? Are there any?

Ms Merryfull—Apart from this provision, and there are further provisions in relation to not identifying parties to an AWA in respect of secret ballots, I am not aware of any other provisions.

Senator MARSHALL—What page is that on? It is probably further than where I got up to last night.

Ms Merryfull—Go to page 261. The first exhortation not to disclose information is to the commission. There are a number of things that they are not supposed to disclose—an applicant who is represented by an agent, a relevant employee, the people who wanted a secret ballot, a person whose name is on the roll or a person who is party to an AWA. That is the exhortation to the commission. Further on there is mention of an offence in relation to officers of the registry or people who acquire that information—very similar to the Employment Advocate—disclosing that information.

Senator Abetz—So it is, once again, protected information—registry officials.

Ms Merryfull—This offence is very similar, except it is a wider range of sensitive information that should not be disclosed. It is really to protect the employee.

Senator MARSHALL—If a person who has an AWA has voluntarily disclosed that information, there is nothing in the act that prevents anyone else from repeating that information.

Ms Merryfull—That they got from the person?

Senator MARSHALL—Yes.

Ms Merryfull—No.

Senator MARSHALL—Okay.

Senator Abetz—They can talk about that over the lunch table at work. It would be helpful if your leader got to know that, just as an aside.

Senator MARSHALL—Do I come and see you about mine, Minister?

Senator Abetz—About your what?

Senator MARSHALL—My AWA.

Senator Abetz—I thought you meant your leader. I have some helpful advice there as well.

Senator MARSHALL—I can now come back to unfair dismissals. During the last round of budget estimates we talked quite a bit about new jobs and unfair dismissal laws. It would appear that the department has not moved away from its statements about the impact of unfair dismissal laws on new jobs. I think you are quoted as saying, ‘We believe that the Don Harding research is the most solid available estimate of the employment impact on Australia’s unfair dismissal laws.’ How does the department view the results from the Oslington and Freyens three-year study on unfair dismissal, as reported in the *Age* on 16 September?

Mr Pratt—We will have someone come and talk to you about that in a second. We have done some analysis of it.

Senator Abetz—What did it say?

Senator MARSHALL—It said 6,000, maybe.

Senator Abetz—That is the 6,000 figure.

Mr Pratt—I understand that we think there are a number of methodological errors in the Oslington research, and there are some assumptions that we may not agree with. I will need to find an expert who can talk on this. We still regard the Harding study as the most ‘solid’, to use the term I used at the last estimates, noting of course that that was a study which related to the then proposal to exempt small businesses from unfair dismissal provisions where the employer had up to 20 employees.

Senator MARSHALL—Yes, and I think you conceded that the figure should be more than the 77,000 claimed, given the new arrangements.

Mr Pratt—Intuitively, I think I felt that there would be more jobs as a result of the increase in the cut-off.

Senator MARSHALL—I think you also advised me at the last estimates that you were confident that there were enough data collection processes in place to measure the overnight improvement of at least 77,000 jobs.

Mr Pratt—I think I said that, if there were a substantial jump in employment, the measures that we currently utilise, including all the ABS measures, would be sensitive enough to pick that up pretty quickly.

Senator MARSHALL—Are you still confident that that is the case?

Mr Pratt—Yes.

Mr Andrews—To take you back to your original question about the Oslington paper, the paper is methodically flawed in that it applies an elasticity concept derived from looking at the employment effects for wage increases. It applies that to the extra costs that employers may incur with unfair dismissal claims. In a sense, it is applying a methodology which has been developed through wage analysis to something which applies to going through court procedures. For that reason, we think the methodology does not really reveal what the true benefit would be of removing those unfair dismissal provisions.

Senator MARSHALL—Did the department advise the authors of that study of their concerns about the methodology?

Mr Andrews—No, not that I am aware of.

Senator MARSHALL—So there has been no formal challenge to the result?

Mr Andrews—No.

Senator MARSHALL—They obviously have not responded to that criticism.

Mr Andrews—That is right.

Senator Abetz—Just for the record, 6,000 new jobs is still one huge major project. If somebody were to announce a new project in Australia that would employ 6,000 new people, that would make headlines right around the nation. It would be one huge, major project. Even if it were only 6,000, that would mean another 6,000 of our fellow Australians having the benefit of employment.

Senator MARSHALL—Thank you, Minister. I just wish that was an answer to the question. Keep offering the commentary; it is a reflection.

Senator Abetz—It is a bit of a reflection that I thought you might be interested in.

Senator MARSHALL—Thank you so much. On 29 September Minister Andrews said:

Well at the present time the cost I'm advised of both an unlawful and an unfair dismissal action is roughly about the same by the time you take into account legal advice and if there's a full arbitration of the matter before the commission at the present time.

Can the department table any studies, research or information that it has on the time and costs involved in pursuing or defending both unfair and unlawful dismissal cases for employees, applicants and employers?

Mr Kovacic—In terms of formal studies, no.

Senator MARSHALL—Would you agree with the minister's statement that the costs of unfair and unlawful dismissals are about the same?

Mr Kovacic—Based on the advice we have obtained by contacting a number of legal firms who undertake both unlawful termination and unfair dismissal claims in the courts and in the Industrial Relations Commission, I confirm that the minister's statement is correct.

Senator MARSHALL—How did you collect that advice?

Mr Kovacic—In essence, we rang a number of legal firms who are on the department's legal panel to discuss with them what their estimates were of the cost on average of defending or pursuing an application for unfair dismissal or unlawful termination.

Senator MARSHALL—In what form did they respond to that contact?

Mr Kovacic—My recollection is that it was, in essence, oral advice.

Senator MARSHALL—Oral phone advice?

Mr Kovacic—Yes.

Senator GEORGE CAMPBELL—In the advice that you received from your people on the legal panel, how much did they say that defending an unlawful dismissal claim was worth?

Mr Kovacic—On both fronts?

Senator GEORGE CAMPBELL—For unlawful dismissal as opposed to unfair dismissal.

Mr Kovacic—In both, the average figure was in the order of \$30,000.

Senator GEORGE CAMPBELL—How did you come to the figure of \$4,000 of assistance to people who were confronted with unlawful dismissal claims?

Mr Kovacic—Again, it was in terms of what would be a reasonable amount in terms of the provision of advice as to the merits of a particular claim.

Senator GEORGE CAMPBELL—So you were only really looking at providing them with financial assistance to determine whether or not their claim might have merit, not with the wherewithal to actually fight the claim.

Mr Kovacic—The nature of the scheme that the government has announced is the provision of up to \$4,000 worth of legal advice for eligible persons.

Senator GEORGE CAMPBELL—You would not have a great expectation, would you, that workers earning in the region of \$25,000 to \$45,000 would have a spare \$26,000 sitting around and available to fight an unlawful dismissal claim?

Mr Kovacic—I presume it would depend on the facts of the particular matter.

Senator GEORGE CAMPBELL—How many unlawful dismissal claims have been prosecuted in the past two- or three-year period?

Mr Kovacic—In terms of the precise number, I would need to take that on notice. My understanding is that the data that is retained by the courts and the Industrial Relations Commission is not very helpful in this regard, but it is a small number in general terms. I do not have a precise figure.

Senator GEORGE CAMPBELL—It is a pretty low number.

Mr Kovacic—Yes.

Senator GEORGE CAMPBELL—Does your legal advice go to the extent of telling you why it is a low number?

Mr Kovacic—Part of the rationale is that at the moment people who may be eligible to pursue an unlawful termination application prefer to pursue such an application in the unfair dismissal stream.

Senator GEORGE CAMPBELL—But isn't it also the case that unlawful dismissal cases are very hard to prove as opposed to unfair dismissal claims?

Senator Abetz—Is there a reverse onus of proof in the unlawful dismissal claims?

Mr Smythe—No, there is not. I do not think it would be fair to say that it is any harder to prove an unlawful termination than an unfair dismissal. It is just that the nature of what is being adjudged is quite different. 'Unfair' is an undefined notion, whereas with 'unlawful' there are elements of discrimination that you are required to prove.

Senator GEORGE CAMPBELL—There are limitations. I am not a legal person, but the barristers and solicitors that I have spoken to say it is a much more difficult hurdle to get over.

Senator BARNETT—Can I just clarify the distinction here? We are talking about unlawful termination and we are talking about unfair dismissal. There seems to be some confusion between the two so I am just clarifying for the record.

Senator GEORGE CAMPBELL—There is no confusion in my mind.

Senator BARNETT—You have said 'unfair termination' several times.

Senator GEORGE CAMPBELL—There is. There is unfair—

Senator Abetz—Dismissal.

Senator GEORGE CAMPBELL—dismissal, and there is unlawful—

Senator Abetz—Termination.

Senator GEORGE CAMPBELL—termination.

Senator BARNETT—Very good.

Proceedings suspended from 6.29 pm to 7.34 pm

Senator MARSHALL—Given the consultative approaches outlined in the WorkChoices document, will the Fair Pay Commission be required by law to consult with all the industrial stakeholders or will it simply be an option available to the them?

Mr Smythe—The legislation does not require them to consult; it enables them to consult. There is no requirement that they consult in that way.

Senator MARSHALL—We talked about the call centres earlier in terms of the advertising campaign up until now. It has been indicated that the government will establish a call centre or hotline to answer questions about Work Choices once the legislation is passed and is being implemented. Can you explain to me what the structure of those call centres will be and what the anticipated costs are?

Mr Kovacic—The call centres that have been operating since the announcement on 9 October will run probably, as I mentioned before, until late November or early December. At this stage there is no intention to have separate call centres of that nature operating post the passage of the legislation.

Senator MARSHALL—And I think we asked you earlier too whether there was going to be a further advertising campaign rolled out once the legislation is in. The answer was that you were not anticipating it.

Mr Kovacic—Not at this stage.

Mr Pratt—Was part of your question what assistance might be available for people who are interested in finding out about the Work Choices arrangement in the future after the passage of the legislation?

Senator MARSHALL—Yes.

Mr Pratt—Mr Kovacic has pointed out that the call centres associated with the advertising will have ceased, but of course the Office of Workplace Services will offer call centre assistance through WageLine and WageNet and the staff who will be providing education to people about the new arrangements.

Senator MARSHALL—So that will be an expanded role for existing facilities. There will be no new facilities?

Mr Pratt—That is correct.

Senator MARSHALL—Is there a budget allocation for the expanded role?

Mr Pratt—Yes. In relation to the material which accompanied the financial impact statement there is a line there which is compliance—it is the first line. Over the four years it identifies that there will be an extra \$141 million going to the compliance function. Part of that is also to cover off over those four years expenses in relation to increased services through WageLine and call centres. There will be quite a few extra staff for those call centres to help with the education of people about their entitlements under the new arrangements.

Senator MARSHALL—How many extra staff will there be?

Mr Pratt—The minister has already released information on this. The number of inspectors will go up to 200. In total the number of staff in the Office of Workplace Services will go up to, from memory, about 530 from around 150 now.

Senator MARSHALL—So what is the total extra cost that is being budgeted for?

Mr Pratt—Over the four years, \$141.5 million.

Senator MARSHALL—I think we established earlier that you have some four million WorkChoices booklets that you are going to get rid of during information sessions and seminars. Are those information sessions and seminars within that cost? Who is going to be running them?

Mr Pratt—Certainly the costs associated with departmental staff conducting seminars are part of that \$141.5 million.

Senator MARSHALL—Is there a specific plan? Do you have a timetable? Do you know how many seminars you will be running?

Mr Pratt—Not at this stage. Our thinking on that has not finalised.

Senator MARSHALL—Will it be the intention to actually have a formalised roll-out of information seminars?

Mr Pratt—That is correct.

Senator MARSHALL—Who will they target?

Mr Pratt—Employers and employees, essentially.

Senator MARSHALL—Do you know what form they will take?

Mr Pratt—There will be a range of formats but the seminars themselves will probably be very similar to the seminars that the department has been doing in Victoria across the last year in relation to the common rule changes which occurred in Victoria.

Senator MARSHALL—But that would be mainly for employers, wouldn't it?

Mr Pratt—Yes, it would be mainly for employers.

Senator MARSHALL—How do you intend to engage employees in the seminar forum?

