



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

STANDING COMMITTEE ON EMPLOYMENT, WORKPLACE  
RELATIONS AND EDUCATION

ESTIMATES

**(Additional Budget Estimates)**

THURSDAY, 15 FEBRUARY 2007

CANBERRA

BY AUTHORITY OF THE SENATE



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

**Thursday, 15 February 2007**

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

**Senators in attendance:** Senators Barnett, Crossin, Fifield, Lightfoot, Lundy, McEwen, McGuaran, Marshall, Patterson, Siewert and Troeth

**Committee met at 9.03 am**

**EMPLOYMENT AND WORKPLACE RELATIONS PORTFOLIO**

**In Attendance**

Senator Abetz, Minister for Fisheries, Forestry and Conservation

**Department of Employment, 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 John Kovacic, Acting Deputy Secretary, Workplace Relations

Ms Vanessa Graham, Chief Financial Officer

Mr Jeremy O'Sullivan, General Manager, Corporate Group

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

Ms Michelle Baxter, Principal Adviser, Assistant Secretary, Human Resources

Ms Rowena Barrell, Assistant Secretary, Human Resources

Ms Kristina Hopkins, Assistant Secretary, Human Resources

Mr Simon Gotzinger, Assistant Secretary, Corporate Legal Branch

Mr Henry Carr, Senior Executive Lawyer, Corporate Legal Branch

Ms Sue Bird, Senior Executive Lawyer, Corporate Legal Branch

Ms Marian Moss, Senior Executive Lawyer, Corporate Legal Branch

Dr Aloka Sinha, Assistant Secretary, Business Services Branch

Mr Thomas Stoddart, Acting Assistant Secretary, Investigations Branch

Ms Shirley Douglas, Assistant Secretary, Administered Estimates and Costing Branch

Ms Christine Leary, Chief Internal Auditor

Mr John Burston, Chief Information Officer

**Outcome 1: Employment**

Ms Susan Monkley, Group Manager, Employment Business Services Group

Ms Susan Devereux, Assistant Secretary, Contract Management Branch

Ms Meredith Fairweather, Assistant Secretary, Employment Communications Branch

Mr Stephen Moore, Group Manager, Employment Systems Group

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Ms Marsha Milliken, Group Manager, Income Support Initiatives Group  
Ms Jo Caldwell, Group Manager, Intensive Support Group  
Ms Alison Morehead, Group Manager, Job Search Support Group  
Ms Janine Pitt, Assistant Secretary, Transition and Participation Branch  
Mr Tony Waslin, Group Manager, Specialist Services and Income Support Group  
Ms Jennifer Chadwick, Assistant Secretary, Vocational Rehabilitation Taskforce  
Ms Alison Durbin, Assistant Secretary, Disability Employment Services Branch  
Mr Ali Jalayer, Assistant Secretary, Employment Pathways Branch  
Ms Sue Kruse, Assistant Secretary, Income Support Programme Branch  
Mr Greg Watson, Acting Assistant Secretary, Payment Integrity and Assurance Branch

**Outcome 2: Workplace relations**

Ms Sandra Parker, Group Manager, Office of the Australian Safety and Compensation Council  
Ms Melissa Ryan, Assistant Secretary, Commonwealth Safety and Compensation Policy Branch  
Mr Tom Fisher, Federal Safety Commissioner, Office of the Federal Safety Commissioner  
Mr Andrew Craig, Director, Outcome 2 Support Unit  
Mr Michael Maynard, Group Manager, Workplace Relations Industries Group  
Ms Natalie James, Chief Counsel, Workplace Relations Legal Group  
Mr David De Silva, Assistant Secretary, Legal Policy Branch  
Mr David Bohn, Assistant Secretary, Legal Policy Branch  
Ms Elen Perdikogiannis, Assistant Secretary, Legal Policy Branch  
Mr Bob Bennett, Assistant Secretary, Legal Policy Branch  
Mr Peter Cully, Assistant Secretary, Legal Policy Branch  
Mr Ted Cole, Acting Group Manager, Workplace Relations Policy Group  
Ms Sue Sadauskas, Assistant Secretary, Strategic Policy Branch  
Ms Linda Lipp, Assistant Secretary, International Relations Branch  
Mr Stuart Watson, Assistant Secretary, Strategic Coordination Unit  
Mr Malcolm Greening, Assistant Secretary, Wages and Conditions Policy Branch  
Ms Jenet Connell, Group Manager, Workplace Relations Services Group  
Mr George Brenan, Assistant Secretary, Workplace Advice and Education Branch  
Mr Stewart Thomas, Assistant Secretary, Workplace Programmes Branch  
Ms Jo Major, Assistant Secretary, Employee Entitlements Branch  
Ms Ann Smith, Deputy State Manager, Victoria

**Outcome 3: Workforce participation**

Mr Barry Sandison, Group Manager, Working Age Policy Group  
Ms Sharon Rose, Assistant Secretary, Disability and Mature Age Policy Branch  
Ms Stephanie Bennett, Assistant Secretary, Employment Policy Branch  
Ms Eileen Newmarch, Assistant Secretary, Parent and Youth Policy Branch  
Mr Bob Harvey, Group Manager, Indigenous Employment and Business Group  
Ms Mary-Anne Sakkara, Assistant Secretary, CDEP Future Directions Branch  
Mr Michael Manthorpe, Group Manager, Labour Market Strategies Group  
Mr Ivan Neville, Assistant Secretary, Labour Supply and Skills Branch  
Ms Louise McSorley, Assistant Secretary, Industry Strategies Branch

Mr Matthew James, Assistant Secretary, Economic and Labour Market Analysis Branch  
Mr Bruce Whittingham, Group Manager, Research and Evaluation Group  
Mr Chris Foster, Acting Chief Economist, Economic Research Analysis Group

**Office of the Employment Advocate**

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

**Australian Fair Pay Commission**

Ms Jennifer Taylor, Director, Australian Fair Pay Commission Secretariat

**Australian Building and Construction Commission**

The Hon. John Lloyd, Commissioner  
Mr Nigel Hadgkiss, Deputy Commissioner  
Ms Heather Hausler, Assistant Commissioner  
Mr Ross Dalgleish, Deputy Commissioner  
Mr John Casey, Chief Financial Officer

**Comcare**

Ms Barbara Bennett, Chief Executive Officer  
Mr Martin Dolan, Deputy Chief Executive Officer  
Mr Steve Kibble, General Manager, Research and Policy  
Ms Marilyn Chilvers, General Manager; Compliance, Enforcement and Self Insurance  
Ms Janean Richards, General Manager, Legal Services  
Ms Penny Weir, General Manager, Corporate Services  
Mr James Malizani, General Manager, Financial Management Group  
Mr Matt Goldrick, General Manager, Customer Service Support  
Mr Stewart Ellis, General Manager, Customer Service

**Australian Industrial Registry and Australian Industrial Relations Commission**

Mr Doug Williams, Industrial Registrar  
Mr Terry Nassios, General Manager, Statutory Services Branch  
Mr Dennis Mihelyi, Corporate Services

**Indigenous Business Australia**

Mr Ron Moroney, General Manager  
Mr Craig Dalzell, Deputy General Manager  
Mr Anthony Lovell, Chief Financial Officer  
Mr Colin Clements, Assistant General Manager  
Ms Kaely Woods, Assistant General Manager  
Mr Peter O'Neill, Assistant General Manager  
Ms Sue McCormick, Assistant General Manager  
Ms Valerie Price-Beck, Assistant General Manager

**Equal Opportunity for Women in the Workplace Agency**

Ms Tracey Carpenter, Acting Director

**Office of Workplace Services**

Mr Nicholas Wilson, Director  
Mr Alfred Bongi, Deputy Director  
Ms Anya Moore, General Manager, Corporate  
Ms Sherry Pullen, General Manager, Policy  
Ms Lyn Valentine, Chief Financial Officer  
Mr Bill Loizidies, General Manager, Field Operations  
Ms Heather Byrne, Acting General Manager, Legal and Advice

**CHAIR (Senator Troeth)**—Good morning. I declare open this meeting of the Senate Standing Committee on Employment, Workplace Relations and Education. The committee will hear evidence today from the Employment and Workplace Relations portfolio, beginning with the department and outcomes 1 and 3. The committee examined the budget expenditure of this portfolio at its hearings on 29 and 30 May 2006 and asked supplementary questions on 26 November 2006. Today the committee will consider proposed additional expenditure for the year ending June 2007, which the Senate referred to the committee on 8 February 2007. The committee has resolved that answers to questions on notice are to be lodged with the committee by 30 March 2007 and the committee will report to the Senate on 21 March 2007. I remind officers that they are protected by parliamentary privilege.

I also remind officers that, in its orders of continuing effect, the Senate has resolved that there is no area in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. Officers shall not be asked to give opinions on matters of policy and shall be given an opportunity to refer such questions to superior officers or the minister. Where an officer declines to answer a question, the grounds for this should be stated so that the committee may consider the matter. The giving of false or misleading evidence to the committee may constitute a contempt of the Senate. Oral evidence and documents in estimates proceedings are part of the public record.

I welcome the Minister representing the Minister for Employment and Workplace Relations, Senator the Hon. Eric Abetz, the secretary, Dr Peter Boxall, and officers of the Department of Employment and Workplace Relations and agencies as well as observers to this public hearing. Minister, would you like to make an opening statement?

**Senator Abetz**—No thanks.

**CHAIR**—In that case, we will move immediately to outcome 1 and outcome 3.

**Senator WONG**—Firstly, Dr Boxall, congratulations on your honour.

**Dr Boxall**—Thank you, Senator.

**Senator WONG**—AO, is it?

**Dr Boxall**—That is correct, Senator.

**Senator WONG**—Is that one of the more senior ones? I do not know much about honours. I turn to the additional estimates statement at page 13, table 1.3. I would like to go through some of the variations outlined there. In relation to vocational rehabilitation, can you explain the additional appropriations set out there?



**Ms Golightly**—My understanding is the variation is a refinement of the costings that we agreed with the department of finance to better reflect a couple of things—one is the phasing of the payments, another is the actual cost of the fees that are paid to the providers.

**Senator WONG**—Take me to the 2006-07 PBS. I want to look at the proportion of that variation. Ms Graham, can you usually help me with these things?

**Ms Golightly**—It is on page 44, table 3.1.1 of the 2006-07 PBS, under 'Rehabilitation services'—just above halfway down.

**Senator WONG**—Is it the \$8.7 million?

**Ms Golightly**—I think it is the 125 figure.

**Senator WONG**—That is DSP?

**Ms Golightly**—Sorry, it is the 172 figure in the final column.

**Senator WONG**—I wish they had lines in the PBS, Dr Boxall—just so you know. It is 125—

**Ms Golightly**—Sorry, it is 172.

**Senator WONG**—Yes, it was the estimate of 2005-06. For 2006-07, 172 was the budget estimate.

**Ms Golightly**—Yes.

**Senator WONG**—So 25 and 20. In terms of the PBS line item, what is included in that aggregate cost? I do not want to have an argument about giving me the actual numbers, but what elements are included in rehabilitation services?

**Ms Golightly**—Sorry, do you mean what services?

**Senator WONG**—Yes.

**Ms Golightly**—It is basically as it says: vocational rehabilitation.

**Senator WONG**—Yes, but what is included? Is it payments to CRS; is it any element of Job Network payments?

**Ms Golightly**—At the moment, it is payments to CRS.

**Senator WONG**—Is the totality of the PBS line item, which is \$172,852, entirely representative of the payments of CRS as they were estimated then?

**Ms Golightly**—I believe so. I will just check that.

**Mr Waslin**—That is correct—this financial year for CRS.

**Senator WONG**—Only for CRS? There is no other cost attributed to that line item?

**Mr Waslin**—No.

**Senator WONG**—As at the production of the PBS, there was no estimation for the potential passage of the contestability bill, which is currently in the House—is that right?

**Ms Golightly**—That is correct.

**Senator WONG**—When did you start to go to tender on that?

**Ms Golightly**—The tender was released in November-December last year.

**Senator WONG**—What is the value of the tendered services?

**Ms Golightly**—While we are getting the exact figure for that, I will take the opportunity to point out that it is only partial contestability this year.

**Senator WONG**—I am aware of that. I did read the department's submission to the inquiry. Is it 25 to 30 per cent?

**Mr Waslin**—It is around 30 per cent of the total CRS business.

**Senator WONG**—Does the additional estimate statement in the PBS reflect the contestability element or some other policy parameter change?

**Ms Golightly**—No, it is simply the changes that I outlined earlier.

**Senator WONG**—Which are they?

**Ms Golightly**—The two that I mentioned—an agreement with department of finance about refinement of the costings to reflect the amount of fees being paid and the phasing of those fees.

**Senator WONG**—Can I have a little more detail on that? What were the changes to the amount of fees and the phasing?

**Ms Golightly**—I would have to obtain that for you. Do you mind if we take that on notice and get back to you a little bit later?

**Senator WONG**—That means I have to remember to come back.

**Ms Golightly**—I am told that in relation to those changing costs, it was to do with whether the cost was calculated on a per person basis, as opposed to a per place basis. That made a slight change in the costs as reflected in the additional estimates.

**Senator WONG**—What about the phasing?

**Ms Golightly**—It is on page 26 of the portfolio additional estimates 2006-07.

**Senator WONG**—It is an increase of \$22.2 million. That is not a phasing issue, though—is it?

**Ms Golightly**—I believe that the \$22 million is the difference between a per place and per person issue and the \$13 million is the phasing issue.

**Senator WONG**—Unless the bill gets through, you are not able to tender the services. Is that correct?

**Mr Waslin**—No. The adjustments to the bill are to ease in the move to contestability. It can still be done under the existing framework.

**Senator WONG**—To alleviate things like the requirement for approval of rehabilitation plans?

**Mr Waslin**—No. The approval of the rehabilitation plans will still stand, but at the moment the legislation specifies that it needs to be done under CRS. Under the new model, the Commonwealth Rehabilitation Service will be delivering about 70 per cent of the service.

It would be inappropriate for them to be agreeing to all plans because that may lead to a bias in the distribution of these people seeking the service.

**Senator WONG**—Is that right? I had a look at that provision. I do not have the bill in front of me, but the requirement that the secretary approve has been removed. It then reverts to guidelines et cetera.

**Mr Waslin**—Yes, and under the revised process it would run in a similar manner to the other employment service programs that we operate. They would register through Centrelink and be referred for a job capacity assessment. That organisation would determine how the individual is streamed. That is where the determination is made and that is the appropriate point where they should be assessed as to the best outcome.

**Senator WONG**—I am not going to argue about it now, but as I understand it, the requirement under the act for the secretary or his or her delegate to approve the rehabilitation plan has been removed and replaced by the framework that you have described.

**Mr Waslin**—The plan would then be approved by the organisation that is dealing with the person.

**Senator WONG**—By the provider?

**Mr Waslin**—That is correct.

**Senator WONG**—Do the additional estimates variations include the tender costs?

**Ms Golightly**—No, they do not. We have been absorbing those costs.

**Senator WONG**—And 2007-08 was the commencement date of the tender. Is that right?

**Ms Golightly**—No, the tendered services will not commence until 1 July 2007.

**Senator WONG**—That is right, 2007-08.

**Ms Golightly**—Sorry, yes.

**Senator WONG**—The first financial year, so this year. Does the additional \$34 million in 2007-08 include—

**Ms Golightly**—No, it does not.

**Senator WONG**—Will you need more?

**Ms Golightly**—That is a matter that will be discussed in the budget.

**Senator WONG**—Presumably there is a funding proposal or request going through the budget process for the tender payments.

**Ms Golightly**—There is also an issue of the difference between administered payments, which is what this is, and the tender costs, which are departmental. It is the government's decision as to whether we absorb those or additional funding is provided.

**Senator WONG**—There is nothing in the additional estimates at this point about any proposed change to administered expenses in respect of the tender. Is that right?

**Ms Golightly**—That is correct.

**Senator WONG**—Do we know what the cost of these services under the tender will be? What will the 30 per cent cost in the first financial year?

**Ms Golightly**—My understanding is that whoever the tender is delivered by needs to fit in with the budget that is approved by government.

**Senator WONG**—Has that budget been outlined for the 30 per cent?

**Ms Golightly**—It has to fit in with the appropriation made by the government for block rehab services—

**Senator WONG**—But you have just said that there is no appropriation made for that administered expense. So what is the appropriation for the administered expense envisaged? I am trying to get a sense of the cost of these contracted out services.

**Ms Golightly**—It is still within the appropriation outlined on page 44, plus the additional estimates. It is not in addition to that.

**Senator WONG**—Presumably it will shift in terms of where it will appear, because it will be an administered expense.

**Ms Golightly**—I did not quite hear—

**Senator WONG**—Presumably it will shift in terms of where it will appear as it will be an administered item. Is that correct?

**Ms Golightly**—Sorry, I have confused things. The cost of running the tender is a departmental cost. The cost of the tendered services, the fees we pay, is an administered cost. Whether we pay that to CRS or any other provider, the total costs still have to be within the appropriation for the rehabilitation services.

**Senator WONG**—Do you know what the cost of the tender service will be for 2007-08?

**Ms Golightly**—We are still assessing the tenders, so I cannot go there.

**Mr Waslin**—It will be approximately 30 per cent of the appropriation though.

**Senator WONG**—Approximately 30 per cent of the total appropriation as adjusted by the additional estimates. Is that about right?

**Ms Golightly**—That is about right.

**Senator WONG**—In Work for the Dole, there is a decrease in this year and next year and nothing in the outer years. Can someone explain why that is?

**Ms Golightly**—This is a revision to account for the expected demand in Work for the Dole services over the coming years.

**Senator WONG**—A reduction in demand.

**Ms Golightly**—Yes.

**Senator WONG**—Why is there nothing for 2008-09 and 2009-10? Is that the contract date?

**Ms Golightly**—Yes. The new contracts will start on 1 July 2009. At the moment we are seeing a decrease in demand for the next two years and that is what we have adjusted this year and next year.

**Senator WONG**—I understand that, but there is a nil appropriation in the outer years—or a nil change?

**Ms Golightly**—No, a nil change.

**Senator WONG**—Okay. What is the total adjusted expenditure as a result of the additional estimates for this line item over the forward years?

**Ms Golightly**—I can give it to you for those two years. In 2006-07 the original budget estimate for Work for the Dole was \$217,618,000. Take \$25 million off that—

**Senator WONG**—Less \$25 million; I can work that out. What about 2007-08?

**Ms Golightly**—We have not published that.

**Senator WONG**—I am trying to work out the effect on the additional estimates. Dr Boxall and I have had arguments before about forward estimate periods in relation to the PBS, but in order to make sense of the extent of the additional estimate change, I would like to know what it is changing.

**Dr Boxall**—Senator Wong, as you know, it has been government policy for a long time not to publish the forward estimates of the individual items beyond the budget year; therefore, in the PBS there is no forward estimate published for 2007-08 for Work for the Dole. The estimate within the budget framework has been revised down by 20, and that is as far as we can go.

**Senator WONG**—Dr Boxall, we have had the argument in relation to the budget estimates PBS. I can take you back through the *Hansard* where you have provided forward estimate expenditure in relation to adjusted areas. I am trying to work out what the effect of these adjustments is on the total appropriation. I would not have thought that the department would be so touchy about taxpayers knowing what proportion of the expenditure is being changed.

**Dr Boxall**—The department is not touchy, Senator Wong—

**Senator WONG**—Well, it appears to be.

**Dr Boxall**—For possibly 10 years the government's policy has been not to publish the forward estimates. The figure for Work for the Dole in 2007-08 is not in the portfolio budget statements and we cannot give it to you now. This is a decision that the government took a long, long time ago.

**Senator WONG**—As I recall, you gave me forward expenditure on a whole range of the Welfare to Work changes?

**Dr Boxall**—They were measures.

**Senator WONG**—This is not a measure?

**Dr Boxall**—That is right. This is not a measure.

**Senator WONG**—It is open government, Chair. You will not even tell us how much you are going to spend next year. This is really very financially irresponsible. You will not tell the Senate or the Australian people what you are going to spend in these appropriations.

**Senator Abetz**—Enough of the speeches. Ask your questions.

**Senator WONG**—Are you refusing to answer that on the basis of government policy?

**Dr Boxall**—I am not refusing to say anything, I am just saying—

**Senator WONG**—I am asking you for the forward estimate appropriation for the Work for the Dole for 2007-08, 2008-09 and 2009-10, so can we just—

**Dr Boxall**—I am confirming to you that, for as long as I have been secretary, these figures have not been given over because it is government policy not to publish them. If the government wanted to publish them, they would put them in the PBS.

**Senator WONG**—This is a Senate estimates hearing, Dr Boxall.

**CHAIR**—Yes, but if I may point out Senator Wong, this is also the additional budget estimates for 2006-07—

**Senator WONG**—And I am asking questions about that.

**CHAIR**—That is clearly printed in front of me.

**Senator Abetz**—Do not interrupt the chair.

**Senator WONG**—Yes, and I am asking about that, Madam Chair. I am asking what is the effect of this which requires us to know what is the forward estimate for that year. I remind the chair what she read out at the beginning of the hearing: there are no areas et cetera—what the Senate has resolved. This is about government expenditure proposed over forward estimate process. The government is seeking to adjust the appropriation in relation to this and a range of other measures.

**CHAIR**—Within the range of what we are looking at this morning, Senator Wong, I think Dr Boxall has clearly defined the limits of what he is prepared to talk about.

**Senator WONG**—That government policy permits him to disclose to a Senate committee. We move now to the Job Network. The \$120 million adjustment: is that right?

**Ms Golightly**—Yes.

**Senator WONG**—That is almost 10 per cent of the budget estimate for 2006-07. It is a very large reduction in revised costings or expenditure.

**Ms Golightly**—These—

**Senator WONG**—I am just trying to work out if I am right or not. Is that right?

**Ms Golightly**—The original budget estimate was \$1.4 billion.

**Senator WONG**—Yes: \$1,405,921.

**Ms Golightly**—Yes, and this has been adjusted by \$120 million, that is correct.

**Senator WONG**—Yes, that is a statement of fact.

**Ms Golightly**—Sorry.

**Senator WONG**—It is about 10 per cent?

**Ms Golightly**—It is just under.

**Senator WONG**—Just under 10 per cent. Can someone explain to me why the extent of the reduction?

**Ms Golightly**—Again it is a reflection of the demand for those services this year and next year.

**Senator WONG**—Is that the only parameter that has altered?

**Ms Golightly**—Yes.

**Senator WONG**—No fee change?

**Ms Golightly**—No.

**Senator WONG**—Can someone explain the demand reduction? Could you quantify that and give me some detail?

**Ms Golightly**—My understanding is that this is driven by Treasury parameters, among other things. I cannot go into a lot of detail.

**Senator WONG**—It is your additional estimate figure. Someone can give me some explanation of why there has been a \$1.2 million reduction in one financial year.

**Dr Boxall**—The explanation is that the demand for services for the Job Network is estimated to decline relative to the original estimate.

**Senator WONG**—Yes, I understand that.

**Dr Boxall**—As Ms Golightly said, that is partly driven by Treasury parameters, which are unemployment parameters.

**Senator WONG**—That is partly driven; can we have an explanation of how that is driven? For example, what proportion is modelling change, that is, the Treasury parameters changing, and what proportion, if any, is due to reduced actual expenditure to date?

**Dr Boxall**—We have a model for estimating the expenditure on Job Network and that has a number of parameters in it, one of which is the Treasury parameter. Having re-run the model and discussed it amongst ourselves, and then, with the Department of Finance, the decision was made to revise down the estimate by \$120,921 which reflects, amongst other things, the ongoing strength of the labour market.

**Senator WONG**—When you say there is a model for estimating Job Network expenditure, Dr Boxall, and one of those things is Treasury parameters, what are the other things?

**Ms Golightly**—There are quite a range of factors which Ms Graham might answer in a minute. My understanding is that it is also based on a trend history of what has happened, seasonal factors and all the normal things that you would put in an economic model.

**Senator WONG**—Ms Graham?

**Ms Graham**—That pretty much covers it. There are obviously quite a number of variables for different services, but it is pretty much driven by historical trends and also anticipated activity going forward, so for example, customer numbers—the number of customers coming through for particular services.

**Senator WONG**—Can you give me actual expenditure to date for this line item?

**Ms Caldwell**—I have actuals until 31 January 2007. The actual for Job Network was \$587.3 million.

**Senator WONG**—Do you have numbers of customers?

**Ms Caldwell**—The number of people currently in Job Network service is 820,000 at the same time period. The number of commencements during this financial year has been 313,000.

**Senator WONG**—313,000 since 1 July 2006?

**Ms Caldwell**—Yes.

**Senator WONG**—When I was reading the *Hansard*, I think you have previously given me commencements and figures for the 2005-06 year. Do you have those here?

**Ms Caldwell**—Yes, I have commencements for 2005-06 as well. In 2005-06, 540,000 persons commenced in Job Network for the whole year.

**Senator WONG**—Can you give me a point in time figure too? I presume the 820,000 is a point in time figure, is that right?

**Ms Caldwell**—Yes, I will have to see if I have point in time for last year.

**Senator WONG**—To clarify, the 820,000 is a point in time as at 30 January?

**Ms Caldwell**—Yes.

**Senator WONG**—I think you might have given me point in time for May 2006, but do you have them for the conclusion of the financial year 2005-06? At the conclusion of the financial year, I presume that you have a point in time figure?

**Ms Caldwell**—I will see if we have the caseload figure in the room with us, the point in time snapshot for the end of last financial year.

**Senator WONG**—I am happy for you to take it on notice if it is going to cause difficulty.

**Ms Golightly**—We will have to come back to you.

**Senator WONG**—I know I have received some of these figures before, but it would be helpful if we could consolidate them. I would like the number of customers commenced for the last three financial years? When did the contract—

**Ms Golightly**—This current contract started in 1 July 2006.

**Dr Boxall**—Senator Wong, this current contract has Welfare to Work in it too.

**Senator WONG**—Yes, I know. Presumably there will be a shift?

**Dr Boxall**—Yes.

**Ms Caldwell**—I do have the commencement figures for the three financial years since this contract started.

**Senator WONG**—Thank you.

**Ms Caldwell**—The first year had the effect of transition to the new contract. In 2003-04 when job seekers were first transitioned to the new contract arrangements, we had very large commencements of 914,000 in Job Network. That was a one-off transition to the new arrangement. Since that time the flow commencements have been 516,000 in 2004-05, 540,000 in 2005-06, and 313,000 in 2006-07.



**Senator WONG**—To date?

**Ms Caldwell**—To date. As the secretary mentioned, the current figures include Welfare to Work client flow as well.

**Senator WONG**—Yes, I am aware of that. What characteristics can you indicate about the current customer base or customer line?

**Ms Caldwell**—I have the point in time as this point in time.

**Senator WONG**—Right now are you able to tell me what information you collect on them or do you have on them? Presumably you have income support payment type?

**Ms Golightly**—Yes. If they are in Job Network they are mainly Newstart.

**Senator WONG**—Yes, obviously. Presumably you have length of period on income support?

**Ms Golightly**—Yes, we collect that information, but we may not have it with us.

**Senator WONG**—What else do you collect?

**Ms Caldwell**—We typically analyse our data on an ongoing basis by the phase of the Job Network caseload they are on. For example, are in they in customised assistance or Job Search support; whether people are volunteers or on activity tested payments. We look at payment types and we also look at the source of where they came from in terms of direct registration and referral from Centrelink.

**Senator WONG**—In terms of what stage of the assistance process they are—I do not know what you call it now—

**Ms Caldwell**—Job Network is a continuum of services.

**Senator WONG**—Your continuum, I can never remember what the current jargon is. In terms of the continuum, can you tell me how many are in intensive support customised assistance (ISCA) and how many are in Job Search training?

**Ms Caldwell**—We usually divide that up between the two principal services.

**Senator WONG**—Can you tell me who is in the categories you have, rather than my trying to work out which are the categories you have? Is that alright?

**Ms Caldwell**—Yes. I will have to take that on notice to give you a breakdown between the different phases.

**Senator WONG**—Are you clear about what I am asking, or am I going to get another ‘this information is not readily available’ answer?

**Ms Caldwell**—We can take your question on notice and we will give you the information on notice.

**Senator WONG**—Are you clear on what I am asking for?

**Ms Caldwell**—You have asked for a breakdown of available information on the classification of job seekers within Job Network services.

**Senator WONG**—At a point in time and the numbers in each of those categories?

**Ms Caldwell**—Yes, that is your question.

**Senator WONG**—Thank you. The \$97 million reduction in 2007-08 as well?

**Ms Golightly**—Yes.

**Senator WONG**—But no reduction in 2008-09, 2009-10 against a mythical figure that I do not know about?

**Ms Golightly**—There is no reduction or increase. There is just no change.

**Senator WONG**—There is no alteration is what you are saying?

**Ms Golightly**—Yes.

**Senator WONG**—Against this ghostly figure that no-one can tell me what it is, you say that there is in excess of \$200 million in reduction in two financial years for Job Network—is that right?

**Ms Golightly**—Just over \$200 million.

**Senator WONG**—Yes, in excess of \$200 million. Is that due to a change in Treasury parameters and the trend to date? The trend to date is 313,000 as at 30 January 2007. Is that significantly less than was anticipated?

**Ms Golightly**—Somebody else has an answer to that. It is a combination of factors. As far as I know we do not do estimates on a month-by-month basis. It is simply what is expected to happen over a year.

**Ms Caldwell**—This goes to the evidence given earlier by the department as to the modelling instrument that we use. That run is continuously being updated for revision in parameters and actual activities projected, and that is why it will vary over time.

**Senator WONG**—There are a lot of words there, Ms Caldwell, but the point is there must be something that you base the trend assessment on. I am trying to work out what was the anticipated trend to date or what has changed?

**Dr Boxall**—The anticipated demand for Job Network is reflected in the original figure which is \$1.405921 billion. Based on experience in the first part of the year, plus any changes to the Treasury parameters, plus judgment about how the market is going, the decision has been made to reduce it by \$129.21 million. It is clear that it is running in part below what was originally anticipated.

**Senator WONG**—I do not know what was originally anticipated.

**Dr Boxall**—What was originally anticipated was expenditure of \$1.405921 billion.

**Senator WONG**—What is the expenditure to date? Was it \$587.3 million?

**Dr Boxall**—Yes.

**Senator WONG**—Just over a third of the original \$1.4 billion, is that right?

**Ms Golightly**—Yes.

**Senator WONG**—It is a very substantial underspend in proportional terms?

**Dr Boxall**—It would revise it down by about eight per cent. There is the ongoing strength of the labour market and the performance of the Job Network after Welfare to Work; it is always difficult to make estimates after you have had substantial changes. It is a pretty good estimate so far.

**Senator WONG**—Your actual expenditure is tracking over halfway into the financial year at \$587 million and you estimated the whole of the financial year at \$1.4 billion.

**Ms Caldwell**—The whole year estimate is revised by the additional estimates pro rata against the revised projection for this year. They are close to pro rata, taking into account the normal seasonality in Job Network expenditure.

**Senator WONG**—I will come back to this, Mr Carters, but my recollection is that Treasury indicated the modelling they did on the Welfare to Work changes was actually what they projected as demand for services of the affected group. Do you recall this discussion?

**Mr Carters**—Yes, Senator.

**Senator WONG**—Can you remind me what was the modelled demand for service from the effect of the Welfare to Work cohort?

**Mr Carters**—There were different numbers for each of the different categories. I do not have the total with me.

**Senator WONG**—Are you able to get that so that we can come back to it? I presume the department can tell me what so far into this financial year is the actual demand for services from those groups?

**Mr Carters**—Can we just clarify which groups you are interested in? The people with disabilities with a work capacity of 15 to 29 hours a week and the—

**Senator WONG**—Principal carer?

**Mr Carters**—Yes, and the principal carer categories. We can give you that.

**Senator WONG**—Thank you. If we can come back to that I would appreciate it.

**Dr Boxall**—Senator Wong, we have a clarification on one of Ms Caldwell's earlier answers which should assist in your enquiry about the estimates.

**Ms Caldwell**—I gave a figure on actuals to date. I wrongly stated that it was at the end of January, but it was actually the end of December figure. The correct figure on Job Network actual expenditure as at 31 January 2007 is \$686 million, which makes it even closer to the pro rata of the revised estimate.

**Senator WONG**—It is \$686 million as at 30 January?

**Ms Caldwell**—Yes.

**Senator WONG**—What was the \$313 million figure? Was that commencements?

**Ms Caldwell**—That was—

**Senator WONG**—This year's actual expenditure to date as at 30 January?

**Ms Caldwell**—Dollar expenditure, yes.

**Senator WONG**—That makes a bit more sense. Incomes, full payments, a very substantial revision to the estimates there? You could fund a lot out of what you are taking out of your department at the moment, Dr Boxall—whole programs.

**Dr Boxall**—This is a—

**Senator WONG**—Billions of dollars.

**Dr Boxall**—This is a revision down in the income support estimate payments, and it is a number of payments, I think.

**Ms Graham**—Yes, it is.

**Dr Boxall**—Ms Graham can give you the details.

**Senator WONG**—Thank you, Ms Graham.

**Ms Graham**—The reduction is associated with the revision of estimates to the Newstart Allowance, the Youth Allowance, the disability support pension and parenting payment single.

**Senator WONG**—Yes?

**Ms Graham**—The reduction basically is in response to the improving labour market, which reflects the low unemployment and the labour force participation being high at the moment.

**Senator WONG**—What is the reduction in Newstart recipient that is assumed in this reduction?

**Ms Graham**—Sorry, Senator?

**Senator WONG**—What is the proportion of the \$523 million which is Newstart?

**Ms Graham**—The reduction for Newstart allowance is \$213.7 million; for youth allowance, it is \$49.8 million; for the disability support pension, it is \$148.9 million; and for the parenting payment single, it is \$66.3 million.

**Senator WONG**—For PPP—parenting payment partnered? It is not a large payment?

**Ms Graham**—It is a very minor change. We have only given you the significant ones.

**Senator WONG**—Is the entirety of the alteration that you have given to me reflective of reduced forecast numbers in each of those payment categories?

**Ms Graham**—Yes.

**Senator WONG**—So there is no other adjustment?

**Ms Graham**—No, my understanding is that it is driven by customer numbers.

**Senator WONG**—There is no adjustment to payment levels that is indicated?

**Ms Graham**—No.

**Senator WONG**—Does that add up?

**Ms Graham**—No, Senator. I gave you the largest ones. All of the payment types in the special appropriations will have changed by minor amounts or not as significant as the ones I have read out.

**Senator WONG**—I am trying to work out what we have left over here. There is about \$60 million to \$70 million left over.

**Ms Graham**—We can work it out from one of the tables in the additional estimates for you, but it will take us a few minutes.

**Senator WONG**—No, that is fine. Could you take that on notice? I want the information that you have given me in relation to the large payments. Can you provide on notice details of any adjustments to the others? I know there are quite a few.

**Ms Graham**—There is a table in the portfolio additional estimates document, on page 22.

**Senator WONG**—I don't like it when you do that and everyone thinks I haven't done my work! You are right, there it is.

**Ms Graham**—If you take the difference between the two numbers, you will get the variance for each of the programs.

**Senator WONG**—So this is the revised estimate? Are these the only ones?

**Ms Graham**—That is right.

**Senator WONG**—That is reflected in the \$523 million and 627. I do not want to have the argument again with Dr Boxall, but can someone explain why there is a very substantial variation in the 2008-09 and 2009-10 years? There is \$700 million and \$842 million?

**Dr Boxall**—That is correct, Senator Wong. We have revised the estimates for the whole four years and the same factors come into play in the out years as in the current year, as explained by Ms Graham.

**Senator WONG**—That is assuming a very large proportional reduction in customer numbers over the forward estimates period?

**Dr Boxall**—As a proportion it is not as large as it might look because I think the total amount is in the order of \$24 billion, so we are talking about numbers that are just over half a billion out of \$24 billion. But your point is quite right, this—

**Senator WONG**—It is more than that. Sorry, Dr Boxall, the outer year is \$840 million. The 2008-09 year is nearly \$700 million.

**Dr Boxall**—Yes. As I said, we are talking about over half a billion out of \$24 billion. But you are quite right in pointing out that, as an absolute number, the downward revision is relatively large. For example, in 2008-09 it is \$699 million or nearly \$700 million, but as a percentage it is not a huge amount. Nevertheless, it is a downwards revision in the estimates, reflecting the factors Ms Graham outlined, which are expected to carry through the forward estimates period.

**Senator WONG**—The factor that Ms Graham outlined was simply customer demand. How do you model that?

**Ms Graham**—The figures are primarily driven by Treasury parameters.

**Senator WONG**—When you say 'primarily', what role does DEWR have?

**Ms Graham**—The Treasury parameters are what drives the projections of customer numbers and there are also average rate calculations. In the model income support estimates, there is also a calculation of the average rate that people are paid.

**Senator WONG**—Is that the DEWR component?

**Ms Graham**—It is determined on actual information.

**Senator WONG**—Yes, I appreciate that. That is the information you give to Treasury to input into their model?

**Ms Graham**—Actually it is the other way around. We have the models and Treasury give us the parameters.

**Senator WONG**—Do you do the modelling?

**Ms Graham**—Yes, that is right, but we do not model unemployment numbers.

**Senator WONG**—They give you that?

**Ms Graham**—That is right.

**Senator WONG**—You are not going to tell me what they gave you, are you?

**Ms Graham**—No.

**Senator WONG**—Are you going to tell me what your average rate was?

**Ms Graham**—I cannot tell you what the average rate was off the top of my head, but it would be very difficult to give you a figure as there are average rates for each different type of person coming through. The models are very complex.