Mr Pratt—I might just check with my colleagues what plans we might have in that area.

Mr Kovacic—Some of these issues are still being developed at the moment in terms of the best way of getting to the target audience. Obviously the printed material that was discussed previously in terms of the booklets is one way of doing it but, similarly, there are other processes or other vehicles, such as the WageLine call centre together with the web site and that printed material. They are probably some of the key mechanisms. As I say, the strategy is still being developed.

Senator MARSHALL—Do you intend to go into workplaces?

Mr Kovacic—That is a possibility.

Senator MARSHALL—So you have not got any of that detail as yet?

Mr Kovacic—As I said, it is still in the process of being developed and thought through.

Senator MARSHALL—When drafting legislation, does the department have guidelines or policies as to what should be included in legislation and what should be included in regulations?

Mr Kovacic—No.

Senator MARSHALL—I think we might have touched on this before but is there an anticipated commencement date for the Work Choices legislation?

Mr Pratt—We do not know yet.

Senator MARSHALL—Are there any practical constraints about when it can be? Can you give me a window?

Mr Pratt—No, but I know the minister has at different times mentioned the first quarter of 2006.

Senator MARSHALL—Are there any parts of the bill that are able to be implemented at different times or is it a whole package to be implemented on one date?

Mr Pratt—It is possible that some aspects of it could start earlier than others. As yet, no decisions have been taken on that.

Senator MARSHALL—What parts of the bill could start earlier than others, forgetting the dates?

Senator Abetz—Virtually the whole lot. It would depend on when the Governor-General signs off on it and it receives royal assent—when it comes into being. It is a whole range of dates, potentially, not that I would necessarily foresee that. I am just saying that as a general comment in relation to legislation.

Mr Smythe—Most of it will come into effect on a date to be proclaimed. Obviously there can be different dates of proclamation. There is one part which will come into effect in January next year. That is a part relating to school based apprenticeships. I have a colleague who can give you more details on that particular part and parts which can be proclaimed on different dates if you wish.

Senator MARSHALL—Is that the only part that is likely to come in before the bulk?

Mr Smythe—That is the only part that has a specific date in the legislation. The general rule with legislation is that different parts can come into effect on dates to be proclaimed. If it is not proclaimed within six months, it automatically comes into effect after six months.

Senator MARSHALL—Sure. So are there any parts—this is probably just getting back to where I was—that are required to come in earlier than other parts?

Mr Smythe—There is a part that will come in—

Senator MARSHALL—Apart from the one you mentioned.

Mr Smythe—No, there is not.

Senator MARSHALL—We will think about whether we take you up on that offer. According to Work Choices, under a transmission of business, the industrial instrument of existing employees who accept employment with a new employer will transmit to the new employer.

Senator Abetz—What page are you on? Page 37?

Senator MARSHALL—I do not know. I have not actually got that.

Senator Abetz—Keep going; sorry.

Senator MARSHALL—It is the transmission of business provisions.

Senator Abetz—Yes, that is page 37.

Senator MARSHALL—Is it possible for the new employer to make the acceptance of a certain type of industrial instrument, such as an AWA, a condition of employment for existing workers?

Mr Smythe—I would have to think about that but I think the answer to that is no. If the workers who were employed with the old employer come to the new employer then the transmission rules apply. So if they had a certified agreement applying to them with the old employer that will be protected and will apply with the new employer.

Senator GEORGE CAMPBELL—Is there a time limitation on that?

Mr Smythe—Twelve months.

Senator GEORGE CAMPBELL—So they get their existing terms and conditions for 12 months.

Mr Smythe—That is right.

Senator GEORGE CAMPBELL—And then, what? All their conditions are up for renegotiations or they go back on the minimum?

Mr Smythe—If there is an award or certified agreement applying to the new employer which is capable of covering the transmitting employees on its face then that will cover them. It is conceivable that they might vary the new employer's certified agreement to cover them. The new employer might offer them AWAs.

Senator GEORGE CAMPBELL—What if there is not?

Mr Smythe—If there is not, they will fall back—

Senator GEORGE CAMPBELL—Do they fall back onto the minima?

Mr Smythe—Plus the award, if they are presently covered by an award.

Senator MARSHALL—It has been asserted that the federal government's changes will improve employment. However, according to your answers to questions W317 and W319, DEWR does not have an estimate of the number of jobs that will be created as a consequence of the proposed industrial relations changes and has not completed any research on the employment benefits of the changes. How can the department support the assertion that the industrial relations changes will boost employment when, by your own admission, you have no research to support the claim?

Senator Abetz—Sorry, what are you saying the department has said?

Senator MARSHALL—That you have not actually done any research to support the claim.

Senator Abetz—There are general economic rules or views that, if you do certain things, certain things will follow, which you do not necessarily model. I do not think that has been any specific research undertaken in that regard; there are just general principles.

Senator MARSHALL—We know that from answers to previous questions. I am asking: how can you support the assertion that the IR changes will boost employment when you have not done any research to back that up?

Senator Abetz—Who made that assertion?

Senator MARSHALL—The assertion has been made by the Prime Minister, I think, and by the Minister for Employment and Workplace Relations.

Senator Abetz—There is a difference between the minister and the Prime Minister asserting things and the department asserting things. I am happy to engage—

Senator MARSHALL—So you do not necessarily support the assertion? Does the department support the assertion?

Dr Boxall—The minister has already answered the questions which you put on notice last time. You are asking if the department supports the assertion made by the Prime Minister and the minister. The answer is: for the obvious economic reasons, yes.

Senator MARSHALL—Let me go to an assertion that has been made on page 8 of the WorkChoices booklet:

The key to greater productivity in the workplace is an increased emphasis on direct bargaining between employers and employees.

I ask: how can the department support the assertion that the IR changes will boost productivity when, again, by your own admission in answer W317, you have no research on the productivity impacts of the proposed industrial relations reforms?

Senator Abetz—Bill Kelty has made similar comments, as has—

Senator GEORGE CAMPBELL—When?

Senator Abetz—As has Paul Keating, about the need to get negotiations onto the shop floor as opposed to having determinations made from on high. I might give you the detail of that on Monday. I do not have it with me at the moment.

Senator GEORGE CAMPBELL—On that issue, Minister, and getting away from attributing stuff to individuals, which may be true or may be your fascination, the truth of the matter is that the industrial relations environment that the government is creating with this legislation has been tried in two places near to home in recent times: in New Zealand under their Employment Contracts Act and in Western Australia. It is an economic fact that, in both those circumstances, productivity failed. Is the department aware of that material?

Senator Abetz—There are a whole lot of factors in that.

Senator GEORGE CAMPBELL—I am asking Dr Boxall. Is the department aware of that material?

Dr Boxall—No. I do not know what happened in New Zealand directly afterwards, but there are lots of reasons why productivity might go up or down. There were a number of

policy changes in New Zealand but, the issue here is that, all other things being equal, if you introduce a workplace relations system which is more flexible and which allows agreements, even at the margin, to be tailored more to the needs of individual employees, groups of employees, individual businesses and employers, by definition, productivity will go up.

Senator GEORGE CAMPBELL—Those arguments were used in both the New Zealand case and the Western Australian case and, in fact, the reverse happened.

Dr Boxall—I do not know what other things were going on.

Senator GEORGE CAMPBELL—How you guarantee that, in terms of this legislation, other events will not intervene?

Dr Boxall—The point is that you and Senator Marshall are asking questions about the impact of Work Choices on productivity and employment. You asked whether the department supports the assertions of the Prime Minister and the minister. The answer is yes. Why does the department support those assertions? It is because, all other things being equal, if you make a change to a workplace relations system which allows—

Senator WONG—Is this an opinion?

Dr Boxall—No.

CHAIR—Senator Campbell asked a question and Dr Boxall is answering it.

Dr Boxall—Senator Campbell asked a question and I am answering a question. Thank you, Madam Chair. When you introduce a system which allows, even at the margin—not everybody—employees, either as individuals or as groups, to negotiate arrangements with individual employers which are more tailored to the needs of the business and the needs of the employee, by definition you get a higher productivity, higher wage result.

Senator GEORGE CAMPBELL—Where is the economic theory that underpins that argument?

Dr Boxall—I have just given it to you, and I am quite happy to give it to you again. The economic theory in terms of the definition of efficiency is that, if you can rearrange the allocation of resources—in this case labour, or employees, and capital—to get a mutually beneficial outcome, you will get a superior outcome. And that is what it is.

Senator MARSHALL—Will you table that research for us?

Dr Boxall—It is not research, it is a theory.

Senator MARSHALL—There is no research? I thought we had established that earlier.

Dr Boxall—It is a theory.

Senator MARSHALL—So it is the offering of an opinion.

Senator WONG—You can offer theories.

Senator GEORGE CAMPBELL—Could you refer us to some of the economic theories?

Mr Kovacic—At page 5 of the explanatory memorandum is a graph that shows a clear correlation between average annual rates of productivity growth and the proportion of the work force that is paid under awards, which reinforces the point that Dr Boxall is making.

Senator MARSHALL—At page 23 of the Work Choices booklet there is a case study. It says:

Rob and his colleagues want to negotiate a collective agreement with a pay rise based on productivity gains made from annualising their salaries by rolling in penalty rates.

Can you explain to me how productivity gains result from annualising salaries and rolling-in penalty rates?

Dr Boxall—If Rob and his colleagues did not think it was in their interests to negotiate this arrangement, they would not do it, but this cameo says that they do think it is in their interests to negotiate this agreement. Assuming that their employer is prepared to negotiate with them—otherwise, there would be no change—this is a classic case in which Rob and his colleagues want to move from a system to a result which they think is in their interests and the employer wants to move from the current system to a result which the employer thinks is in his interests, so they are both winners.

That is a very good microexample of what I was explaining before—that you have a win-win situation. So, by definition, you have an increase in wages and productivity. Otherwise, Rob and his colleagues and/or the employer would sit on the current arrangements. That is the whole principle behind the argument to free up a system. Obviously, it is a freeing up of a system with certain constraints. For example, there are protections in there for employees and for employers. But, apart from those protections, it enables employers and employees to reach agreement which is in their best interests. By definition, that is better than the restricted agreement they were in before.

Senator MARSHALL—Thank you for that little rendition, but that is not the question I was asking. I was asking: how does rolling penalty rates into an annualised salary improve productivity?

Dr Boxall—It is exactly that question; and it is the same answer. They thought it was in their best interests to free up a system and to roll the penalty rates into their basic pay. They get more per hour than they used to for ordinary time. They think that is better. Presumably, the employer thinks it is better, otherwise they would not have agreed to it. And it may well open up opportunities for other ways of working, rather than having a rigid system which has them paid X for some hours and then X-plus for more hours. They are the people who made the decision, in this cameo. Rob and his employees are on the ground. They made the decision without having some central third party dictating to them. That is the whole principle behind the reforms.

Senator MARSHALL—Based on that argument, if we use the reverse, if Rob and his mates were on an annualised salary and negotiated a new agreement to go back to ordinary hours and penalty rates, the fact that they agreed on that with their employer would increase productivity too?

Dr Boxall—Indeed. That is exactly right. And the reason for that is that it depends on the industry. Clearly, there are some industries and workplaces that have different characteristics. Therefore, a one size fits all approach does not fit. Similarly, the current cohort of employees, Rob and his colleagues, may have certain family requirements and certain other tastes, likes and dislikes. In thirty years time, Rob's children and their colleagues may have a different ball

game. The whole idea is that they would then be able to negotiate something which was to their benefit.

Senator MARSHALL—So your position is that reaching an agreement will increase productivity?

Dr Boxall—Yes.

Senator MARSHALL—Regardless of what the content of it is?

Dr Boxall—The point is that people do not voluntarily go into agreements which are against their interests.

Senator MARSHALL—No, people do not voluntarily go into agreements that are against their interests. That is absolutely true

Senator Abetz—Somebody has said that a move to a decentralised wage fixing system will put the spotlight back on the only place where Australia's economic battle will be won—in Australia's workplaces. And guess who said that? Bill Kelty, in 1991.

Senator WONG—An enterprise agreement structure.

Senator Abetz—It is exactly the same principle and it was enunciated 14 years ago by a trade union official.

Senator WONG—You can go out and sell that between now and the next election, Minister. With people who do not have any penalty rates I am sure that will go down a treat.

Senator Abetz—In fact, Greg Combet was advertising the fact that he had negotiated awards that deliberately did away with penalty rates.

Senator WONG—People got a pay increase for that. Under your system they do not have to have a pay increase. It is a very different comparison.

Senator Abetz—No. They would not be trading it away. Why would they trade that away?

Senator WONG—They will trade it away for an ordinary hourly rate if they are made to. That is the point.

Senator Abetz—How can they be made to when they have already got it?

Senator WONG—I had one question in relation to how the federal minimum wage will work. As you are probably aware, the minimum wage increase, because of the relationship between different classification levels and awards, has an effective flow-on effect to different classification levels. Do we agree on that?

Mr De Silva—I did not hear the question.

Senator WONG—The current situation with the minimum wage is that the increase in the minimum wage will have a flow-on effect to the classification structure above the federal minimum wage—

Mr De Silva—Through the SNR.

Senator WONG—I am talking about the current position.

Mr Pratt—Senator, you are correct. It is subject to the AIRC making those changes—

Senator WONG—Is it still C10?

Dr Boxall—There is C1 to C14.

Senator WONG—So the classification structures across awards will be affected through AIRC determination of the minimum wage, effectively. Correct?

Mr Pratt—Correct.

Senator WONG—I am not clear on how the classification structure interaction will work under the proposals in this legislation—the interaction between an increase in the minimum wage and how that will continue to flow on to award classification structures.

Dr Boxall—The Fair Pay Commission will look at the whole breadth of payment for the classifications.

Senator WONG—They are going to set a minimum wage in every single classification level.

Mr De Silva—They will not. All the wage provisions from awards will be converted into what will be known as the Australian pay and classification scales. At the same time, under the legislation, there will be an FMW set under the bill itself, set at \$12.75. The AFPC can adjust the FMW, in which case that will be the base rate for all employees who are covered under the new system. At the same time, it can adjust one or more of the classification scales, and those wage rises will apply to those scales that it adjusts. It could adjust all scales, it could adjust a group of scales or it could adjust just one. If it adjusts the FMW, that will apply to every employee as the minimum.

Senator WONG—But the so-called Fair Pay Commission can make a determination essentially to alter the current relativities to give certain classification structures an increase and not others.

Mr Pratt—As can the Industrial Relations Commission.

Mr Kovacic—The Industrial Relations Commission has in the past awarded differing levels of safety net increase to different levels.

Senator WONG—That is true. It is sometimes done by dollar-for-dollar rates or percentages, which is obviously being conscious of the effect on the relativities of those decisions.

Mr Kovacic—It would be one of the factors that it may take into account in reaching a decision.

Senator WONG—‘It’ being who?

Mr Kovacic—The commission.

Senator WONG—Which commission?

Mr Kovacic—The Australian Industrial Relations Commission.

Dr Boxall—The Fair Pay Commission.

Senator WONG—He is talking about the other one. That is what I was clarifying.

Dr Boxall—Both.

Senator WONG—So it is quite possible under this system for the Australian Fair Pay Commission to raise the FMW by a flat dollar amount and actually hold the APCSs constant. So that would simply mean an erosion in that situation of the classification structure.

Mr De Silva—If by a decision of the AFPC they adjust the FMW and by virtue of that the FMW goes above a classification rate in an APCS, the employee will get paid what the FMW is.

Senator WONG—That is obvious. Sorry, but, if it is the minimum wage, that must be the level at which is set. I am just trying to work my way through schedule 1 and subdivision I, APCS and the interaction between that and the FMW. I am a little bit confused about whether in the situation you have just described, where there is no movement on the APCS and the FMW rises, the act refers to what can occur then.

Mr De Silva—Can you repeat that again?

Senator WONG—In the situation you just outlined, where a classification structure is effectively absorbed because there is no increase in the APCS but there is an increase in the FMW, is there any provision in here which deals with how that would be dealt with?

Mr De Silva—If you look at 90ZC, you see that it says that if the FMW is changed—

Senator WONG—That is just the commencement, though. Section 90ZC is just deeming at the commencement.

Mr De Silva—It deems that all APCSs will be at least equal to the FMW after it makes its first decision, and that continues. If over time an APCS is adjusted and it goes up to FMW, and at a later time the AFPC makes a decision to adjust the FMW and by virtue of that that goes above a particular APCS, the APCS will be deemed—

Senator WONG—Section 90ZC essentially sets the federal minimum wage as the baseline—

Mr De Silva—Yes.

Senator WONG—And contemplates the possibility of above minimum wage classification structures being absorbed down to that level. That is exactly what that provision refers to.

Mr De Silva—All it does is ensure that in any decision where it adjusts the FMW that is what will flow through. It does not preclude the AFPC then, at a later date, adjusting to a higher rate the very APCS that was deemed to be the FMW.

Senator WONG—There is a legal context and a policy context but, essentially, the section states:

... an APCS that covers the employment of the employee determines a basic periodic rate of pay for the employee at that time that is less than that FMW ...

Then the federal minimum wage applies. So this is directly contemplating a situation where the federal minimum wage would overtake a classification level above the federal minimum wage.

Dr Boxall—It is not contemplating it.

Senator WONG—It is exactly contemplating it. If there were a guarantee that the current classification over minimum wage classification structure would be retained in its entirety, would you need this provision?

Mr De Silva—All it does is ensure that when the AFPC is making a decision and, by virtue of that, the FMW rises, a particular APCS which may by virtue of that decision have a classification rate which is slightly lower will be deemed to have the FMW. As I said, the AFPC can at a later stage adjust that APCS to go above—

Senator WONG—It can.

Mr De Silva—It is just to ensure that, if there is any decision that the AFPC makes in relation to FMW, any APCS which has a rate that is lower cannot go below that. It is an ongoing guarantee.

Senator WONG—Yes. It would ensure that if a classification pay level above the minimum wage was not adjusted over time an employee could never fall below the minimum wage.

Mr De Silva—It is a guarantee of that.

Senator WONG—But there is nothing in the act which guarantees that your above minimum wage classification level will be retained.

Dr Boxall—Because it is the job of the AFPC to set the classification wage. In the event that one of the classification wages is below the federal minimum, the federal minimum rules.

Mr De Silva—It will kick in.

Dr Boxall—That is what it is.

Senator WONG—I understand that, but my point is that for those classifications which exist above the minimum wage, of which there are a great many, from recollection—

Senator GEORGE CAMPBELL—Virtually all.

Senator WONG—It is virtually all of them, as my colleague reminds me. If this government were committed to retaining those above minimum wage classification levels, it would not need that because they would always be above the federal minimum wage. This contemplates the erosion of the award classification wage levels above the minimum wage.

Dr Boxall—No. This gives to the AFPC the decision on these classifications. In the event that the federal minimum goes above any of the classification wages, the federal minimum applies. That is what it does. It does not contemplate anything. It says that it is the responsibility of the Australian Fair Pay Commission to make this decision.

Senator WONG—Could you say that last sentence again?

Dr Boxall—It is the responsibility of the Australian Fair Pay Commission to make a determination on these pay rates.

Senator WONG—And there is no guarantee in the legislation that people's existing classification level will be retained.

Dr Boxall—No, because it is the AFPC that makes that determination.

Senator Abetz—But does that exist now?

Dr Boxall—No.

Senator Abetz—That is what I thought. A lot of these fear tactics that are being peddled are quite fallacious.

Senator WONG—You should not go down this path, because Senator Campbell might give you a long lesson on the relationship between different classifications and federal awards—

CHAIR—Indeed, Minister.

Senator WONG—which have been around for a very long time.

CHAIR—Can we have the next question, please.

Senator GEORGE CAMPBELL—I want to ask Dr Boxall one question. To what extent, Dr Boxall, will the Australian Fair Pay Commission, as you call it, take into account the work that was done on the structural efficiency principle in establishing the relativity between—

Dr Boxall—It is up to them. In the act, the government appoints the Fair Pay Commission, including the chair, and then the government has been very clear that their determination stands. It is not that they advise the government and then the government makes a decision; their determination stands. They have an independent secretariat, and no doubt, Senator Campbell, when they are consulting, if somebody were to bring the award structures to their attention then they could take that into account. It is up to them.

Senator GEORGE CAMPBELL—But you have in relation to the minimum wage set a benchmark in the legislation.

Dr Boxall—That is correct.

Senator GEORGE CAMPBELL—Was there any consideration given to setting a benchmark in terms of the relativities and pay structures?

Dr Boxall—No, because the government have set a federal minimum. They have set up the Fair Pay Commission and it will determine the federal minimum and also determine the other award classifications. Like now, where there is no guarantee that something will flow on, there is no guarantee there either. This is a separate body which is independent of government.

Senator WONG—Is there provision in here which deals with the payment of wages?

Mr De Silva—In terms of when it is paid?

Senator WONG—Yes, how often wages will be paid.

Mr De Silva—Wages will be paid in accordance with either the APCS—

Senator WONG—Sorry, not the level of wage; when it gets paid.

Mr De Silva—That could be included in the rate provisions of a scale but it may be included in an agreement. So when someone actually gets paid is determined by the agreement under which someone will be employed.

Senator WONG—Does that mean that there are provisions—

Mr De Silva—There might be rate provisions in awards which say that you will get paid fortnightly in arrears.

Senator WONG—Correct.

Mr De Silva—Those rate provisions—

Senator WONG—They called rate provisions, are they?

Mr De Silva—they are called rate provisions, yes—will be brought into a preserved pay and classification scale.

Senator WONG—Are they part of the APCS?

Mr De Silva—Yes.

Senator WONG—The actual payment of wages—I am just talking about the provision in an award which sets out the detail of the obligation as to when you get paid either in arrears or ahead.

Mr De Silva—If those rate provisions in an award say you get paid in arrears on a fortnightly basis or you get paid in arrears on a monthly basis, those will be brought in—

Senator WONG—To what?

Mr De Silva—To the APCS, which is the preserved APCS.

Senator MARSHALL—I want to go to some research again. Minister Andrews, in a doorstep interview on 8 August, said:

What we've all been saying is that we can't pretend to Australians that we can ensure the standard of living that we would want and Australians would want in the future unless we make some further sensible reform.

Can the department table the research and studies that it has conducted or commissioned on the likely impact of the industrial relations reforms on Australians' standard of living?

Mr Kovacic—A wide range of studies have been conducted overseas—none of which have been necessarily commissioned by the department—which go to show the economic benefits of economic reform. Indeed, recently both the OECD and the International Monetary Fund—

Senator MARSHALL—We are talking about industrial relations reform, not economic reform.

Mr Kovacic—It was a slip of the tongue. I meant labour market reform—industrial relations reform. Indeed, both the OECD and the International Monetary Fund recently commented on the need for further labour market reform in Australia and were supportive of the direction of the government's reforms. The Business Council of Australia earlier this year issued a report which again reinforced the benefits of reform and argued the case for further reform in terms of the labour market and, indeed, in a number of other areas as well.

Senator MARSHALL—Has there been any research or have there been any studies commissioned or conducted that go to the impact of these industrial relations reforms on Australia's standard of living?

Mr Kovacic—Not that I am aware of.

Senator WONG—Classification structures are removed as an allowable matter from awards under Work Choices—yes?

Mr De Silva—Yes.

Senator WONG—So their protection is through the discretion of the Fair Pay Commission?

Mr De Silva—The Fair Pay Commission will be the independent body that sets wages.

Senator WONG—I understood that. They have the discretion essentially to alter classification structures?

Mr De Silva—They have that power too.

Senator WONG—As I understand it, the fair pay and conditions standards set the maximum 38 ordinary hours per week but they are averaged over a 12-month period—is that correct?

Mr De Silva—That is the default period.

Senator WONG—Where is that set out in the act?

Mr De Silva—If you look on page 101—

Senator WONG—The applicable averaging period ‘for the purposes of this section ... the employment period of less than 12 months’—that is what you meant?

Mr De Silva—Yes.

Senator WONG—The applicable averaging period is either a period that has been agreed or the employment period. So the default is 12 months?

Mr De Silva—The default is 12 months, and this is covered by an award which might say that hours are averaged over a period of four weeks. Many awards say that it will be 152 hours over four weeks, or an agreement may state what the averaging period is.