**Senator WONG**—So you weight it by customer types?

**Ms Graham**—That is right.

**Senator WONG**—A proportion of population?

**Ms Graham**—Yes, that is right.

**Senator WONG**—What are the customer types you utilise?

**Ms Graham**—I will have to take that on notice.

**Senator WONG**—If you could, and I will also ask, in relation to the customer type, what average rate was applied over the forward estimate periods for each of those customer types?

**Ms Graham**—I will take that on notice.

**Senator WONG**—I am sure you will. What is the ex gratia payment?

**Ms Golightly**—There is some text on this on pages 25 and 26 of the additional estimates.

**Senator WONG**—But is it any or is it a particular?

**Ms Golightly**—It is a particular individual case. There are two. In both cases they are particularly individuals.

**Senator WONG**—But that explanation is not the totality of that adjustment.

**Ms Golightly**—Sorry, there are two. There is one on page 25 at the bottom, which is a particular case, and on page 26, about halfway down, there is a small group of individuals on widow allowance who also got it.

**Senator WONG**—Yes. As to Cyclone Larry, is it a reduction to DEWR's contribution to the Cyclone Larry assistance measures?

**Ms Golightly**—It is a reduction to the money available for Cyclone Larry relief. We administer that.

**Senator WONG**—Yes, I am aware of that. It is only one year, so Dr Boxall and I do not have to have an argument, but what was the original estimate for that?

**Dr Boxall**—It was \$37,000,092.

**Senator WONG**—Was that envisaged only for the 2006-07 year?

**Ms Golightly**—Yes, that was for 2006-07. There was also a measure description in that PBS as well.

**Senator WONG**—Can you tell me what that means? Has there been less call for wage assist?

**Ms Golightly**—Yes, as it has turned out there has been less demand for that measure.

**Senator WONG**—How much demand has there been? Do you have numbers and details of that?

**Ms Caldwell**—Yes, I have figures to the beginning of this month, to 8 February 2007. We have had 1,552 claims approved, with total payments and commitments of \$44.8 million.

**Senator WONG**—If the additional appropriation was \$37 million—I do not understand the figures I have been given.

**Ms Caldwell**—I can take you through that. The Cyclone Larry item was originally approved for a period of 13 weeks for assistance, with the closing date for employers of 30 June. The government subsequently decided to extend both the amount of time that a subsidy could be paid for and the closing dates for applications by affected businesses. This increased the subsidy for each equivalent full-time employee. Therefore, we had an increase.

**Senator WONG**—No, you have a decrease.

**Ms Golightly**—Overall there is a decrease because, as it has turned out, the demand has been less.

**Ms Caldwell**—We had an original cost for the announcement, which was for a 13-week subsidy which needed to be claimed.

**Senator WONG**—What was the original estimate, what was the revised estimate and then what is the estimate post the additional estimates? We are looking at three figures now, aren't we?

**Ms Golightly**—Yes.

**Ms Caldwell**—On page 44 of the portfolio budget statements there was an original budget estimate for 2006-07 of \$37 million. After the publication of the portfolio budget statements, on 3 August the Prime Minister extended both the closing date for applications—

**Senator WONG**—Yes, I have that. What was the revised figure?

**Ms Golightly**—I believe we added \$0.2 million, but I will just check that.

**Senator WONG**—That makes it 37.2 and the expenditure to date is 44.8 but you have an additional appropriation, which is a reduction. There is something that I am not understanding here.

**Ms Golightly**—Sorry, I have just read you the departmental figure.

**Ms Caldwell**—The \$44 million that I mentioned were of course payments made both in the last financial year and this financial year.

**Senator WONG**—What are the payments this financial year?

**Ms Caldwell**—I do not have a breakdown between the two financial years with me at the table, but we can get that for you.

**Senator WONG**—Is the \$5.6 million an adjustment to the \$37 million or to some other figure?

**Ms Golightly**—It is an adjustment to that appropriation. We will check what the middle figure was.

**Senator WONG**—Thank you.

**Ms Caldwell**—I have the answer to the actual payments figure in 2005-06 in respect of Cyclone Larry. It was \$16.288 million.

**Senator WONG**—And someone will tell me what the \$5 million is actually adjusting?

**Ms Golightly**—Yes.

**Senator WONG**—Can someone explain to me about the reduction of \$29.5 million over the forward estimates as to Centrelink, appropriation for medical expenses?

**Ms Golightly**—That related to a medical assessment program that operated in previous years and no longer operates. It was meant to have been taken out of the estimates at the beginning of the year, but was not. It has now been correctly reflected.

**Senator WONG**—You asked for and received \$29 million more than you should have for a program that had closed, is that what you are telling me?

**Ms Golightly**—It is in 'departmental'; we did not actually get it. It is a correction of the figure.

**Senator WONG**—When did that close?

**Ms Golightly**—On 30 June 2006. It was taken over by job capacity assessment.

**Senator WONG**—But it stayed on your books?

**Ms Golightly**—It stayed in the PBS. It was in the PBS when it should not have been.

**Senator WONG**—Where was it in the PBS?



**Ms Golightly**—It would have been included as one of our output prices. I think, off the top of my head, it would have been at 1.2.1.

**Senator WONG**—Under ‘Information, referral and support services’?

**Ms Graham**—The payments that we make to Centrelink are now actually split between two outputs: 1.1.1 and 1.2.1.

**Senator WONG**—Would this adjustment be to the \$898 million and the \$242 million?

**Ms Graham**—That is correct.

**Senator WONG**—What proportion to each?

**Ms Graham**—Off the top of my head, I think it is about 80-20, but I would have to double-check that.

**Senator WONG**—If you could, thank you. You can either come back to me now or take it on notice.

**Senator MARSHALL**—I wish to ask some questions about the TCF structural adjustment package. How much has been spent on the program to date?

**Mr Manthorpe**—I can give you that figure. The figure I have is \$1,061,021 on the DEWR component of the structural adjustment package, bearing in mind that the structural adjustment package also has components for which the industry portfolio is responsible.

**Senator MARSHALL**—How many workers have accessed the program so far this financial year?

**Mr Manthorpe**—I have a figure of 563. I think that is the total, not broken down by financial year. The measure started on 1 July 2005. There have been 563 registered with Job Network since then.

**Senator MARSHALL**—I think it was 337 last financial year, so that would—

**Mr Manthorpe**—I may have it in my notes here, if you can bear with me for a moment. Having checked, I will have to come back to you on that a little later, but we will be able to get that figure.

**Senator MARSHALL**—How many job placements have been achieved in the 2006-07 year?

**Mr Manthorpe**—I cannot answer that question directly. I can tell you that there have been 563 so far for the duration of the program and that has generated 664 job placements. Some people actually get more than one job placement through the program. I would have to take on notice the question of how many of those have been achieved this financial year.

**Senator MARSHALL**—Can you break that down into multiple placements too so I can understand it?

**Mr Manthorpe**—We can see whether we can do that.

**Senator MARSHALL**—How many 13-week employment outcomes have been achieved in this financial year? All of these questions relate to TCF.

**Mr Manthorpe**—That is understood. I can give you a figure on that for this financial year. For 2006-07, as at 26 January 205 13-week outcomes have been achieved.

**Senator MARSHALL**—How many 26-week outcomes for this financial year?

**Mr Manthorpe**—82.

**Senator MARSHALL**—How many education outcomes has that included?

**Mr Manthorpe**—I do not have that with me.

**Senator MARSHALL**—Can you take that on notice?

**Mr Manthorpe**—Yes, I can.

**Senator MARSHALL**—Looking at those figures and comparing them to last year's, it is still a fairly poor take-up of the program. Has the department tried to work out why that might be?

**Mr Manthorpe**—I do not know whether I would characterise it as poor take-up or not. Our best estimation is that, since the program started, something in the order of 1,000 or perhaps a touch over 1,000 TCF workers may have been eligible to seek assistance through the program. That is approximately 29 employers, particularly in Victoria and, to some extent, South Australia. We know that about 560 of them have availed themselves of that opportunity, but whether that is poor take-up or not is a debatable point. It could actually be very good take-up. It could mean that some of the people who decided to leave the labour force to retire have taken up other employment or other opportunities, whatever they might be, without the need to access the program. We do not necessarily conclude that the take-up is good or bad. Based on those figures, it seems to us to be reasonable. We are continuing to work with TCF employers, with the industry department and the TCF union to identify instances where redundancies occur and make sure that employees of those firms who are about to be made redundant or who have been made redundant are made aware of the package.

**Senator MARSHALL**—I have some specific questions about that later on. Of the 253 jobs found by retrenched TCF workers in the 2005-06 year, only 18 lasted for 26 weeks or more. Do you have data about how long the other 227 jobs lasted?

**Mr Manthorpe**—In 2005-06 there were 67 13-week outcomes and 18 26-week outcomes. The important thing to remember is that people are coming into the program over time. Some of the people may have taken up jobs relatively close to the end of the financial year and may have obtained jobs quite quickly after being retrenched from TCF employment, but they may not have shown up as 13- or 26-week outcomes last year. That explains in part the stronger numbers we are seeing this year. We have gone from 67 13-week outcomes in 2005-06 to 205 this financial year, which is starting to tell us that the numbers are picking up and that more sustained employment is coming through.

**Senator MARSHALL**—That may be the logical conclusion we reach. Do you have an analysis of how long people have lasted in jobs?

**Mr Manthorpe**—I do not have anything other than what I have just described.

**Senator MARSHALL**—Would you be able to take that on notice and see if you can break that down for me?

**Mr Manthorpe**—Yes, certainly.

**Senator MARSHALL**—In response to a question on notice, Senator Abetz on behalf of the minister advised that as at 16 October 2006 only \$46,469 had been spent from the job seeker account and training account to provide retraining for retrenched TCF employees registered for the TCF SAP. How much has been spent on retraining since then?

**Mr Manthorpe**—To give you a like-for-like comparison, the amount spent from the job seeker account or training account for the duration as at the middle of January 2007 was \$158,432. That is another \$112,000 on the figure that was provided in the answer to the question on notice.

**Senator MARSHALL**—Can we break them down by job seeker account and training account?

**Mr Manthorpe**—That is something I will have to take on notice.

**Senator MARSHALL**—If you could, thank you. In the same response, Senator Abetz noted that job seeker account funds have also been used to purchase other goods and services. Can you tell me what those other goods and services are and how much was spent?

**Mr Manthorpe**—I will have to take the amounts on notice, but I can tell you the sorts of things they might be. It might be training, as you suggested, or things like clothing and equipment, employer incentives and wage subsidies. A variety of forms of assistance that is consistent with our usual approach to the use of the job seeker account can be used by the Job Network to tailor a service to the needs of the individual job seeker.

**Senator MARSHALL**—Could you provide me with a list of those other services? The ones that come to mind for me would be clothing, equipment, wage subsidies, transport assistance and interpreter services, but I guess there is a broader list. Could you identify that and the amount of money.

**Mr Manthorpe**—We can take that on notice.

**Senator MARSHALL**—Thank you. The TCFUA produced a report on the operation of the program which was critical of the processes for ensuring redundant workers are made aware of the scheme. From the answers DEWR and DITR have provided to both Senator Carr and me, it appears that there is a process for redundancies involving 15 or more employees. Could you confirm for me that I do now understand the process you go through. The Workplace Relations Act requires employers to notify Centrelink of the redundancies.

**Mr Manthorpe**—That is right.

**Senator MARSHALL**—Centrelink then informs DEWR.

**Mr Manthorpe**—Yes.

**Senator MARSHALL**—Which may also have been provided with information by DITR on the basis of industry intelligence.

**Mr Manthorpe**—Yes.

**Senator MARSHALL**—DEWR confirms with DITR that the company falls within the scope of the TCF SIP scheme.

**Mr Manthorpe**—That is right.

**Senator MARSHALL**—DEWR contacts the employer to advise them about TCF SAP and to arrange for information to go to affected employees.

**Mr Manthorpe**—Yes.

**Senator MARSHALL**—DEWR notifies local Job Network members of the redundancies and the affected workers' eligibility for TCF SAP.

**Mr Manthorpe**—Yes.

**Senator MARSHALL**—Are you sure that the last one actually happens?

**Mr Manthorpe**—I am confident that it happens.

**Senator MARSHALL**—Is that the process? Is there anything I have missed out?

**Mr Manthorpe**—Those are the key elements. There might be other sources where we find out about TCF redundancies. We might read something in the media about a company reducing its workforce. We may hear from the TCF Union. There are other potential sources.

**Senator MARSHALL**—You rely on your own intelligence as well, not only DITR?

**Mr Manthorpe**—That is right.

**Senator MARSHALL**—How long does it usually take for the process to go full circle?

**Mr Manthorpe**—I beg your pardon, Senator.

**Senator MARSHALL**—How long does that process take from the point where the employer advises Centrelink of the redundancies to the point where DEWR advises the employer of the TCF SAP, and employees actually start getting access to information?

**Mr Manthorpe**—That could happen very quickly. There have been a number of these companies, so I cannot give you an 'It took three days here and two days somewhere else' type of analysis. I can tell you in terms of DEWR's part of that process, we regularly act very quickly to make contact with an employer to make sure that they are aware of the service that is available. We make people from the department available within a day or so—sometimes Centrelink does this—to get out to an employer and be available to talk to employees who are about to be retrenched.

**Senator MARSHALL**—Do you have any internal guidelines on that? Normally when redundancies are taking effect, there is a notice period. It is fairly crucial that all this happens within the notice period of redundancy. Do you have internal guidelines?

**Mr Manthorpe**—We do not have internal guidelines, but I am sure we would be aiming to get to the plant before the people were actually retrenched, whenever we possibly can.

**Senator MARSHALL**—Do you have any best-practice benchmark that you apply?

**Mr Manthorpe**—Not in any formal sense. We certainly get out to the plants that are going to close as quickly as we can arrange that.

**Senator MARSHALL**—There are no statutory time limit, is there?

**Mr Manthorpe**—No. This is an administrative arrangement.

**Senator MARSHALL**—None of the responses that we have received about how workers are made aware of their right to access TCF SAP seems to be relevant to smaller redundancies, of fewer than 15 workers. I know that Senator Carr asked a question of DITR about Centrelink's role in identifying individuals and informing them about the TCF SAP scheme, but the answer only related to the processes that are in place when Centrelink actually advises DEWR of the redundancy. Is it not the case that Centrelink is likely to be the first point of contact for workers who are made redundant by smaller firms?

**Mr Manthorpe**—It may be. I cannot tell where retrenched employees might go first, as that would be speculation on my part.

**Senator MARSHALL**—What I am concerned about is that Centrelink staff seem to be unaware of TCF SAP and are unable to advise individuals that they may be eligible. This is identified in the critical aspects of the report from the TCFUA. Specifically in cases where there are fewer than 15 employees, you do not have involvement in the first place?

**Mr Manthorpe**—You assert that we do not have any involvement in the first place. We do not have statutory access to information from an employer to Centrelink to us, but we still may be aware of them from other sources. Sometimes we may be able to identify those.

**Senator MARSHALL**—Explain to me the communication between Centrelink staff and their ability to actually implement the scheme and advise on eligibility.

**Mr Manthorpe**—I think they are really questions for Centrelink. We would certainly work closely with Centrelink on the ground to make sure that they know about the redundancy that might have occurred. Sometimes Centrelink staff go out to the affected plant, not just in the TCF industry but in other industries where there are reductions in staff, to make sure that people know about the services that Centrelink provide. For me to go beyond that is outside DEWR's purview.

**Senator MARSHALL**—Have you looked at the TCFUA report on the package?

**Mr Manthorpe**—Yes, I have.

**Senator MARSHALL**—Do you have any comments on that? It received a lot of criticism. It is not all critical, but have you responded to the TCFUA about the contents?

**Mr Manthorpe**—We had a discussion with the TCFUA quite recently through our Victorian office, not specifically by way of a formal response to their report, but we are preparing a response to their report. We have looked closely at the assertions that they make in the report, and in terms of comments on it the first observation I would make is that what we are fundamentally interested in is people getting a job. As I described a few minutes ago, the numbers are increasing and increasing well. We have something like 270 thirteen-week outcomes out of a group of about 560 people and more are coming in. Some of those are quite recent referrals. We are seeing a very encouraging pick-up in the numbers of 13-week outcomes, and, as I mentioned, there were over 600 job placements. So we are seeing encouraging increases in the job placements and the job outcomes. That does not mean that we do not need to continue to do work with our Job Network members to make sure that they are aware of the package and the availability of the package and that their staff are up to

speed. That goes to some of the allegations that the TCFUA made. We have taken a number of opportunities to inform Job Network members and their CEOs about the package.

Another element of the criticism in the package goes to the issue of whether the retrenched employees are aware of their entitlement to support under the package, and that goes to some of the questions you have been asking. In that area we have been looking at other ways to alert the employees to their entitlements. We are now placing ads in community newspapers and the language newspapers like the Vietnamese, Mandarin and Cantonese newspapers, particularly around Melbourne, to ensure in whatever way we can that we are alerting people to what is available.

**Senator MARSHALL**—There have been two large redundancies lately that have caught the public eye, both Blundstone Footwear and Feltex and Godfrey Hirst Carpets. Can you tell me what has been done so far to ensure that the workers affected get early access to SAP assistance?

**Mr Manthorpe**—Yes—the sorts of things that I have just described. We have been in contact with both of those companies and are available to talk to their employees.

**Senator MARSHALL**—Has that actually happened?

**Mr Manthorpe**—I am not sure.

**Senator MARSHALL**—You say you are available to, but—

**Mr Manthorpe**—I am not sure whether we have actually spoken to the group of Blundstone employees or Feltex employees. I am not aware of—

**Senator MARSHALL**—Can you take that on notice and let us know where you are up to in the delivery of the scheme?

**Mr Manthorpe**—Yes. I can assure you that we are actively following up those cases and will continue to do so. I can take it on notice whether or not we have actually met with the employees.

**Senator Abetz**—For what it is worth, at the Australia Day ceremony in Tasmania I met up with a state Labor member of parliament who was highly complimentary of all the federal government agencies and services in their cooperation in working with Blundstone and the state authority. I am not an expert on all the others, but on the Blundstone ones it seems that we have the state Labor government saying that the federal agencies are working well and I think we would have the federal government on this occasion saying the state government agencies are working well to assist the Blundstone employees.

**Senator MARSHALL**—I thought you might have been able to have been very specific about where we are at with Blundstone. If you take it on notice, that is fine.

**Dr Boxall**—Senator Marshall, we can check with the Tasmanian office. They are probably watching the broadcast now.

**Senator MARSHALL**—What does that say about the productivity of it? Did DEWR receive any intelligence from DITR about those two particular closures?

**Mr Manthorpe**—I am not sure.

**Senator MARSHALL**—Could you find out? I am interested to know whether the media is the generator of the activity or whether we are actually getting intelligence about these things in advance and what action is being put in place. I understand the political reality of the flurry that happens once things hit the press. You can understand it with Feltex and Blundstone, but there are lots happening that do not get to the press. I want to be assured that there is a lot of proactive activity working on industry intelligence as opposed to relying on the press. Could you let me know when you first became aware of it and give me a picture of what is happening?

**Mr Manthorpe**—Yes. One comment I would make on that is that sometimes these things happen very quickly. You mentioned a flurry of media activity. Sometimes the industry portfolio might only find out about something eight hours before it is going to be announced. The question of whether we find out from them or from the media is a little academic. We are certainly in regular contact with them to keep across these sorts of developments.

**Senator MARSHALL**—I understand that the industry minister has met with the TCFUA in relation to their report on SAP. Do you know whether the employment minister was involved?

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

**Senator MARSHALL**—Did any DEWR officials attend the meeting?

**Mr Manthorpe**—I do not believe so.

**Senator MARSHALL**—I think you told me before that you have not met formally with them in response to the report but you are simply preparing a response—is that correct?

**Mr Manthorpe**—We are preparing a response, yes.

**Senator MARSHALL**—You have not met with the TCFUA?

**Mr Manthorpe**—We have met with the TCFUA, but not by way of a formal response to their report. We met with them to make sure that the lines of communication were open and that we—

**Senator MARSHALL**—But not specifically on the report?

**Mr Manthorpe**—That is right. We met with the TCFUA in Victoria to talk about the administration of the scheme and how it was travelling. I think you can imagine that the content of the report was part of that conversation. I do not want to misrepresent what we did to suggest that we made a formal response because we have not, but we are working on that.

**Senator MARSHALL**—The TCFUA pilot program is viewed as successful in the first year of the TCF SAP. Is the department inclined to support an overhaul of the program to go down the pilot path? Are you considering that?

**Mr Manthorpe**—That would be subject to policy advice to government. I do not think I can comment on that.

**Senator MARSHALL**—In terms of the response you are preparing, when will that be available?

**Mr Manthorpe**—A response to the TCFUA?

**Senator MARSHALL**—Yes, to the TCFUA's report. I do not know whether you are going to respond to them. I should ask that question—who is the response for?

**Mr Manthorpe**—It will be a response for the TCFUA.

**Senator MARSHALL**—When will that be ready?

**Mr Manthorpe**—I think we will be coming back to them within the next month or so.

**Senator MARSHALL**—Thank you.

**Senator WONG**—Is it called the Disability Advisory Group?

**Mr Carters**—Yes, it is.

**Senator WONG**—That is your outcome, Mr Carters?

**Mr Carters**—Yes.

**Senator WONG**—What is the status of that group?

**Mr Carters**—The Disability Advisory Group has 11 members, who represent the disability sector employers and employment service providers. The group is currently functioning to provide advice to Minister Stone on servicing people with disabilities.

**Senator WONG**—Who are the current members and which organisations or sectors do they represent?

**Mr Carters**—Would you like me to tell you that now?

**Senator WONG**—Yes, please.

**Mr Carters**—The chair is David Thompson, who is representing the Welfare to Work consultative forum. Members include Simon Schweigert from Recruitment and Consulting Services Association—

**Senator WONG**—Is that an employment services agency?

**Mr Carters**—No, it is a body that represents recruitment agencies, some of which are and some of which are not linked to Job Network. Then there is Lucy Macali from the Association of Competitive Employment, better known as ACE; Dr Ken Baker from ACROD, the National Industry Association for Disability Services; Sally Sinclair from National Employment Services Association; Tony Steven from the Council of Small Business Organisations of Australia; Ruth Oakden from Toll Holdings; Ilona Charles from the National Bank of Australia; Jeff Manton from the Australian Federation of Deaf Societies; Sally Gould from the National Indigenous Council; and Sue Eagen from the Physical Disability Council of Australia Ltd.

**Senator WONG**—The peak disability organisation, the Australian Federation of Disability Organisations, is not represented. Is there a reason for that?

**Mr Carters**—There was a representative of that body previously and that person chose not to continue based on the requirements of participation.

**Senator WONG**—What were the requirements of participation?

**Mr Carters**—In particular, members of that group needed to sign a confidentiality agreement.



**Senator WONG**—What was the nature of the confidentiality agreement that you required them to sign?

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

**Senator WONG**—Who handled these negotiations? Was it a departmental person or the minister's office?

**Mr Carters**—It is the minister's requirement; it is the minister's group.

**Senator WONG**—Who handled the negotiations with the AFDO representative? Was it a departmental officer or a minister's staff member?

**Mr Sandison**—We had some discussions with Marianne Diamond, the CEO of AFDO, and discussed the nature of the requirement when the minister's office was looking at membership and had the requirement about the agreement that was to be signed. They commented that they were disinclined to sign. The decision was that the majority of the membership had said that they did not see a problem with it. They realised they were there to advise government. Marianne Diamond declined to be a member.

**Senator WONG**—At this point, the AFDO representative already had been appointed to the committee—is that right?

**Mr Sandison**—They had attended a number of sessions. The committee had been running for a while.

**Senator WONG**—Subsequently, the minister requested a confidentiality agreement be signed—is that right?

**Mr Sandison**—That is correct.

**Senator WONG**—Do you have a copy of that agreement?

**Mr Sandison**—No, I do not. We would have to take that on notice.

**Senator WONG**—Who prepared the confidentiality agreement?

**Mr Sandison**—Officers in the department.

**Senator WONG**—At the minister's request?

**Mr Sandison**—The minister requested the agreement, yes.

**Senator WONG**—What did the agreement extend to?

**Mr Sandison**—I would have to get the detail on notice. In effect, it is an advisory group to the minister, providing advice to government. It is not a public information session, so there would be elements to the discussions that would be of a confidential nature. They were there as individual experts as well as representatives of an organisation. That was the input the minister was seeking.

**Senator WONG**—AFDO is a peak body that has constituent members from a range of disability organisations—is that correct?

**Mr Sandison**—Correct.

**Senator WONG**—Presumably—and I do not know how they operate—a range of peak bodies would operate on the basis that there would be some consultation on positions taken

between the constituent members and the peak body, just as ACOSS does. Did the confidentiality agreement enable the AFDO representative to undertake those consultations?

**Dr Boxall**—This goes to the substance of the confidentiality agreement, which is the minister's confidentiality agreement, and Mr Sandison has agreed to take on notice whether we can provide a copy of the agreement.

**Senator Abetz**—We had similar discussions yesterday at another Senate estimates about the confidentiality agreements signed by the expert scientific panel for quarantine assessments that, in general terms, people can glean information from colleagues but there are aspects clearly that cannot be divulged. No doubt Marianne Diamond and the Australian Federation of Disability Organisations have a whole host of constituent members. Just perusing through the list, I dare say the Council of Small Business Organisations of Australia would be in exactly—

**Senator WONG**—This is a disability advisory group—

**Senator Abetz**—And COSBOA would have exact—

**Senator WONG**—that does not have a member on the peak organisation—

**Senator Abetz**—Can I finish?

**Senator WONG**—It is embarrassing for the government. They are being advised by business and not by people with disabilities.

**Senator Abetz**—Clearly, I cannot. You are not interested in an answer.

**CHAIR**—The minister has the floor.

**Senator WONG**—We know that you are not interested in listening to what they have to say.

**CHAIR**—The minister has the floor.

**Senator Abetz**—COSBOA would be treated in exactly the same way. I do not know whether the National Indigenous Council has other bodies. One would imagine that the Australian Federation of Deaf Societies, for example, being a federation, would also have constituent bodies. One would imagine that the deaf society would be at the forefront of dealing with people's disabilities. That seems clear. We live in a free society. Marianne Diamond was entitled not to sign and not avail ourselves of the opportunities. But quite clearly other representatives of similar organisations in similar positions did.

**Senator WONG**—When was the confidentiality agreement prepared?

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

**Senator WONG**—Did someone in your area prepare it?

**Mr Sandison**—There were a combination of people. It was treated as a formal document, so it would have been policy officers and some officers in other areas.

**Senator WONG**—When did the minister first request the preparation of the confidentially agreement?

**Mr Sandison**—It was some time ago. I would have to check to find out the date.

**Senator WONG**—I asked a question.

**Dr Boxall**—We do not have the answer to that question. That goes to conversations between the minister and the department.

**Senator WONG**—Dr Boxall, questions as to process are entirely appropriate. I am not asking what was discussed; I am asking when it was requested.

**Dr Boxall**—And I have told you on behalf of the department that we do not have an answer to that question.

**Senator WONG**—How are you going to get me an answer to that question?

**Dr Boxall**—Mr Sandison already agreed to take it on notice, I believe.

**Senator WONG**—Was any legal advice sought by the department or by the minister in relation to the document?

**Mr O'Sullivan**—I have alluded to this in the past—

**Senator WONG**—You should go and speak to the Clerk, Mr O'Sullivan, if you are going to say the same thing to me that you said last time.

**Senator Abetz**—Excuse me, Chair. The witness has got half-a-dozen words out and Senator Wong is already into him.

**CHAIR**—Senator Wong has asked a question and Mr O'Sullivan is answering it.

**Mr O'Sullivan**—I was going to explain an objection to divulging dealings between public servants and the minister.

**Senator WONG**—And you are wrong.

**Mr O'Sullivan**—Under the Public Service Act, in particular section 13 subsection 6—

**Senator WONG**—And you are wrong and the Clerk has said that you are wrong. In every other estimates committee—

**Senator Abetz**—Excuse me, this badgering of—

**CHAIR**—Order! Mr O'Sullivan started an explanation and I would like to hear it.

**Mr O'Sullivan**—I will grab the section and read it out to you. I do not believe that the Clerk has ever disagreed with me on my interpretation of section 13 subsection 6 of the Public Service Act, which—from memory—states that public servants will keep dealings with the minister's office appropriately confidential.

**Senator WONG**—Have you finished, Mr O'Sullivan?

**Mr O'Sullivan**—What that means in my opinion is that what advice we provide the minister and when we provide it falls under that obligation of confidentiality.

**Senator WONG**—And I am saying to you that the Clerk has made it clear, as have other estimates committees, that questions as to when do not breach that and are perfectly in order in estimates committees. I have examined the Department of the Prime Minister and Cabinet, the Finance and Administration portfolio and Treasury in estimates this week, among others, and in all of those hearings questions as to process are routinely answered by officers. Why is it that a legal person in DEWR has an objection to answering what public servants across the

government have answered regularly in accordance with advice from the Clerk and the resolutions of the Senate? I can accept that I cannot ask questions about what the advice was, and I have not sought to do so. I am asking questions as to process and timing. Unless there is evidence that questions as to process and timing somehow divulge the content of the advice, I suggest that clearly, in accordance with resolutions of the Senate, advice of the Clerk and the practice of these estimates hearings, they are in order and ought to be answered.

**Mr O'Sullivan**—My answer dealt only with the question that I and the department were being presented with. I cannot comment on other questions of process and I did not at any stage explain my objection on the basis that it was a process question. The objection was based on legal objections under section 13 subsection 6 of the Public Service Act to maintain appropriate confidentiality in respect of public servant dealings with the minister's office. We all agree that the content of that advice is clearly confidential. The only point on which we disagree is about answering questions about when he asked for such advice. The department is taking the view that that is also confidential.

**Senator WONG**—What you have just said is entirely incorrect in terms of estimates processes. Is it your assertion that any question as to when advice is sought or provided breaches confidentiality and ought not be answered?

**Senator Abetz**—The witness—

**Senator WONG**—I need to be clear, Minister, about what—

**CHAIR**—Order! Senator Wong has the floor.

**Senator WONG**—I asked a very clear question of you, Mr O'Sullivan, so we can get clear what the disagreement is.

**Senator Abetz**—The witness has indicated, Chair, that under the Public Service Act—and he will undoubtedly remind us—the terminology does have a caveat of appropriateness, and that indicates that these matters are decided on a case-by-case basis; therefore, it is not an on-block objection in relation to process. It is a judgement of appropriateness, and those judgements will undoubtedly vary between people.

**Senator WONG**—Okay. Mr O'Sullivan, could you answer my question. You made an assertion in your answer previously that 'when' could lead to a breach of confidentiality. I assume the inference from that is that we cannot ask it. I disagree with that, but I want to be very clear—because we may seek to refer this matter further in terms of our Senate processes—about exactly what you are saying. Is it your suggestion that a question as to when advice was sought ought not be answered on the basis that you have outlined? Let us be very clear about what your basis is.

**Mr O'Sullivan**—Okay. I will answer that question with a short 'no', and I will explain it this way. There is no question you can ask us to which I would have an objection. Following the Senate resolutions, what witnesses are entitled to do if they have an objection to answering such a question is explain the basis for that objection. In respect of the particular questions you asked, I cited a particular objection.

**Senator WONG**—Which one? Can we clarify which question? I think I asked when legal advice was sought.

**Mr O'Sullivan**—By the minister and the department, as I understand it.

**Senator WONG**—Or the department, yes.

**Mr O'Sullivan**—That was a question that I objected to answering, and I explained the basis for it. I think you would understand this, Senator, if I were to give an example of any lawyer who disclosed things publicly or to anyone. If someone said to me, 'What did you ask—

**Senator WONG**—That is not an answer—

**Mr O'Sullivan**—Well—

**CHAIR**—Order! As I mentioned in the opening statement: 'Where an officer declines to answer a question, the grounds for this should be stated', et cetera. Mr O'Sullivan is explaining those grounds, and I think the least we can do is to listen to his explanation. Mr O'Sullivan.

**Mr O'Sullivan**—I think I was just at the stage of—

**Senator WONG**—Bordering on breach of privilege, I think.

**CHAIR**—Order! Please proceed.

**Mr O'Sullivan**—I explained the basis of the objection in answering that particular question. I was not giving a sweeping generalisation of an answer. Just as the minister explained, there is a qualification in subsection 6, which says, 'appropriate confidentiality'. Just by way of example, my view is that if anyone sought advice from the department or from a lawyer and the person giving the advice said, 'I'm not going to disclose the nature of that request, but I will disclose that at this point they did seek advice from the department or from a lawyer,' in certain circumstances would be a breach of appropriate confidentiality.'

**Senator WONG**—The issue of a lawyer is entirely irrelevant, because a lawyer who is not a public servant before estimates is not subject to an estimates committee process. You are. You are an officer, and you are. I am asking: if legal advice was sought in relation to the confidentiality agreement, when did that occur?

**Mr O'Sullivan**—That was why I made the reference to a lawyer—because the nature of the advice that you sought the timing on was legal advice. I would be surprised if any law society in the country took anything other than a dim view of any lawyer who disclosed when such advice was requested or provided.

**Senator WONG**—Not before an estimates hearing. We have had answers in outcome 2 about when legal advice was sought on various aspects of bills. We have answers on those issues in a number of other committees over the years. There is no blanket rule whatsoever about asking when advice is sought. So is the department refusing to answer when legal advice was sought in relation to the confidentiality agreement by either the department or the minister?

**Mr O'Sullivan**—We are objecting to answering your question.

**Senator WONG**—Which one—that one I just asked?

**Mr O’Sullivan**—Forgive me, because I thought it was same question you asked Mr Sanderson.

**Senator WONG**—Yes. I want to clarify this. This is bordering on a breach of privilege. I will be taking this further. I want to make it clear, on the public record, what you are objecting to. I am asking: when legal advice, if any, was sought by the department or the minister in relation to the confidentiality agreement?

**Mr O’Sullivan**—I have declined to answer.

**Senator WONG**—Is that the department’s answer?

**Mr O’Sullivan**—The department has declined to answer, and the department has explained the basis for its objection—and that is, basically, entirely consistent with the rules of this committee.

**Senator FIFIELD**—I can see the situation that Mr O’Sullivan is in. As a public servant it is his obligation to uphold the Public Service Act and not to breach it. It is a very awkward situation when he feels he is being called upon to breach the Public Service Act. It is a legitimate thing for a public servant to state if they think they are being called upon to breach the Public Service Act. We are essentially asking him to do something which he cannot, in good conscience, do as a public servant.

**Senator Abetz**—I have allowed this to continue for some time, thinking that the good senator might have had the presence of mind. There is also a minister sitting at the table. She is asserting that the evidence seems to be that a minister asked for legal advice. I think it is appropriate that the departmental official take the stand that he has taken. There is nothing stopping the senator—I do not know why I am giving her this gratuitous advice and assistance—from specifically asking the minister: when did she seek the legal advice. If she were to ask such a question, I would be happy to take that on notice and see what Dr Stone’s answer is in response to that.

**Senator WONG**—I assumed the department was taking the question on notice.

**Senator Abetz**—I beg your pardon?

**Senator WONG**—Is the department not taking the question on notice?

**Senator Abetz**—I am taking it on notice; the minister is.

**Senator WONG**—Thank you for your gratuitous advice, Minister. It is always—

**CHAIR**—We have already established that the department has an objection to answering the question. As he is obliged to, Mr O’Sullivan has stated his grounds for declining to answer that question. Senator Wong, do you wish to put that question to the minister.

**Senator WONG**—Yes, I do. I think he has just indicated that he would take it on notice.

**Senator Abetz**—If you want to ask the question, I am more than happy to do so.

**Senator WONG**—Did the minister seek legal advice in relation to the confidentiality agreement, and, if so, when?

**Senator Abetz**—I will take that on notice.

**Senator WONG**—I understand that the department object to answering it, but I am asking also: did the department seek legal advice in relation to the confidentiality agreement, and, if so, when?

**Senator Abetz**—For the purposes of drafting the document?

**Senator WONG**—In relation to the agreement. I am not asking what aspect of it the advice related to—and, if so, when?

**Senator Abetz**—All right, we will take that on notice. We will have a close look at the question.

**Senator WONG**—That is the question to which there is an objection to answering. Just so that we are clear.

**Mr Carters**—The department will take that on notice.

**Senator WONG**—Thank you. Was there any representative or person on the disability group who also refused to sign the agreement other than the AFDO representative?

**Mr Carters**—Yes, there was.

**Senator WONG**—Which organisation was that?

**Mr Carters**—The Mental Health Council of Australia.

**Senator WONG**—So, let us be clear: the ministers disability advisory group has representatives from employment service providers, business and Indigenous groups but it has no representative from any group representing expertise in mental health issues and it has no representative from the peak disability organisation in the country?

**Senator Abetz**—But it does have people representing the Federation of Deaf Societies and the Physical Disability Council of Australia. So there is a broad spectrum on that group. You could even ask the question: you only have COSBOA, why isn't ACCI, for example, represented? We could go down that path. These bodies are small by nature. Why do you pick, let us say, COSBOA rather than ACCI? That is undoubtedly a judgement that is made. Similarly, one or two disability groups are on there as opposed to some others. That is the nature of the game.