Senator WONG—Essentially, that would mean that there is no limit on the ordinary hours you might work in a particular week provided that within the 12-month period you do not work more than 38 hours averaged out per week.

Mr De Silva—Unless there is a written agreement between the employer and the employee or unless there is an award which says what the averaging period will be.

Senator WONG—My proposition is correct for the default position?

Mr De Silva—That it could be averaged over 12 months?

Senator WONG—That there is no limit on the number of ordinary hours a person might have to work in a particular week under the legislation, provided that over the 12-month period the average was 38 hours.

Mr De Silva—In terms of ordinary hours, technically, yes. But there is also the requirement in terms of what would be unreasonable hours, in which case there is an assessment of what constitutes unreasonable, and that is set out on page 102. That draws on the factors which were in the reasonable hours case.

Senator WONG—That is reasonable additional hours.

Mr De Silva—Yes.

Senator WONG—Hang on. What are additional hours? If additional hours are only those hours in excess of the 38 hours averaged over the 12-month period, then that provision—subsection 5—only refers to the additional hours over and above that.

Mr De Silva—But in a particular period of time it may be unreasonable to—

Senator WONG—Where is that set out in the act?

Mr De Silva—It talks about it in terms of what ‘reasonable additional hours’ are.

Senator WONG—Yes. What are ‘additional hours’? That is my point. Are additional hours only those over and above the average 38 hours, which is the default position?

Mr De Silva—Yes.

Senator WONG—Then that requirement of reasonableness only refers to those hours in excess of the average of 38. What I am suggesting to you is that, given that is over a 12 month period, there is actually nothing in the legislation which prevents you from having to work a very substantially greater number than 38 hours over a number of weeks, provided over the year you do not work more than the average of 38 hours a week.

Mr De Silva—To some extent, there is flexibility. In periods of high workload, you might work more than a 38-hour week. In periods of low workload, you might work less.

Senator WONG—That can occur now under many award provisions and many agreements. What I am getting at here is that the requirement as to reasonable additional hours does not cut in unless the average period is exceeded.

Mr De Silva—Correct.

Senator WONG—Then how can someone deal with that? Do I have to wait until the end of 12 months before I get the protection of subsection 5?

Mr De Silva—It is at the time you assess what the period is.

Senator WONG—Under the default provisions, which are 12 months, an employee will not get the benefit of any supposed protection against unreasonable additional hours until they hit the point where over the 12-months period their average hours per week exceed 38.

Mr Kovacic—If I could add a couple of things here, the hours of work will still be an allowable award matter, so it will still be possible for awards to deal with the circumstances that you are alluding to in terms of what sorts of limitations—if any—there may be regarding the situation you described. The other point that I would make is that there are—

Senator WONG—Before you go onto the next point, that is only in relation to people for whom those particular provisions are applicable.

Mr Kovacic—In terms of award-reliant employees?

Senator WONG—Correct.

Mr Kovacic—That is correct.

Senator WONG—And your next point?

Mr Kovacic—The second point I was going to make is that a survey of the workplace agreements database indicates that there are currently over 900 federal certified agreements which provide for hours to be averaged over an extended period, and indeed there are a small number of federal awards that provide scope for averaging of hours of work over a 12-month period. They include the Metal Engineering and Associated Industries Award 1998, the Graphics—

Senator WONG—Are you suggesting those awards have no other provisions that protect an employee? Are you saying that they do not have maximum hours or a 12-hour shift, for example?

Mr Kovacic—No, I am not suggesting that at all. What I am suggesting is that under the existing arrangements—

Senator WONG—I am very pleased to hear the defence. I am trying to work out what exists under this legislation which the government has put before the parliament.

Mr Kovacic—The point I made in terms of the issue of hours of work still being an allowable award matter and awards still being capable of dealing with the arrangements regarding how hours are worked is still relevant with respect to the Work Choices legislation.

Senator WONG—Has the government considered how many people it would like to remain award reliant under this system?

Mr Kovacic—It is a matter of choice.

Senator WONG—Given that we understand that the reasonable additional hours provision does not necessarily assist in any one week on the default provision—

Mr De Silva—It may assist in a particular week. If in a particular week an employee is asked to work a certain amount of hours and the employee thinks that is unreasonable, it may go to subsection 5, which talks about reasonable additional hours.

Senator WONG—Yes, only if they go beyond the ordinary hours, which we have already established is only an ordinary hours averaging provision over 12 months.

Mr De Silva—Over 12 months.

Senator WONG—That is the default provision, with some changes for people who either have agreed otherwise or have a shorter term of employment. Is that right?

Mr De Silva—Yes.

Senator WONG—So if a parent is asked to work additional hours but they are not yet in that period of having worked more than 38 hours over the 12 months, what protections in the act are there to ensure that they are not required to work unreasonable hours?

Mr De Silva—It is the reasonable additional hours which may kick in if there is a risk to the employee's health and safety or if there are personal circumstances.

Senator WONG—I thought we had agreed that 'reasonable additional hours' refers only to hours over and above the 38 averaged over 12 months. Say the parent is six months into their employment—

Mr De Silva—If they are six months into their employment, the averaging period would be six months.

Senator WONG—Sure—I was about to give that proposition. They are six months into their employment and they have actually only worked, say, 35 hours a week on average for those six months. They are asked to work 55 hours in a week and they cannot because of child care or parental responsibilities. Isn't it the case that the reasonable additional hours provision in those circumstances would be of no help whatsoever to them?

Mr De Silva—This would only occur where someone does not have an award or a written agreement which is not a workplace agreement. It would just be for that small percentage that is on—

Senator WONG—Be careful there. Certainly you have awards, but you are assuming that an agreement might actually deal with this issue.

Mr De Silva—An agreement can deal with this issue.

Senator WONG—Yes, but it may not.

Mr De Silva—An employee and an employer outside a workplace agreement or outside an award can have an agreement as to what the ordinary hours are.

Senator WONG—I understand all of that. I am asking what protections there are in the act. Are there any protections in the act in terms of the scenario I have described? Are there any protections in this legislation which would prevent a person who had worked fewer than 38 hours over the period of their employment being asked to work 50 hours a week? Is there anything in this legislation which would give them a basis on which to refuse that or dispute it?

Mr De Silva—No.

Mr Bohn—Other than occupational health and safety agreements. But under this legislation—

Senator WONG—I was actually thinking about parents. Has the department considered the impact or have you done any analysis of the impact on a gender basis of this legislation—the likely impact of the industrial relations changes on women?

Mr Kovacic—Yes, we have. In the consideration that we have given it, the view is that the opportunity for developing flexible working arrangements advantages particularly those with—

Senator WONG—Actually, what I am interested in is your answer on whether you have done any studies or research, in which case I would ask that they be tabled. I really do not want to have a discussion where you tell me things that I do not agree with and I feel forced to respond.

Mr Kovacic—We have not commissioned any research or studies.

Senator WONG—Thank you. Has any written documentation been prepared in house as to the impact of this legislation on women, particularly parents?

Mr Kovacic—Yes, in the terms that I was about to go on and describe.

Senator WONG—I am duly chastised, Mr Kovacic. Go ahead.

Mr Kovacic—We have given consideration to the opportunities for women, those with caring responsibilities and other groups, to develop working arrangements which suit their particular circumstances and the flexibility that the system provides. I would also point to attachment B of the *WorkChoices* document, which in particular points to the reforms and how they help workers and their families.

Senator WONG—Hang on, we are going back to this issue. Have you actually prepared some research in house? That is what I am asking.

Mr Kovacic—I answered that a moment ago, in the sense that there is no specific research or studies. We have obviously given consideration—but not in the way of producing a document per se—to what the impact would be on groups such as women and others as well.

Senator WONG—Mr De Silva, going back to the issue we were discussing—this is the default period of 12 months—there would be nothing in the legislation to prevent an employer from requiring that someone work, for example, 60 ordinary hours for 15 weeks straight without overtime and then perhaps 29 hours per week for the remainder of the year?

Mr De Silva—No.

Senator WONG—Mr Kovacic, can we go back to the agreements you cited, with a flexible hours provision. I wonder if you could tell me or perhaps provide on notice the examples that you cited and what offsets or occupational health and safety clauses are also contained in the same agreements.

Mr Kovacic—I will take that on notice in the sense that I only have a small extract from the awards at this stage.

Senator WONG—I'm sure. The *WorkChoices* document refers to the 'major positive impact on Australian social and family life', which I think you alluded to in your answer. How does the department propose to measure the major positive impact of these changes?

Mr Kovacic—As is currently the case under the act, there is a requirement for the department to prepare, and for the minister to table in the parliament, a report on agreement making. That requirement will continue to apply under the Work Choices legislation. The initial report on agreement making will cover the period through till the end of 2007, and that will be a key vehicle for reporting on the impact of the changes.

Senator WONG—So how are you proposing to measure whether or not there has been a 'major positive impact' on Australian family life? What are the indicators you will be looking at?

Mr Kovacic—I think there would probably be a number of indicators. One, I suppose, indirectly alluded to, would obviously be flexibility in terms of family-friendly arrangements, if I can describe it that way, that might continue to emerge under the reform legislation. There may be a range of others, but at this stage, as I mentioned, the report is to cover the period through till the end of 2007, so we have not really given a lot of consideration to the specifics, if I can put it that way.

Senator WONG—What did you say—'There's strong consideration of the specifics'?

Mr Kovacic—In terms of what indicators you may look to include in the report on agreement making, they will be tabled in the parliament at some stage in 2008.

Senator WONG—What I am trying to determine, given the lack of protections in terms of unreasonable working hours, is whether the department is proposing to measure things like the impact of working hours on family life, the impact on children of parents having to work longer hours at certain times and those sorts of issues. Are they proposing to measure those?

Mr Kovacic—It might be one of the issues that is canvassed in the report, but it is too early; we just haven't given any consideration to it.

Senator WONG—I have a question about section 90F of the bill if we can we go back. There is a reference to a basic periodic rate of pay for each hour worked. Can you explain how this provision would affect a person on an annual salary, if at all, as opposed to someone on an hourly rate?

Mr De Silva—The basic periodic rate of pay would be determined based on the hours worked in terms of dividing the hours worked by what you would work for the year. It ensures that, if you are under a classification scale, you will get paid for each hour that you work.

Senator WONG—I understand that. How does it affect someone who is on a salary, who is not on an hourly rate of pay?

Mr Bohn—What the provision means is that the person cannot be paid, over the course of the year, less than an amount that is equivalent to the number of hours multiplied by the minimum hourly rate.

Senator WONG—There is no mention of the FMW here.

Mr Bohn—Sorry—their guaranteed minimum rate, which might be an amount that is derived from an award and is now in a pay and classification scale or it might be the FMW.

Senator WONG—Some agreements and some awards may not have a particular hours clause; they may have an annual salary. How does section 90F apply to them?

Mr Bohn—What the provision does is require that, for the hours that they are required to work, they get at least that guaranteed amount. I understand what you are saying, but that amount might be worked out in a particular case over a longer period. It might be an annual salary or it might be a weekly or monthly salary. But the guarantee is still there in respect of each hour worked.

Senator WONG—How is it worked out? What is the guaranteed basic periodic rate of pay for somebody who is on salary with no defined hours in their agreement, obviously subject to the minimum conditions?

Mr Bohn—The basic periodic rate of pay for that person will be the rate that is either the rate that would apply to them under a pay and classification scale or a rate that would be equivalent to the FMW. The pay and classification scales operate as a benchmark under which any agreement making cannot fall. The pay and classification scales, I suppose, have an impact not just in that they apply directly to someone but also in that they have an operation in terms of a benchmark to bargaining. So, if someone with their employer agrees through an

agreement to annualise their salary, they are guaranteed that the sum of that must be at least that hourly minimum rate.

Senator WONG—How would it apply to somebody who was in a professional position on a salary, or, say, an academic? How does that apply to them, or does it?

Mr Bohn—It does. For each hour that they are required to work, which is a concept that is explained a little bit further in the next section, section 90G, the guarantee is that they are paid at least that much. Compliance with that might take place over a longer period, but that is the guarantee that the legislation provides.

Senator WONG—What does it mean for someone working unpaid overtime? Would they get an hourly rate for that?

Mr Bohn—They would get at least that hourly rate, yes.

Senator WONG—So the reference to hours worked generally means hours required to be worked.

Mr Bohn—That is right.

Senator WONG—And hours required to be worked can be anything as agreed—there is nothing in the act which prevents it from being above 38 hours a week—and the only hours restriction is the 12-month default provision with variations.

Mr Bohn—The hours guarantee has a default of 12 months or some other period that is agreed.

Senator WONG—So this interacts with 38 hours over a 12-month period, essentially?

Mr Bohn—It interacts with it in that, for each hour that you are required to work, you are entitled to be paid at least that minimum amount.

Senator WONG—Is ‘required to work’ defined?

Mr Bohn—No, it is not.

Senator WONG—So what does ‘required to work’ in the context of section 90G mean?

Mr Bohn—Obviously ‘directed to work’ would be encompassed by that concept. But also it is a slightly broader concept in that, say for example there is a project that needs to be completed that requires a certain amount of work and the employee came in on a Saturday afternoon to do little bit of it, that could entirely possibly be encompassed by ‘required to work’ because the project had to be completed by a certain time. It is not limited just to circumstances in which the employer says, ‘I need you here between 10 and three,’ or something like that. But it is not expressly defined, no.

Senator GEORGE CAMPBELL—On the issue of the average, reasonable hours and the question of ‘required to work’, if there is a dispute between the employee and the employer over the definition of what is reasonable, how is that intended to be resolved under this?

Mr Bohn—I suppose there are two mechanisms. The first is the dispute resolution procedure provided for by the legislation. That procedure applies to disputes about all elements of the standard, other than the wage provisions. So it would apply to the hours provisions. There is enforcement—that is, court processes.

Senator GEORGE CAMPBELL—How would the dispute initially be dealt with—through the Industrial Relations Commission?

Mr Bohn—I am assuming you are talking about the situation where there is not an agreement or something like that in place that has a dispute resolution mechanism in it.

Senator GEORGE CAMPBELL—I am talking about the situation whereby, on the reasonable hours issue or on the averages, you could get a set of circumstances where an employer may require his employee, who has been working less than 38 hours a week—

Mr Bohn—Can I hand over to a colleague on how the dispute resolution process works?

Senator GEORGE CAMPBELL—Sure. I was just making the point that, in respect of the averaging of the hours, in the set of circumstances where an employer may require an employee to work, say, 60 hours in a week as part of this averaging process, and the employee disputes that that is reasonable, how would that be resolved?

Mr Cully—It would be resolved using the model dispute resolution process set out in the bill which begins at section 173 on page 372. In the first instance, the requirement would be that the parties must try to generally resolve that dispute at the workplace level. In the event that they cannot resolve it at the workplace level then they may refer it to a third party. The third party could be the AIRC; it could be someone else.

Senator GEORGE CAMPBELL—Do they have to agree on who the third party is?

Mr Cully—In the first instance, yes. The approach is that the party should agree on who the provider is. But there is a process set out in the event that the parties cannot agree which is that either party can notify the registrar. The registrar will then provide them with certain information and if within a 14-day period after that the parties have still not agreed then the AIRC will deal with the matter.

Senator GEORGE CAMPBELL—Tell me how that will work in practice. Suppose I work for Dr Boxall. He notifies me tomorrow that next week he requires me to work 60 hours on the basis of five 12-hour days.

Dr Boxall—That simply would not happen.

Senator GEORGE CAMPBELL—Why wouldn't it happen?

Dr Boxall—Because I have never been known to ask anybody to work 12 hours, never.

Senator GEORGE CAMPBELL—You are a good boss. Let's take Senator Abetz. You could be guaranteed that he would ask you to work 12 hours a day, five days a week. That is on a Friday. I am due to start on Monday—how do I get a resolution to that issue if I dispute it before Monday morning? Before I am told, 'If you don't show up for 12 hours on Monday don't bother bringing your lunch.'

Mr Cully—There is nothing in the bill that would guarantee you a resolution by the Monday.

Senator GEORGE CAMPBELL—But isn't that an impossible situation?

Mr Cully—The part about being told not to come on Monday—you could not be dismissed on that basis.

Senator GEORGE CAMPBELL—You could not be?

Mr Cully—No.

Senator GEORGE CAMPBELL—Why not?

Mr Cully—There is a provision in the freedom of association provisions, that Mr Smythe referred to earlier, about being entitled to the benefit of an industrial instrument or the standard. That would form part of the standard.

Senator GEORGE CAMPBELL—Could you explain to me how that works? How does the instrument or standard work in terms of the average hours?

Mr De Silva—If there is a dispute as to being required to work on the weekend and the employer has said that if you do not, you will get fired, you cannot get dismissed because of that.

Senator GEORGE CAMPBELL—No, what I am saying is that I have been working for an employer under the average an hour provisions. I have been working say, 30 hours a week for a period of time. The employer tomorrow requires me to work 60 hours next week because the business requirements are such that he wants the employee for 60 hours. I dispute the reasonableness of that request. How do I get a resolution before Monday or is he entitled to dismiss me for being unreasonable in not meeting the request?

Mr De Silva—As Mr Cully said, there is a process by which you could resolve the dispute. There is a process by which you are guaranteed to get a result by the Monday.

Senator GEORGE CAMPBELL—But Mr Cully just said that there is no way you could get a result by the Monday.

Mr Cully—No, I said there is no guarantee that you could get a result by the Monday. You may have a discussion and your employer may agree that it is unreasonable.

Senator Abetz—Can I ask rhetorically: is there such a guarantee that if that situation were to arise now, you would get it resolved by Monday under the current arrangements?

Senator WONG—There are other protections, about hours of work.

Senator GEORGE CAMPBELL—There are other protections in the awards, in terms of unreasonable demands, which do not appear to be in this bill.

Mr Kovacic—The reality is that an employee in this situation is likely to be employed either under an award or an agreement and in those circumstances it is highly likely either the award or the agreement, whichever instrument it may be, would deal with the provisions in terms of—

Senator WONG—That is a hypothetical—‘highly likely’.

Mr Kovacic—In terms of the question itself, it is highly likely. The question was hypothetical as well.

Senator GEORGE CAMPBELL—You said you had a number of federal awards or agreements that have those provisions now.

Mr Kovacic—They have the capacity for employees and the employer to agree to average hours of work over a period of up to 12 months.

Senator GEORGE CAMPBELL—That is right, but those are fixed hours of work over a period—not flexible. This is talking about flexible hours. Isn't that the difference? Those agreements you are talking about provide for fixed averaging over a period of time.

Mr Kovacic—That is correct.

Senator GEORGE CAMPBELL—This is talking about flexible hours. This is talking about there being the capacity to change them, to suit the needs of the enterprise, at a moment's notice.

Mr Kovacic—For that to be the case, it would be in circumstances where there is an award, I would think, that would apply to the employee. It would be highly unlikely that the award would not deal with the issue of, where there is a business need, how to deal with that situation. Similarly, it is difficult to envisage an agreement not dealing with the circumstances where that may be the case as well.

Senator WONG—The agreement could deal with it by simply saying, 'You will be required to work additional hours, subject to 38 hours being averaged over 12 months.' That could be it.

Dr Boxall—That is if the employee agrees to that. If the employee does not agree to that, the agreement will not say that. But if the employee agrees to that, then, if they are asked to come in, as in Senator Campbell's hypothetical, they have agreed to do that. So it is not an issue.

Senator GEORGE CAMPBELL—But it may well be an issue.

Senator Abetz—Not if they have agreed to it.

Dr Boxall—Not if they have agreed to it. If you sign an agreement which says that you are prepared to deal with the situation that you outlined, then you can hardly complain if somebody asks you to do it.

Senator WONG—We might quote you on that.

CHAIR—I should also point out that in this life it is often difficult, if things happen on a Friday, to get them resolved by the Monday. Perhaps we might bear that in mind.

Dr Boxall—Indeed.

Senator GEORGE CAMPBELL—To get what?

CHAIR—If things happen on a Friday that need fixing, it is often very difficult to get them fixed by the Monday.

Senator GEORGE CAMPBELL—That is nonsense in the context of what we are talking about.

Senator WONG—It is not a philosophical question.

CHAIR—No, it is not. I put that in as a comment.

Senator GEORGE CAMPBELL—We are talking about a provision in a bill that provides a set of circumstances that can lead to conflict in the workplace. It seems to me that there is no protection built into that section in terms of ensuring a reasonable period of notice and a

reasonable period of time to resolve any differences that might occur out of the application of that section—

CHAIR—In two days.

Senator WONG—Awards have often had notification of change of hours, Chair.

Senator GEORGE CAMPBELL—It seems to me to be entirely reasonable that, in drafting a bill, you would build those protections in.

Senator Abetz—It does not exist now.

Senator GEORGE CAMPBELL—It does exist now.

Senator WONG—While I was out, was there some discussion of section 104, the coercion and duress provision?

Senator Abetz—There was some—about the prohibited conduct.

Senator WONG—Yes. Division 10 deals with that. Can someone explain to me what the effect of subsection (6) of section 104 will be? Does it alter the existing law?

Mr Smythe—No, it does not alter the existing law.

Senator Abetz—It is a doubts removal cause.

Senator GEORGE CAMPBELL—Dr Boxall, you argue that this system is being promoted in the interests of efficiency?

Dr Boxall—No, I did not, but go ahead with your question.

Senator GEORGE CAMPBELL—And increasing productivity?

Dr Boxall—The workplace relations system changes are being made to provide for a higher productivity, higher wage, higher income per capita Australia.

Senator Abetz—In fact, the principle object in the first schedule on page 4 tells you what the objects of it all are, and it is a lot wider than what you have just suggested, Senator Campbell.

Senator GEORGE CAMPBELL—No, I was talking about our discussion earlier on about economic efficiency.

Senator Abetz—Yes, that is one of them, and there is no argument against that, but do not limit it to that.

Senator GEORGE CAMPBELL—If that is the case, Minister and Dr Boxall, why isn't the federal government considering referring its IR powers to the states, given that the cost of servicing the federal system is \$35 per worker as opposed to \$17 per worker for the New South Wales system? Why aren't you referring the powers in the opposite direction?

Senator Abetz—It was Bob Carr who said in 1990 that we cannot afford the luxury of having seven different industrial relations system for—at that stage—17 million people. Of course, since then Victoria has dropped out, and the population is now 20 million.

Senator GEORGE CAMPBELL—But it is much more efficient to run the state systems than it is the federal system.

Senator Abetz—That was not Bob Carr’s view in 1990.

Senator GEORGE CAMPBELL—He may not have known these figures. He has never had a strong view about industrial relations, and he has never known much about them either.

Senator Abetz—I do not think much has changed since then and I think Stephen Bracks might be of that view as well, because I do not think he is trying to claw the industrial powers back into Victoria. He is quite happy.

Senator MARSHALL—So if he indicated he was not happy, Minister, you would change your mind?

Senator Abetz—Is that in fact Labor Party policy?

Senator GEORGE CAMPBELL—What?

Senator Abetz—To abolish the federal system and devolve it all to the states.

Senator GEORGE CAMPBELL—No, it is not, but—

Senator Abetz—Good. I would hate to see you being misinterpreted.

Senator GEORGE CAMPBELL—it may well become policy based on those figures.

Senator Abetz—Okay, watch Senator Campbell: when it becomes your policy we will know where it started. We heard it first.

Senator WONG—I assume in relation to the IMF report, to which Dr Boxall has referred on a number of occasions, that DEWR had some input into the consideration of the drafting of that document.

Dr Boxall—Which report?

Senator WONG—IMF.

Dr Boxall—No. The IMF drafts—

Senator WONG—I understood that. Did you provide information to them?

Dr Boxall—Not that I am aware of. I used to work in the IMF as an economist so I do know their system. What happens is they have a mission that comes to Australia. They consult basically with Treasury and the Reserve Bank and possibly some other government agencies.

Senator WONG—Were DEWR consulted by the IMF?

Dr Boxall—As far as I know, no.

Senator WONG—So you are not in a position to indicate what ‘strong social protections’ refers to?

Dr Boxall—I have not read the IMF report and we were not consulted on it.