**CHAIR**—The committee will break for morning tea.

**Proceedings suspended from 10.46 am to 11.06 am**

**CHAIR**—Dr Boxall, do you wish to say something?

**Mr Boxall**—Yes, thank you, Chair. We have the answers to Senator Marshall's question on TCF.

**Senator MARSHALL**—You are right, they were watching, Dr Boxall.

**Mr Manthorpe**—They certainly were. The advice I can give you about Blundstones is that, following an approach we made to the company a week or two ago, we, DEWR staff, are meeting with Blundstone's employees on 22 and 23 February. We will have Centrelink with us to make sure that everybody is on the same page, as it were. You asked where we found out about the various closures in respect of Blundstones. We found out about that one from the press. I understand that the redundancies are not expected to actually commence until June, so

we are getting in well and truly in time to bring the employees up to speed with what is available for them. We have also already had a meeting with our Job Network members down there to make sure that they, too, are aware of what the package is about and the services we would expect them to provide. That is the Blundstone situation.

As to the Feltex situation, we found out about that one from the industry portfolio. We are meeting tomorrow and on Tuesday and Wednesday of next week with the Feltex employees—again, following an approach from the department to the employer. That meeting will be attended by not only DEWR but also Centrelink, again to make sure that all the parties are in the loop. We will also have some Job Network members with us at that meeting so they, too, are getting the same messages and information as the employees. So, that covers some of the questions I took on notice earlier.

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

**CHAIR**—Now, in view of the discussion that was taking place before morning tea, I need you, Mr O’Sullivan, to once again give your reason on the record why you have declined to answer Senator Wong’s question. I would also like you to state the reason why you think that it is not appropriate to answer the question.

**Mr O’Sullivan**—Certainly. The reason I objected to answering the question, as I understood it, was that I believed it required me to breach the statutory obligation of confidentiality that applies to me as a public servant, as set out in subsection 13(6) of the Public Service Act, which states:

An APS employee must maintain appropriate confidentiality about dealings that the employee has with any minister or minister’s member of staff.

The question as I understood it asked the department, that is, me, to disclose information that in my view would not only breach obligations of confidentiality as set out in the Public Service Act but also may well breach legal professional privilege, which a client is entitled to maintain.

**Senator WONG**—Which are you relying on? Let us be clear. Are you relying on legal professional privilege, are you relying on the Public Service Act or both?

**Mr O’Sullivan**—It is neither one nor the other. It is both. I am relying on the Public Service Act, but I qualified the second limb to that by saying that it may be a breach of LPP. I would have to examine the documents in question more closely than that to give a more comprehensive and unequivocal answer. But either of those I think is sufficient basis to justify the objection.

**CHAIR**—Do you consider that there is a reason why you would breach the act if you answered Senator Wong’s question?

**Mr O’Sullivan**—Yes, because it would disclose dealings that the department had had with the minister’s office.

**Senator WONG**—On what basis does disclosure of the timing of interactions with the minister’s office breach the Public Service Act?

**Mr O’Sullivan**—Because I consider that falls within the very broad term of dealings. Maybe if I can just further explain—



**Senator WONG**—Can you just give me the section again?

**Mr O’Sullivan**—Section 13(6), and I just quoted from it.

**Senator WONG**—It is all right, I will get it on the web.

**Mr O’Sullivan**—Sure. Just by way of, I guess, some of the tenets of statutory interpretation, when parliament chooses to use broad words such as ‘dealings’, the general presumption is that they are supposed to be given their commonsensical but broad meaning and to not be of an unduly restrictive nature. That is why I formed the view that if and when a minister, or a client, requests advice from me on a certain subject it is, appropriately, confidential information. I find that unremarkable.

**Senator MARSHALL**—But that gives me a problem, given what you have said. You have said you do not broadly interpret this as a general refusal to answer questions on timing but that in this instance it does. It seems to conflict with what you said earlier. So, what I would like you to do is to tell us why in this instance giving us the timing of such advice—or the nature of the advice sought in the first place and the timing of it—gives you a problem under the act you referred to.

**Mr O’Sullivan**—I will just say two things in response to that. First, the reason why I am not giving a response to anything other than the question that was put to me is that I am not giving legal advice on broad issues of interpretation to this committee. Secondly, why I considered in this particular instance that an answer would, *prima facie*, be a breach of section 13(6) is simply because that would involve the disclosure of a dealing that this department has had with the minister’s office.

**Senator MARSHALL**—Then doesn’t it follow that you will interpret this broadly and that you cannot in any circumstances then reveal whether advice was sought or the timing of it because, in every case, it must do that?

**Mr O’Sullivan**—You can draw that inference, because it is not my place to give you legal advice. All I am doing is just answering the question put.

**Senator MARSHALL**—No, I am not asking for legal advice; I am asking for the way you are interpreting this and the way you are responding to the questions.

**Senator WONG**—Can I just clarify something? Section 13(6) states, ‘An APS employee must maintain appropriate confidentiality.’ Is it your assertion that appropriate confidentiality includes not disclosing to a Senate estimates hearing the timing of seeking of legal advice in the context of the question I asked?

**Mr O’Sullivan**—Yes.

**Senator WONG**—Can you tell me how you have due regard to section—

**Mr O’Sullivan**—Could I just add to my answer? When I said ‘yes’, that was in relation to that particular question that you asked.

**CHAIR**—We understand that.

**Senator WONG**—Yes, I understood that. Section 10(1)(e) makes it clear that the APS is openly accountable for its actions within the framework of ministerial responsibility to the government, the parliament and the Australian public.

**Mr O'Sullivan**—Absolutely.

**Senator WONG**—You are being asked questions through the parliament in a Senate estimates committee in relation to a timing issue that is not associated with the content of legal advice, and you are refusing to answer them?

**Mr O'Sullivan**—I have objected to answering that question.

**Senator WONG**—You are refusing to answer it, yes. You are refusing to answer it.

**Mr O'Sullivan**—Yes, I objected to answering your question, Senator. I certainly did not object to answering the question of the committee.

**Senator WONG**—No, you are refusing to answer the question as to when legal advice was sought.

**Mr O'Sullivan**—Yes.

**Senator WONG**—Okay. What about this: if the issue was, as in section 13(7), relating to a minister or minister's members of staff and whether the department sought legal advice, and if so, when? I am not asking when you dealt with the minister's office; I am asking when the department sought legal advice.

**Mr O'Sullivan**—I will have to take that on notice.

**Senator WONG**—Are you objecting to it on the same basis?

**Mr O'Sullivan**—No, I do not know the answer to your question. I may well object to answering it on the grounds of LPP but, because I do not know the answer, I will take it on notice.

**Senator WONG**—So we now have a legal professional privilege ground, do we? Since the last hearing when we had this discussion, have you actually perused the various advices from the Clerk about the grounds on which questions can refuse to be answered?

**Mr O'Sullivan**—I am very familiar with it.

**Senator WONG**—Have you perused them since?

**CHAIR**—Order! I want to keep this to the context in which we are discussing it. Mr O'Sullivan has been asked a question; he has declined to answer it for reasons that he has stated. He has stated the grounds on which he objects to answering the question, and he has stated the reason why he will not answer the question. I simply point this out to Mr O'Sullivan in the fair and full nature of the debate: privilege resolution 1(16) provides a special rule relating to the questioning of federal or state public servants:

An officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy, and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister.

This provision prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policy or factual questions about when and how policies were adopted. So it simply says it does not preclude questions. However, I am putting that into the record. Senator Wong?

**Senator Abetz**—Chair, just briefly on that—and I do not have the exact wording in front of me—an officer can shoot it up the line or to the minister—

**Senator WONG**—He is not doing that.

**Senator Abetz**—As indicated—and I think we are all in heated agreement—this was a request by the minister of the department. I am not sure what all this debate is now about but, as minister, I have said I will ask my colleague, on notice, when she in fact asked for that advice. So the actual question has been taken on notice by the person who sought the advice or requested the department to do something and, as a result, the Australian people in due course will be given the full transparency that is allegedly so hotly sought.

**CHAIR**—Minister, thank you for that, but as I see it, that is a separate issue, and that happened before the morning tea break. You said that you would take the question on notice and refer it to the minister.

**Senator Abetz**—That is right.

**CHAIR**—Right. Mr O'Sullivan's question and his declining to answer it is a separate issue. Now, could I bring this to a close at present by saying that my feeling is that the committee accepts Mr O'Sullivan's objection.

**Senator MARSHALL**—I disagree with your position on that, Chair.

**CHAIR**—In that case the committee will need to have a private meeting on this, and I would suggest that it be at the beginning of the lunchtime.

**Senator WONG**—I have just obtained previous advice from the Clerk that was provided when Mr O'Sullivan did this last time. I would ask that it be circulated to the committee, and I ask that it be tabled.

**CHAIR**—Very good. We will proceed.

**Mr Carters**—Senator Wong, I can give you some feedback on an earlier question that you asked. You asked whether I was able to give you the actual number of the Welfare to Work target groups that have participated in services since the Welfare to Work changes started on 1 July 2006. The answer is that we do not have that data available. We would need to extract that data separately, so we will have to take that notice.

**Senator WONG**—Thank you. You have given it to me before. When the budget measure was introduced, you gave me the figures that were estimated to utilise the services within that cohort.

**Mr Carters**—You do have those figures, yes, primarily through answered questions on notice, because there is quite a bit of detail there.

**Senator WONG**—Okay. What I would like to do is compare them. Are you able to consolidate this new information with what was estimated?

**Mr Carters**—We will see what we can do.

**CHAIR**—I have some questions about the disability employment network. What is the total number of referrals made to the disability employment network since 1 July 2006?

**Mr Waslin**—There are two streams under the arrangements: the capped and the uncapped.

**CHAIR**—Yes, I understand that.

**Mr Waslin**—It is about 17,000.

**CHAIR**—What is the total number to the capped stream and what is the total number to the uncapped stream?

**Mr Waslin**—In the capped stream, it was 12,978 and in the uncapped stream, 4,291.

**Senator WONG**—Was that financial year to date, Chair?

**CHAIR**—No, that is since 1 July 2006—the present financial year. As I understand it—and please correct me if I am wrong—the uncapped stream are those people with a disability who require more ongoing support. Is that correct?

**Ms Golightly**—The uncapped stream is those people who are assessed as having partial work capacity and would require some additional support to get to that full capacity.

**CHAIR**—Additional support to get to work ready status?

**Ms Golightly**—That is right.

**Senator WONG**—They are the ones to whom obligations apply?

**Ms Golightly**—The uncapped ones, yes.

**Senator WONG**—And the capped is non-obligated?

**Ms Golightly**—That is correct, Senator.

**CHAIR**—Are the disability employment network providers aware of those figures? Have they been provided with those figures?

**Ms Golightly**—I do not recall that we have published them.

**CHAIR**—So they are not published?

**Ms Golightly**—Yes, well, not to the providers. We may have given them in previous Senate estimates, I just cannot recall.

**CHAIR**—Of that total number of referrals made to the disability employment network through the job capacity assessment process, how many have actually been accepted?

**Ms Golightly**—They are all accepted. There is possibly a difference between referral and commence—people who actually commence. I will see if we have those figures for you.

**Mr Waslin**—The number of commencements under the capped disability employment network is 12,020.

**Mr Waslin**—The number of commencements under the capped disability employment network is 12,020; uncapped is 5,013. Those numbers may not align exactly, because we are probably talking about some small differences in time frames, depending on when the data was extracted for referrals and when it was extracted for commencements.

**CHAIR**—How many disability employment networks or services are operating at 100 per cent capacity—that is, how many of them are full, as you might say?

**Ms Golightly**—Again there will be a difference between the capped and uncapped streams.

**CHAIR**—Yes, that is right. That was to be my next question.

**Mr Waslin**—We do not have a breakdown in front of us that tells us the number of organisations that are at full capacity, but the national average is 97 per cent.

**CHAIR**—Would you be able to provide me with the status of each of the services, both capped and uncapped?

**Ms Golightly**—We would have to take that on notice.

**CHAIR**—By all means take it on notice.

**Ms Golightly**—As long as it does not also identify particular contractual arrangements.

**CHAIR**—I understand.

**Ms Golightly**—We might just have to delete a name or something like that.

**CHAIR**—Yes, I understand that.

**Senator WONG**—My recollection is you have previously given us—by area, I think—the unmet demand in area.

**Ms Golightly**—Yes.

**Senator WONG**—Was it on a geographic basis?

**Ms Golightly**—Yes, from memory, I think we may have done it on employment service area. We can give you that.

**Senator WONG**—Yes, if it does not cross over the chair's question, could we have the unmet demand by area? Do you do that by places as well?

**Ms Golightly**—Sorry, I am not sure that the questions are the same. Did you mention unmet demand just then?

**Senator WONG**—Yes.

**Ms Golightly**—That is a different issue to what I understand—

**Senator WONG**—All right, I will come back to that.

**CHAIR**—On notice, how many of the full services are capped and how many are uncapped? How many disability employment network uncapped providers have reached their full market share of referrals?

**Ms Golightly**—We will certainly take that on notice.

**Senator WONG**—Can we go to the unmet demand issue? I have just forgotten the detail of how you track that data. Can someone remind me of that?

**Ms Golightly**—I am not sure that we do track unmet demand data.

**Senator WONG**—I do not believe that the officer is working in DEWR anymore—I think she is down in PM&C—but I recall getting numbers or an indication of unmet demand when the program first moved over from FaCS, as it was then. Is Ms Durbin able to help?

**Ms Golightly**—We can certainly look back on that and, indeed, that could have been possible, but the program was on a completely different footing when it first moved over.

**Senator WONG**—Is there any information on unmet demand? Ms Durbin, are you able to assist?

**Ms Golightly**—No, we have just confirmed that we do not track.

**Senator WONG**—Do you do waiting lists?

**Ms Golightly**—For the capped program?

**Senator WONG**—Correct.

**Ms Golightly**—Obviously, because uncapped is uncapped. No, Senator.

**Senator WONG**—Did FaCS used to keep an analysis of waiting lists? Do you do any analysis of waiting lists?

**Ms Durbin**—The department does not keep a centralised waiting list for disability employment network capped services. Some individual sites may choose to keep a waiting list if they are aware that someone wants to access their services and at a point in time they are full, but we have no centralised waiting list.

**Senator WONG**—Do you have information about waiting lists?

**Ms Durbin**—Not that we collect nationally, no.

**Senator WONG**—Do you have information about specific areas where they are provided to you?

**Ms Durbin**—Providers would not give us that information as a matter of course. In some of our discussions with them, they might mention that they are aware some people are waiting for the service, and we are aware clearly whether they are at 100 per cent at a point in time, but we do not track that nationally.

**Senator WONG**—Is the national average utilisation rate of 97 per cent presumably in relation to capped?

**Ms Durbin**—Yes.

**Senator WONG**—How do you come to that point?

**Ms Durbin**—We have contracts with each of our capped organisations, and they are contracted to help a certain number of clients at a point in time at each site. So we can tell how many job seekers they have on their books as opposed to how many they are contracted to help at that point in time.

**Senator WONG**—In relation to that—and I do not know if the chair's questions cut across this area—if that is the national average, which services are at 100 per cent and which are not?

**CHAIR**—Yes, well that—

**Senator WONG**—That is what you are asking?

**CHAIR**—Yes.

**Senator WONG**—The figures you gave the chair of 17,000 to date—12,978 in capped and 4,291 in uncapped—was that to 30 January?

**Ms Golightly**—We just did not have a date on the top.

**Mr Waslin**—That was dated until 2 February 2007.

**Senator WONG**—Are you saying they are the figures to 2 February?

**Ms Golightly**—Yes.

**Senator WONG**—That is not commencements but total client customer load?

**Mr Waslin**—That is the number of people who JCAs have referred to the program.

**Ms Golightly**—Referrals.

**Senator WONG**—Referrals as opposed to commencements?

**Ms Golightly**—That is correct.

**Senator WONG**—Do we have the commencement data?

**Ms Golightly**—Yes, we have answered that in the previous question as well. It is at the end of January.

**Senator WONG**—That is the 12,020 and 5,013.

**Mr Waslin**—That is correct.

**Senator WONG**—That is as at 31 January?

**Mr Waslin**—Yes.

**Senator WONG**—Is the difference in the figures the time delay?

**Ms Durbin**—That might be part of it. Clearly there are also delays between when a job seeker is referred and when they commence the service.

**Senator WONG**—That is what I mean.

**Ms Durbin**—That is right.

**Senator WONG**—Why are there more commencements in uncapped than referrals, or do I have the figures wrong? I had 12,020 commencements in uncapped and 5,013 commencements in capped, and then I had 4,291 uncapped referrals.

**Mr Waslin**—We will come back to you. We will just double-check those figures. As to the chart from which I have read, there might be some other columns that I have not interpreted.

**Senator WONG**—Okay, so you will come back to me with that?

**Mr Waslin**—Yes.

**Senator WONG**—Is there an outcome fee for placing a person whose capacity is 0 to 7 hours within DEN?

**Ms Durbin**—No.

**Senator WONG**—So, if the capacity assessment is 0 to 7 hours, that is a per week assessment, presumably.

**Ms Durbin**—To be eligible for a disability employment network outcome, it is a minimum of eight hours a week.

**Senator WONG**—If your job capacity assessment gives you a capacity between 0 and 7 hours, what is the default referral mechanism?

**Ms Durbin**—In general, if those clients wish to access a service, generally those clients would not be subject to participation requirements, but if they wish to access a service, they could volunteer to participate in Job Network.

**Senator WONG**—They would not get to DEN?

**Ms Durbin**—No.

**Ms Golightly**—They would be on DSP.

**Senator WONG**—There would be no referral?

**Ms Golightly**—No automatic referral; they can volunteer.

**Senator WONG**—Do you have information about waiting lists?

**Ms Durbin**—Not that we collect nationally, no.

**Senator WONG**—You have information about specific areas where they are provided to you?

**Ms Durbin**—Providers would not give us that information as a matter of course. In some of our discussions with them, they might mention that they are aware some people are waiting for the service. We are aware clearly whether they are at 100 per cent at a point in time, but we do not track that nationally.

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**Ms Durbin**—Yes.

**Senator WONG**—How do you come to that point?

**Ms Durbin**—We have contracts with each of our capped organisations, and they are contracted to help a certain number of clients at a point in time at each site. So we can tell how many job seekers they have on their books as opposed to how many they are contracted to help at that point in time.

**Senator WONG**—I do not know if the chair's questions cut across this area, but which services are at 100 per cent and which are not? The figure you gave the chair of 17,000 to date—12,978 in capped and 4,291 in uncapped—was that to 30 January?

**Ms Golightly**—We just did not have a date on the top.

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**Ms Golightly**—Referrals.

**Senator WONG**—Referrals as opposed to commencements?



**Ms Golightly**—That is correct.

**Senator WONG**—Do we have the commencement data?

**Ms Golightly**—Yes, we have answered that in the previous question as well. It is at the end of January.

**Senator WONG**—That is the 12,020 and 5,013?

**Mr Waslin**—That is correct.

**Senator WONG**—That is as at 31 January?

**Mr Waslin**—Yes.

**Senator WONG**—Is the difference in the figures the time delay?

**Ms Durbin**—That might be part of it. Clearly there are also delays between when a job seeker is referred and when they commence the service.

**Senator WONG**—Why are there more commencements in uncapped than referrals, or do I have the figures wrong? I had 12,020 commencements in uncapped and 5,013 commencements in capped, and then I had 4,291 uncapped referrals.

**Mr Waslin**—We will come back to you, Senator. We will double check those figures. As to the chart off which I have read, there might be some other columns that I have not interpreted.

**Senator WONG**—Is there an outcome fee for placing a person whose capacity is nought to seven hours within DEN?

**Ms Durbin**—No, Senator.

**Senator WONG**—So, if the capacity assessment is nought to seven hours, that is a per week assessment, presumably?

**Ms Durbin**—To be eligible for a Disability Employment Network outcome, it is a minimum of eight hours a week.

**Senator WONG**—If your job capacity assessment gives you a capacity between nought and seven hours, what is the default referral mechanism?

**Ms Durbin**—If those clients wish to access a service, generally those clients would not be subject to participation requirements. If they wish to access a service, they could volunteer to participate in Job Network.

**Senator WONG**—Job Networks; they would not get to DEN?

**Ms Durbin**—No, Senator.

**Ms Golightly**—They would be on DSP.

**Senator WONG**—But there would be no referral?

**Ms Golightly**—No automatic referral; they can volunteer.

**Senator WONG**—Can they volunteer to go to a DEN service as opposed to a Job Network?

**Ms Golightly**—To a DEN capped, no, I do not believe so.

**Ms Durbin**—No, Senator.

**Senator WONG**—In terms of the continuum, where would they end up in the Job Network?

**Ms Durbin**—Senator, it would depend on that individual's classification under the job seeker classification instrument. They would go through the normal processes in terms of responding to the questions with Centrelink, and the assessment under that instrument would determine their place on the continuum. If they were highly disadvantaged, they would go into intensive support customised assistance; otherwise they would go into the other places on the continuum.

**Senator WONG**—Do you track the data of how many people with a nought to seven hours work capacity have been referred to the Job Network?

**Ms Golightly**—They are not referred. They would volunteer and more or less directly register.

**Senator WONG**—That is their only option?

**Ms Golightly**—Yes.

**Ms Caldwell**—We do not routinely track those figures.

**Senator WONG**—What is the cost of a place?

**Ms Golightly**—DEN capped or uncapped, Senator?

**Senator WONG**—Both?

**Ms Golightly**—There are a number of payments. Would you like us to read them through?

**Senator WONG**—You have given me estimates of the appropriation for capped and uncapped; I am just trying to work out how much it costs per place on average?

**Ms Golightly**—This is where it is difficult. It is like Job Network. They get service fees and outcome fees, and the outcome fees are staggered to whether the person is in a job for 13 weeks or 26 weeks. Obviously you can add them all up for some people, but not every person.

**Senator WONG**—Do you have an average cost?

**Ms Golightly**—I do not think we have an average cost, no.

**Senator WONG**—No average expenditure per place?

**Ms Golightly**—No, Senator.

**Senator WONG**—How do you cost the appropriation bit—what is the basis for that?

**Ms Golightly**—Similar to Job Network. There is a model for how many expected people and certain assumptions are made about how far they would go in that continuum.

**Senator WONG**—In terms of the end point, in one of your question on notice answers, you have indicated that the appropriation for 2006-07 represented a capped capacity of 38,000; was that right?

**Ms Durbin**—That is correct, Senator.

**Senator WONG**—An estimated uncapped capacity of 21,000 over the first three years—so is that 7,000 a year or was it split up differently?

**Ms Durbin**—That appropriation does include the capped and the uncapped. The appropriation that was given in that answer to the question on notice covers our expectation in terms of the numbers that will flow through into uncapped in the first year of the service.

**Senator WONG**—First three years?

**Ms Durbin**—The 21,000 is a three-year figure.

**Senator WONG**—Is the expectation that you have referred to split seven, seven and seven, or is it differently split?

**Ms Golightly**—I cannot recall, Senator. We can check for you.

**Senator WONG**—Do you have that information?

**Ms Durbin**—Not with me; I can take that on notice.

**Senator WONG**—Ms Golightly, I cannot recall if I got it, but have you provided the total number of the various outcome fees, et cetera, associated with DEN?

**Ms Golightly**—I know that we have tabled it for Job Network; I cannot recall if it was for DEN as well, but we can do so.

**Senator WONG**—Could you do that?

**Ms Golightly**—Yes.

**Senator WONG**—These are service fees and outcome fees?

**Ms Golightly**—Yes, and there is a series of outcome fees.

**Senator WONG**—Does the service fee vary depending on the number of people referred?

**Ms Golightly**—Yes. Mr Waslin and Ms Durbin can talk about this in more detail than I can, but in DEN the service fee is more like assessment fees. It is a slightly different concept from Job Network. I make that clear.

**Senator WONG**—It is a bit more per cap?

**Ms Golightly**—Yes, there is an intake fee, an assessment fee, and then more or less we go into the outcome type fees.

**Senator WONG**—How many outcomes are there? Do you have that there? Are you able to give it to me?

**Ms Golightly**—For DEN capped, we have an intake fee of \$302.50; an assessment fee of \$610.50. We then go into the outcome fees, and at four weeks, depending on the level of disadvantage of the client, it can be anywhere between \$550 and \$1,837.50.

**Senator WONG**—That is dependent on level of disability?

**Ms Golightly**—Level of disadvantage.

**Ms Durbin**—That is right, Senator.

**Senator WONG**—How do you rate the level of disability—is that the JCA assessment?

**Ms Durbin**—No, there is a specialist disability tool; it is called the disability pre-employment instrument, and it looks at the support needs that individual clients may have. There is a classification of 1 to 4, and the funding levels depend on someone's rating under that instrument.

**Senator WONG**—Four weeks outcome and then—

**Ms Golightly**—Yes, and then 13 weeks, and the fee ranges from \$550 to \$1,837.50. Then there is a 26-week outcome fee which ranges from \$1,100 to \$3,674. There are also maintenance fees to help with maintaining that person in employment, and they range between \$357.50 and \$1,072.50.

**Senator WONG**—The maintenance fees are post the 26 weeks? Are they for services post—

**Ms Golightly**—It would be for whenever, if the person goes into employment, even at the four-week—

**Senator WONG**—A maintenance fee could be paid at any point after—

**Ms Golightly**—Yes, it is more of an ongoing fee to make sure that person is supported in the workplace. There is also a 39-week outcome fee, which is \$1,650.

**Senator WONG**—Thank you; is that it?

**Ms Golightly**—I think they are the main fees, yes.

**Senator WONG**—I assume you would be able to get for me the number of people at each of the levels, 1 to 4, who were the subject of each of those outcomes, so the number of those who went in at level 1—everyone will get an intake, everyone will get an assessment, presumably?

**Ms Golightly**—Yes, that is right.

**Senator WONG**—You could give me the number of level 1s, if level is the right term, in respect of whom received a four-week outcome, a 10-week outcome, and a 26-week outcome, a maintenance fee and a 39-week fee were paid?

**Ms Golightly**—Yes, we will take that on notice.

**Senator WONG**—If you could give me those in respect of all levels? In terms of capped, how far back does that data go?

**Ms Golightly**—All of this fee structure, both capped and uncapped, only started on 1 July.

**Senator WONG**—Could I have that to date then in respect of both capped and uncapped?

**Ms Golightly**—Yes.

**Senator WONG**—I suppose I will be able to work it out from the numbers. Is there a difference in performance between capped and uncapped in terms of the number of subsequent outcome fees that are paid?

**Ms Durbin**—In terms of performance, or in terms of funding?

**Senator WONG**—Performance. So, do more people in uncapped get to four, 10 or 26 weeks, or do more people in capped get to those weeks?

**Ms Durbin**—The uncapped stream only started on 1 July 2006, so in order to look at things like 26-week outcomes, we do not have enough data.

**Senator WONG**—All right. You will give me figures to date?

**Ms Durbin**—Yes.

**Senator WONG**—That was in respect of all the fees sthat you have indicated, if that data is available?

**Ms Golightly**—Yes. The fees I have just given you are for the capped stream only. There is another set of fees for uncapped. I understand that your question is for us to give you both, but I have not read into the record the uncapped fees.

**Senator WONG**—What are the uncapped fees, and are they for the same points but just different amounts?

**Ms Golightly**—Pretty much the same points, although I do not think there is a 39-week outcome fee in the uncapped stream.

**Senator WONG**—Would you just go through them?

**Ms Golightly**—Yes. The intake fee is \$302.50. We are calling this one the DPI fee, but that is basically an assessment fee—

**Senator WONG**—What is DPI?

**Ms Golightly**—That is the disability index that Ms Durbin mentioned—\$610.50. DEN uncapped get employment assistance fees of between \$247.50 and \$1,006.50, again depending on the level of disability. There are intermediate outcome fees at four and 13-week marks, and they range between \$220 and \$759. There are full outcome fees available at the four and 13-week marks of between \$880 and \$3,025. There are post-placement fees of between \$247.50 and \$704; an intermediate 26-week outcome fee of between \$440 and \$1,518; and a full 26-week outcome fee of between \$1,760 and \$6,050. I think I mentioned there was not a 39-week one but in fact there is, of \$1,650.

**Senator WONG**—I am just trying to compare them. It is quite a different fee structure for capped and uncapped. What is the rationale behind that?

**Ms Golightly**—Mainly, I would imagine the difference in the clientele. People in the uncapped stream have a much greater capacity to work, and we are providing some assistance to get them over some final hurdles, or to help them with their disability.

**Senator WONG**—Would it be fair to say that there is somewhat less assistance offered to the uncapped?

**Ms Golightly**—No. It could be an equal amount of assistance; it is that they are at a different stage and level of capacity.

**Senator WONG**—What is employment assistance in the uncapped stream?

**Ms Durbin**—The contact that the Disability Employment Network member would have with that job seeker is generally on a fortnightly basis, and that is the fee that is available to the organisation to provide that assistance to the job seeker. Disability Employment Network

members also do not have a job seeker account, so any assistance that they provide to the job seeker would normally come out of those employment assistance fees.

**Senator WONG**—The same levels, 1 to 4, apply?

**Ms Durbin**—Yes.

**Senator WONG**—Could you take on notice the same request in respect of those outcomes as well?

**Ms Golightly**—Yes.

**Senator WONG**—Obviously you do not have any 39 weeks?

**Ms Golightly**—No. The numbers could still be quite small, anyway, just depending on when the people started.

**Senator WONG**—I had assumed that.

**CHAIR**—Just before we leave that, I did ask whether you had provided those figures of the capped and uncapped referrals to the providers nationally and/or the general public, and you said no. Will they be provided at any stage?

**Ms Golightly**—How we usually talk about these types of figures with providers is if we are in meetings or presenting. I cannot imagine why we would not provide those figures at a national level. I do not think the opportunity has arisen since we have had a decent amount to talk about. I am going from memory here, so I apologise: I think I was asked very early in the piece, within the first six weeks, and it just was not appropriate to talk about it at that stage.

**CHAIR**—I understand that.

**Ms Golightly**—Mr Waslin has just pointed out that of course each individual provider knows their own referral figures.

**CHAIR**—Yes, of course.

**Ms Golightly**—I am just talking about the national figures.

**CHAIR**—Thank you.

**Senator WONG**—Now I will turn to Job Network.

**Dr Boxall**—Senator, we now have some information on Cyclone Larry.

**Ms Golightly**—My understanding from the notes is that the overall reduction to the 2006-07 estimate for Cyclone Larry of the \$5.6 million figure reflects two things: an increase of \$24.197 million for the extension to 26 weeks, but this is offset by a decrease of \$29.824 million, reflecting a reduction in the number of claims expected.

**Senator WONG**—That is, \$29.8 million down to \$4 million.

**Ms Golightly**—No. The actual reduction is \$5 million, but that is a net figure.

**Senator WONG**—Yes. You are giving me a net figure which reflects an increase of \$24.197 million to cover the extension in entitlement, which you described earlier, offset by a reduction from \$29.8 million to \$4 million?

**Ms Golightly**—No, a decrease of \$29.824.

**Senator WONG**—It did not make sense. To reflect decreased demand?

**Ms Golightly**—Yes—the decrease in the number of claims expected. I think we were also asked for the actual expenditure to date. I think someone mentioned \$44 million. We have double-checked; it is actually \$47.2 million, but that is a total between the financial years 2005-06 and 2006-07.

**Senator WONG**—Thank you. Was that all?

**Ms Golightly**—Somebody might have mentioned the number of claims approved being 1,552; it is actually 1,578.

**Senator WONG**—Can I move to the Job Network?

**Dr Boxall**—Yes.

**Senator WONG**—In previous estimates you have indicated to me that the process in relation to the job seeker account is that an amount is credited when a person enters the system.

**Ms Golightly**—Yes, at the appropriate point that they—

**Senator WONG**—I just want to drill down into that a little bit more. What is credited when, if you could continue?

**Ms Caldwell**—I am just getting the schedule for you.

**Senator WONG**—Is that in the schedule of fees in the contract?

**Ms Caldwell**—It may be; it is certainly in the contract schedule, and I believe that we may have tabled it last time we had this discussion. Your question goes to the actual timing of the gates?

**Senator WONG**—How much, when? Are we going to have 20, because if it is going to be 20 we will just get the paper. How many points are we talking about?

**Ms Caldwell**—There are a number of points. It differs by job seeker type. I can explain to you the basic structure and we can table the details of the correct figure after that.

**Senator WONG**—What do you have here?

**Ms Golightly**—We will have it in the contract; it is just a matter trying to find the right page.

**Senator WONG**—I did not bring my tabled contract—sorry. Can I have another one so we can talk about it with the same document in front of us. Is that possible?

**Ms Golightly**—Okay.

**Senator WONG**—Do not give me one that has any notes on it that might disclose something bad—'Don't tell Wong this' or something.

**Ms Caldwell**—I was looking for a table—in fact it is in the clauses on page 13 of our contract.

**Senator WONG**—I said I did not bring my contract, so if we are going to do this, does the department have another copy of the contract? If so, I would be very appreciative. I appreciate this, Dr Boxall, thank you.

**Dr Boxall**—You are welcome, Senator Wong.

**Senator WONG**—Where are we at, Ms Caldwell?

**Ms Caldwell**—We are looking at page 13 of the contract—it commences on page 12 in definition AQ: job seeker account means a quarantined pool of funds.

**Senator WONG**—Okay.

**Ms Caldwell**—Page 13 then goes on to specify those funds, the amounts and at what stage they are paid to whom.

**Senator WONG**—This conflates outcome fees plus job seeker account—no, this is all job seeker account.

**Ms Caldwell**—No, Senator, that list of figures relates to the amount of notional credits of job seeker account that is made available to Job Network members for each of those events.

**Senator WONG**—I would like to ask some questions now about numbers entering and transiting through each of the points in the continuum for job seeker account—

**Ms Golightly**—We might not have that detail with us, Senator, but if you ask the questions, we will endeavour to answer them.

**Senator WONG**—Before I start, can we be clear about what you track in relation to this information. Presumably for 2005-06 and 2006-07 you have figures for the total number of people that went through each of these gates, as it were?

**Ms Golightly**—I would imagine so, yes.

**Senator WONG**—That is what I want.

**Ms Golightly**—Yes, okay.

**Senator WONG**—I presume you will have to take that on notice, Ms Caldwell?

**Ms Caldwell**—I think we will, yes.

**Senator WONG**—I would like that for 2005-06 and 2006-07 to date in relation to each of the—what do you call these?

**Ms Golightly**—If you mention job seeker account gates, we will understand.

**Senator WONG**—Job seeker account gates described at pages 12 and 13 in the contract for the years 2005-06 and 2006-07?

**Ms Golightly**—Certainly, Senator.

**Senator WONG**—Thank you. Do you have an average per person? I think you have given me that before.

**Ms Caldwell**—We have an average expenditure per person.

**Senator WONG**—Has that altered since we last had this discussion?

**Ms Caldwell**—I believe it has; I have updated figures for it. I can give you figures for the period July 2006 to December 2006—that is the average expenditure per job seeker for each of the job seekers who were assisted during that period. The average figure in that six-month period is \$472.



**Senator WONG**—And what about actual expenditure—the actual total amount?

**Ms Golightly**—I think that would be the actual average. It is the average of the actual expenditure.

**Senator WONG**—Yes, I want the total.

**Ms Golightly**—The total, sorry.

**Ms Caldwell**—For job seeker account in the period 1 July 2006 to 31 December 2006, that was \$74,859,000.

**Senator WONG**—So \$74,859,000 was actually spent in the six months to 31 December 2006?

**Ms Caldwell**—Yes.

**Senator WONG**—Do you do it six-monthly? Do you have figures to the end of January?

**Ms Caldwell**—No, the figures I have in front of me on that item are taken over that six-month period.

**Senator WONG**—What was the total amount credited for the same period?

**Ms Caldwell**—The total amount of credits during that period was, of course, higher than the expenditure—and that was \$155,113,000.

**Ms Golightly**—The other thing is that the notional bank does not lapse year on year.

**Senator WONG**—Do you keep accruing it—is that what you are saying?

**Ms Golightly**—Yes, it accrues for the life of the contract.

**Senator WONG**—How much is in it now?

**Ms Golightly**—While Ms Caldwell is looking for that, I mentioned that simply because you cannot necessarily compare the \$74 million to the \$155 million.

**Senator WONG**—I am sorry, maybe I misunderstood the question. I thought when I said total amount credit you were talking about additional credits to the system in that period versus expenditure. Your point is that there are people in respect of whom there has been a credit for which there has been no expenditure because of the time lag, is that right?

**Ms Golightly**—No, it is actually slightly different. The \$74 million that was expended may well have been credits from another year.

**Senator WONG**—Yes, I understand that. So the total amount credited is \$155 million. What is the total amount credited over the life of the contract?

**Ms Caldwell**—Over the life of the contract, there were total job seeker account credits of \$889 million for the first three years of the contract up to June 2006.

**Senator WONG**—So that is from 1 July 2003 to 30 June 2006—what were the credits and total expenditure?

**Ms Caldwell**—Total credits were \$889 million; expenditure over that period was \$591 million.

**Senator WONG**—Presumably the difference accrues?

**Ms Caldwell**—These are notional credits not cash payments, so the difference is the pool that is available to Job Network members to assist their clients on an ongoing basis.

**Senator WONG**—Was there any adjustment in these additional estimates for any reduced anticipated expenditure on the job seeker account?

**Ms Golightly**—It is not that specific. The reduction is of Job Network appropriation as a whole, of which this is part.