Senator WONG—I am sorry, Dr Boxall. I thought you had referred to it earlier.

Dr Boxall—No, I did not.

Senator WONG—You never referred to the IMF report?

Dr Boxall—I have not mentioned it previously.

Senator WONG—I am sure somebody over there did.

Senator Abetz—It is a good report.

Senator BARNETT—Yes. And the OECD report.

Senator Abetz—Sharan Burrow tried to influence the IMF report, though.

Senator GEORGE CAMPBELL—Dr Boxall, on page 14 of WorkChoices it says minimum wages for trainees and apprentices will be set by the Australian Fair Pay Commission. This follows from a statement by the Prime Minister on 20 September in which he suggested that apprentices' wages will be set at levels that ensure they are 'competitive in the labour market'. Can you detail to us what is meant by wages which are competitive in the labour market in this context?

Senator BARNETT—What page is that?

Senator GEORGE CAMPBELL—Page 14.

Senator Abetz—But what you quoted is from what the Prime Minister said—is that right?

Senator GEORGE CAMPBELL—I am quoting from WorkChoices—page 14 in WorkChoices.

Senator Abetz—Which column?

Dr Boxall—Is this in the box on page 14?

Senator GEORGE CAMPBELL—There is no box on my—

Senator Abetz—On page 14 there is. Is that 2.2?

Senator GEORGE CAMPBELL—I am sorry, I have got two documents here.

Senator Abetz—You have got the one with pictures, have you?

CHAIR—It is now 9 o'clock. Were you about to answer a question?

Senator Abetz—No.

Senator GEORGE CAMPBELL—It is in the box.

Senator Abetz—It is in the box. We have cleared that up.

CHAIR—It is in the box—that is good.

Senator Abetz—We have cleared that up.

CHAIR—We will now call a break.

Proceedings suspended from 9.00 pm to 9.14 pm

CHAIR—We will continue with questions on output 2.

Dr Boxall—Chair, we want to clarify an answer to an earlier question. Mr Kovacic will do this.

Mr Kovacic—Senator Marshall, you asked me before whether the department had commissioned any research on the impact of the reforms on standard of living. I have consulted with some of my colleagues during the break. There was some research that the department commissioned which looked at the benefits of aspects of the reforms. The aspects that were considered were the changes to unfair dismissal laws, the benefits of moving

towards a national system and the changed wage-setting arrangements. We have only recently received that report. I just wanted to clarify that we have indeed commissioned some research. The report does show that there are some benefits flowing from those aspects of the reforms.

Senator MARSHALL—Are you able to provide the committee with a copy of those reports?

Mr Kovacic—I have to take that on notice.

Senator WONG—The 170CE(5B) amendment—

Senator Abetz—Which page?

Senator WONG—Page 355. Mr Smythe, you might recall this better than I. Isn't that provision very similar to one of the provisions that the AIRC, as it then was, considered in the context of the 1984 termination, change and redundancy case?

Mr Smythe—I do not recall what was in the 1984 TCR decision.

Senator WONG—It looks to me like a provision that the Industrial Relations Commission knocked off 21 years ago, in terms of it being a submission considered by the commission from the employer bodies. Are you aware of whether that is true or not?

Mr Smythe—I do not know whether that is true or not.

Senator WONG—Mr Smythe, could you or whomever is appropriate, take on notice this question: what aspects of this legislation are, in effect, the same as provisions of the 1996 bill called 'roller'—workplace relations and other associated legislation, I think—which were not passed in the Senate?

Mr Smythe—Yes, we can take that on notice.

Senator WONG—Is that clear?

Mr Smythe—I think so. Although, my recollection of that process was that, following an agreement between the government and the Democrats, most of the provisions of 'roller' were passed by the Senate.

Senator WONG—But not all.

Mr Smythe—Okay. So you want to know the ones that were not passed by the Senate. Yes, we can take that on notice.

Senator WONG—The ones that were not passed by the Senate that are substantially similar to provisions being introduced in this bill.

Mr Smythe—I can take that on notice.

Senator GEORGE CAMPBELL—Dr Boxall, just before the break I asked you whether you could detail what is meant by 'wages which are competitive in the labour market' with respect to trainees or apprentices.

Mr Kovacic—It is a provision that is currently reflected in the objects of the Workplace Relations Act as it is at the moment. Given that young people invariably have fewer skills and less capacity than perhaps persons who have been in the employment market for some time,

the provision is to ensure that they are not disadvantaged in the labour market relative to others in terms of their employment prospects.

Senator GEORGE CAMPBELL—I am trying to establish whether the argument is that current wages are too high or too low.

Dr Boxall—We really cannot establish that, because this is the objective of the Fair Pay Commission. The Fair Pay Commission will need to decide on that very issue and make a determination.

Senator GEORGE CAMPBELL—The reference in the box states, ‘Providing minimum wages for junior employees and employees to whom training arrangements apply’. It goes on to say ‘employees with disabilities’. Does that mean that a single rate for adult apprentices and trainees and junior apprentices may be established?

Mr Pratt—That will be up to the Fair Pay Commission to establish. It says ‘wages’—plural. It says ‘providing minimum wages’.

Senator GEORGE CAMPBELL—There is a distinction in that box between juniors and ‘employees to whom training arrangements apply’. It could be adults.

Mr Pratt—Certainly. The Fair Pay Commission will need to take that into account.

Senator GEORGE CAMPBELL—Can you confirm whether or not, for an apprentice entering into an AWA with their employer where there are award conditions that facilitate training, such as reimbursement of TAFE fees, guarantee of access to training without loss of pay, tools, travel allowances et cetera, those conditions can be bargained away?

Mr Pratt—We will have to consult on that. We will have a go at working that out.

Mr Stewart—Some of the conditions of employment you mentioned that might be allowances or whatever specifically for apprentices and not part of the Australian fair pay standard could be subject to an AWA and, by agreement, there would be flexibility to trade them off for other conditions or whatever. However, there is a protection in the draft bill for training provisions in state legislation—that is, the provisions in training legislation that establish apprenticeships, regulate the provision of training and regulate the quality of the training provided to apprenticeships. Those provisions in state legislation under the bill could not be traded off under AWAs. They could not be subject to agreement.

Senator GEORGE CAMPBELL—Where is that in the bill?

Mr Stewart—That is at 7D on page 26 of the bill. It is provision 7D(2).

Senator GEORGE CAMPBELL—So there would be matters that are subject to the law of the state or territory?

Mr Stewart—That is right. Basically, for the training systems that establish apprenticeships, regulate entry into apprenticeships, place training obligations on employers and regulate the training agreements and the contracts between employers and apprentices, those laws cannot be displaced by an AWA.

Senator GEORGE CAMPBELL—Mr Stewart, if you are saying that these other provisions—and I understand the distinction that you are making—can be traded away, how

do they contribute to us addressing the skills shortage? They are fundamental elements that are key to developing tradespeople. The Prime Minister has offered them \$800 for a tool kit.

Mr Stewart—That will not be able to be dealt with in an AWA or traded off under an AWA.

Senator GEORGE CAMPBELL—I would hope not!

Mr Stewart—But the essential provisions that are needed to ensure that the apprenticeship is a genuine apprenticeship that has proper training and so on are contained in state training legislation, and the AWA cannot disturb those. So the things that the AWA can deal with are terms and conditions of employment.

Senator GEORGE CAMPBELL—But it could deal with key issues or elements that contribute to the nature and the quality of the training.

Mr Stewart—No, apprenticeships and traineeships are established under the state training legislation, not in awards. Those provisions that ensure quality training and so on will not be disturbed by AWAs.

Senator GEORGE CAMPBELL—But access to training without loss of pay, for example, and tool allowances and travel allowances are all key parts of the elements that go to ensuring the apprentice gets the best quality training that is available. Why would you allow a provision that would allow them to trade it away?

Mr Stewart—They can be traded away under the current AWA provisions of the Workplace Relations Act, and difficulties have not arisen there. This provision is actually similar to one that is currently in the Workplace Relations Act and it has protected the training system provisions that are the keystone and foundational provisions that establish apprenticeships and ensure that they are genuine and provide quality training.

Senator GEORGE CAMPBELL—Can you explain to us how the removal of these entitlements will make apprenticeships and traineeships more appealing to young people?

Dr Boxall—They are not removed. To the extent that they are part of the wages and conditions, they can be traded in both a certified agreement and an AWA. It might be a case where there is a travel allowance of X which the employee might trade for a salary which is much greater than X and both the apprentice and the employer are quite happy. Then the apprentice might decide to pay their bus fare out of their extra income and they might be better off. So it is not a question of removal; it is a question of apprentices negotiating an agreement, either a certified agreement or an AWA, with their employer. It goes back to the discussion we had earlier: there is no reason why an apprentice would give up an allowance if they thought they were going to be worse off. They just would not do it.

Senator GEORGE CAMPBELL—But they may not have a choice in the matter, Dr Boxall.

Dr Boxall—They do have a choice because—

Senator GEORGE CAMPBELL—They may not have a choice. They take the apprenticeship or take the offer.

Dr Boxall—The whole Work Choices idea is that this is an opportunity for employers, on one hand, and employees, on the other, to reach an agreement, so there is no way that people will enter into an agreement which they do not want. They just will not do it.

Senator GEORGE CAMPBELL—I have to say I thought the only people in this building that believed in fairies at the bottom of the garden were the Democrats—

Dr Boxall—Sorry, I cannot hear you.

Senator GEORGE CAMPBELL—I said that I thought the only people in this building that believed in fairies at the bottom of the garden were the Democrats but obviously there are more.

Dr Boxall—It has got nothing to do with being at the bottom of the garden.

Senator GEORGE CAMPBELL—You believe in a perfect world, Dr Boxall.

Senator MARSHALL—I am after some information on the department's legal costs for last financial year and this financial year. Can you tell me how many legal consultants or legal firms you engaged in one form or another?

Mr Smythe—In anticipation of a question along these lines, I have some information about legal firms who have been engaged to assist us with the development of the workplace relations reform legislation—if that would help you.

Senator MARSHALL—That would be excellent.

Senator Abetz—If it is limited to that, if that is what you were after, rather than being general.

Senator MARSHALL—I have some follow-up questions.

Mr Smythe—As you may be aware, the department has a panel of legal service providers. That panel was established after an open tender process. We have drawn on a number of firms from that legal panel to provide us with people to work in the department in assisting and providing drafting instructions to the Office of Parliamentary Counsel. All in all, we have had 12 people from legal firms and the Australian Government Solicitor. The Australian Government Solicitor and seven private sector firms have provided a total of 12 secondees, for want of a better word. I can run through the amounts of money that have been paid to those external providers for those services since we commenced the work on the legislation.

Senator MARSHALL—Yes, please.

Mr Smythe—We have paid: to the Australian Government Solicitor, \$101,022; to Blake Dawson Waldron, \$47,218; to Clayton Utz, \$41,681; to Corrs Chambers Westgarth, \$32,913; to Freehills, \$45,000; to Harmers Workplace Relations Lawyers, \$12,581; to Minter Ellison, \$34,827; and to Philips Fox, \$40,909. Those are the costs we have incurred to date in respect of secondees working in the department on the legislation.

Senator MARSHALL—What is the hourly charge-out rate for each of those firms?

Mr Smythe—There is a range of different charge-out rates. I would have to take on notice whether it is appropriate to give you the dollar figure for each of the people concerned. The deeds of standing offer we have with our panel firms have agreed charge-out rates for

solicitors at different levels of seniority within those firms. I can say that, for the secondees from the private sector firms, I negotiated with those firms a rate for their services which is considerably less than the rate contained in the deed of standing offer and considerably less than the arrangements usually applicable to secondees from private sector firms working for Commonwealth departments.

Senator MARSHALL—I would appreciate it if you could take that on notice and provide me with it. What is the charge-out rate of the Government Solicitor?

Mr Smythe—Again, I will take it on notice as to whether it is appropriate to answer that. There are obviously commercial competitive issues about disclosing the charge-out rates of various people working on this sort of thing.

Senator MARSHALL—They do not provide services to the private sector, do they; they just provide services to government departments?

Senator Abetz—They compete with the private sector in providing services to government departments.

Senator MARSHALL—If you could provide that information I would appreciate it. I think you said that those costs applied to work directly for the drafting of the legislation.

Mr Smythe—The Office of Parliamentary Counsel drafts the legislation. With the assistance of these people, the department provides the drafting instructions to the Office of Parliamentary Counsel.

Senator MARSHALL—Was there another set of legal costs in getting legal advice in the development and formulation of the policy leading to the objectives of the bill? I assume a lot of work would have to be done before we actually get to the checking of the draft of the legislation.

Mr Smythe—No, as a general proposition that is all part and parcel of the same exercise. But we have had some private sector advice on a few specific projects that have arisen during the development of the policy. In relation to that, we engaged Phillips Fox to provide some advice on a particular issue relating to the content of state awards and agreements. For that we paid \$80,000. We engaged Clayton Utz on a related exercise on the identification of state laws regulating employment, for which we paid \$40,909. We took some advice from Blake Dawson Waldron on a specific technical issue for which we paid \$10,990.

Senator MARSHALL—Would that have been at the same hourly charge-out rate as the previous arrangement?

Mr Smythe—I will have to take that on notice. The Blake Dawson Waldron one would have been at the same charge-out rate as for our normal legal service providers. In relation to the Phillips Fox and Clayton Utz exercise, a particular charge-out rate was negotiated. I will take on notice whether I can provide you with the details of that.

Senator MARSHALL—Can you tell me the total amount of hours?

Mr Smythe—No, I cannot.

Senator MARSHALL—Will you be able to take that on notice?

Mr Smythe—No. We have not kept charge sheets. The secondees worked long hours. We were not been billed on the basis of the hours they have worked; we were billed on a monthly basis for those secondees. I have no record of the hours they worked.

Senator MARSHALL—I am sure I do not understand the way lawyers charge, but I thought you said earlier that you had negotiated an hourly charge-out rate which was better than the general rate.

Mr Smythe—I negotiated a monthly rate, which is in the deed of standing offer between the department and the private sector lawyers. They have an hourly rate, which is what we would normally be obliged to pay them. I negotiated a monthly rate, which is significantly less than the equivalent in an hourly rate would be.

Senator MARSHALL—How many hours do you consider to be in a month?

Mr Smythe—I have not thought about that. I have not required them to work 24 hours a day.

Senator MARSHALL—But they work full time on a month-by-month basis.

Mr Smythe—Yes.

Senator MARSHALL—And you do not know the hours of work?

Mr Smythe—No, I do not know the hours of work. It has varied. I can assure you they have worked long hours, as indeed have officers in the department. That may not come as a surprise to you.

Senator MARSHALL—I am sure they have. Are there any other costs that you can identify that would come under the general legal umbrella?

Mr Smythe—In relation to the development of the legislation?

Senator MARSHALL—Yes.

Mr Smythe—I hesitate to say that of course there are the costs associated with departmental officers. Before you ask me what they are, I have not costed them.

Senator MARSHALL—You could make it easy for me. What else is on the list there in front of you?

Mr Smythe—That is it!

Senator MARSHALL—That is it? Put your hand on your heart, Mr Smythe! Can I then ask more generally about legal costs and the use of legal consultants for the department as a whole?

Senator Abetz—You can ask. What do you want to know?

Senator MARSHALL—The number of consultants that have been used and the cost of them.

Dr Boxall—In the department apart from workplace relations legal?

Senator MARSHALL—Mr Smythe gave me the costs associated with checking the drafting of the bill and some of the legal development costs of the bill. Now I would like to go

a bit broader in the department as a whole and get a picture of what the legal costs were, whom they related to and what the hourly rate was.

Mr Smythe—As we have discussed during the previous estimates, the department does engage external providers to assist with interventions in matters. My colleague Mr Bennett can give you the details of those.

Mr Bennett—There has been one intervention since the beginning of this financial year and a number have continued from last year. That intervention is a matter which is on appeal to the full bench of the AIRC and has yet to be heard, so we have not been billed for that yet. We do have figures available for the full term of the last financial year—I think those figures were provided to you in June after the previous estimates. So we are happy to provide those figures, but, given the late hour, I assume you do not want us to read out the individual matters; I will simply table the document if that is all right with the committee.

Senator MARSHALL—Thank you. Are there any other consultancies that may or may not be associated with legal matters that the department has engaged over the last financial year? I do not want to be too difficult, so I am looking at significant consultancies, not those worth only a couple of thousand dollars, for instance.

Senator Abetz—Doesn't the annual report contain those details?

Senator MARSHALL—Is that all detailed in the annual report?

Dr Boxall—Yes, details for the last financial year are in there.

Senator MARSHALL—We will not go there then.

Senator Abetz—I think that is common to all departments now. Chair, perhaps I can make a brief comment while there is a lull in proceedings. Senator Campbell was asking about the hours that somebody might be required to work when it is annualised. Regarding the scenarios that Senator Campbell was painting, it is clearly not the intention of the government that those sorts of outcomes occur.

The minister has asked DEWR to look at this issue—of where awards, workplace agreements et cetera are silent on that—and, if it is not adequately prevented from occurring, they will look at any drafting deficiencies and look at any potential remedies. So there will be a consideration of that aspect to see whether the legislation actually does cover it off and, if not, to look at what might be able to be done. No promises there but, on the basis that it has been raised in the manner it has, I think it is appropriate to say that the minister's office is seriously considering the matter raised by Senator Campbell.

CHAIR—Good. Thank you.

Senator GEORGE CAMPBELL—I am pleased the minister's office was watching. And a small victory is always welcome. You have thrown me!

Senator Abetz—Well, I was hoping that, on that note, you would say—

Senator GEORGE CAMPBELL—I'm going straight home to read all the rest of it!

Senator Abetz—My recommendation now is that you quit whilst you are ahead.

Senator GEORGE CAMPBELL—I will try not to go backwards—put it that way. Earlier on today, Dr Boxall, we were discussing with the Office of the Employment Advocate the transfer of compliance matters to the Office of Workplace Services. The minister has announced, I think, an increase in the number of inspectors in the Office of Workplace Services from 90 to 200 people. Will the additional 110 inspectors be new employees, or will they be transferred from other parts of the department?

Mr Pratt—Largely, they will be new employees.

Senator GEORGE CAMPBELL—Will they?

Mr Pratt—Yes. There may be some who will transfer from other parts of the department—we do not know yet—including possibly, I guess, some from the OEA, but we expect that most of them will be new employees.

Senator GEORGE CAMPBELL—Given that part of this bill is about the establishment of a single, unitary system, have you done any assessment of the number of persons employed in compliance activities under the state systems? How do your provisions here match up with the aggregate figures that are currently operating in this area?

Mr Pratt—Certainly we have done analyses of that sort. We have looked at the number of cases which are covered by the state systems, and how many resources we will need to be able to handle that number of cases into the future under the Work Choices arrangements.

Senator GEORGE CAMPBELL—How many people are employed in the state systems on compliance matters?

Mr Pratt—I do not have that figure.

Senator GEORGE CAMPBELL—So you have not done an analysis of the people—

Mr Pratt—We have not looked specifically at state inspectorates and attempted to quantify how many people they have working there. It would be impossible to actually determine how many are doing inspection functions as compared to other functions. But we have looked at the number of cases which are likely to be covered by the state systems and costed how many people we will need to be able to handle those in the future.

Senator GEORGE CAMPBELL—Have you given any consideration to, in the event of this coming off, offering some of those individuals who are operating in the state system engagement in the federal system, given that they will have had experience with state awards?

Mr Pratt—Yes. In fact, I have had discussions very recently with a number of states about exactly those matters.

Senator GEORGE CAMPBELL—And have they been positive?

Mr Pratt—Yes.

Senator GEORGE CAMPBELL—Under Work Choices, Mr Pratt, it has been proposed that employees can seek assistance from the OWS when faced with making an agreement, including an individual agreement. Will the OWS provide a copy of the relevant state award to workers, in order for them to determine what conditions they are bargaining away by signing an individual agreement? How will they provide that assistance?

Mr Pratt—Currently the OWS will provide information about awards to possible employees if they need that information. So if that information is available to the OWS in the future through WageNet or WageLine they will provide it to the employee.

Senator GEORGE CAMPBELL—But we are talking here about making individual agreements. Presumably, it will go to the advice as to whether and how the individual agreement matches up with the award, including state awards.

Mr Pratt—The OWS certainly will not give the employees advice on agreement-making matters, but if they are looking for information about state awards, and what their entitlements are under those awards, to the extent that the OWS has that information we will provide it to them.

Senator GEORGE CAMPBELL—When it says under Work Choices that it has been proposed that employees can seek assistance when faced with making an agreement, what do they mean by the word ‘assistance’?

Mr Pratt—What are you referring to?

Senator GEORGE CAMPBELL—I do not have the reference to the part in WorkChoices that—

Mr Kovacic—I think it is the Office of the Employment Advocate that will be there to provide assistance to employees and employers in terms of agreement making.

Senator GEORGE CAMPBELL—So it is not the OWS.

Mr Kovacic—No. Primarily it will be the responsibility of the Office of the Employment Advocate.

Mr Pratt—I take you to page 19 of the 68-page document. In the bottom left-hand corner of that page there is a section headed ‘Assistance with agreement making’. It goes on to detail that.

Mr Boxall—This was discussed with the Employment Advocate this morning.

Senator GEORGE CAMPBELL—I just had the wrong reference. I can see where the mistake was made. It is in respect of compliance.

Senator MARSHALL—Was DEWR required to provide a report to the International Labour Organisation on its compliance with Australia’s ratified conventions by late August this year?

Mr Kovacic—The government was invited to appear before the ILC’s committee on the application of standards in June to answer questions in terms of claims made by the ACTU that the government’s workplace relations laws breached its international obligations. The applications committee considered the government’s case and asked the government to provide a detailed practice and law report to the ILO Committee of Experts on all aspects of the application of convention 98 by the Australian government. The requested report was provided on 24 October 2005 as part of the government’s regular report on compliance with that convention.

Senator MARSHALL—Have you done that? Can you table a copy of the report to the committee?

Mr Kovacic—I have to take that on notice.

Senator MARSHALL—Did the report cover the proposed IR changes that are before us now?

Mr Kovacic—It had an attachment to the submission which would have provided the publicly available information relating to Work Choices at that point in time.

Senator MARSHALL—So that formed the basis of the report.

Mr Kovacic—It was an attachment to the report, but the report would have specifically sought to address the claims that were made by the ACTU.

Senator MARSHALL—Based on the existing legislation?

Mr Kovacic—The report specifically addressed some questions asked by the application standard committee. The covering letter provided an overview of Work Choices, as I said a moment ago, as it was public at that point in time.

Senator MARSHALL—It would be useful if we could get a copy of the report.

Mr Kovacic—I am taking that on notice.

Senator MARSHALL—Thank you. We are happy to move on to the ABCC.

CHAIR—Does that mean that mean that everyone other than the Australian Building and Construction Commission may leave?

Senator MARSHALL—Yes, I think that is okay, and we will put any questions we have for anyone else on notice.

CHAIR—Thank you.

[9.52 pm]

Australian Building and Construction Commission

CHAIR—Welcome.

Senator MARSHALL—I want to talk for a moment about covert tape recordings. In the *Ponzio v Multiplex* case, the Federal Court observed that the tape recording of a conversation that was subsequently used in evidence might be seen by a reasonable observer as devious and underhanded. The court ultimately dismissed the task force's application in the matter. Has the task force reviewed its policy on involvement in and the use of secret recordings as a result of the decision?

Mr Hadgkiss—The matter to which you refer and the policy that surrounded that matter has now been subsumed by the ABCC. The task force exists no longer.

Senator MARSHALL—Yes, sorry.

Mr Hadgkiss—The policy remains as it always has done. In this instance, as you would be aware, the tape recording was carried out in accordance with the law and His Honour permitted the evidence to be admitted. As I say, the policy continues on with the ABCC.

Senator MARSHALL—Have you previously tabled that policy?

Mr Hadgkiss—I have, yes.

Senator MARSHALL—Thank you. I thought you might have.

Mr Hadgkiss—It can only be done in exceptional circumstances.

Senator MARSHALL—Is that litigation now completely finalised?