**Senator WONG**—I appreciate that, but that was not a specific issue mentioned, so I am just clarifying. I did have one question, while I remember it, relating to the income support question. In discussions of the change to the income support appropriations for all the working age payments, there was an indication that there was no change in rate reflected in that alteration. I note that the additional estimates statement refers to indexation parameters at page 26. Could someone clarify that?

**Dr Boxall**—The indexation parameters, which come from Treasury, would be applied to that.

**Senator WONG**—I am sorry?

**Dr Boxall**—The rate would be based on the indexation parameters from Treasury. The increase in the rate of payment will be based on the indexation parameters from Treasury.

**Senator WONG**—What was the change in the indexation parameters that is reflected?

**Dr Boxall**—That goes to what the parameters from Treasury are, and we cannot give out that information.

**Senator WONG**—Did you have anything to add, Ms Graham?

**Ms Graham**—Just to clarify, the change in parameters for the income support payments is in the line item which is the revised estimate. It is all tied up. At the bottom of that table, where it says ‘parameter adjustments’ and there are only figures in the out years, that is indexation that is generally applied to the other programs, not income support payments.

**Senator WONG**—Sorry, are we at page 13?

**Ms Graham**—Yes, page 13.

**Senator WONG**—Where are you looking? Do you mean the parameter adjustments down the bottom?

**Ms Graham**—Sorry, I am talking about the parameter adjustments in the middle of the page. I am just making the distinction between parameters for income support versus other program parameter adjustments.

**Senator WONG**—But at page 26, it states:

Administered special appropriation for 2006-07 have decreased by \$525.8 million ... The reduction is associated with the revised estimates of expenses for income support payments. Factors influencing the revised estimates include changes in forecast beneficiary numbers, average rates of payments and indexation parameters.

**Ms Graham**—That is right.

**Senator WONG**—I assumed that was referring to that one line item?

**Ms Golightly**—It was. Ms Graham is just drawing the distinction. For income support payments, it is within the line item; for other programs, there is a separate line item.

**Senator WONG**—I misunderstood, thank you. Returning to the Job Network, were we talking about average per person? You gave me that, didn't you?

**Ms Golightly**—Yes. We were talking about job seeker account average expenditure per person and also in total.

**Senator WONG**—What was the average?

**Ms Caldwell**—For those people who were assisted through the job seeker account, in the period July 2006 to December 2006, the average was \$472 per person.

**Senator WONG**—Yes, I have that. What was it for the previous financial year?

**Ms Caldwell**—I have a whole-of-contract figure for average expenditure prior to that.

**Senator WONG**—Which was what?

**Ms Caldwell**—For the period from July 2003 to June 2006, the average expenditure per job seeker assisted through the job seeker account was \$980.

**Senator WONG**—I know that it is a small period of time, but why is there such a marked reduction?

**Ms Caldwell**—It would depend on the assistance that was being provided and the needs of the individual job seeker, as it always does. In particular, we are looking at six months of data in that period, which includes the opening of a number of new Job Network sites as a reflection of the tender outcomes. Where that occurs, it may take some time before Job Network actually has trigger payments for payments of wage subsidies, for example, and there is also a number of new job seekers flowing in over that period.

**Senator WONG**—Is there a change in policy parameters or guidelines associated with the entitlement to expenditure that would reflect the almost halving of the expenditure?

**Ms Golightly**—There was a change in guidelines, but that was an administrative issue, not feeding into the estimates. The estimate reduction was simply because of the modelling that we were talking about before.

**Senator WONG**—But what about the change in actual expenditure in the last six months, vis-a-vis the three years previous?

**Dr Boxall**—I do not think they are directly comparable. For example, you could have somebody in the three-year period who received job seeker account payments over a period of 12 months, whereas by definition, in the new period, they have only had six months. Let us say somebody started receiving benefiting from job seeker account payments in July, and they are likely to go on for nine or 10 months, there would still be some additional expenditure.

**Senator WONG**—Is changing guidelines one of the issues we discussed before in terms of the minister indicating a different view about what could be spent or not spent?

**Ms Golightly**—I believe we have discussed that before, yes.

**Senator WONG**—That is what you are referring to?

**Ms Golightly**—Yes.

**Senator WONG**—Ms Caldwell, you have given me the average expenditure for the life of the contract. Could you give me that on a financial year basis? You may need to take that on notice. What was the average expenditure in the first year, second year and third year?

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

**Ms Golightly**—I have an answer to another question from Senator Wong that we took on notice this morning. The question related to the reduction in Centrelink funding for the better assessments, and the approximate split between output 1.1.1 and 1.2.1. The split is 88 per cent to 1.1.1 and 12 per cent to 1.2.1.

**Senator WONG**—Thank you. Your estimate was not far off.

**Ms Golightly**—Ms Graham knows her figures.

**Senator WONG**—That she does. I appreciate the figures you have given me about the crediting of job seeker accounts, et cetera, on notional, but they are reflected in the current estimates. There is no reduction over the life of the contract; so far actually you have spent \$200 million and something less than was credited, but there is no actual reduction in terms of the appropriation.

**Ms Golightly**—Because this is all part of one appropriation, and if there is a reduction to the appropriation then we have to live within the revised estimates. There is no reduction, for example, to the amount that would be credited or what people are entitled to. It is simply another flow-on from some of the numbers like customer numbers reflected in what we expect to be credited.

**Senator WONG**—Yes. I understood in our discussion about the variation that is in the additional estimates statement that, essentially, you have a model—and a whole range of inputs go into that which you are not going to tell me about—and as a result of that you work out what your likely demand, and therefore like cost, will be?

**Ms Golightly**—Yes, that is correct.

**Senator WONG**—To ask a slightly different question is there a specific alteration to any estimate as a result of a notional underspend in the job seeker account?

**Ms Golightly**—Not specific, although I think, as Ms Graham mentioned, a part of one of the factors that goes into the overall model is actual trend of expenditure over history, and that would include any Job Network expenditure. There it is indirectly, yes.

**Senator WONG**—But it is part of the model.

**Ms Golightly**—Yes.

**Senator WONG**—For a lay person who had \$889 million credited and only spent \$591 million, you do not therefore reduce that appropriation by \$280 million?

**Ms Golightly**—No.

**Senator WONG**—But it is a factor that might be taken into account in terms of the total appropriation—

**Ms Golightly**—Total trend in expenditure.

**Senator WONG**—Presumably it would take a number of years, or is there a period of time for that trend to result in an alteration?

**Ms Golightly**—That is right. The model is populated by historical factors, but it is at the highest level, the total appropriation level, and also estimates of what we think will happen going forward.

**Senator WONG**—Returning to the disability advisory group—

**Ms Caldwell**—I have an answer to a question you asked earlier, through the chair. The committee asked for the current balance of available notional funds in the overall pool of job seeker accounts. I can advise the committee that there is currently a balance of \$278 million notionally available to Job Network members as at 2 February.

**Senator WONG**—Thank you for telling us that. I assumed that the notional availability in the 2006 period would be the difference between the expenditure and the credit.

**Ms Golightly**—This goes to the point I was trying to make—it is not a direct relationship.

**Senator WONG**—This is the time lag issue. Notionally there is available as at 2.2.07 a total of \$278 million?

**Ms Golightly**—That is correct.

**Senator WONG**—Mr Carters, it is not just the disability advisory group. We have had some discussion previously about what employer demand strategies in terms of disability employment the department was undertaking. I would like an update on those activities. They include the employer roundtable and any associated projects. Essentially, what is the department doing in relation to employee demand or employee education processes for the employment of people with a disability?

**Mr Carters**—The department is doing a number of things on behalf of the government. The first is that a job access website has been set up. It has been improved over a period of time so that it provides a very good service for employers and people with disabilities, and for service providers.

In particular, that website provides not only a lot of information to people wanting to employ people with disabilities but also direct access to the workplace modification scheme, which was one of the key announcements in the Welfare to Work package. A \$25 million package was there for workplace modifications. As well as that—

**Senator WONG**—What was the name of the website?

**Mr Carters**—Job access.

**Senator WONG**—Is that publicly available? It is not an internal site?

**Mr Carters**—It is publicly available.

**Senator WONG**—Sorry, go on.

**Mr Carters**—Another thing that is covered through that, which has also been provided, is the mental health first-aid kit. It is an e-learning kit for use in the workplace. It basically provides lots of detail and services for people to understand how best to work with people with mental illness. That is a very good learning tool as well for employers.

**Senator WONG**—A mental health tool kit?

**Mr Carters**—Yes.

**Senator WONG**—Is that accessible from the website?

**Mr Carters**—Yes, it is.

**Senator WONG**—Sorry, go on.

**Mr Carters**—Many versions of that have been sent out to employers and so on as well.

**Mr Sandison**—Some of the other elements in that area are around Job in Jeopardy, so there are programs are run through outcome 1 linked into the disability specialist providers. That is the workplace modification scheme, with the increase in funding. That is linked to the job access website. A lot of the work has been to improve the turnaround time for approval time periods.

**Senator WONG**—Jobs in jeopardy is a mechanism to access the workplace modification scheme?

**Mr Sandison**—I should not have run them together. Workplace modifications is one program. It received a significant increase in funding and it is being run now through job access to give direct access to employees, individuals and services to make their claims. That has boosted the process, but also increased the amount of money going out for modifications to be done. There is also the Job in Jeopardy program that received some additional support as well for taking care of people where they are in work but at risk of falling out of employment. That was another element.

**Senator WONG**—How much is allocated to jobs in jeopardy, and where does that appear in the PBS?

**Ms Golightly**—It is part of the appropriation for employment assistance and other services.

**Senator WONG**—How much is that program?

**Ms Golightly**—I am not sure that we have the break-up.

**Mr Sandison**—We would have to take it on notice to get the breakout from the payments.

**Senator WONG**—If you could. What does that involve?

**Mr Sandison**—I am sure the details could be provided by somebody, but it is an engagement of the person who is already in the workplace back with a specialist service.

**Senator WONG**—A DEN service?

**Mr Sandison**—Like a DEN service.

**Senator WONG**—Is an additional outcome fee paid?

**Mr Sandison**—I will look that up.

**Ms Durbin**—The jobs in jeopardy component is delivered under the Disability Employment Network, so it forms part of the appropriation that Ms Golightly mentioned. Generally, what happens is a Disability Employment Network member would come across the job seeker, either the employer or the job seeker would contact them indicating that they

needed additional support to maintain that employment, and that would be delivered through the Disability Employment Network. There is no outcome payment per se; it is just a payment that is available to the Disability Employment Network member to be able to support that employer do any retraining or support a co-worker.

**Senator WONG**—How much is the payment?

**Ms Durbin**—We will come back to you on that. We will look it up.

**Senator WONG**—We are scrolling down. For the workplace modification service, there was an increase in funding in the 2005-06 budget announcement.

**Mr Sandison**—And right through. Yes, that is right.

**Senator WONG**—What else?

**Mr Carters**—We have talked about job access. That also includes the mental health e-learning package. The job access site also has advisers that are on hand. They are experts that are there to help people to adjust—

**Senator WONG**—Yes, I saw that. How many people are engaged in that activity?

**Mr Sandison**—I will find out how many calls they have had.

**Senator WONG**—Is it a full-time adviser? How does this work?

**Mr Sandison**—It is run out of an organisation in Western Australia. They won it through tender and they have staff on hand that provide a working hours inquiry line.

**Senator WONG**—It is fully tendered?

**Mr Sandison**—Yes.

**Senator WONG**—Can you tell me the cost of the tender and the organisation?

**Mr Sandison**—I will take that on notice.

**Mr Carters**—There is also a broader communication strategy, which is part of the broader Welfare to Work communication strategy, which also obviously focuses on people with disabilities. That is an important one, particularly to encourage employers to take on more people with disabilities. Part of that obviously is rolled out in the first six months of the year, and more will be rolled out in the media throughout the next six months and onwards.

**Senator WONG**—There will be more media in the next six months?

**Mr Carters**—Yes. As well as that, on the employee demand side, there are many projects being run which Mr Manthorpe might like to discuss.

**Senator WONG**—Before we move to that, if you do not mind, because I am aware that the chair wants to finish at 12.25—so we might need to come back to you, Mr Carters—are you able to tell me the cost of the website or how much is allocated for the job access website?

**Mr Sandison**—We would have to answer that on notice, with the information about the tender.

**Senator WONG**—I am sorry, I thought only the advisers was the service that was tendered out?

**Mr Sandison**—And they assist with the running of the website, so there is a link.

**Senator WONG**—If you would let me know what that is. What is the mental health tool kit funded out of?

**Mr Sandison**—We received some funding for mental health related issues in the Welfare to Work, and that was one of the issues that was linked to it, so it is a combination of job access and the mental health funding. You asked about how many of those CDs and access to job access. Year to date, about 2.5 million pages have been accessed on the job access website, and inquiries to the advisers is at about 5,500, year to date. About 7,500 of the CDs, which is the primary delivery mechanism for the mental health first aid kit, have been provided so far.

**Senator WONG**—How much money is allocated to the mental health tool kit?

**Mr Sandison**—I would have to check. It is now been completed, and I would have to check what the details were.

**Senator WONG**—So there are no more to be sent?

**Mr Sandison**—No. We outsourced the development of the CD.

**Senator WONG**—But there is the development and then there is distributing it. Are no more to be distributed?

**Mr Sandison**—I would have to check whether we have just done a production run of X thousand and have them available, or whether there is a continuing supply.

**Senator WONG**—This might be a convenient time to break, Chair.

**CHAIR**—Yes, thank you. The committee needs to have a private meeting now. The whole of the committee will break for lunch and we will resume at 1.30.

**Senator WONG**—I understand that Senator Crossin had some questions on Indigenous employment. If it is acceptable to the committee, when we come back at 1.30 we propose to do half an hour on Indigenous employment issues.

**CHAIR**—Yes, all right.

**Proceedings suspended from 12.24 pm to 1.33 pm**

**CHAIR**—We are still considering outcomes 1 and 3.

**Dr Boxall**—If now is a good time, we have an answer to an earlier question.

**CHAIR**—Please go ahead.

**Ms Golightly**—It is in regard to the number of referrals and commencements in DEN, capped and uncapped. As at 2 February 2007, the referrals to the capped part were 20,050 and to uncapped part were 5,867. Commencements, as at the same date, were 12,020 for capped and 5,013 for uncapped.

**CHAIR**—Thank you.

**Ms Golightly**—I also have the answer in terms of fees for the Job in Jeopardy program. With regard to the Job in Jeopardy items in the DEN, currently 815 people have been assisted. In the uncapped part of DEN, they get an intake fee of \$302.50 and a post-placement fee of



\$247.50 for six months. In the capped part of DEN, they get an intake fee of \$302.50, an assessment fee of \$610.50 and employment maintenance fees, which range from \$357.50 to \$1,072.50 depending on the level of disability. That is paid per month.

**CHAIR**—Thank you, Ms Golightly.

**Ms Golightly**—There was also Job in Jeopardy in another program, which is Vocational Rehabilitation Services. The number assisted there is 242. The fees there consist of a service fee of \$2,579.50 and a 26-week outcome fee of \$3,190.

**CHAIR**—Thank you. Senator Crossin, you have questions on Indigenous employment.

**Senator CROSSIN**—I mainly have questions around CDEP. I want to clarify some of the issues in relation to answers to questions I got back. I am assuming you have brought most of those answers with you. Question W799 relates to the Australian Indigenous Leadership Centre. You say that the AILC fully met the criteria. What were the criteria? Could you provide a copy of the criteria to the committee?

**Mr Harvey**—I will provide further information. Basically, when we say ‘met the criteria set by the department’ we were looking for someone who could deliver the program. That was the first point. Secondly, they ran a pilot. With the pilot we were looking at engaging with CDEPs to develop leadership skills in CDEPs. We set two locations for that to occur. That did occur and they basically did that. Shortly we should have an evaluation report from them.

**Senator CROSSIN**—Where is the AILC based?

**Mr Harvey**—They are located in Canberra.

**Senator CROSSIN**—When you say that they had a proven track record, what does that mean?

**Mr Harvey**—They run courses across Australia already in terms of certificates II and III. They run them for a range of organisations and individuals. We based it on that. The consultants who work with AILC have done work in the Public Service and for a range of organisations. So they do have a proven track record and they are very good in terms of the courses they run, the way they set them up, the way they motivate people, and the follow-up as well.

**Senator CROSSIN**—Do they provide specific leadership training?

**Mr Harvey**—Yes, they do.

**Senator CROSSIN**—In my question I referred to IAD and CDU. Was an assessment made against those two institutions in relation to AILC?

**Mr Harvey**—No. We looked for particular organisations that had a track record in dealing with Indigenous organisations. We knew that this was a good organisation. We were also aware of other organisations. I am not aware that we looked at those two organisations. It was only a very small contract and we were trying to find someone who could run a leadership course because there is a significant challenge to find organisations that have a proven track record in running Indigenous specific leadership courses.

**Senator CROSSIN**—What was the value of the contract?

**Mr Harvey**—It was \$66,000.

**Senator CROSSIN**—Was it put out to tender?

**Mr Harvey**—No. We just went for three quotes.

**Senator CROSSIN**—I am puzzled particularly as to why neither IAD, which is the Institute for Aboriginal Development, nor Batchelor college, which is an Indigenous specific TAFE and a higher education college with a campus in Alice Springs, were approached in the first instance, given that they had local knowledge.

**Mr Harvey**—We started off looking at the areas around northern New South Wales and then we started to go beyond that into other locations, such as Alice Springs. We talked to a number of people that other government agencies had used and to our state managers as well about who had particular leadership skills because we were looking beyond just generalist types of skill; we were looking for someone who could run leadership types courses. From our information, we were not aware that there were a significant number of organisations that delivered particular leadership skills.

**Senator CROSSIN**—But you did not have a discussion with Batchelor or IAD to find out if they could do this, did you?

**Mr Harvey**—I do not recall that we did, no.

**Senator CROSSIN**—In an answer to me you told me that there were 18 participants from the Alice Springs region. Did all of these 18 participants complete the course successfully?

**Mr Harvey**—Ten participants received a certificate IV, six participants received a certificate II, one participant withdrew and one participant received a statement of attainment for certificate IV. Those were the outcomes.

**Senator CROSSIN**—Which CDEP organisations were asked to nominate applicants?

**Mr Harvey**—There are quite a significant number of CDEP organisations around the Coffs Harbour region and also around Alice Springs. One of the challenges that we had with this course was attracting people from within the CDEPs to participate. We allowed for up to 30 participants and we ended up with only 18 participants that AILC were able to attract. There were two challenges: the first was to find someone who could deliver it, and the second was to get Indigenous people to participate in it. We were offering a certificate course which is a significant advantage in terms of leadership.

**Senator CROSSIN**—Which CDEP organisations in Alice Springs were targeted?

**Mr Harvey**—It would have been Tangentyere and the other CDEPs in that location. Our contract managers, together with the organisation, would have gone to all the CDEPs within that location. There are up to 15 CDEPs in Alice Springs, so we would have targeted them, and there are about 10 in Coffs Harbour. So we had a large number of CDEPs in both these locations but, again, we could only get 18 people to participate.

**Senator CROSSIN**—Will there be an underspend of the \$66,000 now, if you were expecting 30 participants?

**Mr Harvey**—Leadership is critical—and you would appreciate that—to running Indigenous organisations. Across government, a range of agencies are looking at what we can

do about leadership. On the basis of the report and what comes back, I am sure that we will be again pursuing leadership courses, because they are critical to improving the delivery of services. We will look more broadly at the two organisations you suggest. We did look broadly across Australia, but we will look more broadly in the future.

**Senator CROSSIN**—In your answer to question No. W802 there were two residential components. One was in Coffs Harbour, but I am not sure where the second one was.

**Mr Harvey**—It was in Alice Springs.

**Senator CROSSIN**—The Yarrawarra Aboriginal Community is in Coffs Harbour, I take it?

**Mr Harvey**—Correct. The main work was done in Coffs Harbour and then they went across to Alice Springs as well. That was because the bulk of the people were in Coffs Harbour.

**Senator CROSSIN**—A valuation of the program is currently being done by AILC?

**Mr Harvey**—That is correct.

**Senator CROSSIN**—Which will be completed by?

**Mr Harvey**—We would hope this month.

**Senator CROSSIN**—Will that then determine whether or not it will be an ongoing program?

**Mr Harvey**—Correct. As I said, there is a lot of interest across the public service, not only in the Australian government but also in state governments, about finding effective leadership courses. So we have dealt with it across the Australian government and we have had consultations with state governments, where there is also an interest in this whole area of leadership. It is an area we have to pursue. We have to find organisations that can deliver leadership courses to Indigenous people within Indigenous organisations.

**Senator CROSSIN**—In question W806 I asked you about which CDEP organisations run training programs. I take it from your answer that DEWR does not bother to ask if CDEP organisations are running training programs. Are you telling me that is a question for DEST or that you do not ask for that information at all?

**Dr Boxall**—No, we are not saying that we do not bother to do it; we are saying that the requested information is not kept by DEWR nor is it readily available.

**Senator CROSSIN**—So my question is: is that a question I should ask of DEST? Do you liaise with DEST in relation to training from CDEP organisations, or is it not something you ask them to report on?

**Mr Harvey**—We require that CDEPs have a capacity-building plan, and part of that capacity-building plan is about training, developing their officers, financial controls, governance and a whole range of things. In our contract management monitoring visits we are interested in looking at what is in the capacity-building plan and in seeing that those capacity-building plans are in place. That is in regard to the people who supervise the courses and deliver the programs within CDEP. Equally, we are interested in what is happening to the participants—whether they are getting a qualification through participating. Again, we do that

through our contract management monitoring visits and our reviews of CDEPs, but we do not store all of that information. We store an overview of a capacity-building plan, but it is not detailed. It is basically just an opportunity to say that they are doing things in the area of governance, training and whatever, but it is not detailed down to the level you are looking at.

**Senator CROSSIN**—That would have been easier to understand if you had included a bit more of that information in the answer. What I was trying to get a handle on—and I know there are a whole range of CDEP organisations—was whether you kept statistical information about what courses they might have offered and at what level and what training they did.

**Mr Harvey**—No, we do not.

**Senator CROSSIN**—I turn to the next lot of answers to questions on notice, W807. You say there that you do not provide governance training to organisations.

**Mr Harvey**—No, as we did with AILC, if there is a need for governance training then we outsource that. We encourage CDEPs, as part of their development, to engage with any organisation that can offer governance and training to their staff. That is part of their responsibility as a CDEP organisation. So, again, we do not keep information on that apart from the overview information held in the capacity-building plan.

In terms of the qualifications, basically many of our staff have a contract management qualification—though it is more general in terms of assessing the needs of an organisation and how it is running. We are not particularly looking for whether they understand education and training. Many of them have backgrounds in employment, education, training and a whole range of areas, but we are not actually looking for those qualifications in our contract and account managers; we are looking for people who have a qualification who can basically contract manage organisations: make sure that they are delivering the service and that we are monitoring the service.

**Senator CROSSIN**—You can probably guess where I am heading here. If an organisation is actually having governance problems, what responsibilities does DEWR have and what does DEWR do, even as part of your contract management visits, to actually help those organisations?

**Mr Harvey**—The first thing we do is to make a risk assessment of all organisations. These risk assessments may surround financial governance and a whole range of areas.

**Senator CROSSIN**—When do you make that risk assessment analysis?

**Mr Harvey**—We make that on the basis of the conversations we have and the visits and the monitoring that we do.

**Senator CROSSIN**—Could that be at any stage of the contract?

**Mr Harvey**—It can be at any stage, but it is generally at the beginning of the contract. We then determine the level of risk. If the organisation is a higher level risk organisation then we will visit them a lot more and will work a lot more closely with them. The capacity-building plan is the next step because that basically specifies the areas in which they need to develop. We tick off on that capacity-building plan. We write this into our contracts—for example, our funding agreements. If there is a requirement for governance training, we will actually say that: that this funding agreement is subject to you having governance training in place for

your board—and it might even require training for supervisors. So we specify that on the basis of the risk assessment that we make. We would then go back during the year and make sure. For example, it could be a governance requirement that board meetings were regularly held and that minutes were in place. There are a range of things that we have suggested about having accountants and lawyers on boards. We have suggested a range of things like that to basically improve the governance of organisations.

**Senator CROSSIN**—How many CDEP organisations would have faced a risk assessment in the last 12 months?

**Mr Harvey**—Everyone of them has a risk assessment.

**Senator CROSSIN**—At the beginning of the contract?

**Mr Harvey**—Yes, everyone has a risk assessment done against them. That is the basis of how intensively we contract manage them.

**Senator CROSSIN**—I see.

**Mr Harvey**—It is part of the way we do business at the beginning of the contract. Even before we sign a contract, we have made an assessment of the risk associated with that organisation—and that is what we build into not only the funding agreement but also the capacity-building plan.

**Senator CROSSIN**—So what questions should I ask you here—which CDEP organisations are high risk? Is that what I should be asking?

**Mr Harvey**—We have that information, though I cannot give it to you now. The way we monitor that is that in each of our state offices we have risk committees, and I have a national risk committee. We have a list of high-risk CDEPs. We meet, I think, monthly; we review those high-risk CDEPs and we talk to our states about what strategies are being put in place. Within our state offices they do the same thing. They are always looking at the high-risk CDEPs and the high-risk other service providers and looking at strategies. For example, instead of a full-year contract we will have a part-year contract, and continuation of that contract will be subject to a range of things being put in place.

**Senator CROSSIN**—In terms of capacity-building plans, would you expect that out of all CDEP organisations?

**Mr Harvey**—Yes.

**Senator CROSSIN**—Are the capacity-building plans confidential documents? Are they a commercial document between you and the provider?

**Mr Harvey**—They would be commercial-in-confidence, but the format is very standard. It basically asks about a range of things, as I said—about governance and training and how they operate their organisations. But yes, it is a part of the documents that we keep on each organisation, so it would be commercial-in-confidence to our organisation.

**Senator CROSSIN**—You would know I am leading to a question about the Central Australian communities of Imampa, Kaltukatjara and Mutitjulu?

**Mr Harvey**—Yes.

**Senator CROSSIN**—Was that a high-risk operation?

**Mr Harvey**—It was very high risk.

**Senator CROSSIN**—Very high risk?

**Mr Harvey**—Yes.

**Senator CROSSIN**—So we have ‘very high risk’ and ‘high risk’ now?

**Mr Harvey**—We have actually also got ‘extreme risk’.

**Senator CROSSIN**—‘Extreme risk’! I do not even want to ask for that list because I am sure it is not publicly available. I am assuming that they would have had intensive visits?

**Mr Harvey**—Yes.

**Senator CROSSIN**—In what ways were they failing to manage the program?

**Mr Harvey**—It was around basic management of the whole program—financial management. It is all around board meetings and just managing the organisation. There was basically a breakdown in the delivery of service through those organisations. We are very interested in continuing to provide a CDEP service across those communities and we are currently assessing a number of applicants to put in place a CDEP. As you would know, it is an area that is significantly challenged. We would be looking to have on the board, as far as possible, accountants and lawyers to assist in running that organisation across those four communities.

**Senator CROSSIN**—Can you tell me about how the contract for the new provider for those communities was advertised?

**Mr Harvey**—We tend to look within the community first to see if there are other CDEPs that could run it. We look to see if there are other employment service providers. And then we approach those organisations which we consider could deliver the service and we go out for a limited tender process. We look at who in the region could deliver it. Firstly we ask, ‘Is there a CDEP that could run it?’ and secondly, ‘Are there others?’ That is the process that we go through. We ask those providers if they want to put in a bid to run the CDEP. If they do, we go through the process of getting them to—

**Senator CROSSIN**—Did this actually go out to tender or was ITEC chosen because it was already in the Territory?

**Mr Harvey**—We do not go out—we have a limited tender, basically—

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

**Mr Harvey**—and we just go to those organisations that are in the region that can deliver it.

**Senator CROSSIN**—And ITEC was one of those because they are in Tennant Creek; is that correct?

**Mr Harvey**—Yes, they are. It is a tender.

**Senator CROSSIN**—So it would have gone to ITEC—and who else?

**Mr Harvey**—I should have that detail but I have not got it with me. We currently have two applications that are being considered.

**Senator CROSSIN**—I will have to put a lot of these on notice because I am under pressure to finish in one second.

**Senator Abetz**—That is a pity.

**Senator CROSSIN**—It is a pity because there are a lot of issues here. I had similar questions to ask you about Umbakumba council as well, of course.

**Mr Harvey**—Regarding that CDEP, I have been advised that that was advertised in the press.

**Senator CROSSIN**—In the Alice Springs press? It does not really matter where it was advertised, I guess.

**Mr Harvey**—I cannot tell you exactly where.

**Senator CROSSIN**—I have to wind up. I have a lot of issues here for you. I have had a lot of representation about the 300 participants at the Darwin regional and Larrakia CDEP. My understanding is—and correct me if I am wrong—that, come the end of June, those people will move onto Newstart. Is that correct?

**Mr Harvey**—The minister has not come out with a decision about that. He is still looking at the outcomes of the consultations that we had. We expect an announcement in the near future, but he has not come out yet and made a statement about Indigenous employment service delivery for urban and major regional centres.

**Senator CROSSIN**—'Soon'. Are you telling me to watch this space?

**Dr Boxall**—Shortly.

**Senator CROSSIN**—Shortly. There is an issue here. You actually have 300 people who are engaged daily. The question I am continually being asked now by those people is, in order to continue that activity, will they be moved onto Work for the Dole. If they move onto Newstart, they will not be expected to continue that activity. What happens to their involvement in the projects they are in?

**Mr Harvey**—I will have to answer that after the minister makes an announcement. The discussion paper that was put out talked about options. We dealt with those in the consultations in Darwin. That consultation paper talked about moving participants into structured training and employment, but first placing them on income support. In the model that was proposed, a number of them would remain in activities. The activities would focus on employment and training outcomes. As set out in the discussion paper, it is all about ensuring that it becomes a stepping stone to jobs.

**Senator CROSSIN**—Yes, I read that. Three hundred is a lot. Has consideration been given to moving the CDEP money from DEWR to those organisations so they can employ these people for even four hours a day—just shifting the money to create employment?

**Mr Harvey**—We are getting into trying to pre-empt what the minister is going to announce. Could we have this conversation in June?

**Senator CROSSIN**—That is pretty close to 30 June. There are 300 people who like what they are doing and want to keep doing it; that is all.

**Mr Harvey**—We can give you an assurance that, whatever the minister decides, there will be comprehensive transition strategies put in place to ensure that participants who are currently in CDEP will be comprehensively looked after. There are all sorts of arrangements for participants on wage subsidies to get them into jobs. The proposal talked about the vast majority going into structured training and employment, which again is a more immediate pathway to employment. As soon as the minister makes an announcement, we will work very closely with the CDEP in Darwin. We have already been working very closely with the CDEP in Darwin on transition arrangements in anticipation of a future decision. But of the utmost importance for the government, and for us, is ensuring that participants go through training and employment and get a job and that the process that is put in place provides better options for Indigenous people than currently exist.

**Senator CROSSIN**—I know I talk about the 300 in Darwin, but perhaps you could take on notice for me other areas and numbers that will be affected by this, because I know it is not just Darwin; I know it is very Territory focused. But there must be other capital cities or other regions—

**Mr Harvey**—There are, Senator, yes.

**Senator CROSSIN**—that will also be affected by this. So I wouldn't mind if you could tell me where and how many we're talking about.

**Mr Harvey**—Very quickly, the discussion paper talked about 37 locations and up to about 7,000 participants.

**Senator CROSSIN**—Okay. Thanks.

**Mr Harvey**—But we will give you more detail once the announcements are made.

**Senator CROSSIN**—Thank you. We will have a longer time to get there in June, I hope.

**Mr Harvey**—We will.

**Senator SIEWERT**—I want to follow up on some of the issues that I've been following up for a while—I can see you smiling! I will get to principal carers in a minute, but I wanted to follow up on a couple of answers that you have given me in writing; thank you for those. In answer to my question W1020-07, which was about the current eligibility for NSA, you told me the number of recipients, which I much appreciate. I was wondering if it is possible—and I am aware I might be asking questions you may not be able to answer because of privacy—for you to disaggregate that figure to tell me what types of categories people who are receiving a payment fit into. In answer to question W1019-07 you gave me some examples of the categories under which people who are in full-time employment would get payments. What I am interested in knowing is: do those 1,877 people who are getting a form of payment fit into those categories, or are there other categories as well? Because, as I understand that answer, they are examples of categories of people who may be full-time employees but who are still eligible for NSA.

**Senator Abetz**—It seems like a very simple and clear question!

**Senator SIEWERT**—Sorry.



**Senator Abetz**—No, I dare say they might have to take it on notice. It seems very detailed, that's all.

**Senator SIEWERT**—I appreciate that. Do you understand what I mean?

**Mr Carters**—No, sorry. I didn't have the answers in front of me when you were asking, so I wasn't sure what the question was.

**Senator SIEWERT**—In question W1020-07, you told me the number of recipients who are working at least 76 hours who are getting some form of payment under NSA. What I am interested in knowing, even if you can't tell me in a lot of detail, is: under which of the categories you list in question W1019-07 are the bulk of people getting payments? For instance, are they single people who are receiving rent assistance or are they people with partners receiving assistance due to illness et cetera?

**Mr Carters**—Okay. I understand the question, and we will take that on notice.

**Senator SIEWERT**—That would be appreciated. I appreciate that you have to take that on notice. I also have a number of other questions asking for details on categories of parenting payment single, but I will put those on notice.

I do now want to move to principal carers. First, I want to follow up a discussion that we were having during the last estimates. If you remember, we had quite a detailed discussion about how foster parents in particular get exemptions—when they are exempt from Newstart participation requirements. We got down to the fact that they would have to be designated a principal carer and how that would happen. We left it at a discussion about a letter.

**Mr Sandison**—The letter from the minister?

**Senator SIEWERT**—No; I will get back to the letter from the minister. But you may remember we were saying, 'How does a person who is looking after a child in crisis get a letter to exempt them from participation requirements?' and I was asking whether it was 'and' or 'or'. You were going to get back to me, but I cannot find the response to that question. I apologise if I have missed it. You may recall we were having a conversation about the urgency of things.

**Mr Sandison**—That is right—that where they did not come through with a formal foster carer there was a crisis issue. The child in the family would be placed with somebody, possibly in kinship care or other, but it was not formalised in the foster care arrangement.

**Senator SIEWERT**—It was not, at that stage, but the people could be registered foster carers. You were going to double-check that for me.

**Mr Sandison**—I think we have responded to all the questions that have been formalised through *Hansard* but there were—

**Senator SIEWERT**—You have done the formal ones. You have told me who qualifies as a principal carer.

**Dr Boxall**—We will see whether we can find out the number of that question and then see whether or not it has been tabled.

**Senator SIEWERT**—That discussion is on the bottom of page 101 of *Hansard*.

**Dr Boxall**—The staff here will check it out to see whether we can find out the number of the question. Once we do that, we can then find out where the answer is, whether it has been tabled or whether it is yet to be tabled. We will check that out.

**Senator SIEWERT**—Thank you. As I said, you have given me the definition of a principal carer; I do appreciate that. Going back to this issue, my understanding is that the process works in each state in a different way, in the same way as each situation is different in each state for kinship carers—for example, in Western Australia they have worked out a process with Centrelink to overcome this problem. I am wondering: are you working with the other states to put in place a situation that is not a problem in the other states?

**Mr Sandison**—I think the best thing is for me to take that on notice so that we can find out what the Centrelink and Western Australia government approach is. We could then answer you as to what might or might not be going on in other states. Otherwise, I would only be guessing at what that might be.

**Senator SIEWERT**—Okay; that would be appreciated. My next question is about principal carers and the issue of only one parent being classed as principal carer. Now that family law has changed—as a basic starting point, there is now shared, equal parenting—you can presume that the government is hoping that there will be more shared, equal parenting arrangements. What is happening now with the other parent? You have a parent who has fifty-fifty care and only one is a principal carer. How do you propose handling that?

**Mr Sandison**—At this stage, government policy is still that there is only one principal carer, and that will be the person who may be eligible to look for part-time work. The other person will be looking for full-time work. I recall that we did talk through this situation of fifty-fifty care, but that is still the position; that is government policy.

**Senator SIEWERT**—Have you had anybody from the community raise this issue as an area of concern and give case studies of where this is causing some problems?

**Mr Sandison**—I cannot recall any ministerials direct to the minister or the department on that issue.

**Senator SIEWERT**—I find out whether some of my constituents are having a problem and write to you about it. Is it not seen as being inherently unfair that one person is picked as a principal carer and the other is not, even though they have shared equal responsibility for their child or children?

**Mr Sandison**—I cannot comment on whether the government would see that as unfair. I just think that the issue of the government policy is still as it stands.

**Senator SIEWERT**—I will follow it up. I appreciate that I am asking you for an opinion.

**CHAIR**—Before we move to Senator Wong's questions, I would like to read out a statement from the committee summarising the discussions we have had today. The committee met in private before lunch today to discuss the issue which arose from Senator Wong's questioning of the department on the date on which legal advice had been sought. The committee notes the claim by Mr O'Sullivan that an attempt to answer the question would involve him in a breach of section 13(6) of the Public Service Act. It noted advice to Senator Wong from the Clerk of the Senate on 6 June 2006 which was tabled at the hearing, which

includes advice from the Solicitor-General. However, in view of the possibility that such a dispute may arise again, the committee has agreed that in future officers should not rely on such a claim. The committee notes that the opportunity already exists for officers to refer a matter to the minister at the table. In the meantime, the committee draws the Clerk's advice to the attention of the department.

**Senator WONG**—Before the break, Mr Carters, we were discussing the website, the tool kit et cetera. I have to say I cannot remember what my last question to you was. I think it was on funding allocation and that you took it on notice.

**Mr Carters**—Yes, I took it on notice.

**Senator WONG**—What about the disability advisory group—what is the funding for that group and how long is it intended to continue?

**Mr Carters**—My understanding is that there is no specific funding for that group; it is just something that we fund within the department.

**Senator WONG**—I am sorry?

**Mr Carters**—It is just something we fund within departmental resources.

**Senator WONG**—I hope that wasn't a Freudian slip! How long is the term of the group? How long is it going to go for? How long is it funded for—one year, two years, three years—or has that decision not been made by government?

**Mr Carters**—There is not a specific duration. It is up to the minister to decide how long she would like to have her disability advisory group operate for.

**Senator WONG**—What are the costs associated with it, or the expenditure to date? Do you track that separately or is it just absorbed into departmental?

**Mr Sandison**—Primarily it is absorbed, but the only costs really relate to the setting up of each of the meetings, when they are brought together.

**Senator WONG**—What has happened in relation to work trials? They were raised previously. I just want to check what they are and how they are operating.

**Ms Golightly**—Work experience?

**Senator WONG**—I had work trials down, from a previous *Hansard*. Is there a program in relation to work trials or is it work experience?

**Ms Golightly**—There is a new program called the Work Experience Program which started on 1 January this year. I do not know that we have discussed it before, which is why I am not sure if it is the same.

**Senator WONG**—What is the Work Experience Program?

**Ms Caldwell**—The Work Experience Program is a new program that is available through Job Network for the placement of job seekers into real businesses and workplaces for a time limited period.

**Senator WONG**—I am sorry, who is placed?

**Ms Caldwell**—The unemployed person, the income support recipient, is placed into the workplace.

**Senator WONG**—Is there a program that is seeking to bring employers and people with a disability together for work experience or a work trial period that is funded by DEWR?

**Mr Sandison**—Some of the individual DENs, in the way that they engage with employers, might use that approach.

**Senator WONG**—But that is not funded by DEWR?

**Mr Sandison**—Other than the normal funding arrangements that were described this morning.

**Senator WONG**—Are there any trials in this area associated with job sampling, job training or job auditioning that DEWR is funding?

**Mr Sandison**—Not that I am aware of.

**Senator WONG**—Has there been any alteration to the Workplace Modifications appropriation?

**Ms Golightly**—Not in the additional estimates.

**Senator WONG**—What is that?

**Ms Golightly**—There is no variation in the PAES.

**Senator WONG**—No, but was there anything in the PBS previously?

**Ms Golightly**—Certainly through the Welfare to Work scheme.

**Senator WONG**—This is subsequent to the announcement that Mr Sandison and I were talking about, where that was augmented. Has there been any subsequent modification of that appropriation?

**Ms Golightly**—No.

**Senator WONG**—What is the expenditure to date of that program?

**Mr Carters**—\$2.09 million has been spent.

**Senator WONG**—As at?

**Mr Carters**—The end of December 2006.

**Senator WONG**—What was the allocation for this year?

**Ms Golightly**—It is part of a larger one: the employment assistance and other appropriation.

**Senator WONG**—Yes, I know, but this was a budget measure, so you actually gave disaggregated funding for that. I just cannot recall. I am trying to compare actual against—

**Ms Golightly**—I think we gave disaggregated funding related to the measure spread over a number of years. But that is a bit different to the total.

**Senator WONG**—What is the allocation for the Workplace Modifications Scheme?

**Ms Golightly**—Perhaps I can take that on notice.

**Senator WONG**—Were there any other employer demand studies in respect of people with a disability that we have not covered broadly, Mr Sandison or Mr Carters?

**Mr Carters**—Mr Manthorpe will refer to those.

**Mr Manthorpe**—Just for completeness, I was going to mention that, in addition to the website, the communication strategy and various other things that we have talked about, through the employer demand demonstration projects program—that is a set of projects that we are running with employers and employer associations across all of the welfare-to-work groups—some of those projects are specifically tailored towards placing people with a disability into work.

**Senator WONG**—What are they?

**Mr Manthorpe**—I do not have a complete breakdown, but there are some in the retail industry, some in the transport industry and some in clubs and associations—those sorts of places.

**Senator WONG**—On notice, are you able to tell me what they are and the actual expenditure to date in relation to those components, if that is available?

**Mr Manthorpe**—Yes.

**Senator WONG**—Thank you. What is the policy in relation to the grandfathered group on DSP? What occurs if they volunteer to look for work and agree to undergo a job capacity assessment?

**Mr Carters**—Those who volunteer and are on DSP are advised that, by undertaking a job capacity assessment, that incorporates a review of their entitlement to DSP. The reason is that we are obliged to consider people's ongoing eligibility for a particular payment. As part of that assessment, if they happen to be assessed as being able to undertake more than 30 hours of work a week—because they are still assessed under the old rules—they may lose their DSP.

**Senator WONG**—So it incorporates an assessment of their entitlement?

**Mr Carters**—It does.

**Senator WONG**—Which, in plain speak, means that they are reviewed for their entitlement to continue to be on the pension?

**Mr Carters**—Yes. The review, though, is needed to determine what service they need, just the same as everybody else.

**Senator WONG**—But the government has made a decision to not make the review, I suppose, without prejudice, in the sense that it may not affect your entitlement to the DSP; it would only affect which service you were put into?

**Mr Carters**—That accords with the legislation.

**Senator WONG**—What accords with the legislation—the government's position or what I have put to you?

**Mr Carters**—The requirement to assess somebody's ongoing eligibility for a payment, and that if they are not eligible then under the legislation—

**Senator WONG**—The government has made a decision in relation to the grandfathered group to have an assessment for the purposes of not only determining which employment service to stream them into but determining their ongoing eligibility to the pension.

**Mr Carters**—That is correct.

**Senator WONG**—Is that not contrary to the idea that you might want to encourage people with a disability to voluntarily enter employment services, without the threat of possibly losing their entitlement to DSP?

**Mr Carters**—There is still the encouragement there because there is servicing available to assist people into work and, if their capacity is greater than 30 hours, that creates a very strong opportunity for them to get employment at that level, which will ultimately move them off income support.

**Senator WONG**—Are they assessed against the 30 hours, not the 15 hours?

**Mr Carters**—Thirty, yes.

**Senator WONG**—Isn't this inconsistent with the approach that would try to encourage people to get into employment services? Someone with a disability may be wary about going through this process in case they lose their entitlement to the pension.

**Mr Carters**—It is certainly consistent with the approach to optimise the opportunities for people to undertake work of which they are capable.

**Senator WONG**—Can I now turn to W951-07, the pensioner education supplement. I just want to clarify something. It refers to the only categories for which people receive the PES. Is that right?

**Ms Golightly**—Yes.

**Senator WONG**—On notice, are you able to update it and give me figures for 2006-07 to date for each of those categories?

**Ms Golightly**—I am happy to take it on notice.

**Senator WONG**—Also, in relation to the figures you have given me, are you able to give me the part rate and full rate as a percentage of total DSP population, as at that point?

**Ms Golightly**—I believe so.

**Senator WONG**—That would be good. I just want to know whether 16,014 represents X per cent of DSP for that period.

**Ms Golightly**—Sure.

**Senator WONG**—If you could do that with respect to date and the years which you have given me in that answer.

**Ms Golightly**—Okay.

**Senator WONG**—Could you do the same for parenting payment and NSA for the same years?

**Ms Golightly**—Parenting payment is already in the table.

**Senator WONG**—It is the percentages of proportion of the population that I was seeking.

**Ms Golightly**—I see.

**Senator WONG**—You have given me very useful information. Can you update it to date, and can you give me an indication of what each of those categories, say, the disability support pension and parenting payment, is as a proportion of the total population of that income support at that time.

**Ms Golightly**—Sure.

**Senator WONG**—What is the current average duration for receipt of the PES? Is it one, two or three years? Do you have that figure?

**Ms Golightly**—We will see whether we have that information with us. No. We will have to take it on notice.

**Senator WONG**—Are you able to tell me, at least in broad terms, what data you trap on that or are you not able to tell me that?

**Ms Golightly**—Obviously we track, part rate and full rate, how many people are getting it. We can probably track it by demographic group as well, as well as the average duration, which you asked for.

**Senator WONG**—If you could provide that, I would appreciate by group as well. How many people in the transition group are receiving the PES? Do we still use that phrase, Mr Carters?

**Mr Carters**—Yes, we do.

**Mr Sandison**—I will have to check in relation to the DSP transition group getting the PES.

**Ms Golightly**—We can look at that.

**Senator WONG**—Also, are there not parenting payment people who would also receive it, despite being placed on Newstart?

**Mr Carters**—Yes, if they continue their studies then they would be eligible to continue receiving that.

**Senator WONG**—Could I also have those numbers?

**Ms Golightly**—We can get those.

**Senator WONG**—Mr Sandison said DSP, or people with a disability.

**Mr Sandison**—That is the transition group with DSP.

**Senator WONG**—What do you call the parents?

**Mr Carters**—We just call them principal carer parents.

**Senator WONG**—Principal carers, who were previously on PPS, receiving the PES, who continue to receive the PES by virtue of the grandfathered provision for a period?

**Mr Carters**—Yes.

**Senator WONG**—I might have asked this, but you were going to give me actual expenditure to date in this financial year on the PES?

**Ms Golightly**—No, you had not asked. I can see whether we have it. I do not have that figure with me, but we can see whether we can get it during the afternoon.

**Senator WONG**—I would appreciate that. Mr Sandison, in a question to this committee in relation to the Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) (Consequential Amendments) Bill 2006, you indicated that there were no savings expected from the amendment to the legislation for the PES.

**Mr Sandison**—That is correct.

**Senator WONG**—You made reference to the fact that a very small number is involved.

**Mr Sandison**—And the original intent of government was as is intended with the change to the act; therefore, that was taken into account in the original budget figures.

**Senator WONG**—I will not bother having an argument with you about that. I think it is fairly clear that that was not the original intent of the government; that is why the act was not amended and you are now having to fix it up. But let us not go there. Do you have any sense of the number of people who might be affected?

**Mr Sandison**—I will check on that. I will have to take it on notice.

**Senator WONG**—You do not have that?

**Mr Sandison**—I will keep looking but, as a backup, I will take it on notice.

**Senator WONG**—Thank you. W875-07 is a question in relation to education entry payment. Do you have that, Ms Golightly?

**Ms Golightly**—Yes.

**Senator WONG**—You have given me the payments made for the last three financial years. Could you give me the number of payments to date?

**Ms Golightly**—For this financial year?

**Senator WONG**—Yes.

**Ms Golightly**—We could. Apparently, it is 16,848. That is until the end of December 2006.

**Senator WONG**—Can these payments be made in respect of more than one income support payment category recipient?

**Ms Golightly**—Yes, there is quite a list of different income support payments.

**Senator WONG**—Are you able to give me these figures in this question by reference to which income support payment the person was on?

**Ms Golightly**—I believe we could. We would need to take that on notice.

**Senator WONG**—Obviously, yes, and if you could do that and also in respect of the actual 'to date'.

**Ms Golightly**—Yes.

**Senator WONG**—Thank you. Mr Carters, I refer to the second rate of mobility allowance, which was \$100 a fortnight. Who did the \$100 apply to?



**Mr Carters**—It is \$104 a fortnight. It applies to the people who are looking for work, registered with an employment service provider and are unable to use public transport.

**Senator WONG**—Sorry, it is the lower rate.

**Mr Carters**—The lower rate is \$74.30 a fortnight.

**Senator WONG**—Who does that apply to?

**Mr Carters**—That is the old rate that existed prior to Welfare to Work. That applies to people who could be on DSP and could be doing training and other things like that.

**Senator WONG**—When was the mobility allowance last adjusted?

**Mr Sandison**—I believe it was on 1 January this year.

**Senator WONG**—So that is the \$4 increase. Is it adjusted annually?

**Mr Sandison**—I could not tell you that. I would have to check when the indexation is done for it.

**Senator WONG**—Can someone clarify that for me, or can that be taken on notice?

**Mr Carters**—We will check that for you.

**Senator WONG**—Sorry, has that been taken on notice or are you checking it now?

**Mr Carters**—We will give it to you when we get it. We are trying to find it.

**Senator WONG**—I will continue while you are looking for that. Was the higher rate, which is now \$104, introduced as part of the Welfare to Work changes?

**Mr Carters**—That is correct.

**Senator WONG**—Remind me exactly who is entitled to that.

**Mr Sandison**—To be eligible for it, you have to be a person aged 16 years or over who is permanently, or for an extended period, unable to use public transport without substantial assistance, due to disability. The higher rate is linked to those people who are looking for work, but it can include volunteers, so those who are on DSP, even though they do not have a formal work requirement, provided they are engaged with an employment service.

**Senator WONG**—So, it is also volunteers engaged with an employment service?

**Mr Sandison**—Correct.

**Senator WONG**—How many people are currently on the higher rate?

**Mr Sandison**—It is approximately 3,000.

**Senator WONG**—Is that at a point in time?

**Mr Sandison**—At the end of December.

**Senator WONG**—Do you have periods for previous time frames?

**Mr Sandison**—No. The only one I have got was a point in time to the end of December.

**Senator WONG**—Are you able to tell me the same information as at the end of the 2005-06 financial year, so as at 30 June 2006, and also at 30 June 2005?

**Mr Sandison**—Is this now for the lower rate, because the higher rate came in with Welfare to Work.

**Senator WONG**—No, for the lower rate.

**Mr Sandison**—We currently have just on 51,000 on the lower rate, as at the end of December, and we can go back and do the two previous years at a point in time.

**Senator WONG**—For the 3,000 do you have an indication of the trend data around that? How many per month?

**Mr Sandison**—I will see if we can withdraw the data on it month by month—because it would have started, obviously, at 1 July—to see whether or not it is an easy, averaged figure or whether it has been coming up as a total.

**Senator WONG**—I assume it would increase.

**Mr Sandison**—So what you are after is how many people each month are being signed up?

**Senator WONG**—That is correct. Turning to the DEN discussion of ratings of particular levels of disability, is any of that type of analysis applied to the mobility allowance?

**Mr Sandison**—Just those criteria that I read out.

**Senator WONG**—I turn now to the personal support program. I refer to W921-07. Can you give me the figures to date for the number of capped places and number of participants in this current financial year?

**Ms Golightly**—I will see if I have those to hand. We certainly would be able to get those for you if I do not have them here.

**Senator WONG**—I will go back to Mr Carters while you are looking.

**Mr Carters**—Yes. There is an update.

**Senator WONG**—And indexation applied as per a range of allowances?

**Mr Carters**—Yes.

**Senator WONG**—CPI?

**Mr Carters**—CPI, yes.

**Senator WONG**—As at 1 January each year, is it?

**Mr Carters**—That is correct.

**Ms Golightly**—Senator, I have not been able to find the figures, but other people are looking. I will come back to you on that.

**Senator WONG**—Okay, that is no problem. I have a question in relation to W-922-07. There is a batch here, Ms Golightly, just so you know; I think they are all sequential. They are numbered 923, 924, 925 et cetera. There are no uncapped places, are there?

**Ms Golightly**—Not in the personal support program.

**Senator WONG**—In 921 it says ‘the number of capped places’. I was wondering whether there was a distinction with something else given the previous answer we were looking at.

**Ms Golightly**—No. It is a capped program.

**Senator WONG**—When you refer to 50,000 in W922-07, is that the cap?

**Ms Golightly**—For 2006-07, yes.

**Senator WONG**—In W-923-07 you indicated that you collect and analyse data on the profile of people who are currently on the waiting list. What data do you obtain? What are the characteristics you can identify?

**Ms Golightly**—I am not sure of the exact detail of the information we have on each client, but certainly we would know where they are, at the very least. I will just check if we have any other characteristics.

**Senator WONG**—I do not want it as to individual clients, just as to characteristics of the group.

**Ms Golightly**—No, I understand that. To get the total, we would need to somehow aggregate it from the bottom. I know that we know where they are—the locations. We do that sort of analysis. I will just check if we do any other analysis.

**Senator WONG**—I am sorry; in W925-07 you gave me a waiting list and a data set, and that is what I should have gone to. There is attachment A to W925-07.

**Ms Golightly**—Yes, that is the location. I am advised that we also do an analysis by priority group.

**Senator WONG**—How was that assessed?

**Mr Jalayer**—The PSP is divided up into four priority groups. Priority group one is for those disciplines which have already commenced but are currently suspended or have left the program and need to be reconnected. Priority two are those with high and urgent needs, as defined by the job capacity assessors. Priority three are those who have been referred to the program but have a mutual obligation requirement, but have a lower priority, as in lower needs, and priority four are for those volunteers.

**Senator WONG**—So it is in a list of priority order: one, two, three, and four?

**Mr Jalayer**—Yes. And we can do the waitlist by each region as to how many people are in each area.

**Senator WONG**—Could I have an update to attachment A to W925-07 to date.

**Ms Golightly**—Certainly.

**Senator WONG**—Are you able to let me know the proportions or the numbers in each of those areas which are one, two, three and four?

**Ms Golightly**—Certainly.

**Senator WONG**—And, if you are not able to do it by employment service area, at least aggregate?

**Ms Golightly**—Yes, sure.

**Senator WONG**—You indicated to me that PSP participants are entitled to up to two years of assistance. I am just trying to get a sense of whether the majority of people would take two years or whether there is an average duration on the program.

**Mr Jalayer**—The average duration is roughly 14½ months, and that has been gradually increasing.

**Senator WONG**—Right. The average cost?

**Mr Jalayer**—The average cost per person is about \$2,400, but again it is a program where you have social outcomes and economic outcomes, and they differ for each one. But, on average, it is \$2,400.

**Senator WONG**—That is per person, not per place?

**Mr Jalayer**—Per person.

**Senator WONG**—Do we have a cost per place?

**Mr Jalayer**—Per place it is approximately \$3,900 over two years.

**Senator WONG**—Thank you. On W927-07, I asked if you collected data on the proportion of people who returned to the PSP one year after exiting the program. The answer was yes. So the next question is: could you provide that data?

**Ms Golightly**—Yes.

**Senator WONG**—I thought, ‘Well, I suppose that is some departmental person saying, ‘Ask your questions well, Senator Wong.’ ‘Yes, we collect it. Full stop.’ What is the data? I am just trying to work out whether I need to ask the question in a particular way.

**Ms Golightly**—I think, again, we would certainly have it in the total program. We possibly might have that by location as well. I will just check.

**Mr Jalayer**—We would have it in total.

**Ms Golightly**—Yes, just in total.

**Senator WONG**—Okay. If you could give that to me, that would be great. I presume you have it by financial year and year to date, or something like that?

**Ms Golightly**—Definitely financial year.

**Senator WONG**—Thank you. Can you tell me: what is the proportion of PSP outcome payments that are for social outcomes, and what is the proportion that are for economic?

**Mr Jalayer**—Did you want them in actual dollar terms or percentage terms of outcomes?

**Senator WONG**—You could give me both, if you have them.

**Mr Jalayer**—Basically about 50 per cent of our outcomes are social, and about 20 per cent are economic.

**Senator WONG**—So what is the other 30 per cent?

**Mr Jalayer**—They are people who exit without either of those two outcomes. With social outcomes, you have stayed there for two years. With economic outcomes, either you have got

employment, gone to education or have had your barriers addressed, and you are now eligible to go to full employment assistance.

**Senator WONG**—Can you give me—

**Mr Jalayer**—This is for 2005-06. Social outcome fees were \$6.7 million.

**Senator WONG**—And economic?

**Mr Jalayer**—That is divided up by a 13-week economic outcome. That is \$4.3 million, and our 26-week economic outcome, I believe, is \$1.1 million.

**Senator WONG**—You gave me a figure in W928-07 of \$3,630 for a social outcome. Is that the figure that was applicable for the 2005-06 year, or is there a different one?

**Mr Jalayer**—Sorry?

**Senator WONG**—W928-07.

**Mr Jalayer**—Yes.

**Senator WONG**—You gave me two figures there. I just want to check, firstly, in relation to the social outcome. Is that the fee that was payable in the 2005-06 year or, if not, could you give me the fee that was?

**Mr Jalayer**—I believe that is for the current year—that is, 2006-07. We can give it to you for 2005-06. But, of those two figures, the \$3,600 is the average payment for someone achieving a social outcome—that is, they have stayed there for the full two years—and the figure of \$4,015 is the average payment to a provider for a participant who has achieved an economic outcome.

**Senator WONG**—I am asking, for the 2005-06 year, whether that figure is the average fee for 2005-06, or is there a different average fee for 2005-06?

**Mr Jalayer**—I will have to take that on notice.

**Senator WONG**—Okay. Are you able to give us a little more detail of the service fee and outcome payments for both social and economic outcomes?

**Ms Golightly**—Yes.

**Senator WONG**—Thank you. On notice?

**Ms Golightly**—I think I have them here. There is quite a list.

**Senator WONG**—Could you just provide them on notice.

**Ms Golightly**—Yes, sure.

**Senator WONG**—I would appreciate that. And could we get the average figure applicable for the 2005-06 year, in the event that it differs from the W928-07 figures.

**Ms Golightly**—Certainly. Through the chair, I have some answers to your previous questions.

**Senator WONG**—Yes.

**Ms Golightly**—You asked for the expenditure, year to date, for the pensioner education supplement. The expenditure, year to date, as at the end of January, was \$41.7 million.

**Senator WONG**—This is for PES?

**Ms Golightly**—Yes.

**Senator WONG**—Okay. And you were going to give me the numbers of grants.

**Ms Golightly**—Year to date—yes, we can. Sorry, I thought you were just looking for the dollars, but, yes, we can get you that.

**Senator WONG**—That was on notice, I think.

**Ms Golightly**—Yes. I also need to correct something I said earlier. I think in an earlier question you asked if the cap for PSP was 50,000, as per our question on notice. The 50,000 figure is the number of people figure. The cap actually relates—I should have been clearer—to the number of places, and that figure is 45,930.

**Senator WONG**—For 2006-07?

**Ms Golightly**—Yes. Also, before lunch you asked for the average JSKA expenditure on a financial year split for the last three years: 2003-04 was \$461; 2004-05 was \$778; 2005-06 was \$586.

**Senator WONG**—But I thought the cost over the duration of a contract was significantly higher than that. What was the figure you gave me for that?

**Ms Golightly**—I think the figure we gave you earlier was an average over three and a bit years, since 2003. It was roughly \$900.

**Senator WONG**—That does not make sense to me. How can the average be higher than the components?

**Ms Golightly**—I am giving you averages for each year.

**Senator WONG**—Yes, but the average over the three years is \$900.

**Ms Golightly**—As I think Dr Boxall pointed out, any particular participant might get JSKA expenditure right over the whole three years. It is not time limited.

**Senator WONG**—I see. So someone might get \$461 plus, say, \$300 of \$778, which is going to push the average over.

**Ms Golightly**—Yes.

**Senator WONG**—I got there eventually. Is there anything else that you want to tell me?

**Ms Golightly**—No—that is all I have for the moment.

**Senator WONG**—Regarding the data that you gave me about the proportions in each category—social, economic and exiting—did it relate to 2005-06?

**Mr Jalayer**—That is correct.

**Senator WONG**—Do you have similar figures for the previous financial years?

**Mr Jalayer**—We can take that on notice.

**Senator WONG**—If you could. Thank you. JET Child Care—is that under your?

**Ms Golightly**—No, that is FaCSIA.

**Senator WONG**—Mr Carters, thank you. I have finished with PSP. I just want to ensure that there has been no update to W016-06, which is the number of people who would have been on DSP but will be on Newstart; and W017-06, which was the projected number of parenting payment recipients to go onto enhanced Newstart. I think you said on the last occasion that you were not updating them, but I just want to confirm that you have not altered them.

**Mr Carters**—For W016-06, for example, the figures we provided were our estimates of how many people would fit into those categories. We do not actually update the estimates. We have actual numbers that flow through. We do not update estimates.

**Senator WONG**—Can you update the actual numbers, then?

**Mr Carters**—For the six months 1 July through to the end of December, what we call the Newstart, Youth Allowance and other principal carer groups have been granted those payments.

**Senator WONG**—These are not people with a partial work capacity?

**Mr Carters**—I was going to do both.

**Senator WONG**—Okay. I am just trying to work out which page we are on.

**Mr Carters**—I will do the partial work capacity first. The number of people with the 15- to 29-hour capacity—that is, partial work capacity—who have been granted Newstart or youth allowance up until the end of December 2006 is 4,215.

**Senator WONG**—Do you disaggregate between Newstart and youth allowance?

**Mr Carters**—No. The equivalent figure for the principal carer group is 11,229. There is another group called the parenting payment single group whose youngest child is six to seven. They have participation requirements even though they stay on PPS, and that number is 3,265.

**Senator WONG**—This is from 1 July to 31 December last year?

**Mr Carters**—Yes. So it is for six months.

**Senator WONG**—Do you have the numbers of people in those three categories who have moved into work?

**Mr Carters**—No. I will take that one on notice.

**Senator WONG**—Does the department collect that information?

**Mr Carters**—We can collect it.

**Senator WONG**—Would you like me to clarify what I am seeking?

**Mr Carters**—I understand—it is for each of those groups.

**Senator WONG**—We have had this discussion before. Do you know what you might be tracking? One can move into work but still be in receipt of payment. There are those who might exit the payment and then there are those who might be in work but still on part payment.

**Mr Carters**—Yes.

**Senator WONG**—Do you track that kind of data?

**Mr Carters**—We can only track it for people who are placed through Job Network services.

**Senator WONG**—I appreciate that. So why don't we do it that way—the numbers of persons in the two groups that you have provided me with today who have been placed in work and, if you have it, the duration of the work.

**Mr Carters**—Okay.

**Senator WONG**—Presumably, if it was placed through Job Network you would know in terms of outcome fees.

**Mr Carters**—Yes. Do you want duration in work as well as job placement?

**Senator WONG**—Yes, if you have it.

**Mr Carters**—Right. I will take that on notice.

**Senator SIEWERT**—I have a question about the protocols around breaches—how people are informed—and appeals. I would like to ask you some general questions and then look at some figures, which you may have to take on notice. When someone has been breached—say it is for the eight-week penalty—how quickly are they told that they are going to be breached?

**Mr Carters**—The process is a Centrelink process, so we cannot necessarily answer that question. If somebody has a participation failure which will lead to what we used to call a breach—a third failure will do that—then the Job Network member could notify the person that they are going to put in a participation report for them, but the actual process of Centrelink working through that report, making contact with the job seeker, finding out whether they have a reasonable excuse and, if they have not, telling them that they will have a non-payment period is a process that Centrelink undertakes. We certainly have a requirement that they make two contacts on two separate days to the person so that it is done quickly, but the actual operational process is Centrelink's.

**Senator SIEWERT**—For the actual operation, I should talk to Centrelink?

**Mr Carters**—Yes, if you want the details.

**Senator SIEWERT**—Are people told of their appeal rights? How are they informed?

**Mr Carters**—Again, it is Centrelink which notifies them of their appeal rights as part of that process.

**Senator SIEWERT**—Probably the rest of my questions are for Centrelink, so I will put them on notice.

**Senator WONG**—What action has DEWR taken as a result of the discussion paper issued in November by Catholic Social Services Australia on the Job Network?

**Dr Boxall**—I understand that we have briefed the minister on the discussion paper.

**Senator WONG**—When did that occur? Shortly after its release?

**Ms Golightly**—Yes.



**Senator WONG**—Has any action been taken? Has there been any further dialogue with Catholic Social Services in relation to the issues raised in the report?

**Ms Caldwell**—We have been continuing conversation and dialogue with all our Job Network members, and in the case of this particular organisation we have made clear our interest always in hearing suggestions or concerns with Job Network at any time. This is one of the many organisations that we talk to on a day-to-day basis as part of our contract management and ongoing program interests.

**Senator WONG**—Have there been any policy changes arising out of this continuing dialogue?

**Ms Caldwell**—Not that we know of.

**Senator WONG**—I have some questions regarding DEWR's approach to the appealing of Administrative Appeals Tribunal or SSAT decisions. What is DEWR policy in relation to such appeals?

**Dr Boxall**—DEWR review a number of cases that are decisions of the SSAT, the AAT and, for that matter, the Federal Court and then we decide whether we should appeal them or not. We always do this within the purview of the legal service directions.

**Senator WONG**—Mr O'Sullivan's directions?

**Dr Boxall**—There is nothing further to add from the department to that particular question.

**Senator WONG**—I meant Mr O'Sullivan's group's directions?

**Dr Boxall**—No, the Attorney-General's.

**Senator WONG**—So it is external to the department. Has there been a change in policy since DEWR took responsibility for working age payments?

**Dr Boxall**—We do not know what the policy of FaCSIA was in dealing with appeals but basically if there is a decision in the Social Security Appeals Tribunal, the AAT or the Federal Court which we think is not correct then in the interests of protecting the integrity of the social security system we pursue to appeal, subject to the appeal being under the purview of the legal service directions.

**Senator WONG**—Do you have a written policy or guidelines around your appeal decisions?

**Dr Boxall**—Each one is treated on a case by case basis.

**Senator WONG**—Yes, I appreciate that. Sometimes, in trying to be a model litigant, departments have principles against which they assess whether a decision would be appealed—that is, does it have broad application et cetera. Does DEWR have any internal guidelines around how it assesses whether a decision will be appealed?

**Dr Boxall**—We do not have any except for the model litigant.

**Mr O'Sullivan**—That is what I was going to say.

**Senator WONG**—How many SSAT decisions has DEWR appealed since DEWR has had this responsibility?

**Mr O'Sullivan**—The most recent figures I have are for the calendar year 2006. We have appealed 91 matters, of which 51 have gone through to a decision by AAT.

**Senator WONG**—In how many of those were you successful?

**Mr O'Sullivan**—Those matters that went through to a decision that was favourable to the department—that is, the decision varied the decision in line with the way we thought it should have been—were 47 and unfavourable eight.

**Senator WONG**—You took responsibility for this area some time in 2005, didn't you? So your figures for 2005 would not reflect an entire calendar year. Is that right?

**Ms Bird**—That is correct. Because of the change, the 2004-05 year would have been partially FACS and partially DEWR.

**Senator WONG**—Do you have figures for the 2004-05 year?

**Mr O'Sullivan**—We will have to take that on notice.

**Dr Boxall**—We do not have those figures here.

**Senator WONG**—What about the number of SSAT appeals taken by a client but defended by DEWR to which you were party and in which you actively participated?

**Dr Boxall**—We do not have figures on that. They are what is called customer appeals against the SSAT.

**Senator WONG**—Surely you know in how many cases you either appeared or—

**Dr Boxall**—We do not have the figures with us. We have the figures for appeals lodged by DEWR for calendar year 2006, and Mr O'Sullivan gave those figures to the committee. They showed that we won 47 and lost eight. We do not have figures for customer appeals.

**Senator WONG**—Mr O'Sullivan, surely the department knows in how many cases it appeared before the AAT. I understand that you may not have the figures here.

**Mr O'Sullivan**—We could probably ascertain that. I will take that on notice. If I can get it to you quickly I will.

**Senator WONG**—I would appreciate that. Can you tell me the costs of the 91 appeals?

**Mr O'Sullivan**—No, I cannot.

**Senator WONG**—How do you attribute the costs?

**Mr O'Sullivan**—I would have to take that on notice.

**Senator WONG**—What is your process for attributing costs for these matters?

**Dr Boxall**—Most of this work is done by Centrelink for us as part of the business partnership agreement. We pay Centrelink to do it.

**Senator WONG**—I would like the costs associated with the 91 matters which DEWR appealed in this calendar year, and if any external counsel were briefed the costs of such briefing and any other associated court costs. Dr Boxall and Ms Golightly, were you coming back to me with anything?

**Ms Golightly**—I have something in response to your question about the proportion in 2004-05 between positive outcomes and social outcomes in PSP. Around 27 per cent were positive outcomes and around 43 per cent were social outcomes.

**Senator WONG**—Positive meaning economic?

**Ms Golightly**—Yes.

**Senator WONG**—And exits? I think it was 20 per cent for the 2004-05 year.

**Ms Golightly**—I still have to get that figure for you. You also asked about the average cost for PSP and whether the figures we had given you were 2005-06 or 2006-07. Basically it was the same in both years.

**Senator WONG**—When are those payments due to be adjusted? These are tender services, aren't they?

**Ms Golightly**—The PSP is.

**Senator WONG**—When is the next adjustment?

**Ms Golightly**—This current contract runs out in June 2009, so we will do the tender leading up to that.

**Senator WONG**—Are the outcome fees at the same level for the period of the contract?

**Ms Golightly**—Yes.

**Senator WONG**—There is no adjustment for CPI?

**Ms Golightly**—Because it is a contract the fees are set.

**Senator WONG**—Mr Carters, there is just one thing I want to clarify in relation to the welfare to work cohort, which is the two bits. You were going to give me the figures for those who move into work. Can you also give me the figures for those who are moving into a relevant employment service? The latter will include the former.

**Mr Carters**—I am sorry; I am not clear what you mean.

**Senator WONG**—You are giving me the number in each category of the welfare to work cohort who are moving into work. You said to me that you can only do that by identifying them moving into a particular employment service. Is that right?

**Mr Carters**—Yes. I said we can only do that for Job Network.

**Senator WONG**—Yes, for those who go into Job Network. You were also going to give me duration, if possible. So, I will get the total number of this group who will have access to job network services?

**Mr Carters**—We can give you the numbers that will go into each of the different services—we can attempt to break the figures into those categories.

**Senator WONG**—Thank you. That is all I have for outcome 1.3.

**CHAIR**—Thank you. That concludes that section.

**Proceedings suspended from 3.19 pm to 3.38 pm**

**CHAIR**—We will start with the Office of the Employment Advocate.

**Senator MARSHALL**—There are a number of questions which you have not responded to from the November supplementary estimates and the May budget estimates. Where are we at with them?

**Mr McIlwain**—We prepare the answers to questions as soon as is practicable. We then provide those answers to the department's parliamentary team for tabling as per its processes and arrangements with the minister. We have provided answers to the department's parliamentary team. I am not able to comment on the timing of the tabling of those.

**Senator MARSHALL**—Because you do not know or because you cannot—

**Mr McIlwain**—I have no information concerning that.

**Senator MARSHALL**—The questions specifically are W275/07, 276/07 and 240/07. Could you get someone to check and confirm definitely that you have answered them to the department.

**Mr McIlwain**—We have provided our answers to the department's parliamentary team.

**Senator MARSHALL**—Since the commencement of Work Choices, how many AWAs have been lodged to date?

**Mr McIlwain**—Until midnight on 11 February under Work Choices, 250,964 Australian workplace agreements.

**Senator MARSHALL**—Have been lodged?

**Mr McIlwain**—Yes.

**CHAIR**—Since when?

**Mr McIlwain**—From 27 March 2006 until 11 February 2007.

**Senator MARSHALL**—How many AWAs are currently in effective operation?

**Mr McIlwain**—The OEA has a methodology for estimating live AWAs. Employing that methodology, until 31 January 2007 the estimate is 704,875 live AWAs.

**Senator MARSHALL**—Why aren't you able to give us an exact number of AWAs in operation?

**Mr McIlwain**—We are unable to give you an exact number for the same reason that it is not possible to give an exact number of employees covered by other forms of industrial instrument, including awards and collective agreements.

**Senator MARSHALL**—I do not necessarily accept that, because it cannot be the same reason. You obviously will know that with collective agreements it is more difficult to tell how many people are covered by them, but each individual AWA is lodged, so why can't you tell us how many exactly are in operation? Maybe you could explain to us the methodology that you use.

**Mr McIlwain**—The methodology is to count the number of Australian workplace agreements approved prior to the implementation of Work Choices and then lodged after the implementation of Work Choices in the preceding 36 months. So it is a rolling period. The 36-month period is chosen on the basis that, until the advent of Work Choices, the nominal expiry date for an AWA or the maximum nominal expiry date was three years. The most commonly

seen nominal expiry date in AWAs was three years, but in fact most AWAs were silent and therefore were deemed to have a nominal expiry date of three years. Some AWAs would have operated for fewer than three years. Some AWAs would have operated for more than three years. With the advent of Work Choices, the maximum nominal expiry date period was extended to five years. However, the OEA took the decision in the first year, 18 months or possibly two years of Work Choices, not to change its methodology. So we have retained the 36-month rolling period methodology as described.

**Senator MARSHALL**—If you discount the AWAs lodged since the introduction of Work Choices, the remaining number that you say are in operation is a maximum number because you simply drop every one off numerically after 36 months?

**Mr McIlwain**—No, it is not a maximum number because live AWAs could include AWAs made prior to the commencement of that 36-month period. An AWA under the pre Work Choices legislation did not cease to operate when three years was reached. An AWA could continue to operate beyond a normal expiry date, including one nominated in the agreement. The AWA ceased to operate when the employment relationship ceased, when the agreement was terminated or when a new agreement was entered into by that employee and the same employer.

**Senator MARSHALL**—That is the extent of the methodology—simply calculating 36 months and dropping those ones off? That is the methodology you explained to me? It is no more complicated than that?

**Mr McIlwain**—The methodology is as described, noting that some AWAs made in the previous 36 months would not have operated for the entire 36 months and noting also that some AWAs made prior to the commencement of that 36-month period would still be in operation.

**Senator MARSHALL**—But you have no way of knowing under that methodology how many AWAs are replacement AWAs of ones that were already in existence?