Mr Hadgkiss—No. That is now a subject of appeal.

Senator MARSHALL—Can you tell me what the legal costs have been to date?

Mr Hadgkiss—In excess of \$300,000, including the ensuing appeal procedures.

Senator MARSHALL—That have not started yet or—

Mr Hadgkiss—As you would appreciate, senior counsel was involved in this matter, and there is the ongoing engagement of senior counsel.

Senator MARSHALL—So you expect the total cost to be in excess of \$300,000, including the appeal?

Mr Hadgkiss—I do not know until the outcome of the appeal.

Senator MARSHALL—I thought you said that it included the appeal. That is what I was just trying to clarify.

Mr Hadgkiss—No. The appeal has not been heard yet.

Senator MARSHALL—So it will be in excess of \$300,000, plus the costs of the appeal?

Mr Hadgkiss—Yes.

Senator MARSHALL—When were you subsumed into the—

Mr Hadgkiss—1 October.

Senator MARSHALL—Did the task force investigate any possible breaches of the Building and Construction Industry Improvement Bill 2005 after 9 March 2005, when the legislation was tabled, but before 7 September 2005, when it became law?

Mr Hadgkiss—Yes.

Senator MARSHALL—What was the dollar value of the resources used in such investigations?

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

Senator MARSHALL—If you could. How many investigations did you undertake?

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

Senator MARSHALL—Okay. Was any specific authority required to spend public resources investigating conduct which at the time of such investigations was not unlawful?

Mr Hadgkiss—Not to my knowledge. These are ongoing investigations.

Senator MARSHALL—Indeed.

Mr Hadgkiss—Indeed, the task force would not have investigated matters that, prima facie, did not appear unlawful.

Senator MARSHALL—That was the point of my question. None of the matters you are investigating were unlawful until the bill was passed.

Mr Hadgkiss—They have not yet appeared before the court, with respect, Senator.

Senator MARSHALL—No. The point I made—let's be clear about it—was that the bill was passed on 7 September and had a retrospective application. But until the bill was passed what you were investigating was not illegal—between the period 9 March to 7 September.

Mr Hadgkiss—At that point of time, you are correct.

Senator MARSHALL—How do you reconcile that with your statement that you would not have been investigating anything that was not illegal?

Mr Hadgkiss—With the knowledge or the confidence that the legislation would be passed. Information was volunteered by industry participants to the task force. No powers were used. All information gathered was on a voluntary basis.

Senator MARSHALL—So you will take on notice the cost of each of the investigations?

Mr Hadgkiss—I will.

Senator MARSHALL—Thank you. How many of those investigations are still ongoing?

Mr Hadgkiss—They are all ongoing.

Senator MARSHALL—What is the breakdown of investigations on a state-by-state basis?

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

Senator MARSHALL—Thank you. Did the task force—again, depending on exactly when some of these events took place, you might have to read in 'BICC' for 'task force'—recently give undertakings to the recipients of notices issued under section 86 of the Workplace Relations Act that such notices would not need to be complied with until the outcome of a hearing before the Federal Court in Melbourne on 4 October 2005 was known?

Mr Hadgkiss—Again, I would have to take that on notice. I am unsure about what you are asking. It is a complex question, with respect.

Senator MARSHALL—Could you take that on notice, and also how many undertakings were given.

Mr Hadgkiss—Is there a particular investigation that you have in mind?

Senator MARSHALL—That is what I am trying to find out from you but, if you are taking it on notice, I am probably going to be unsuccessful tonight. It was section 86 of the Workplace Relations Act.

Mr Hadgkiss—In Melbourne?

Senator MARSHALL—Yes. As I understand it, there was a Federal Court case in respect of the matter on 4 October.

Mr Hadgkiss—Before the commission?

Senator MARSHALL—Before the Federal Court.

Mr Hadgkiss—To my knowledge, since its inception the ABCC has taken no action in respect of the Melbourne Federal Court action.

Senator MARSHALL—You can take that on notice. You can also take it on notice, if there is an answer to the question, to find out how many such undertakings were given, how many were given to employers and how many were given to unions and employees.

Mr Hadgkiss—These undertakings?

Senator MARSHALL—Yes. At the previous estimates, Mr Kovacic told the committee that a further review of the national code of conduct implementation guidelines had taken place and was continuing. Has the review being finalised?

Mr Hadgkiss—That is a matter you would have to address to Mr Quealy, in the Building Industry Branch of the department, who has taken over the carriage of the national code.

Senator MARSHALL—So it is not under the building—

Mr Hadgkiss—No. It is a matter for the department.

Senator MARSHALL—It was previously under the task force.

Mr Hadgkiss—No. The task force has only been responsible for the auditing of the IR provisions of the national code. The carriage of the review et cetera has been with the department.

Senator MARSHALL—That is annoying.

Mr Hadgkiss—I am sorry to ruin your evening, Senator.

Senator MARSHALL—That is all issues to do with the building industry code of practice?

Mr Hadgkiss—All policy decisions are in the hands of the Building Industry Branch of DEWR. The task force—now the ABCC—merely takes the role of audit and reports to the code monitoring group, which is chaired by the Deputy Secretary, Finn Pratt. In fairness to the task force, I have been a member of the code monitoring group, but not to oversight the development of policy.

Senator MARSHALL—At the last round of estimates, the committee was told about a compliance campaign targeting 300 employers in the building and construction industry in New South Wales, Victoria and Western Australia. I understand that it was found in the employers' time and wages records that 145 had breached their responsibilities and 68 had been underplaying their workers. Has the campaign been finalised?

Mr Hadgkiss—I am not in a position to answer that question. That should really be directed to the OWS. Again, I apologise.

Senator MARSHALL—You are not doing those investigations?

Mr Hadgkiss—That is the responsibility of the OWS, the Office of Workplace Services, which is housed within DEWR.

Senator GEORGE CAMPBELL—So it has been handed over to them as a compliance issue?

Mr Hadgkiss—They have always had carriage of it.

Senator MARSHALL—I thought we asked you these questions last time. I must be wrong. I recall that, by the time you got on, it was getting very late, so maybe my memory is slightly faulty.

There have now been four decisions of the Federal Court in which the task force has prosecuted employers for the payment of wages to employees for periods of industrial action. The court has determined that it is not appropriate to oppose a penalty at all on the employers. In one case, the court described the matter as ‘much ado about nothing’. There have been two other cases, in which the fines have been \$200 and \$800 respectively. Can you tell me how much those legal proceedings have cost?

Mr Hadgkiss—I do not know, Senator, but to put the record straight, more recently His Honour Justice Merkel, imposed a fine of \$4,000, from recollection, on Multiplex for payment of strike pay. There have been a number of other decisions where more substantial fines have been imposed, one of which I think was \$960 comes to mind, against subcontractors.

Senator MARSHALL—Can you provide that information to the committee?

Mr Hadgkiss—I am happy to, Senator.

Senator MARSHALL—How do you report that? Do you do that in your annual report or on ongoing basis?

Mr Hadgkiss—We keep ongoing records of prosecutions—

Senator MARSHALL—And you publish that? I am interested in keeping up to date with that.

Mr Hadgkiss—I am more than happy to supply those statistics to you.

Senator MARSHALL—What about between estimates?

Mr Hadgkiss—I am happy to within weeks, Senator.

Senator MARSHALL—Thank you. So you will take on notice how much those proceedings have cost—

Mr Hadgkiss—It was an operation that was carried out by the then task force involving a death in Shepparton which caused the CBD in Melbourne to be closed and some 33 building sites, and cost, obviously, billions of dollars. We now have 37 respondents before the court and a number of them are employers including Multiplex. From recollection, nine parties have already pleaded guilty and, as you rightly pointed out, there have been various degrees of penalty imposed.

Senator MARSHALL—But the question was: will you provide a breakdown of the costs for each of those matters?

Mr Hadgkiss—Yes.

Senator MARSHALL—Not the costs in fines—

Mr Hadgkiss—The matter that I think you are talking about is C-Lite—

Senator MARSHALL—I think we did C-Lite many estimates ago—

Mr Hadgkiss—It is more recent, I think.

Senator MARSHALL—Another C-Lite?

Mr Hadgkiss—From recollection, the cost of prosecution was \$7,736.25.

Senator MARSHALL—What about Expoconti?

Mr Hadgkiss—I will have to take that on notice.

Senator MARSHALL—And Firebase Sprinkler Systems and DNE Airconditioning?

Mr Hadgkiss—They would be in the same vicinity as C-Lite.

Senator MARSHALL—Could you take on notice and provide me with a breakdown of costs for those legal proceedings?

Mr Hadgkiss—Yes.

Senator MARSHALL—Does it remain the EICC policy, the former task force policy, that all technical breaches of the law should be prosecuted before the courts?

Mr Hadgkiss—With respect, Senator, that has never been the policy of the former building industry task force.

Senator MARSHALL—I thought you always have a zero tolerance—

Mr Hadgkiss—We have a zero tolerance, which has been misinterpreted in various forums. The philosophy of the task force—and speaking on behalf of the commissioner—is that we have only prosecuted matters where external independent legal advisers have said that the requisite evidence exists and, moreover, it is in the public interest to prosecute. There has never been a capricious prosecution or a prosecution for mere technical breaches.

Senator MARSHALL—Whom do you use to provide that independent legal advice?

Mr Hadgkiss—There used to be a panel of six firms that were on the DEWR list and, more recently, this has been expanded to 10 firms throughout Australia.

Senator MARSHALL—Can you provide me with the list of those firms and how much—

Mr Hadgkiss—It is on the public record. I think that is in DEWR's annual report.

Senator MARSHALL—It may be, but I just asked questions of the department and they were going to provide that information to me as well.

Mr Hadgkiss—If you want the six firms hitherto used, there has been the Australian Government Solicitor—

Senator MARSHALL—Take it on notice—that is fine—and a breakdown of the costs.

Mr Hadgkiss—I have the amounts here. Would you like me to table it?

Senator MARSHALL—Yes, thank you.

Senator BARNETT—Today there have been allegations in parliament in regard to employers and employees, relating to employees being forced to either take an AWA or take no job at all. Of course, the actual legislation says that if you are an existing employee then that does not apply. I am interested in evidence, in the building and construction industry, of any duress that is being applied at the moment or that has been applied in recent months,

where unions or others are forcing businesses into agreements, perhaps against their will or otherwise. Is there any evidence of that at the moment?

Mr Hadgkiss—Not in the scenario you paint, but it is fair to say that about 24 per cent of all complaints made to the task force relate to coercion, threats, intimidation and violence. They are followed by freedom of association matters and then hindrance and inability to enter sites. Regrettably, it is not as you paint it. It is the inability of subcontractors to get onto sites for failing to have a union endorsed EBA.

Senator BARNETT—Can you say that last point again?

Mr Hadgkiss—In the vast majority of those matters, most callers have a combination of all three. They could not get onto a site because of ‘no ticket, no start’ or freedom of association provisions. There was an element of threats, coercion, violence or whatever. When we break down into those three elements, ordinarily it is a combination. But it is most likely because the subcontractors are the majority of our complainants. They complain of an inability to get onto a site because of not having a union endorsed enterprise bargaining agreement.

Senator BARNETT—In terms of the 24 per cent, what sorts of numbers are we talking about?

Mr Hadgkiss—We are talking about in excess of 3,600 callers since the inception of the task force on 1 October 2002.

Senator BARNETT—Do you get involved in responses by businesses where there is a union enforced EBA?

Mr Hadgkiss—Yes. Regrettably, the vast majority of the 29 or 30 prosecutions that the task force and now of course the ABCC have taken to date revolve around such coercion. I have no knowledge of the example that you illustrated that was canvassed in the House today. I do not recall instances of a complaint of that nature.

Senator BARNETT—I realise that it is outside of your bailiwick.

Mr Hadgkiss—It would be an appropriate matter, were those things to arise. The ABCC would be the responsible body to go to. We are talking about building industry participants here; we are talking about building industry law. But, to my knowledge, it is an extremely rare scenario that you paint where an employer is forcing somebody to sign an AWA.

Senator BARNETT—I understand that, and I appreciate your feedback.

CHAIR—Thank you very much for that. Thank you, Minister.

Committee adjourned at 10.13 pm