**Mr McIlwain**—We have no way of knowing precisely. That is why the figure has always been described as an estimate.

**Senator MARSHALL**—Are you satisfied with that methodology? Are you looking at ways to improve that?

**Mr McIlwain**—As I said, with the advent of Work Choices, we have decided that we will review the methodology, not the least because Work Choices extends the normal expiry date period to a maximum period of five years. But I should say that, as under the pre Work Choices legislation, an agreement is not automatically extinguished when it reaches that five-year date. It can continue to operate until another event occurs. However, we do not wish to be precipitate in changing that methodology. We would prefer there to be 18 months or two years of the new system before we then consider how the methodology might be changed or, indeed, if it needs to be changed.

**Senator MARSHALL**—So what you have described to me is that the only review of that process will be in effect to determine what should be the nominal cut-off time?

**Mr McIlwain**—No, I am not saying that.

**Senator MARSHALL**—What else will you look at then?

**Mr McIlwain**—An entirely different methodology could be developed. But we have not yet turned our minds to that.

**Senator MARSHALL**—So there is no work in progress on that?

**Mr McIlwain**—Not currently.

**Senator MARSHALL**—You gave me the figures for pre and post Work Choices, didn't you?

**Mr McIlwain**—I have given you figures for Work Choices AWAs.

**Senator MARSHALL**—Can you give me your estimate of pre Work Choices AWAs then?

**Mr McIlwain**—Live pre Work Choices AWAs?

**Senator MARSHALL**—Yes. The only other figure would be simply a total of all AWAs registered, wouldn't it?

**Mr McIlwain**—I have immediately to hand the cumulative total for AWAs approved and then, following Work Choices, lodged.

**Senator MARSHALL**—If you can give me those figures on ones that have been lodged that is useful. But also can you give me your estimation of live ones from both post and pre?

**Mr McIlwain**—Since the commencement of AWA making in March 1997, 1,139,670 AWAs have been approved or lodged—to use the post Work Choices terminology. As to live pre Work Choices AWAs, I will do a quick calculation and give you that figure directly.

**Senator MARSHALL**—Can you give me that figure again? My first question was, 'Since the commencement of Work Choices how many AWAs have been lodged?' and I thought you said 250,964.

**Mr McIlwain**—Yes, I gave you a 31 January figure. I have an updated 11 February figure, which is 250,964. Indeed, I have just been handed an updated 11 February figure for the total number of AWAs both pre Work Choices and post Work Choices. It is 1,150,348. Those are 11 February figures. They are updates on 31 January.

**Senator MARSHALL**—So the number of pre Work Choices agreements is simply that number minus the 250,964?

**Mr McIlwain**—The number of pre Work Choices agreements is 899,384. Not all of those are live. Our estimate of live pre Work Choices AWAs is 464,000.

**Senator WONG**—So the total figure of 1,150,348 that you gave Senator Marshall includes live and non-operative?

**Mr McIlwain**—It is all AWAs ever made.

**Senator WONG**—So the live number is 250,967 plus 464,000?

**Mr McIlwain**—That is correct. The total would be slightly more than the 704,875 that I mentioned.

**Senator WONG**—How does that work?

**Mr McIlwain**—I have figures for 31 January and I have updated figures for—

**Senator WONG**—You have misunderstood my question. Shouldn't 250,567 and 464 000 equal the total live number?

**Mr McIlwain**—Yes, it would.

**Senator WONG**—Okay.

**Senator MARSHALL**—How many employers have employees on AWAs? Can you give me those figures?

**Mr McIlwain**—I believe we have that figure with us.

**Senator MARSHALL**—Are you also able to break that figure down into industry type?

**Mr McIlwain**—Yes, I believe so.

**Senator MARSHALL**—How far can you break this information down? Would it be possible to know how many employees have one AWA, how many have 10 AWAs and how many have 100 AWAs? Could that information be pumped out of your database?

**Mr McIlwain**—I would have to take that on notice. I am not sure whether we are able to produce the data in that form. We have published for many years the break-up of AWAs by employer size—how many employees an employer has—but I am not able to say whether we are able to cut out data in a way that indicates how many AWAs each employer has.

**Senator MARSHALL**—I have asked you a question about AWAs replacing existing AWAs but I want to be a bit more specific. Given the introduction of Work Choices, is there any way of knowing how many Work Choices AWAs have replaced pre Work Choices AWAs?

**Mr McIlwain**—There is no way to know whether an individual Work Choices AWA has replaced an individual pre Work Choices AWA.

**Senator MARSHALL**—With the modelling and methodology that you are using have you factored the changes in the unfair dismissal laws into the results? Do those things have an impact on any of the modelling you have done?

**Mr McIlwain**—I do not understand the question.

**Senator MARSHALL**—You probably answered the question when you described the modelling itself. Are any other factors inputted into that methodology?

**Mr McIlwain**—No. The methodology I have described is the methodology we employ.

**Senator MARSHALL**—Do you have any statistical analysis on the status of protected award conditions in AWAs at this time?

**Mr McIlwain**—I have nothing to add to the evidence I gave at the November hearing.

**Senator MARSHALL**—Last time you told us you were looking to develop a model you thought was appropriate. Can you update us on how your discussions and considerations have been going?

**Mr McIlwain**—Our considerations and discussions within the OEA are ongoing. The three areas of concern that I described in regard to the methodology employed for that initial sample of only 250 AWAs remain and have not, in my mind, been overcome.

**Senator MARSHALL**—So you have no statistical analysis at all on the status of protected award conditions in AWAs?

**Mr McIlwain**—I have nothing more that I am able to add to the evidence I gave in November.

**Senator MARSHALL**—Since that evidence you gave in November have you had any discussions with the current or former minister or the department in relation to the collection of data on the status of protected award conditions?

**Mr McIlwain**—No.

**Senator MARSHALL**—Have they communicated with your office in any way about this?

**Mr McIlwain**—No.

**Senator WONG**—Minister Hockey has not sought any advice from the OEA regarding what the AWAs look like—how many remove protected award conditions and how many remove penalty rates? This minister has sought no advice about employment conditions in AWAs?

**Mr McIlwain**—Not from the OEA.

**Senator WONG**—You have not been asked to undertake any analysis, have you?

**Mr McIlwain**—No.

**Senator WONG**—Can you explain to us then how the minister can assert that thousands of AWAs providing ‘bucketloads of flexibility’ can be signed around the country?

**Senator Abetz**—That is a question for me. Mr Hockey is a very consultative minister. He would know from all his backbench colleagues who go around the country that small businesses and individuals working in them—and also big businesses—are favourably disposed towards AWAs because of flexibility, et cetera. The evidence we have just been given of the numbers who are signing up indicates that they are popular. Overall, Australians are enjoying an increase in total wages under this government. I think real wage increases since the Howard government came to power 10 years ago are now over 17 per cent. That is a great record.

**Senator MARSHALL**—Are you telling us that the information the minister is relying on comes from the government backbench?

**Senator Abetz**—And his own consultations. Let us not be precious about this. I remember that before Work Choices certain people were asserting with absolute confidence that that this would lead to mass sackings. I note that Julia Gillard and a few others have not apologised for it but have now acknowledged that they were wrong. We can ask them where they got their evidence for those assertions. I remember another senator who was very anxious to question me about my assertions, for example, that Work Choices might lead to 75,000 new jobs. I find that I am not being tested on that assumption anymore. People know that I would be saying that I was wrong with that assumption of 75,000, because we are now tracking at well over 200,000.

**CHAIR**—I think we have now established that Mr Hockey is well briefed on the number of AWAs and we will proceed with questions.



**Senator WONG**—That is a big assertion from the chair.

**Senator Abetz**—But a very fair one.

**Senator WONG**—If I could finish one point with Mr McIlwain. Just to be clear, the Office of the Employment Advocate does not have any information about the actual impact on working conditions of the hundreds of thousands of AWAs which have been lodged?

**Mr McIlwain**—Senator, the office has for almost 10 years now published information about how workplaces—

**Senator WONG**—You have stopped.

**Mr McIlwain**—The office has published information about how workplaces are using their agreement-making options to provide better productivity outcomes and flexibility for employees. That information has been available on our website and it has been particularly in the form of real-life stories about real workplaces, real employers, real workers, who have used their agreement-making options for the advantage of both the business and the employees. The OEA published in July last year a DVD containing stories about three such workplaces.

**Senator WONG**—So anecdotal evidence, not hard statistical analysis. You have no idea how many of these AWAs remove penalty rates or any protected award conditions, do you?

**Mr McIlwain**—The information, Senator—

**Senator WONG**—Do you? Can you answer?

**CHAIR**—Senator Wong, please—

**Senator WONG**—Chair, could he answer the question? I do not want another rant about DVDs and stories. The question is: do you have any idea how many post Work Choices AWAs remove protected award conditions, penalty rates or any other such entitlements?

**Mr McIlwain**—We have no statistical analysis—

**Senator WONG**—Thank you.

**Mr McIlwain**—on protected award conditions, save for that small sample of 250.

**Senator Abetz**—But what we do know is that people cannot negotiate below certain minimum standards, and the agreements have to be voluntarily entered into.

**Senator MARSHALL**—Let's keep to answering the questions, if we can. Mr McIlwain, last time, in November, when you had told me that you had stopped collecting the data, there was a period of time between the previous estimates and the information you gave us and when you actually stopped collecting the data. These were questions on notice which you say you have answered but which have not been provided to the committee as yet. Have you had a chance to determine the date and analyse those extra AWAs that you were looking at during that time?

**Mr McIlwain**—Senator, as I have said, I have taken that question on notice and I have provided an answer to the department's parliamentary team. The question will be answered on notice.

**Senator MARSHALL**—Here we are at the next round of estimates. Let me ask that question again. Can you give me the answer?

**Mr McIlwain**—I could take it on notice again, Senator, but as I have already taken it on notice I say again that the question will be answered on notice.

**Senator WONG**—Chair, Senator Marshall has asked a question that was taken on notice and not answered; is that right, Senator Marshall?

**Senator MARSHALL**—We have not been provided with the answer.

**Senator WONG**—No answer. Are we just going to have the OEA taking rolling questions on notice so that an answer never has to be provided?

**Senator Abetz**—That is not fair on the OEA, from what the evidence of Mr McIlwain is.

**Senator WONG**—That is right—it is the minister who has refused to answer.

**Senator Abetz**—He has answered and provided it to the department, but—and somebody will undoubtedly correct me if I am wrong—in my briefings for this particular estimates, I think I was told that over 800 questions were taken on notice last time. I think 400 or so have been answered. The demand on officials' time is absolutely huge in working through such a huge amount of questions and providing answers. So, yes, there is a delay and that is to be regretted.

**Senator MARSHALL**—That is not right. Mr McIlwain said that he has answered every question on notice.

**Senator Abetz**—That is right.

**Senator MARSHALL**—What are you talking about then?

**Senator Abetz**—That 800 questions were asked on notice from the last estimates. When a department or a section provides an answer, as I understand it, those answers are then provided with a further check. In due course, they are forwarded to the minister's office for a further check. Quite often, before an answer even hits the minister's desk—and I know this from personal experience in my portfolio—a staffer might be of the view that it is not necessarily responsive or that more information is required or whatever, and so it bounces all the way back down the chain. When you are dealing with 800 questions—can I tell you—that is one huge workload.

**CHAIR**—Minister, when we reconvene with the department, if there are 400 questions still outstanding, as I think you said, we may mention that fact.

**Senator MARSHALL**—Mr McIlwain, have you had a chance to analyse the data collected during that period?

**Mr McIlwain**—I have taken that question on notice, provided—

**Senator MARSHALL**—I did not ask you that question on notice. It is similar but it is not the same question.

**Senator Abetz**—It has been nuanced.

**Senator MARSHALL**—You invited me to do so, Minister.

**Senator Abetz**—What was your question, again?

**Senator MARSHALL**—I asked Mr McIlwain whether he had had a chance to analyse the data created up until June.

**Senator Abetz**—That would have been June 2006.

**Senator MARSHALL**—Yes.

**Senator Abetz**—I think there is an answer No. W243, but it is not yet tabled.

**Senator MARSHALL**—So the answers are there, at the table; they have just not found their way, 10 feet across the floor, to the committee.

**Mr McIlwain**—We have our record of questions.

**Senator MARSHALL**—I am sure the question I asked is a little different from that. Can you answer the question I asked, Mr McIlwain?

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

**Senator MARSHALL**—Come on. You have a similar question that is on notice. You were just looking at it. You showed it to the minister. You have the answer there. It is on that side of the table. It is probably the same answer to the question that I have just asked. You have it there in front of you, but you will not provide it to the committee.

**Mr McIlwain**—We have the questions in front of us, but it is not my role or place to table answers.

**Senator WONG**—No, but it is your role to answer questions at estimates hearing. If you choose not to—

**Mr McIlwain**—And I offered to take that question on notice.

**Senator MARSHALL**—This is an extraordinary effort to avoid answering that question. Can you tell me when the directive was given to OEA employees to cease analysing the agreements?

**Mr McIlwain**—It was in June 2006.

**Senator MARSHALL**—I have asked you whether you have had a chance to analyse the data. Can you give us the data that you collected up until June 2006?

**Mr McIlwain**—The data is in a form, I am advised, that would allow the parties to agreements to be identified, and for that reason I am not able to provide it.

**Senator MARSHALL**—Has that data been made available to anybody?

**Mr McIlwain**—No.

**Senator MARSHALL**—So only your office has that data; no-one else has had access to it?

**Mr McIlwain**—Just to be clear, there are two things: data and analysis of data. You asked for the data. The data for the 250 AWAs that were the subject of my evidence in May last year contains information that would allow someone who is not a party to an AWA to, using that data, identify parties to AWAs. I am required by law to ensure that does not occur as a result of my actions. Indeed the same responsibility is on my staff.

**Senator MARSHALL**—Can I have the analysis to that date then?

**Mr McIlwain**—The analysis was in my evidence in May.

**Senator MARSHALL**—Not for the period from May to June—that was not in your evidence in May.

**Mr McIlwain**—I am sorry, Senator. I do not understand your question.

**Senator MARSHALL**—You said I cannot have the data that you collected from May to June because it will identify the individuals. Well, can you give me the analysis, which does not identify the individuals, from May to June?

**Mr McIlwain**—That seems to me to be a question we have taken on notice.

**Senator MARSHALL**—Yes, it is a similar question. So you cannot?

**Mr McIlwain**—I cannot add to the evidence I have already given.

**Senator MARSHALL**—Can you confirm whether or not you have done the analysis?

**Mr McIlwain**—That is a question I have taken on notice.

**Senator MARSHALL**—You do not know?

**Mr McIlwain**—I have taken the question on notice.

**Senator MARSHALL**—It is a fairly simple question. You know whether you have analysed it or not, don't you?

**Mr McIlwain**—And I have taken it on notice.

**Senator MARSHALL**—For what reason?

**Mr McIlwain**—Because I took it on notice at the last hearing.

**Senator MARSHALL**—Exactly. But you know whether you have done the analysis or not. I cannot understand the difficulty with confirming to this committee whether you have done an analysis of that data or not.

**Senator Abetz**—There has been evidence about very real question marks over the robustness of the analysis. I dare say—and I do not want to put words in Mr McIlwain's mouth—that there is a potential concern that people might say, 'An analysis has been done,' expecting a genuine, robust analysis, whereas in fact the bits and pieces that were pulled together were not seen to be a satisfactory analysis. That is why we are in the position that we are in.

**Senator MARSHALL**—People may say a lot of things, Minister, but that is quite irrelevant to the officer answering questions that I ask. So you are not going to answer that? You are going to take that on notice?

**Senator Abetz**—It is highly relevant.

**Mr McIlwain**—With respect, I have already taken that question on notice.

**Senator MARSHALL**—All right. When do you think we might get an answer?

**Mr McIlwain**—I am not able to answer that question, Senator.

**Senator MARSHALL**—No. According to an answer to a question in writing from the member for Cunningham, the then minister's answer said that, as at 16 August 2006, the OEA was conducting small samples of AWAs to establish how protected award conditions are being treated by the parties. Can you provide the data relating to those samples?

**Mr McIlwain**—I am unaware of that.

**Senator MARSHALL**—So you were not collecting small—

**Mr McIlwain**—No.

**Senator MARSHALL**—Well, then, is the minister's answer wrong?

**Mr McIlwain**—A 'small sample'—

**Senator Abetz**—Of what? Can you refer us to that?

**Senator MARSHALL**—It says:

... the OEA analyses a small sample of AWAs each month to establish how protected award conditions are treated by the parties and to ascertain whether the agreements, prima facie, provide for compliance with the Australian Fair Pay and Conditions Standard.

**Mr McIlwain**—Sorry, was it protected award conditions or the Australian Fair Pay and Conditions Standard that that question is in relation to?

**Senator MARSHALL**—Both. It was a response to the question on notice. I think I have it here somewhere. It was on 16 August.

**CHAIR**—Was that a question in the House?

**Senator MARSHALL**—Yes, in the House, on notice.

**Senator Abetz**—I suggest that what the OEA does is to have a look at the actual question and the answer and see where the apparent conflict lies.

**Senator MARSHALL**—It is question No. 3767. I can provide a copy if you like.

**CHAIR**—While we are doing that, Senator Barnett has a question.

**Senator BARNETT**—You have indicated the number of AWAs since Work Choices came in. Could you repeat that number, please?

**Mr McIlwain**—Yes, I can. As at 11 February, there were 250,964.

**Senator BARNETT**—Then you mentioned a figure of 464,000. Is that the other live AWAs?

**Mr McIlwain**—Pre-approval live AWAs, yes—I beg your pardon, pre-reform live AWAs.

**Senator BARNETT**—So if you add those two figures together you get 714,000 live AWAs.

**Mr McIlwain**—That is correct.

**Senator BARNETT**—And the total number since—

**Mr McIlwain**—The system began in March 1997 and the figure is 1,150,348.

**Senator BARNETT**—That is effective to what date?

**Mr McIlwain**—It is 11 February 2007.

**Senator BARNETT**—Thank you, very good. Are you aware that the ABS figures that I have been provided with show that the number of extra jobs since Work Choices started was 241,300?

**Mr McIlwain**—Yes, I am aware of those figures.

**Senator BARNETT**—Are you aware that 85 per cent of those jobs are full time?

**Mr McIlwain**—Yes, I am.

**Senator Abetz**—That is 206,000.

**Senator BARNETT**—Yes. Are you also aware that in terms of real wages—the minister referred to it earlier—the advice I have is that since 1996 there has been a 16.5 per cent increase?

**Mr McIlwain**—Yes, I am aware of that figure.

**Senator BARNETT**—Thank you.

**Senator MARSHALL**—Mr McIlwain, you are not aware of providing information to the minister for that answer, are you?

**Mr McIlwain**—I am sorry, Senator?

**Senator MARSHALL**—Are you aware of providing information to the minister for that answer?

**Mr McIlwain**—For this answer? I am not personally aware, but the answer could certainly have been produced by the OEA. I do note that the date on which Ms Bird asked the question was 22 June. Reading the answer, I would assume that the reference to protected award conditions refers to the evidence that I gave in May 2006 and would have been correct at the time.

**Senator MARSHALL**—No, because you have told us already that you instructed your office to stop collecting the data in June.

**Mr McIlwain**—In June.

**Senator MARSHALL**—You are now going to be specific and tell me the date, are you? What date in June did you stop collecting information?

**Mr McIlwain**—I am unable to recall the exact date.

**Senator MARSHALL**—Will you take that on notice?

**Mr McIlwain**—It was between the middle of June and the end of June.

**Senator WONG**—Can I clarify your evidence? Did you want to add to that answer, Mr McIlwain, before I ask you another question?

**Mr McIlwain**—Mr Rushton has reminded me that that is entirely consistent with the evidence I gave here in November.

**Senator WONG**—So is your evidence that the data set that comprises the answer is no longer being collected by the OEA?

**Mr McIlwain**—With regard to protected award conditions, yes.

**Senator WONG**—But the number of agreements lodged is being collected?

**Mr McIlwain**—In each of those electoral divisions?

**Senator WONG**—Yes—in any electoral division.

**Mr McIlwain**—Yes. I have no reason to believe that that is not correct information.

**Senator WONG**—No, my question was: are you still collecting data on an electoral basis of the number of AWAs lodged but no longer collecting any data about the effect on protected award conditions?

**Mr McIlwain**—Correct.

**Senator WONG**—While I have the floor and Senator Marshall is looking for something, I will go back to something else. I am not sure whether Senator Marshall raised W32907, which was a question of mine and, I think, of Senator McEwen's. I asked:

What contact did you have with the Minister's Office between last Estimates hearing and your decision to discontinue AWA condition sampling in June? Can you provide your diary notes relating to telephone conversations that you had with the Minister's Office in this period?

No answer has been filed with the committee in compliance with the committee's direction. Can you tell me where that answer is?

**Mr McIlwain**—It has been provided to the department's parliamentary team.

**Senator WONG**—When was it provided to the parliamentary team?

**Mr McIlwain**—Before 15 December.

**Senator WONG**—In relation to this decision, which you have indicated and stated was yours, not to collect any further data about the impact on people's actual employment conditions under AWAs, subsequent to the change of minister, have you confirmed with the minister or with his office the intention to continue that situation?

**Mr McIlwain**—I have confirmed my decision with the minister's office.

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

**Mr McIlwain**—It would have been the week in which Minister Hockey was sworn in as Minister for Employment and Workplace Relations.

**Senator WONG**—What was the nature of the confirmation? How did that occur?

**Mr McIlwain**—It was a telephone conversation.

**Senator WONG**—To whom?

**Mr McIlwain**—It was to the minister's workplace relations adviser.

**Senator WONG**—Was the telephone call initiated by you or by the adviser?

**Mr McIlwain**—The advice was given in a phone call that I took from the minister's workplace relations adviser. The phone call was made for that adviser to introduce themselves to me.

**Senator WONG**—So Minister Hockey's adviser rang to confirm that you were going to continue not to collect any analysis of the impact on people's working conditions?

**Mr McIlwain**—Absolutely not.

**Senator Abetz**—You were told that he rang to introduce himself. When you have clear evidence like that before you, it does not reflect well on you or the Senate committee system to then try and twist such a very straightforward answer into something which it patently was not.

**Senator WONG**—Have there been any further discussions regarding your decision?

**Mr McIlwain**—No.

**Senator MARSHALL**—You gave evidence last time you were before this committee that you were in the process of the development of new methodology for analysing the effect of AWAs. How are you going with that?

**Mr McIlwain**—As I said some minutes ago when you asked me a similar question, that consideration is continuing. Discussions are ongoing within the OEA. I am not yet at a point where those concerns I explained in November have been overcome in my mind.

**Senator MARSHALL**—What factors do you intend to analyse in the development of your new methodology? Will you just be looking at protected award conditions or will you be doing a compliance test against the Fair Pay and Conditions Standard?

**Mr McIlwain**—The consideration and discussions that have been occurring in the OEA have been with regard only to the problems which are identified in relation to a methodology which looks at protected award conditions. There has been no discussion about the inclusion of other characteristics of a statutory nature, such as a standard, in any replacement methodology.

**Senator MARSHALL**—Do I take it from that answer that you will not be looking at wages outcomes?

**Mr McIlwain**—No.

**Senator MARSHALL**—Flexible working arrangements?

**Mr McIlwain**—Let me be clear here. I said in November that my concerns went to three specific points: the size of the sample, the composition of the sample and, perhaps most significantly, how best to take account of the totality of a workplace agreement and look at what compensatory factors or characteristics an agreement might contain. I should say quickly that I am thinking that those compensatory factors would not only be necessarily monetary but, as they have been in the 10 years of Australian workplace agreement making, would include other conditions of employment or flexibilities that are of benefit to an employee. I need to be careful in answering your question and not out of hand dismiss your suggestion that other factors need to be taken into account when developing a methodology that looks at protected award conditions but does not deliver results that are misleading or distorted in some way.

**Senator MARSHALL**—I am just trying to work out what you are doing. The first two problems you identified are simply resolved by increasing the sample number. It is the third



area that I am interested in. I thought you had told me that you were only going to look at the protected award conditions. I asked you whether that will go to looking at wages or flexible working arrangements. I think you are now indicating to me that it may.

**Mr McIlwain**—Indeed, as I have said, the critical issue to be resolved is how best to take account of what the parties have agreed to globally.

**Senator MARSHALL**—So you are not yet at the stage of development of the new methodology where you can give me any indication of the sorts of things you will be looking at?

**Mr McIlwain**—Not beyond the evidence I have just given.

**Senator MARSHALL**—Have you any idea about the size of the sample you would want to take?

**Mr McIlwain**—I have advice from my research staff that, as I foreshadowed, the size of the sample would need to be significantly greater than 250 AWAs, as it was in the first month of April 2006.

**Senator MARSHALL**—As a percentage of the number of agreements there at the time, 250 may or may not have been the right number. I know at the time when you gave the evidence you were very satisfied with the statistics. I think that was your evidence.

**Mr McIlwain**—I do not believe that—

**Senator MARSHALL**—If you dispute that I will withdraw it. We will not argue about it. Nothing necessarily turns on it. But, given the number of AWAs that have been lodged now, what sort of sample size are you looking at?

**Mr McIlwain**—The advice I have is that the sample size would need to be between 50 and 100 times greater.

**Senator Abetz**—And also then it would only tell half the story, because the thing about these agreements is that they are in fact individual agreements and therefore, whilst you might be able to determine, by a random sample, certain features of them, it would only paint part of the picture. You might be able to say, 'These things were traded off,' but not necessarily what was traded on which made it attractive to the employee to actually sign on to the agreement. If you want statistics and analysis, as Mr McIlwain has said, if we are going to spend taxpayers' money on it, it should be robust. That is the problem.

**Senator MARSHALL**—Okay. Can you then tell me about what work and resources are going into the development of the new statistical model?

**Mr McIlwain**—The process of consideration and discussion that is occurring involves me and my director and assistant director of research. There have been many discussions over recent months.

**Senator MARSHALL**—Amongst the three of you?

**Mr McIlwain**—Indeed.

**Senator MARSHALL**—So you have not engaged with any outside agencies or consultants in relation to this?

**Mr McIlwain**—No.

**Senator MARSHALL**—Are any of you three statisticians or do you have qualifications in that area?

**Mr McIlwain**—I am unable to talk for my assistant director, but for the director I believe the answer is no. I myself have no formal statistical qualifications. However, we do have several staff in our research unit who have university level qualifications and experience in statistical analysis.

**Senator MARSHALL**—That is handy, but it is the three of you who are talking, not anyone else.

**Mr McIlwain**—The discussions that we have are informed by advice that my director and assistant director have obtained.

**Senator MARSHALL**—Through discussions. I am assuming from what you have said that there is no project underway and no formal job has been given to anybody to develop this; it is simply a discussion going on within your department about what may happen.

**Mr McIlwain**—That is correct.

**Senator MARSHALL**—How many statisticians did you say are employed by the OEA?

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

**Senator MARSHALL**—Thank you. Just to confirm: you have not utilised any other department's or agency's staff in this regard?

**Mr McIlwain**—No.

**Senator MARSHALL**—I will ask this again for the purpose of getting everything right. Have you had any directions from the previous minister or the current minister or the departments with respect to the development of the methodology to analyse AWAs?

**Mr McIlwain**—No.

**Senator MARSHALL**—Have there been any discussions with respect to this issue with the current or previous minister?

**Mr McIlwain**—No discussions.

**Senator MARSHALL**—And you have told me there have been no directions. Has there been any other form of communication that I have not covered?

**Mr McIlwain**—My advice.

**Senator MARSHALL**—Simply your advice—what you talked to Senator Wong about before?

**Mr McIlwain**—Yes.

**Senator MARSHALL**—When the methodology is completed, do you intend to retrospectively analyse agreements lodged between 27 March and the date that the analysis commences?

**Mr McIlwain**—I am unable to answer that question at the moment.

**Senator MARSHALL**—It is not your plan to, at the moment, but you are not ruling it out?

**Mr McIlwain**—It is neither my plan to or not to. I have no determined view.

**Senator MARSHALL**—I get confused. When you say that you cannot answer that I am not sure whether it is because you are not going to answer it or whether—

**Mr McIlwain**—I have no formed view on that question.

**Senator MARSHALL**—Thank you. Just bear with me. I had a series of questions to ask you but, given your answers so far, a lot of them have become redundant. You told me last time that DEWR was doing some analysis of AWAs. What is your understanding of their analysis? I think your evidence last time was that you provide them with a sample.

**Mr McIlwain**—I do not have details of their analysis. They analyse collective agreements and I have provided a sample of AWAs to DEWR.

**Senator MARSHALL**—How big is the sample, and how often it is provided?

**Mr McIlwain**—I am advised, 1,500 per quarter.

**Senator MARSHALL**—How do you select that sample?

**Mr McIlwain**—I am advised it is stratified by industry and business science.

**Senator MARSHALL**—Just explain to me what ‘stratified’ means.

**Mr McIlwain**—Slices, according to business size, are taken out of ANSIC industry codes.

**Senator MARSHALL**—So we get a mix of small to big and across industries?

**Mr McIlwain**—Yes, using—

**Senator Abetz**—That is a very good description.

**Senator MARSHALL**—Well, I wish you had just said that to me; I would have understood it. Are you aware of any other body or government department conducting statistical analysis of AWAs and, specifically, on how protected award conditions are being dealt with in those agreements?

**Mr McIlwain**—I am not aware of specific analysis with regard to protected award conditions.

**Senator MARSHALL**—Who else are you providing samples of AWAs to?

**Mr McIlwain**—Since the advent of Work Choices, a sample of AWAs has been provided to the department alone. We have had no formal requests from any other organisation.

**Senator MARSHALL**—And informal requests?

**Mr McIlwain**—We have had no requests. We have had inquiries; no requests.

**Senator MARSHALL**—I think last time you told us you provide some samples for academic studies. Has that stopped now?

**Mr McIlwain**—No. Since 1997, the OEA has had a researcher access arrangement. Over the years—and this is off the top of my head—in 20 instances the OEA has provided a sample of AWAs to researchers who meet the criteria of being bona fide academic researchers. We have had inquiries, but we have had no requests since the advent of Work Choices.

**Senator MARSHALL**—Just run that last bit by me again. You have had inquiries but no requests? Since Work Choices, no-one has accessed the database on AWAs—

**Mr McIlwain**—No.

**Senator MARSHALL**—apart from DEWR?

**Mr McIlwain**—Apart from DEWR, yes.

**Senator MARSHALL**—All right. Your website lists 90 organisations providing assistance to employers and two for employees, both of which are in Queensland. One is for employees in the real estate industry. Have you got updated figures on that, or is that still the case?

**Mr McIlwain**—We have, and Mr Casson will answer those questions.

**Mr Casson**—As at Wednesday—yesterday—in our Agreement-Making Partnerships Program we had 57 partners in the consultants/advisers category, six in our employee associates category, 90 in the employer associates and 11 in our workplace innovators category.

**Senator MARSHALL**—Are you able to provide me with a list of where all of those are based?

**Mr Casson**—Those are on the website.

**Senator MARSHALL**—All of them?

**Mr Casson**—Yes, they are able to be accessed on the website.

**Senator MARSHALL**—There are six employee ones. I understand that one is specifically for the real estate industry. Are any of the others for specific occupations?

**Mr Casson**—It might assist if I read out who they are.

**Senator MARSHALL**—Sure.

**Mr Casson**—They are ACROD Limited, the National Industry Association for Disability Services—

**Senator Abetz**—For what it is worth, I understand it is all on the website.

**Senator MARSHALL**—Well, my information must be a little old.

**Senator Abetz**—If there are questions—

**Senator MARSHALL**—When was it updated? Is that on the website too?

**Mr Casson**—That is on the website.

**Senator Abetz**—If there are questions that flow from it, you might want the information now. But if it is just a search for information—

**Senator McEWEN**—Do the workplace innovators assist employers, employees or both?

**Mr Casson**—The workplace innovators category is designed to provide examples of flexible, innovative and creative uses of Work Choices and agreement making under Work Choices in order that others can take the lead provided by those examples.

**Senator McEWEN**—So it is things like sample AWAs?

**Mr Casson**—I am sorry, I do not understand.

**Senator McEWEN**—Template AWAs that either employers or employees can look at.

**Mr Casson**—No, they are not template AWAs. It is essentially featuring employers and employees who have taken advantage of the flexibility that Work Choices agreement making offers to introduce innovative and creative conditions into their workplace agreements which reflect the activity in their workplace, and who have found workplace agreements the most positive way of expressing that flexibility.

**Senator MARSHALL**—Does that extend to assisting in negotiations between the employer and the employee?

**Mr Casson**—Just to ensure that I am following your thought pattern, is the question whether the workplace innovators assist in negotiations?

**Senator MARSHALL**—Right.

**Mr Casson**—No.

**Senator MARSHALL**—Does the OEA provide any assistance to employees and employers to negotiate?

**Mr Casson**—The OEA provides advice, assistance, information and education about the process of agreement making. Its responsibility under section 151 is to assist and to provide information that will assist the parties to agreement making to make good agreements. We have seminars and workshops and there is a variety of information available on our website, so there are many tools available to both employers and employees. We have what is called a how-to guide that has been developed to assist both employers and employees to make agreements, and we also have the workplace agreements information service, or our contact centre, which is available from 8.30 am to 7 pm weekdays to assist employers and employees with any queries they may have about agreement making.

**Senator MARSHALL**—When you say ‘assist’, does the assistance go to the provision of information?

**Mr Casson**—The provision of information to understand the legislation, to understand their responsibilities under the legislation and we run workshops with employers and employees—

**Senator MARSHALL**—You have talked about providing information and assisting. I am just trying to work out to what extent the assistance goes. There is no hands-on assistance.

**Mr Casson**—There is hands-on assistance; we run workshops. If an association or an employer—

**Senator MARSHALL**—That is providing information. I am talking about the actual negotiation process.

**Mr Casson**—We do not intervene in the negotiation process. That is a matter between the parties.

**Senator MARSHALL**—Is there a rationale for the imbalance between organisations supporting employers and those supporting employees?

**Mr Casson**—I think there is. The OEA has assiduously tried to engage with employee associates and, under the new Agreement Making Partnerships program, continues to assiduously seek to engage with organisations that represent the interests of both employers and employees. Effectively, we have had a greater degree of uptake from employer organisations than those that represent employees over time. We are assiduously and actively working to redress that imbalance, but there has to be a degree of reciprocity in that. In fact, oftentimes we do not get the take-up from those organisations, such as trade unions, that may be in a position to better assist employees and their members.

**Mr McIlwain**—I might add to Mr Casson's comments. The OEA has always been, and continues to be, a very available and useful source of information for employees on their rights and obligations under the Workplace Relations Act. One of the reasons we significantly increased the size of our call centre on 27 March last year was to ensure that employees had access to that assistance. I am pleased to say that we have recently taken our 100,000th call in our call centre since the start of Work Choices. Nearly 40 per cent of calls received every working day of the year are from employees.

**Senator MARSHALL**—You have got your advert in—that is good. I will probably get to your call centres soon.

**Senator McEWEN**—Why are there no employee associates in Victoria or South Australia?

**Mr McIlwain**—As Mr Casson has said, over the last 10 years we invited organisations representing the interests of employees to become, under the previous scheme, a partner with the OEA. As Mr Casson also said, we have unfortunately not had much success. There has not been an acceptance of those invitations to dialogue. However, we press on and I am pleased to say that, under the new Agreement-Making Partnerships Program, which was launched last year, we now have six employee associates. We are trying hard to increase that number, including in Victoria and South Australia.

**Senator MARSHALL**—I think Mr Casson said that you were 'assiduously' working to redress the imbalance.

**Mr Casson**—Indeed. We are looking—

**Senator MARSHALL**—What is the idea? Are you looking to get the same amount—

**Senator Abetz**—Senator, you could help by encouraging the trade unions to come on board.

**Mr Casson**—We have a program designed to encourage employee associates. We have specific staff devoted to managing that program. I myself take a personal role in leading that program and seeking appointments with organisations that represent the interests of employees to explain the benefits of joining the program so that they can provide a conduit, information assistance and advice to their clients, to their members, about agreement making.

**Senator MARSHALL**—Sure, but what is the ideal? Are you looking to have the same number? We just talked about the imbalance. Is balanced 50:50? Is that what you are aiming for?

**Mr Casson**—We would be delighted to ensure that there was coverage across the workforce and that there was advice available not only from the OEA but from organisations that represent employees. It is not simply a numerical equation, Senator.

**Senator McEWEN**—What do you have to do to get listed on your website as a consultant/adviser? I see there are a number of well-known law firms listed there like Minter Ellison, Norman Waterhouse and EMA Consulting in South Australia.

**Mr McIlwain**—We have criteria for membership of the program. In all categories you have to meet those criteria to become a partner.

**Senator McEWEN**—Are those criteria on the website as well? I cannot find them; perhaps you could provide them if they are available.

**Mr McIlwain**—Sure, we can take that on notice. They were certainly on the website prior to the launch of the new website last year, but if they are no longer there we will provide a copy.

**Senator McEWEN**—Do these consultants/advisers, such as those I have mentioned, have to pay to be listed on your website?

**Mr McIlwain**—No; no money changes hands in the arrangement.

**Senator MARSHALL**—How many employees are employed on AWAs in the mining sector in Australia?

**Mr McIlwain**—We would have to check to see if we have an industry breakdown that would provide that information.

**Senator MARSHALL**—Is it possible today?

**Mr McIlwain**—I can give you immediately a Work Choices figure till the end of January 2007. Between March 2006 and January 2007, 18,472 Work Choices AWAs were lodged with the OEA. Of course that does not include any pre Work Choices AWAs. We would have to take that on notice.

**Senator MARSHALL**—I think you took all that on notice earlier on. You were going to break those figures down for me by industry sector, weren't you? That is my recollection.

**Mr McIlwain**—We can take it on notice.

**Senator MARSHALL**—If it is not already on notice, let us put it on. If it is already on notice, let us put it on again. We will get two questions on notice in the one set of estimates and that will probably give us a better than fifty-fifty chance of getting one of them answered. Have you conducted any modelling in relation to the introduction or removal of AWAs in a particular sector?

**Mr McIlwain**—No.

**Senator MARSHALL**—Do you see it as your role to do so?

**Mr McIlwain**—You would have to be more specific as to the modelling for me to be—

**Senator MARSHALL**—Have you conducted modelling in relation to the impact on an industry of the introduction or removal of AWAs in a particular sector?

**Mr McIlwain**—The impact?

**Senator MARSHALL**—Yes.

**Mr McIlwain**—The answer is no and no.

**Senator MARSHALL**—Do you do it in relation to anything else other than impact?

**Mr McIlwain**—We provide aggregated statistical information about workplace agreements by industry sector.

**Senator MARSHALL**—Yes, but you do not do any modelling about the effects, the impact—

**Mr McIlwain**—No.

**Senator MARSHALL**—I am just wondering whether, if I use the wrong word, you might escape me!

**Mr McIlwain**—No.

**Senator MARSHALL**—All right. So you don't do any modelling on those issues. Have you done any modelling on the productivity benefits of AWAs generally or in relation to any particular industry?

**Mr McIlwain**—No.

**Senator MARSHALL**—All right. When was the decision made to begin publishing collective agreements?

**Mr McIlwain**—When was the decision made?

**Senator MARSHALL**—Yes. Or have they always been published?

**Mr McIlwain**—Pre Work Choices, they were published by both the AIRC and the department through its WageNet site.

**Senator MARSHALL**—Are you now publishing them?

**Mr McIlwain**—We now publish collective workplace agreements on our website. That decision would have been taken in October last year, when we learned that they were not to be published on the WageNet site. So we have, since October, published collective agreements, and in the first week of March we are launching a new web page which will allow people to conduct sophisticated searches of published agreements.

**Senator MARSHALL**—When will that be available?

**Mr McIlwain**—The first week of March.

**Senator MARSHALL**—The first week of March.

**Mr McIlwain**—Senator, I need to correct my evidence. On 24 August last year we began by publishing a list of collective agreements that had been lodged. Some time after that, in October, we provided active links from that list to the agreements. And, as I said, from the first week of next month we will provide a fully operational, sophisticated search function that will allow people to search by industry, location and other variables.



**Senator MARSHALL**—Thank you; that does answer a few questions for me. According to the list of collective agreements, there are numerous lodging employers that are actually trusts. Have you conducted any analysis of or raised any concerns over the constitutional corporation status of trusts?

**Mr McIlwain**—Mr Rushton will answer that question, Senator.

**Mr Rushton**—Your question goes to jurisdictional matters. Whether or not an employer is a constitutional corporation and then has the jurisdiction to make workplace agreements are matters for the parties to determine. We obviously provide advice on the legal position regarding constitutional corporations, but ultimately it is a matter for the parties to determine that they do have the jurisdictional basis to make a workplace agreement.

**Senator MARSHALL**—Well, have you received any queries or heard of concerns from employers or employees, or even unions, regarding the lodging of agreements by trusts under Work Choices?

**Mr Rushton**—I would have to take that on notice, as to how many queries may have been raised in relation to the issue, but—

**Senator MARSHALL**—Have there been any?

**Mr Rushton**—Certainly, we have received questions from employers and employees about the jurisdictional basis for making workplace agreements and we do provide advice on that—and there is a fact sheet on the website about who can make workplace agreements.

**Senator MARSHALL**—Have there been any concerns raised that you are aware of?

**Mr Rushton**—As I said, employers and employees may raise a question with our contact centre and with our legal team about whether or not they can make workplace agreements. We provide advice on a case-by-case basis.

**Senator MARSHALL**—Is your advice that trusts can or cannot?

**Mr Rushton**—A trust would ordinarily not be a constitutional corporation.

**Senator MARSHALL**—So your advice is that trusts cannot make agreements under Work Choices?

**Mr Rushton**—Constitutional corporations and certain other limited categories can make agreements under Work Choices. And, of course, a wider range of employers—all employers, effectively, in the territories and in Victoria—can make workplace agreements. That is the legal position.

**Senator MARSHALL**—Do you have a script, a formal fact sheet or an advice sheet for people asking questions about trusts making agreements?

**Mr Rushton**—We have a fact sheet on who can and cannot make workplace agreements.

**Senator MARSHALL**—Is that the general stuff on your website?

**Mr Rushton**—It is on the website, yes.

**Senator MARSHALL**—So, if someone rings up your call centre, there is no specific script for that?

**Mr Rushton**—There is a fairly well-developed answer.

**Senator MARSHALL**—Is it specifically in relation to trusts?

**Mr Rushton**—I would have to take on notice whether there is a particular script for trusts but, certainly, the question has been answered a number of times. Contact centre operators and legal staff are well aware of the answer.

**Senator MARSHALL**—If you have a script for advice you give in relation to trusts, would you be able to provide that to the committee?

**Mr Rushton**—Yes, I can do that. I should add that there may be some confusion because it may well be that a company is operating as a trustee for a trust as opposed to the trust itself, and the trustee company may well be a constitutional corporation, depending on the activities that it carries out.

**Senator MARSHALL**—How many lodging parties to an agreement have applied for an exemption from the publication of an agreement?

**Mr McIlwain**—We do not have that figure with us. There have been a number of applications. We will take it on notice.

**Senator MARSHALL**—Is there a threshold test that you apply?

**Mr McIlwain**—Yes, there is a test. Mr Rushton will explain it.

**Mr Rushton**—I believe that it is also on the website.

**Senator MARSHALL**—If it is, do not tell me about it. Could you also take on notice to provide figures on how many applications for exemption have been successful.

**Mr McIlwain**—Yes.

**Senator MARSHALL**—Do you have any plans to publish AWAs on the site? I accept that you would not do so identifying the parties, but do you have any plans to publish the AWAs so as not to be identifiable?

**Mr McIlwain**—No.

**Senator MARSHALL**—I know you will not be able to answer this, but I will ask it anyway; you may know for collective agreements. Do you know how many agreements lodged since the commencement of Work Choices contain jury service clauses?

**Mr McIlwain**—No.

**Senator MARSHALL**—Is there any way of finding out? That is for agreements across the board. It may not be possible for AWAs. It may be possible for—

**Mr McIlwain**—We believe that it might be a question that DEWR might be able to answer with regard to collective agreements. But I would have to say that, no, I am not aware of any mechanism.

**Senator McEWEN**—I have a couple of follow-up questions from the discussion about the partnerships program. I cannot find the workplace innovators listed on your website. Can you give me a few examples?

**Mr Casson**—I was just going to clarify that. My understanding is that the workplace innovators themselves are not currently listed. The intention is to list them when the website is upgraded on 3 March. Our workplace innovators include: Austral Tree and Stump Services in South Australia, Blue Illusion in Victoria, the CCR Group in Western Australia, COMREC Australia in South Australia, the Liverpool Catholic Club in New South Wales, Luv-A-Duck in Victoria, Prime Pharmacy in Victoria, Red Scooter in Victoria, Riley Industrial and Marine Sales in Tasmania, SNS joinery in Queensland and Vision Australia in Victoria.

**Senator McEWEN**—Is that a broad cross-section of industries? It is a bit hard to tell from names like Luv-A-Duck what they do—I hate to think what they do!

**Mr McIlwain**—It covers food processing, retail, light manufacturing—

**CHAIR**—Red Scooter is an entertainment venue—

**Mr McIlwain**—hospitality—

**Senator McEWEN**—How do you know, Madam Chair?

**Senator Abetz**—What is Luv-A-Duck?

**CHAIR**—An extremely successful duck-processing company, as the name implies.

**Senator Abetz**—It is not a dating agency or anything?

**CHAIR**—Definitely not!

**Senator McEWEN**—Thank you. You talked about getting organisations to participate in the partnerships program as consultants, employee associates or employer associates. Have you invited the community legal centres, which were recently defunded, to participate in the program?

**Mr Casson**—Yes.

**Senator McEWEN**—With any success?

**Mr Casson**—I will have to take that on notice. I believe there has been some correspondence and some interest from some of the Working Women's Centres and community legal centres. There are none currently that have taken up the opportunity of becoming employee associates, but we would welcome them.

**Senator McEWEN**—Do you know why they have not taken up the offer as yet?

**Mr Casson**—No. We wrote to them and invited them individually to become employee associates. I understand that there are some discussions and there has been some interest. The reasons for them not taking it up would be individual to them, I am afraid.

**Senator McEWEN**—Some of these centres obviously have funding problems. Is there any capacity to assist them to participate in the program with funding from the OEA or DEWR?

**Mr Casson**—There is no funding associated with the Agreement-Making Partnership Program for any of the categories of consultant advisers, employee associates, employer associates or workplace innovators. We do not pay any of those categories to participate.

**Senator McEWEN**—Which would therefore make it difficult for community type organisations to participate in the program, I presume.

**Mr Casson**—We provide them with advice and assistance that they can provide to their clients or members. We provide things like legal briefings, we bring them up to date on developments and we assist them with quick answers on the process of agreement making—how to go about agreement making. It is an information advice and assistance mechanism that is tailored to a particular organisation to get information to them so that they can get information to their client base and their members more quickly.

**Senator McEWEN**—But to do all that takes resources—staff—and that means money. It is all very well for Minter Ellison to participate in this program, because they can charge their clients \$150 or \$400 an hour or whatever it is; but a community organisation such as a community legal service or a Working Women's Centre does not charge any fees. I am just trying to assist you to make the program more appealing to other organisations. To get them on board you are going to have to fund them to do it. Is that under consideration at all to enable you to reach your objective of parity between employer and employee representative organisations? Are you going to fund trade unions, Minister, to participate?

**Mr McIlwain**—We took a threshold decision in 1999, when the first partnership program was established, not to provide funding of any kind. The reason for that is that the OEA, through time and the resources of its staff, puts a tremendous amount into the program. It costs the OEA money to run a program of that size. That is the OEA's investment. As Mr Casson said, an integral part of the program has always been, for example, material and legal training and quite extensive and intensive training provided by OEA lawyers. We believe we put a lot into the program for all of the categories, including for the employee associates category. We accept that whether an organisation participates will depend upon the organisation's own view about its capacity and resources, but the OEA puts a lot of resources into the program and we do not see that there is the capacity for the organisation to fund individual participants in the program.

**Senator McEWEN**—Are you doing anything else to encourage other organisations to participate in this partnership program? It seems to me that you say there is a problem, but you are not doing anything about it.

**Mr McIlwain**—No, that is not the case. As Mr Casson said, we have contacted many organisations over the last eight years representing employees, inviting them to consider becoming an OEA industry partner. Under the new scheme, which was launched last year, we have redoubled our efforts there. And as Mr Casson said, there are staff who work full-time on trying to persuade organisations representing employees to see the benefits of becoming part of the program. That is what we are doing: we have redoubled our efforts, we take it seriously. I am delighted that we now have six employee associates, and we are very keen to see that number grow.

**CHAIR**—That is all of the questions. Thank you very much, gentlemen.

#### **Australian Building and Construction Commission**

**Senator McEWEN**—Can I have an update on the number of inspectors in each state and territory please?

**Mr Lloyd**—The current inspector numbers are: Victoria, 17; New South Wales, 18; Queensland, 10; Western Australia, 12; South Australia, three; and Tasmania, one.

**Senator McEWEN**—So none in the territories?

**Mr Lloyd**—No.

**Senator McEWEN**—Are any of those located in regional areas?

**Mr Lloyd**—No, they are all located in capital cities.

**Senator McEWEN**—And that was at which date, Mr Lloyd?

**Mr Lloyd**—That was at 31 January 2007.

**Senator McEWEN**—Can you advise on the number of prosecutions since Work Choices commenced that the ABCC has undertaken or is undertaking, and do you have that information listed by state?

**Mr Lloyd**—I do not have a figure readily available.

**Senator Abetz**—Do you want figures since Work Choices came into being or since the building legislation came into being?

**Senator MARSHALL**—You could probably break it down into both. Pre and post Work Choices is always a nice comparison and seems to be common.

**Mr Lloyd**—I will have to take on notice the question about before and after Work Choices.

**Senator McEWEN**—Well, since the ABCC commenced?

**Senator MARSHALL**—Would you take that on notice?

**Mr Lloyd**—Yes.

**Senator MARSHALL**—Can you break that down into what areas and in relation to what matters—which offices have initiated it?

**Mr Lloyd**—Which state?

**Senator MARSHALL**—Yes, and in relation to what matters. Are you going to publish this information?

**Mr Lloyd**—We publish in our annual report various information about prosecutions commenced and finalised.

**Senator MARSHALL**—That is your yearly report, obviously.

**Mr Lloyd**—It is on our website.

**Senator MARSHALL**—How often is that updated?

**Mr Lloyd**—Very regularly—as regularly as it has to be. It can be daily, it can be weekly. When a new prosecution is launched, it is normally on the website almost immediately.

**Senator MARSHALL**—My understanding is that between 1 October 2005 and 31 December 2006 you issued notices to 44 individuals and interviewed 41 under your compliance powers. Of those, my advice is that 31 were workers, seven were union personnel, two were managers and one was a government inspector. Can you explain to me the interview process? Do you interview both employers and employees when a matter is raised, to obtain both sides of the story?

**Mr Hadgkiss**—The process is followed in most investigations by a law enforcement agency, in that invariably an allegation is made by a party—it could be a union official, an employee or an employer—the details of that allegation are recorded, witnesses are interviewed and then the person or entity against whom the allegation is made is afforded the opportunity to reply to that allegation.

**Senator MARSHALL**—In respect of the discrepancy in the interviews conducted under your compliance powers, can you explain the discrepancy for me?

**Senator Abetz**—A discrepancy as in?

**Senator MARSHALL**—The discrepancy goes to the fact that 31 were workers and seven were union personnel and then on the other side you had two managers and one government inspector. They may not necessarily be ‘on the other side’, but I am just trying to get an idea on why that is happening.

**Mr Hadgkiss**—Sure. The rationale is that, in my experience, with a large proportion of workers, they are often reluctant to cooperate. They may tell a version of events off the record but be reluctant to go on the record—that is, sign a witness statement. They have often said that if they were forced to—they are aware of the compliance powers—then they would be happy to submit to the compliance powers. So if they are threatened for having cooperated with the authorities, they can say that they were forced to come in and give their version of events.

**Senator MARSHALL**—How many of the 41 interviews were done under the conditions in that last example?

**Mr Hadgkiss**—We do not keep statistics on that particular scenario. I was just basing this on what has been my experience.

**Senator MARSHALL**—We are talking about 41 interviews all up. What is your experience? What percentage would that be?

**Mr Dagleish**—Our experience is that the vast majority of the witnesses at these compulsory examinations under section 52 have refused to sign witness statements.

**Senator MARSHALL**—That is all right; that is probably why you use the compliance powers.

**Mr Dagleish**—Yes, that is why we use the compliance powers.

**Senator MARSHALL**—Mr Hadgkiss gave us an example. His experience was that people say, ‘I don’t want to do so, but if you do it under the compliance powers then I’d be happy to.’ I take it from what he has said that people are requesting that the compliance powers be used upon them. That is the question I am asking: what is the percentage or how many—

**Mr Hadgkiss**—We do not keep those statistics.

**Senator MARSHALL**—You have said that. But we are talking about 41 interviews here. You have told me what is your broad experience. So, according to your experience, what is the percentage breakdown?

**Mr Hadgkiss**—Again, I cannot answer that. We do not keep those statistics. Another dimension is, regrettably, that there is a blanket policy by unions, when workers invariably go to their union for advice, of not cooperating with the ABCC.

**Senator MARSHALL**—That is also your experience.

**Mr Hadgkiss**—That is in writing. Most union publications put out an edict to that effect.

**Senator MARSHALL**—I want to turn to prohibited content for what are referred to as side agreements in the building and construction industry. There have been numerous articles, particularly in *Workplace Express*, about some of these things. The rules relating to prohibited contents were changed. Can you tell me why?

**Mr Lloyd**—That is a matter for DEWR. I could not give you an indication as to why.

**Senator MARSHALL**—You drew the attention of the minister to the alleged discrepancy in the rules relating to prohibited contents in side agreements, didn't you?

**Mr Lloyd**—I did.

**Senator MARSHALL**—Why did you do that? Was the law clear or unclear on the issue?

**Mr Lloyd**—I learnt that a NECA-ETU agreement had been considered to be code compliance, and that agreement had a side deed attached to it. On looking at that side deed, it seemed to me that it was about having the parties agree to prohibited content, including also as a purpose to counteract any changes made to the national code and the guidelines. That seemed to me to be incongruous—to have the code about best practice workplace relations being conducted on building sites. Therefore I asked for the matter to be reviewed.

**Senator MARSHALL**—What was the recommendation that you made to the minister?

**Mr Lloyd**—I wrote to the department, to DEWR, and asked for the matter to be reviewed. I asked for the code compliance advice to be reviewed.

**Senator MARSHALL**—And you did not include any recommendations in that.

**Mr Lloyd**—No.

**Senator MARSHALL**—Do you believe the law needs to be clarified when applying to future agreements?

**Mr Lloyd**—That is not for me to say.

**Senator MARSHALL**—Do you know what the cost to business in relation to the change in the rules has been?

**Mr Lloyd**—No.

**Senator Abetz**—But we know what the savings to business have been. They have been very extensive.

**Senator MARSHALL**—Do you know how many renegotiations of agreements the change in the rules requires?

**Mr Lloyd**—No, I do not.

**Senator MARSHALL**—Do you know whether there have been any damages awarded for breaches of contracts as a result of the change to the rules?

**Mr Lloyd**—No.

**Senator MARSHALL**—Is it your intention to initiate investigations and/or prosecutions in relation to this issue immediately?

**Mr Lloyd**—No.

**Senator MARSHALL**—When do you intend to initiate investigations and prosecutions?

**Mr Lloyd**—Investigations are initiated on the basis of a complaint. Also, in relation to the code and guidelines, our role is ensuring that the code and guidelines are adhered to on work sites. Investigators visit various code sites around the country to conduct inspections and audits, but there is no intentional focus, if you like, on this particular issue.

**Senator MARSHALL**—So when you wrote to DEWR initiating the review, was that as a result of a complaint?

**Mr Lloyd**—No. I became aware that the agreement had been assessed as being code compliant. I had a look at it, and then had a look at the site deed and came to the view that it warranted a review.

**Senator MARSHALL**—Who assessed it as code compliant?

**Mr Lloyd**—DEWR.

**Senator MARSHALL**—So the impact of the change in the rules after DEWR had assessed the agreements as code compliant was that it effectively then made those agreements non code compliant. Is that the effect of the change?

**Mr Lloyd**—Can you repeat the question?

**Senator MARSHALL**—I understand DEWR had assessed the agreements that were code compliant and numerous agreements were then entered into. Then the rules were changed, which made non code compliant all those agreements which had initially been assessed as code compliant. Is that the effect?

**Mr Lloyd**—I do not think that is the effect. My understanding is that there was one or a very small number of agreements which had emanated from a round of negotiations between NECA and the ETU. My understanding was that only one—or if it was more than one it was only a very small number—had been assessed as being code compliant. Therefore, I do not think there was a massive amount of making non code compliant agreements.

**Mr Dalglish**—The amendment was prospective from 3 November, not retrospective. It did not have an effect on past agreements.

**Senator MARSHALL**—Prospective in what impact—if it had been negotiated and agreed but not registered would that have still been okay?

**Mr Dalglish**—We are talking about code compliance here, which is something different from prohibited content under the regulation.

**Senator MARSHALL**—Yes, that is right. If it has been assessed as code compliant, and you are saying the change only applied to future agreements, at what point is the agreement made? Is it when the agreement is made between the employee and the employers or when the agreement is registered in the commission?



**Mr Dagleish**—The code compliance structure is one where they submit the agreements to DEWR to make an assessment, but they do not actually—

**Senator MARSHALL**—But they do that before they have registered the agreements with the commission, otherwise there is no point. You do not go and register an agreement that is binding for three years or so and then see if it is code compliant. The whole point of going to DEWR in the first place to get a tick-off on your agreement is so that it is accepted as code compliant. Then you go and register it.

**Mr Dagleish**—Yes, I agree. And then it is lodged. ‘Lodged’ is the word used these days.

**Senator MARSHALL**—You offered the information and I thank you. I appreciate the information you gave me, but I am now just trying to clarify. You said the changes were prospective. From when were they prospective—from when agreements are registered or when the employer and employees agree to it?

**Mr Lloyd**—It was an amendment to the guidelines.

**Mr Dagleish**—We are talking about side deeds, which are not lodged. That is why I hesitated. The whole point of the side deed was to not lodge it, as I understand it.

**Senator MARSHALL**—How do you make side deeds compliant or non-compliant with the code?

**Mr Hadgkiss**—They have been prohibited under the latest guidelines.

**Senator MARSHALL**—So the change is prohibited for any form of side deed?

**Mr Lloyd**—No.

**Mr Hadgkiss**—Only if there is prohibited content within the deed. You can still have a side deed, but it should not offend the code.

**Mr Dagleish**—You can have a side deed that is code compliant.

**Senator MARSHALL**—So that I am clear: DEWR had ticked off on the original side deed as code compliant?

**Mr Hadgkiss**—As I understand it, the agreement had been ticked off, but there was a reference within the agreement to a side deed which contained prohibited content.

**Senator MARSHALL**—You are not really the department I should be asking about this?

**Mr Hadgkiss**—No, Senator.

**Senator MARSHALL**—I got that message.

**Mr Hadgkiss**—I am just trying to be helpful.

**Senator MARSHALL**—I want to ask some general questions about what sort of compliance work you do to ensure that employers in the building and construction industry comply with the Workplace Relations Act.

**Mr Hadgkiss**—Nearly 400 presentations have been made by personnel of the ABCC to industry groups, including unions, industry associations, site personnel, boards of directors, executive—

**Senator MARSHALL**—I am talking about compliance work.

**Mr Hadgkiss**—As in educational work. We have been educating industry stakeholders as to their rights and obligations under the legislation. Indeed, in recent times a penalty is handed down by the courts—that entities and individuals receive training by the ABCC.

**Senator MARSHALL**—So that is the extent of your compliance work?

**Mr Hadgkiss**—No. Obviously the inspectors are busy responding to 1800 calls. Since 30 June last year we have received 1,764—

**Senator MARSHALL**—The question goes to compliance. I am asking: what sort of compliance work do you do? First of all, you told me you do seminars and briefings. That is fine. Then you told me you respond in a proactive way to calls. Is that the extent of the compliance work you do?

**Mr Hadgkiss**—And there are obviously investigation activities—following up those calls for assistance—

**Senator MARSHALL**—Yes; that is responding to calls.

**Mr Hadgkiss**—Putting matters before the court, where necessary.

**Senator MARSHALL**—No—that is a consequence of the compliance work. Do you do anything proactive? Do you do area raids or industry raids?

**Mr Hadgkiss**—I will not use the term ‘raids’, but since—

**Senator Abetz**—That is very provocative.

**Senator Marshall**—No. Mr Hadgkiss, I do not mean to be. What I am trying to find out from you is what compliance work you do, without the advertisement.

**Mr Hadgkiss**—We have conducted nearly 1,300 visits to building sites since October.

**Senator MARSHALL**—As a result of?

**Mr Hadgkiss**—Proactive work, as you—

**Senator MARSHALL**—Not as a result of calls to your call centre?

**Mr Hadgkiss**—No, not necessarily so.

**Senator MARSHALL**—Can you give me a breakdown of the staff who are working on the seminar type aspect?

**Mr Hadgkiss**—All of them. They are multiskilled, multidisciplined.

**Senator MARSHALL**—So they are all involved in reactive, proactive and seminar and information—

**Mr Hadgkiss**—The only delineation would be that certain inspectors are confined to national code work.

**Senator MARSHALL**—This is the sort of information I am asking for, yes.

**Mr Hadgkiss**—And, yes, we could give you those statistics—how many are dedicated code inspectors and, as the commissioner pointed out, the total number of personnel we have just in code work and how many do the remainder of our compliance work.

**Senator MARSHALL**—It might be easier if you actually give me a breakdown of the staff and what they do. Can you do that?

**Mr Hadgkiss**—I have already explained what they do, but on a daily basis they could be doing many things.

**Senator MARSHALL**—Which includes—

**Mr Hadgkiss**—Coming to Senate hearings.

**CHAIR**—You might be wise to leave that, Senator.

**Senator Abetz**—Is there a particular thing you had in mind as to what they might be doing that you want a response to, or is this just a general question?

**Senator MARSHALL**—It comes as a result of DEWR indicating that they do not do any compliance work. We have the Office of Workplace Services coming up. What I want to be able to do when I get to those departments is understand where any demarcations or overlapping of work—

**Senator Abetz**—So it was just a general question.

**Senator MARSHALL**—Yes.

**Senator Abetz**—And that is why it is, in fairness, I think somewhat difficult for Mr Hadgkiss to think of all the variety of things that people might do.

**Senator MARSHALL**—Given the explanation I have just given, is there anything you might want to assist me with?

**Mr Hadgkiss**—We cannot give a breakdown of statistics. There is no requirement on inspectors to give an hourly breakdown. I understand law firms require their lawyers to account on a three-minute, six-minute, half-hour basis or whatever it is for the activity they are involved in. There is no requirement for our inspectors.

**Senator MARSHALL**—And I was not actually seeking that. Maybe you can give some consideration to the generality of my question. Rather than telling me about staff and what each one of them does, maybe you could give me a ballpark indication on the types of activities that are being done. With compliance work—what sort of compliance work, whether it is proactive, reactive or information delivery and if there is any other sort and if you could identify a reasonable descriptor for what other activities they might be involved in. That would assist me in understanding the activities that your department is involved in so that I can then see what other departments may or may not be doing and whether there is any crossover.

**Mr Hadgkiss**—Certainly.

**Senator McEWEN**—When your officers make their proactive visits or inspections—not raids—do they advise either the employer or the employees or both that that is happening?

**Mr Hadgkiss**—Invariably the practice is that they would advise the site manager that they were coming to the site. Obviously on occasions they would visit a site in response to a request by a site manager or worker, whatever, to respond to a problem. They would get to the site as soon as they could, depending upon the circumstances.

**Senator McEWEN**—In the unannounced visits, do they let the employer know they are coming?

**Mr Hadgkiss**—Ordinarily, in the majority of cases I would not imagine an instance whereby the employer would not know that they were coming, because either he had called them or they had already indicated to him or her that it was their intention to call. In terms of code compliance, normally for an audit we would give them a week's notice of our arrival. If it were just a site visit, it could be 24 or 48 hours or whatever. It certainly would not be—

**Senator MARSHALL**—So even if they did not initiate the visit, if it were an employee who initiated the visit you would still give the employer 24 hours notice?

**Mr Hadgkiss**—Not necessarily. If an employee had a complaint, if it were a country town, there may be an instance where they would call in in response to a request for assistance or in response to a request for some educational material, for instance, or some advice on the law.

**Senator MARSHALL**—Sure, but I doubt an employee would be ringing you if they had a problem because they thought the employer was not getting enough advice or they need extra information. What I am trying to establish is: do you always give notice of your visit or are there some circumstances where you do not?

**Mr Hadgkiss**—I cannot imagine an occasion where we would not.

**Senator MARSHALL**—So if an employee has complained to you about the conduct of the employer, the employer will know about that complaint?

**Mr Hadgkiss**—Not necessarily. If an employee has a complaint we probably would not want to embarrass the employee by going to the site. We would probably invite that employee into one of our offices or meet them at their home or wherever was convenient to them and obtain that information from that employee in the circumstances they required. If it then were the case that the site needed to be visited or an allegation put to the employer, we would again make an announcement that it was our intention. You see, for instance, we receive a lot of calls from employees about employers' behaviour.

**Senator MARSHALL**—Yes. That is what I am trying to ascertain. You have told me you could not foresee an instance where you would not announce your visit in advance.

**Mr Hadgkiss**—In the scenario I gave, if an employee were making a complaint against his or her employer, we would elicit the facts and go back to what I said originally. We would interview potential witnesses. We would then approach the employer on the site or at the site office or head office—wherever it happened to be—put the nature of the allegation to them and afford them the opportunity to respond to the allegation made by the employee.

**Senator MARSHALL**—Would you identify the employee in that process?

**Mr Hadgkiss**—Wherever possible, if the employee wanted to make it confidential we would respect that confidentiality. Again, returning to the compliance powers, it may be that the employee may say, for whatever reason—

**Senator MARSHALL**—They may.

**Mr Hadgkiss**—That is obviously hypothetical.

**Senator MARSHALL**—So if the employee asked for confidentiality—

**Mr Hadgkiss**—We would respect that confidentiality at all times.

**Senator MARSHALL**—Will you have any compliance role regarding the Independent Contractors Act?

**Mr Dagleish**—Yes, we will.

**Senator MARSHALL**—Can you explain what?

**Mr Dagleish**—We anticipate being involved, when the legislation comes in, in respect of the sham—

**Senator MARSHALL**—It is in, isn't it?

**Mr Dagleish**—The legislation has been passed but has not commenced yet. But when it commences I anticipate that, apart from being involved in the educational role, we will be talking to subcontractors, for example, as to how the legislation will affect them. It is quite possible that people will complain to us about alleged sham arrangements in the building industry. We could be involved in investigations there.

**Senator MARSHALL**—Can you tell me what criteria you will use to determine whether a worker is an independent contractor or not?

**Mr Dagleish**—There is a multifaceted test. As you know, the independent contractor is not defined in the act. It is just a common law test. So we revert to the type of criteria set out in Hollis and Varbou, which looks at various aspects of the organisation and the relationship. There is actually a checklist that is proposed to be used so that people can self-assess against the checklist, taking all those factors into account.

**Senator MARSHALL**—Will that be the same checklist you use?

**Mr Dagleish**—The idea is that we will use the same list as OWS so that it is all consistent from one section—

**Senator MARSHALL**—Can you provide a copy of that checklist to the committee? It does not matter if you do not have it now.

**Mr Dagleish**—The list that I have is the one that we are going to use in the training, but I am not sure that that will be the final list that is adopted between all the agencies.

**Senator MARSHALL**—It could not be different, could it?

**Mr Dagleish**—Exactly. It will have to be uniform.

**Senator MARSHALL**—That is right. So can you provide that list? You cannot train people with one list and then apply a different one, so it is going to be the same.

**Mr Lloyd**—The refinements are still being worked out. We will provide it when it is settled.

**Mr Dagleish**—I think it is probably better to wait till it is settled between the agencies.

**Senator Abetz**—The ABCC has its own list.

**Senator MARSHALL**—I thought you had indicated that you had a list you were going to use for training, but if it is still in development that is another matter.

**Mr Dagleish**—It is a draft list.

**Senator MARSHALL**—Will you provide that list to the committee when you have finalised it?

**Mr Dalglish**—Certainly.

**Senator MARSHALL**—What about in determining any scripts for use on hotlines and others? How are you going to manage that?

**Mr Dalglish**—In our training process we are adapting what is going to be used by OWS in its call centres. I think it is quite important, from our point of view, that we do not find that somebody who answers the 1800 number gives legal advice. In the first instance, I will be wanting all of those calls referred to our in-house lawyers. As you know, it can be quite a difficult question—

**Senator MARSHALL**—I know. I talked about it with Senator Abetz for a long time.

**Mr Dalglish**—We will try to give people legal advice from lawyers in the first instance on those questions.

**Senator MARSHALL**—You are going to have a compliance role, and OWS will have a compliance role. Will your areas of responsibility overlap? They are not cordoned off from the building and construction industry, are they?

**Mr Dalglish**—No, that is right. As it happens now, we have a fair bit of liaison with OWS—on both a formal and an informal basis. If somebody complains that they have not been paid their entitlements, we can refer that on to the OWS for investigation. A similar sort of arrangement will arise in relation to the Independent Contractors Act. They might be the call in the first instance and refer it to us if it is in the building industry; or, if we get a call that relates to the building industry, we will deal with it.

**Senator MARSHALL**—Can you explain your role in prosecutions for breaches of the Independent Contractors Act? Will you have a role in prosecution?

**Mr Dalglish**—I think in relation to sham arrangements we will. We have jurisdiction so that an ABCC inspector will be able to bring proceedings in respect of those sham arrangements.

**Senator MARSHALL**—I am wondering about the scenario, because you provide advice about what is and what is not. It is a difficult test to apply and there will be some confusion. You may actually be giving advice to both parties in dispute.

**Mr Dalglish**—Sure.

**Senator MARSHALL**—How do you intend on managing that? You may end up finding yourself both the defender and prosecutor.

**Mr Dalglish**—You can imagine that that situation might arise. I think that (a) we can go to external legal advice, and (b) it might be in those instances that we could refer one aspect of it to OWS and deal with the other aspect ourselves—if there is perceived to be a conflict.

**Senator MARSHALL**—Are you able to initiate prosecutions on behalf of yourself, or does it have to be on behalf of a party?

**Mr Lloyd**—We can initiate them ourselves.

**Senator MARSHALL**—So, regardless of the request—even if neither party involved in an arrangement wishes a prosecution to take place—you can initiate that and run with that and there are no restrictions on that?

**Mr Dagleish**—The ABCC inspector is an eligible person to bring proceedings in its own name.

**Senator BARNETT**—Mr Lloyd, you will recall that we previously discussed the appointment by the Tasmanian government of union officials as OH&S inspectors in Tasmania in the building and construction industry. I am wondering whether you can advise the committee of the status of that trial. I know from previous advice that it started on 1 September. It was to be for six months. I know that you also wrote to the relevant minister, Minister Kons, in the state government, and expressed some concerns. I have personally received concerns expressed to me from the Master Builders Association, the Tasmanian Chamber of Commerce and Industry, the Australian Mines and Metals Association and indeed the HIA in Tasmania. The TCCI originally advised that such appointment was ‘outrageous’. So can you advise what inquiries have taken place and the status of that inquiry?

**Mr Lloyd**—Yes. There has been an exchange of correspondence since the last hearing here. I think at about that time I had indicated to the Tasmanian government—and I did not write to the minister; I actually wrote to officials: the Secretary of the Department of Justice is the person I have corresponded with most frequently—that I would attempt to get information and statements from people who had made a complaint to the ABCC. I pursued that, and two people decided that they would agree to the ABCC passing on their witness statement to the Tasmanian government. Two others declined to do so. I think they were concerned about possible repercussions if they did so. After having done that, I recently received a letter from the Tasmanian government, from an official, the Secretary of the Department of Justice, saying that they had investigated the allegations; they had spoken to the union officials involved; they had apparently looked at similar complaints, other complaints—

**Senator BARNETT**—Sorry, could you just say that again.

**Mr Lloyd**—They had, I think, examined similar complaints, but not the ones that I referred.

**Senator BARNETT**—They had received similar complaints.

**Mr Lloyd**—Not the ones that I referred, but they gave an indication that they had had similar complaints from other people, and they came to the conclusion that matters were resolved to their satisfaction. So that was the last letter I received from the Tasmanian government officials, and I have just responded.

**Senator BARNETT**—When was that?

**Mr Lloyd**—That letter was received on 3 January 2007. I have responded by saying that I consider that I have concerns about the trial and will look at any future complaints seriously. We may investigate them ourselves; we may refer them to the Tasmanian government. But it seems that, at the moment, that is the end of the matter—the complaints, the issues that I raised. As I understand it, the trial is continuing, but I think it must be coming close to the end of that trial period. I understand it is a six-month trial.

**Senator BARNETT**—Can we just go back a step. Thank you for that. I understand, based on our previous correspondence, that you had corresponded with the state government—you had received a number of complaints. I just want to confirm with you how many complaints you had received and the amount of correspondence you have had with the state government.

**Mr Lloyd**—We had received complaints about three incidents. That is my recollection.

**Senator BARNETT**—Three separate incidents?

**Mr Lloyd**—Yes. I think there, as complaints, statements were received from four people in relation to that. I do not have the break-up, but there were four people.

**Senator BARNETT**—And were the three separate incidents in the building and construction industry?

**Mr Lloyd**—Yes, they were.

**Senator BARNETT**—And you are not at liberty to advise any further details, I would assume?

**Mr Lloyd**—No.

**Senator BARNETT**—That is fine. Four separate people, and two of those have been prepared to provide witness statements which you have received and then forwarded to the state government, and two have not?

**Mr Lloyd**—Yes. Our investigators received witness statements from four people. To release that information to the Tasmanian government, we had to get their agreement that their statement could be released, so we approached the four people. Two agreed to have their statement passed on, and two did not agree. So we did that, and then I am not too sure what the Tasmanian government official did with it, but they have written back, as I say, and said that they consider the matter has been resolved to their satisfaction.

**Senator BARNETT**—So, when you received these three separate complaints, did you write to the state government on each occasion or did you write to them summarising the four incidents and the complaints?

**Mr Lloyd**—I wrote to them in a more general sense and said we had received information about these complaints. The information was that the union officials did not appear to be exercising the power appropriately. I drew that to their attention.

**Senator BARNETT**—Based on the four witness statements that you have received, do you consider that the statements are concerning and serious?

**Mr Lloyd**—Yes, they are of concern. That is why I persisted with corresponding with the Tasmanian government in urging them to investigate it—because I felt it was a serious matter which justified a thorough investigation by them.

**Senator BARNETT**—So you are now awaiting the evaluation of the six-month trial by the state government, I assume, and their evaluation will determine your future actions. Is that a fair assessment? How would you assess the situation?



**Mr Lloyd**—The assessment is clearly in their hands. I imagine they will be consulting with industry parties about the trial. Whether that includes the ABCC, I do not know as yet. But I anticipate that review will take place soon.

**Senator BARNETT**—So the ABCC may take this matter further, depending on the state government's response to the evaluation.

**Mr Lloyd**—Yes.

**Senator Abetz**—Can I just ask a question here for my own interest. There were four complaints. Two were happy for their witness statements to be provided to the state government. You provided them with a letter expressing concern. The state government wrote back saying it was resolved to people's satisfaction. Did you check up with those two who did allow their witness statements to go to the state government that it had in fact been resolved to their satisfaction? For the *Hansard*: Senator Barnett is asking this question and we will take it on notice!

**CHAIR**—I think you have agreed to take your own question on notice.

**Senator Abetz**—That is what I was thinking.

**Senator BARNETT**—I think it was a very legitimate question from the minister. I am very keen to seek a response.

**Senator Abetz**—Yes, just as a matter of process as to how it all works.

**Senator BARNETT**—Would you like to take that on notice?

**Mr Lloyd**—Yes, we will take that on notice. I know they were certainly unhappy and concerned when they made the complaints to us. But I do not know their current disposition.

**Senator BARNETT**—I have received different representations from different industry groups. Have you also had feedback from industry groups of the same ilk? Can you advise us on that?

**Mr Lloyd**—Throughout the whole trial period my perception is that the industry groups are concerned about it. That even includes, I think, the ACCI, which I recollect mentioned that they may consider referring the matter to the ILO.

**Senator BARNETT**—That is on the public record—the ACCI's intention to say that the action is actually in breach of an ILO resolution. Do you have anything further to add at this stage, Mr Lloyd or Mr Hadgkiss?

**Mr Lloyd**—No, that is about where it is at the moment.

**CHAIR**—Thank you very much, gentlemen, for appearing before us today. We will now call the Australian Fair Pay Commission secretariat.

[6.00 pm]

#### **Australian Fair Pay Commission**

**CHAIR**—Welcome, Ms Taylor. Senator Marshall has some questions for you.

**Senator MARSHALL**—Thank you. Your website states that the minimum wage determination is to be announced in mid-2007, the junior wage review is to be announced in

late 2007 and the training wage review timing is to be determined. Will these processes and their determinations change if an election is called this year?

**Ms Taylor**—No, Senator. The commission has set the timetable for the wage reviews. The first wage review that is to be handed down in mid-2007 is underway. You may have noticed also on our website that we have called for submissions and started the consultation process. We have not as yet called for submissions for the junior wage review, but that is in the planning, with a decision in late 2007. The trainee and apprentice wage rates review is to be next year, at a time as yet undetermined. But the calling of the election will not affect those decisions.

**Senator MARSHALL**—So those processes can and will continue during an election period?

**Ms Taylor**—They would, Senator, yes.

**Senator MARSHALL**—Thank you. Was the decision to move the minimum wage determination to mid-2007 made in order to give you more room to move in your determination in relation to when the state tribunals will be handing down their decisions?

**Ms Taylor**—That was a decision the commission made, and I am not really able to add much to their reasons for the decision. They said it would be in mid-2007. But, if I can add something, Professor Harper said in a consultative forum the other day that a number of groups had made representations about wanting it to not be in December because there were a lot of people about to go on leave at that time. So, for administrative reasons, there were a number of representations and comments to the commission that the decision not be made in December or later in the year.

**Senator MARSHALL**—Okay. Do you intend to alter your consultation processes for the three wage determinations planned for 2007?

**Ms Taylor**—The consultation processes will alter slightly depending on the feedback that we get at each stage about the best way to contact or consult the target groups. For this wage review we have undertaken a consultative process that is very similar to the last consultative process: there are meetings with stakeholder groups, there are meetings with specific advisory groups—as we had last year with our advisory group on disability—and there will be greater use of targeted focus groups. We used those in the last round of consultations, but there will be a greater use of those in targeting specific sectors of the general public so that culturally and linguistically there will be diverse focus groups for the unemployed. For the junior wage review we will also have specific groups looking at juniors. So there is a whole list of those.

**Senator MARSHALL**—In terms of the consultations themselves, will there be changes there? Specifically, will you again be using a public relations company or professional to run those consultation sessions who does not have any industrial relations experience?

**Ms Taylor**—We used the targeted focus groups and the consultations as we did last year. We used a company—and I think I said this last time—that was experienced in the facilitation of those groups; that was their expertise. Again, we put out a tender to run those targeted focus groups of companies that have experience in that.

**Senator MARSHALL**—Will you again be googling participants prior to the consultation sessions?

**Ms Taylor**—We are not doing the public consultation—the open, public meetings for the targeted focus groups. We know the background, if not the specific background, of the target group these people are coming from, so we will not need to do that this time.

**Senator MARSHALL**—Will you again be having predetermined items for discussion at the sessions?

**Ms Taylor**—There will be some predetermined items for discussion but, as with our last public consultation sessions, there was an opportunity for open discussion. So, if there were areas in which participants felt they passionately wanted to say something or have a discussion, there was an opportunity for that. Again, there will be an opportunity for people to raise their concerns around their particular topic.

**Senator MARSHALL**—Will there be any changes to the last consultation arrangements to ensure that you consult with trainees and junior workers?

**Ms Taylor**—Yes. As I said, we are using targeted focus groups so that we are talking directly to groups of juniors—and the plan is for groups of trainees and apprentices when we do the training and apprentice review—as well as those organisations that represent young people and trainees and apprentices and organisations such as youth affairs councils. We consulted with them last time and they will be part of the review. We will also call for submissions, as we have done with the first and second wage reviews. That will allow anybody with an interest in the matter to put in a submission to the commission.

**Senator MARSHALL**—You will probably have to take this on notice: are you able to provide us with the locations, the workplaces that you will be consulting with?

**Ms Taylor**—For the whole list, I will take that on notice. The locations for the focus groups have recently been put on our website, but I will give you an extensive list and also the list of organisations that we will be consulting with as well. In addition, we have sent out some information packs to libraries and employment services providers—those sorts of organisations—about the submission process and how they can be involved in the commission's deliberations. I will give you a list. I think, though, there were some 7,000 of those; I do not know whether you want that as well.

**Senator MARSHALL**—Are you using media to assist with the notification of the consultation sessions?

**Ms Taylor**—No, we are not using media for the focus groups. We have used the media to advertise the call for submissions, and the advertisement was placed on the weekend of 2 December for this wage review.

**Senator MARSHALL**—While I personally am not looking for a new job, I did happen to come across an ad in the paper on the weekend for senior researchers and researchers. There were various positions with packages of up to \$110,000. Can you explain to me what they are going to do, how many of them there are going to be and the time frames of employment? From the ad, they appear to be full-time, permanent jobs. Are you aware of the ad?

**Ms Taylor**—Yes, I am aware of that. We have three areas of the secretariat. One is our research and analysis area. We have various people employed in there. There are currently 14 staff in the research and analysis area. It is, as you would expect, our biggest area. We look for a range of people with skills and background qualifications either in economics or statistics—areas like that. They will be assisting the secretariat with our research and analysis and also the research analysis that is commissioned. We commission research to provide to the commission.

**Senator Abetz**—Do not apply, Gavin!

**Ms Taylor**—We would be happy to have your application, Senator.

**Senator MARSHALL**—No, I could not leave you, Eric! I have to finish the job.

**Ms Taylor**—We have had those positions in development since the start of the secretariat. A couple of people have left recently and caused some vacancies, so they are filling vacancies at the moment.

**Senator MARSHALL**—If it is not publicly available, could you give us a list of your staff, their titles and the pay bands which they occupy?

**Ms Taylor**—Yes. I think that was one of the questions on notice that we responded to last time. I will see if I can find that question.

**Senator MARSHALL**—With a fairly new organisation, I expect it probably has changed since then.

**Ms Taylor**—Not with people's names.

**Senator MARSHALL**—No, not names; I would like the positions and a description of what they do—the title, I suppose.

**Ms Taylor**—We did provide some information about that, but I do not think it had the titles of positions.

**Senator MARSHALL**—Could you update that for us with the new positions. You say 'various positions'. How many are you actually taking on?

**Ms Taylor**—At the moment we are looking for two people, but there are a couple of opportunities coming up as we have some staff going on maternity leave, so there may be other opportunities in the near future. So rather than do it bit by bit we are hoping to establish a bit of a pool of applicants.

**Senator MARSHALL**—Have you commissioned any research since the last wage decision?

**Ms Taylor**—Yes, we have.

**Senator MARSHALL**—Could you tell me who is doing it and what it is.

**Ms Taylor**—We have put the tenders out for two pieces of research. The tenders have not closed as yet.

**Senator MARSHALL**—How much have you allocated in dollar terms for this work?

**Ms Taylor**—We have a research budget overall of \$490,000. We have not put an actual figure on this research.

**Senator MARSHALL**—If it is still out for tender you had better not tell me.

**Ms Taylor**—It was in the range of \$20,000 to \$80,000 on both tenders. The first project that we have called for tenders on is economic and social circumstances of Australian young people aged 15 to 20. The information in detail is on AusTender and also on our website. Also, we have called for a tender for the development of a monitoring strategy.

**Senator MARSHALL**—Do you have any government departments doing research for you?

**Ms Taylor**—No.

**Senator MARSHALL**—So that would be the extent of research that the Fair Pay Commission is doing?

**Ms Taylor**—Commissioned research. At this point in time, yes.

**Senator MARSHALL**—Will the results of that research be publicly available?

**Ms Taylor**—Yes.

**Senator McEWEN**—I have a couple of questions about the focus group. Your website lists the focus group's schedule. It says February to March 2007. Have these actually started?

**Ms Taylor**—They are starting today.

**Senator McEWEN**—With the view of completing them by the end of March. Is that correct?

**Ms Taylor**—Yes.

**Senator McEWEN**—And it is the same group doing all of the consultations.

**Ms Taylor**—Yes, it will be.

**Senator McEWEN**—I note that in your low-paid group the places you have chosen include Whyalla in South Australia, which I found a little surprising. What is the reason for that?

**Ms Taylor**—We are looking for a mix of regional and country areas. Whyalla in South Australia is probably representative of a regional centre in that it has a number of low-paid jobs. We also took—

**Senator McEWEN**—There are a lot of high-paid jobs in Whyalla as well, aren't there, with the mining?

**Ms Taylor**—There are some high-paid jobs in Whyalla.

**Senator McEWEN**—There is also very low unemployment.

**Ms Taylor**—We took advice from the organisation that—

**Senator Abetz**—We are finding that all around the country: low—

**Senator McEWEN**—Oh God!

**Senator Abetz**—unemployment; high wages. So it is a bit tough to find them.

**Ms Taylor**—Whyalla is also one of those areas that has traditionally had high unemployment and a lot of transitioning into low-paid work as well. That would also be in areas surrounding Whyalla. There would also be the opportunity to look in the Iron Triangle, so it may not necessarily draw on Whyalla; you might have Port Augusta and Pirie and those surrounding areas. You have quite a mix in the Iron Triangle and certainly a proportion of low-paid work.

**Senator McEWEN**—Your Indigenous focus groups are going to be in Sydney and Townsville. Is there no thought of having a group in Central Australia or the Northern Territory?

**Ms Taylor**—We did one last year in the Northern Territory, and so rather than go back to the Territory we are focusing on a major metropolitan area for Indigenous people so that the issues for Indigenous people are not confined to the issues for those in rural or regional centres. But we are also getting the rural and regional view with Townsville.

**Senator McEWEN**—Thanks. For the junior wage consultations, will the young people be required to have their parents present, or be able to have their parents present?

**Ms Taylor**—If they wish to have their parents present I would imagine that that would be perfectly all right. If they felt more comfortable in talking about the issues and about junior wage rates with them there, I would not see a problem with that.

**Senator Abetz**—They can sign up to a trade union without parental permission.

**Senator McEWEN**—They can sign up to a ‘take it or leave it’ AWA, too, Minister.

**Senator Abetz**—No, they need the significant other in their life—as in a parent or guardian—to co-sign these days, one of the many improvements protecting workers rights under Work Choices.

**CHAIR**—That is right.

**Senator McEWEN**—Thank you.

**CHAIR**—In the seven or so minutes remaining before the dinner break, I call the Office of Workplace Services. Senator Lundy has some questions for them and we will make a start on that.

[6.19 pm]

#### **Office of Workplace Services**

**CHAIR**—Good evening, Mr Wilson and Mr Bongi.

**Senator LUNDY**—You could probably have taken a punt that I was going to ask questions about the restaurant audit, both here in the ACT and more widely in Australia. I would like to begin by noting that, to my knowledge, the committee has not yet received answers to questions placed on notice in November last year relating to the names of the restaurants that were found to have committed breaches, including the option that was discussed across the table of possibly providing the names of the restaurants that had not committed any breaches. Can I get a general response about the problems with the unanswered questions, and then I will go to specific questions about the audit.

**Mr Wilson**—The office has gone through a process of preparing answers to the questions on notice and we provided those to the relevant Department of Employment and Workplace Relations group in late November and early December. As you would be aware, the responsibility for the tabling of the answers rests with the minister's office. The Office of Workplace Services has provided draft answers but we are not aware of when the answers might be tabled.

**Senator LUNDY**—Minister, what is your knowledge or understanding of these answers being withheld by the minister's office?

**Senator Abetz**—I covered this earlier but you were not here, which is fine, and I understand from the chair that it will be covered later this evening. But in general terms, if I am correct—and I said that I stand to be corrected—at the last estimates this committee delivered some 800 questions on notice, of which about 400 have been processed and given to the committee. That is one huge workload that people are trying to get through methodically in the department and then in the minister's office. Of course, some of these questions and answers take work in being refined, being sent back to relevant officers et cetera, so it is one huge workload that they are experiencing at the moment. Whether that applies to these particular questions, I do not know.

**Senator LUNDY**—I do not either, and perhaps I can ask the chair for some advice. If I have placed questions on notice and they have all been answered by the department and I ask the same questions again now, is there anything that would prevent the officers from answering those questions by virtue of those answers being stuck in the minister's office for whatever reason?

**CHAIR**—No. We had this issue in the previous session, and I think we indicated that if the same question were to be placed on notice we should wait for the first question to be delivered to the committee. In spite of Senator Marshall's exhortations to ask a different question, I have personally undertaken to ask the department about this when we go into cross-portfolio matters after dinner.

**Senator LUNDY**—I appreciate that and I am sure I can be creative and ask the same question in a different way, but for the purposes of clarification—

**Senator Abetz**—You do in the Senate, so why not here?

**Senator LUNDY**—All the time. The information I am seeking is a list of the restaurants that either have or have not been breached as part of the Canberra restaurant audit.

**CHAIR**—If Mr Wilson has taken that on notice either previously or now, I expect you will get an answer in due course.

**Senator LUNDY**—I hope that means sooner rather than later. I have a series of questions arising out of that, and I figure that the officers will inform me if I have that question on notice. We will see how we go. Is the audit into Canberra restaurants still ongoing?

**Mr Wilson**—The audit is ongoing. It has been going for some time now and, as you would be aware, there are quite a number of restaurants. We expect it to proceed for some time. I can indicate that the Canberra office of the Office of Workplace Services has moved through quite a number of the restaurants already, but there are still some to go.

**Senator LUNDY**—I think that, as of 30 January this year, a statement was issued saying that 114 breach notices had been issued and \$386,500 had been recovered. Are you able to give the committee an update to those figures?

**Mr Wilson**—I believe I can give an update to 8 February this year. The number of breach notices that have been issued up to that point is 116 and, over that period—which I believe is from January 2006 to 8 February 2007—\$443,513 has been recovered on behalf of employees.

**Senator LUNDY**—Can OWS tell the committee specifically how many of the workers owed money have received those moneys?

**Mr Wilson**—Not in specific terms. I do not think we are equipped to say that we can verify that every one of those people has received the money. However, I can say that our process is such that I am confident the money has been paid to the workers. Simple human experience indicates that, with 600 people, there might be one or two where that has not occurred, but the inspectors certainly have a brief to make sure that the money is paid, and it is usually part of the process they go through to verify that the cheque has been paid.

In many instances, as you would be aware, the inspector will receive the cheque from the employer and then physically give it to the worker. In addition, the Office sometimes receives and banks money on behalf of employees as a trust arrangement. That is part of our process to make sure that people receive the money.

**Senator LUNDY**—How many individual workers are owed money?

**Mr Wilson**—In the sense of how many are owed money—

**Senator LUNDY**—Or were owed money and or have had money recovered for them?

**Mr Wilson**—The \$440,000 we recovered was for 622 employees.

**Senator LUNDY**—Do you have the average amount owing? Are you able to average it across all of those?

**Senator Abetz**—You would have to divide 622 into that \$440,000.

**Senator LUNDY**—Your maths is probably better than mine, Minister. Off you go!

**Mr Bongsi**—We do not.

**Senator LUNDY**—Okay. Someone will do the sums, I am sure. I was just curious. I have received a complaint that an employee of a restaurant has not received the money that OWS found they were owed. Are you aware of any situations where money you have identified as being owed to an employee is outstanding?

**Senator Abetz**—Could I suggest that as soon as you get that sort of information, or if any member of the public is concerned about that, immediate contact should be made with OWS so that that can be pursued on behalf of the worker.

**Senator LUNDY**—I do not have any paperwork. It is an allegation that has been made to me. So unless you have some information to offer I will proceed on the basis that I will refer that complaint directly to OWS.



**Mr Bongi**—We are very keen to receive such allegations, because we will treat them seriously. However, sometimes with that transient workforce it is not possible to track everyone down. At the moment, for example, \$22,000 is being held in trust while we are looking for a particular worker. We actively go through that list. Just recently we located workers and paid them in the order of \$2,000—I do not have the exact figure. So there will be a small group that cannot be tracked.

**Senator LUNDY**—I think that is very important information and sheds light on the fact that there is some difficulty in tracing the employees. What advice do you have for anyone who believes they are in that category? Should they contact you immediately if they think they are owed money? You will know because you will have their names on a list, will you not?

**Mr Bongi**—That is correct. Because we are holding this money in trust, it is all identified with the name of the employer, the worker and the amount. So we have got that there.

**Mr Wilson**—If you were able to point to a person who had been promised money through one of our breach notice investigations, and that money had subsequently not been paid, that in itself would be evidence that we would be interested in because it would be taken into account by the office in possible further action.

**Senator LUNDY**—That actually anticipates my next question. I note in the various public statements that OWS has made that it has not announced any additional prosecutions beyond those that have already been released—that you have made public statements about and there have been results. What is the process by which you determine whether or not to proceed to prosecute an employer whom you have found to have breached the award?

**Mr Bongi**—That is the first thing you asked on notice, and we have provided quite a fulsome answer to that question.

**Senator LUNDY**—I was trying to be a bit different! Could I ask you—

**Senator Abetz**—Would the rules that apply generally to potential prosecuting authorities apply to you—that you would take into account whether it was an inadvertent breach, whether it was deliberate, all those sorts of factors?

**Mr Bongi**—Yes, absolutely—is it serious; is it a repeat; is it a wilful breach? We take those matters into account.

**Senator Abetz**—Is it a subsequent offence?—all those sorts of things.

**Senator LUNDY**—Going back to the point about allegations of unpaid moneys owing: that could possibly be grounds to proceed to prosecution.

**Mr Bongi**—It might tilt the balance, depending on all the other matters that relate to that particular circumstance. It might be just enough to tip the balance.

**Senator LUNDY**—I am pretty sure I did not ask this question last time, but can we assume that, because no prosecutions have been announced, you are satisfied that every one of those restaurants has inadvertently done the breach and tried to rectify the situation to your satisfaction? Is that a reasonable assumption?

**Mr Wilson**—No. I would say it simply indicates that so far we have not commenced litigation against anyone. The process of litigation is necessarily a time-consuming one. We obviously have to make sure that the evidence is there. We need to weigh the criteria that Mr Bongi referred to a moment ago. We are quite confident that there are matters which certainly warrant detailed investigation, and there are some investigations at a fairly advanced stage which we are considering litigation for.

**Senator LUNDY**—How many?

**Mr Wilson**—I am loath to actually say the total number because it is counting your chickens before they hatch, but it is more than five. To elaborate on that answer: as you would be aware, you need to consider the evidence and make sure that it is then in the public interest to proceed.

**Senator LUNDY**—I have made comment—and I think everyone is aware—that there was quite a significant lead time with respect to the prosecutions that have already been successfully prosecuted in the Federal Court. Is it anticipated that the lead times will be of similar magnitude if you proceed to prosecution with additional cases?

**Mr Wilson**—In my experience, the matters which have gone through the Federal Magistrates Court so far have been dealt with in a fairly timely and expeditious way.

**Senator LUNDY**—I was reflecting more on your preparation, as opposed to the Federal Court's deliberations.

**Mr Wilson**—And I was reflecting more on after the lodgement in the court. There are two sides to it. By definition, the litigation process is not a quick one in terms of investigation and the gathering of the evidence or in terms of getting before the court and getting the deliberation of a magistrate. On that sort of basis I think we will never be in a situation where we can say it is going to be a swift process of one or two months. The six or so months it took for the most recent litigations was, I think, reasonably swift.

**Senator LUNDY**—How many more restaurants here in Canberra need to be audited as part of this process?

**Mr Wilson**—We have approached roughly 300 establishments and so far we have moved through more than half of those. That gives you an indication of the numbers.

**Senator Abetz**—Canberra must be the restaurant capital.

**Senator LUNDY**—Yes, per capita we have a pretty high number of restaurants.

#### **Proceedings suspended from 6.36 pm to 7.40 pm**

**Senator LUNDY**—I would like to move on to the national audit in the restaurant and hospitality industry. Last time, before estimates, the committee was advised that such a national audit would start in early 2007. Can you update the committee on the status of that audit and how many businesses have been audited so far?

**Mr Bongi**—I would be happy to answer that question, but I would like to follow up a couple of things that you asked about before the break.

**Senator LUNDY**—Yes.

**Mr Bongi**—I would like to confirm that the average underpayment recovery for the ACT workers was \$713. In terms of tracking people down, just at this time we tracked someone down in Germany. We tracked down someone that we could not locate earlier and shipped their underpayment to Germany. As to your question, we wrote to 2,391 businesses. We asked for records in January, and we are still getting those records to audit.

**Senator LUNDY**—Will you be writing to any more businesses or are you using 2,391 as a representative sample?

**Mr Bongi**—It is a representative sample at this stage. The way that we did the ACT restaurants was that we started with 14 initially, then we expanded that to 27, and then we expanded it further. Depending on the outcome of the audit, we will identify potential hotspots and then delve deeper.

**Senator LUNDY**—Do you have a budget allocated to this particular audit and, if so, how much?

**Mr Bongi**—No, we do not break up the budget by campaigns.

**Mr Wilson**—I can elaborate on that. As you know, the organisation has about 200 inspectors throughout Australia and we expect each one of them within their offices to undertake a number of targeted audits in their industries and regions. We will allocate these basically on a proportional basis throughout the country. As we have said, there is no specific budget that relates to this program, but obviously it is part of what we do and part of the way in which we approach our work.

**Senator LUNDY**—How do you select the restaurants that you have identified in this first round with a letter?

**Mr Bongi**—In part it will be information that we have in our database, complaints received and other factors. Basically, complaints are a very useful measure.

**Senator LUNDY**—Do you accept that some employees feel unable to make a complaint for fear of being sacked for doing so and how do you respond to that? I have been told by some employees that they are scared to make a complaint because then when OWS pursues it they will be sacked.

**Mr Bongi**—We have the capacity to receive complaints and keep the name of the person out of any subsequent discussions. Conducting a campaign in an area where the particular restaurant is included also provides a useful cover, if you like. As part of the process we can examine that employee's records specifically. We have ways of maintaining anonymity of the complainant.

**Senator LUNDY**—What would you do if you received a complaint from an employee and anonymity was not breached and their identity was not revealed, but they were sacked because of a suspicion that the employer had? What would you be able to do to try to get that person employed again, but also to sanction the employer?

**Mr Bongi**—I think that is an offence under the act; that would enable us to take action.

**Senator LUNDY**—Would you prosecute if you believed that they were sacked for making the complaint?

**Mr Bonggi**—Absolutely, if we could get the evidence together that we could present before a court.

**Senator LUNDY**—Do you know of any instances where you know an employee was sacked after making a complaint to OWS?

**Mr Bonggi**—I am not aware of that.

**Mr Wilson**—I will elaborate a little on that. We have already taken a matter where we say duress has been applied to an employee in the course of our investigation. I cannot recall whether or not the person was actually dismissed. I do not think so. We have referred a complaint to the Director of Public Prosecutions with evidence that we say supports laying a criminal complaint against that particular employer/individual. We understand that has been given earnest consideration by the DPP.

**Senator LUNDY**—Have they advised you on the outcome of their considerations as yet?

**Mr Wilson**—No, they have not completed their deliberations of that yet, but my understanding in viewing that last week was that they are fairly close—within the next few weeks to a month—to concluding that.

**Senator LUNDY**—Was that a scenario where you said the employee was threatened with the sack but not actually sacked, and you were still able to prosecute a case?

**Mr Wilson**—We need to be a bit careful in articulating what could be the facts.

**Senator LUNDY**—What I am trying to ascertain is the sort of advice that you would give employees approaching you and how you would handle certain scenarios. I agree that we do not want to talk about specific cases. I was using those sorts of examples as illustrative examples.

**Mr Wilson**—In endeavouring to apply that to an example, the one I am giving has a slightly different set of facts. I do not believe that the person was dismissed, but there was duress and in all the circumstances we believed it was sufficient to trigger a complaint to the DPP. In answering your example, certainly if we saw a dismissal of a person, then OWS would have no difficulty in proceeding with that matter, assuming that evidence was there and assuming that we had the cooperation of the employee and so on. The staff have just referred me to one action that we have taken in a similar vein. This is a Federal Court action the office has commenced for an interlocutory injunction against Australian Ophthalmic Supplies Pty Ltd, trading as Merringtons, which is a Victorian company. In the application for the injunction, which I believe is yet to be heard in detail, the office alleged that Merringtons applied pressure against one of its employees who was to appear as a witness and give evidence against the company in the Victorian Magistrates Court during October 2006. My recollection is that is still to be heard.

**Senator LUNDY**—I have one final question. With respect to an employer who has received a letter advising that OWS is of the opinion that they have breached their obligations, if there is a willingness to voluntarily comply, what mediation processes do you offer employers who want to rectify the problem? Do you give them the opportunity to do so?

**Mr Bonggi**—We will sit down with the employer and work with them on an approach to recover the moneys for the workers and to rectify the breach. The best employers are those

that are very willing to identify that they have made a mistake and wish to correct it. When we take someone before the court it is because they are at the bad end of the scale.

**Senator LUNDY**—Once you have made a finding against an employer, do you give them a chance to respond formally to that finding, to discuss it with you or even to debate it with you before proceeding to prosecution if they disagree?

**Mr Bongzi**—They have a fortnight to do exactly that.

**Mr Wilson**—In our experience there are many reasons why an employer might wish to engage in that debate. There might be a discussion about whether or not the employee was even employed. There might be a discussion about whether the inspector has correctly identified the award or agreement that might apply. Of course we go through the process of ensuring that before we take litigation action there is a capacity to work through whatever differences there may be. The other overlay is the one that we were talking about prior to the break, which is the inspector's judgement about whether in all the circumstances the breach was deliberate or knowing on the part of the employer or the other party, and whether in fact it having been established and identified to them the other party has been prepared to restore. In many instances they are prepared to do that.

**Senator LUNDY**—That is all I have.

**Senator MARSHALL**—Has the OWS received any direction or guidelines from the current or former minister in relation to initiating prosecutions?

**Mr Wilson**—No.

**Senator MARSHALL**—What about the Prime Minister?

**Mr Wilson**—No. I will correct my answer to make sure it is correct: you may be aware that there are ministerial directions on the Office of Workplace Services. These are proper statutory instruments. They do not go to how we conduct litigations or when we do, other than to say in certain circumstances the litigation can be initiated by an SES officer from within OWS and in certain circumstances from other people.

**Senator MARSHALL**—In terms of specific prosecutions there have been no directions?

**Mr Wilson**—That is correct.

**Senator MARSHALL**—There have been no guideline issues on how that might be done?

**Mr Wilson**—That is correct.

**Senator MARSHALL**—From the Prime Minister's department or from DEWR?

**Mr Wilson**—That is correct.

**Senator MARSHALL**—Do you seek approval from the minister prior to taking a decision to prosecute?

**Mr Wilson**—No, we do not. The way that we make decisions about litigations is to receive legal advice about the recommendation of the inspector. Under the Attorney-General's legal services directions we need to be given advice by an external lawyer to the effect that there are reasonable prospects of success. Having got thus far and determined that it is in our interests to pursue the matter, then the decision is made within the office.

**Senator MARSHALL**—Is the quantum of the claim relevant to the decision?

**Mr Wilson**—Not necessarily.

**Senator MARSHALL**—Do you have guidelines that you work to in assessing a decision to prosecute?

**Mr Wilson**—Not in that sense. We have some general questions that we ask ourselves, but they do not go to the quantum or otherwise of the breach alleged.

**Senator MARSHALL**—So there is no internal formal decision-making process on whether to prosecute or not? It is a subjective decision based on the circumstances?

**Mr Wilson**—In terms of the first part of your question, there certainly is a formal internal deliberation undertaken.

**Senator MARSHALL**—But it is not like, tick a box and if it meets this, this and this we will prosecute and, if it does not, then we do not?

**Mr Wilson**—No, not quite to that level. I would ask you to bear in mind that the office has been going since March last year.

**Senator MARSHALL**—You used that last time. You are old hands now.

**Mr Wilson**—I can point to one that has been lodged in the courts and that might give you an indication of how we do not necessarily take account of the quantum. An example would be the Power Juices matter, which was heard by the Federal Magistrates Court last year, and I believe the decision is to be determined tomorrow. In that particular matter there were a number of underpayments of wages to juvenile workers. From recollection, the amounts for each of those employees was only a matter of a couple of hundred dollars each. At the other end of the scale, there are other litigations that we have taken which are for quite significant amounts of money. There is one that we commenced this week for an amount of about \$96,000.

**Senator MARSHALL**—How many times has the minister sent a request or given you a direction regarding investigations?

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

**Senator MARSHALL**—Are there any?

**Mr Wilson**—Senator Abetz asked whether it would be a direction or a request. On the previous occasion we answered to the effect that we take our work from wherever it comes. In some instances there are matters raised in the media and in other cases they are raised in parliament or by members of parliament.

**Senator MARSHALL**—You have given evidence on that. I am asking how many times has the minister asked you?

**Senator Abetz**—That is different—asking or directing?

**Senator MARSHALL**—I actually said: made a 'request' or given a 'direction'. I asked both in the same question last time. So it is easier for you to separate them out, how many times has the minister requested you to commence an investigation?

**Mr Wilson**—I do not have any information that would enable me to answer that.

**Senator MARSHALL**—Is it some or is it none?

**Mr Wilson**—I will simply repeat my answer: I do not have any information that would enable me to answer that. I would need to check that.

**Senator MARSHALL**—You would know if the minister requested you to conduct an investigation. If it is more than zero, I am happy for you to take it on notice, but you would know if it was none, wouldn't you?

**Mr Wilson**—The problem, though, is the one that I identified on the previous occasion, which is that it becomes a moot point as to where the Office of Workplace Services first heard about a matter.

**Senator MARSHALL**—No. My question is: how many times has the minister requested you to conduct an investigation? You may have heard about it. I am not worried about that. Has the minister or the minister's office picked up the phone, written you a letter or sent you an email making a request to commence an investigation?

**Mr Wilson**—I could not answer that.

**Senator MARSHALL**—Is it any?

**Mr Wilson**—I could not answer that without checking.

**Senator MARSHALL**—You must know if you have had a request. I understand that if there is more than one you may not know the exact number. I accept that and am happy for you to take it on notice. But surely you can tell me whether there has been none?

**Mr Wilson**—My colleague says that he cannot think of any. I cannot think of any, but I could not be precise with my answer.

**Senator MARSHALL**—I would appreciate it if you could take that on notice. I did break the question up, so is it the same answer in terms of directions from the minister to commence an investigation?

**Mr Wilson**—I can think of no circumstances where there has been a direction given.

**Senator MARSHALL**—There have been no circumstances?

**Senator Abetz**—I stand to be corrected on this, but the suggestion that the minister could direct the independent statutory authority would be like a police minister directing the police department to investigate or a Director of Public Prosecutions to do something. It is fair and appropriate that from time to time people in public life, including ministers, request or refer a matter, but then they do not give a direction to an independent body.

**Senator MARSHALL**—This is not in debate. Mr Wilson has answered the question. In terms of my question in relation to direction, you have said 'none', have you not?

**Mr Wilson**—That is correct.

**Senator MARSHALL**—That may well be because it was appropriate that there was none.

**Senator Abetz**—Yes, but I do not want on the public record the suggestion that the minister does have the power.

**Senator MARSHALL**—There is no suggestion. It is just words.

**CHAIR**—I do not think there was an inference of that. We will allow Senator Marshall to go on with questioning.

**Senator MARSHALL**—Last time you were before us you gave us a description of how you progress an investigation. I will not take you through that because it is getting late, but do you advise employers and employees that the length of time this process will take will be a minimum of 90 days?

**Mr Wilson**—Not that I am aware of.

**Senator MARSHALL**—It has been put to us that when people ring up to make inquiries about unpaid wages they are told that it will be a minimum of 90 days.

**Mr Wilson**—Maybe I can give you confidence about our position by referring to what we call our national key performance indicator. We have a performance objective, and have had for many years, of 80 per cent of our matters being finalised within 90 days. Certainly during January 2007 that was running at 85 per cent being settled within 90 days. That is not to say that there would not be circumstances where investigations take longer, but certainly 85 per cent of matters are running at that less than 90 days measure.

**Senator MARSHALL**—There is an element of that in the ability to mediate and seek voluntary compliance, which you talked to Senator Lundy about.

**Mr Wilson**—That is correct.

**Senator MARSHALL**—The question I want to ask is: do you consider, in determining whether to prosecute or not and the time frames, the employee's need to receive outstanding wages or back payments to pay mortgages and day-to-day costs, or does the objective of getting a mediated result outweigh that?

**Mr Wilson**—Obviously, we take into account the need for people to have certainty—whether they be employers or employees. It is in the interests of all concerned to have that quicker than not. The majority of our matters, as I have indicated, are determined within that 90-day period, but there are some matters where the evidence is quite difficult to obtain or the cooperation of the other party is very difficult to obtain, and they do take longer.

**Senator MARSHALL**—I would like to talk about the Tristar issue. Can you tell me what time you became aware of industrial issues at Tristar?

**Mr Wilson**—It was 23 January.

**Senator MARSHALL**—How did you become aware of that?

**Mr Wilson**—We were made aware by a series of media statements that were made about the subject. It was something that the OWS decided to investigate.

**Senator MARSHALL**—Did you make that decision on your own or after discussions with others—the Department of the Prime Minister and Cabinet, DEWR, the minister or the Prime Minister? I know you would not have received a directive or a request, because you have answered that. It may have been after a discussion. Did you have discussions with anyone before you decided to investigate?

**Mr Wilson**—I am not sure that we did. That is not to say that there were not discussions around about the same time with either of those groups that were mentioned.



**Senator MARSHALL**—Have you had discussions with the minister about Tristar?

**Mr Wilson**—Of course. It is a matter of public controversy and certainly, as we have explained before, there is a need for the office to make sure the minister is aware of what the OWS is doing and the implications of that.

**Senator MARSHALL**—As a matter of course, are you required to or do you advise the minister before you commence prosecutions?

**Mr Wilson**—We would make a judgement about that. If there are some matters where there is an element of public controversy, the policy which we would run is that, about the same time as we make a lodgement in the court, we indicate to the minister's office or the department that some action is about to commence.

**Senator MARSHALL**—What about investigations?

**Mr Wilson**—As I have answered previously, there are some matters that could be controversial.

**Senator MARSHALL**—It is the same answer.

**Mr Wilson**—Clearly we make sure that our minister and the department are aware that the OWS is involved.

**Senator MARSHALL**—Are you sure that former Minister for Employment and Workplace Relations Mr Andrews did not advise you about the Tristar issue, and that that would have come afterwards?

**Mr Wilson**—Yes, I think so.

**Senator MARSHALL**—The fact sheet from your website says that OWS inspectors have powers as set out in section 169 of the Workplace Relations Act, which may be exercised for the purpose of determining whether agreements, awards, the Fair Pay and Conditions Standard, or minimum entitlements and orders under part 12 of the act are being observed. Do you stand by that?

**Mr Wilson**—Yes.

**Senator MARSHALL**—Are there any other powers or purposes for inspectors, apart from those that I just mentioned?

**Mr Wilson**—I do not have the legislation in front of me at the moment, but, presuming that that is the elaboration of the particular section, then, yes, you would be correct. In a broader sense, the inspectors have the obligation of enforcing all of the provisions of the Workplace Relations Act.

**Senator MARSHALL**—Are you currently investigating Tristar formally?

**Mr Wilson**—We are.

**Senator MARSHALL**—When did that investigation commence?

**Mr Wilson**—I presume it was on 23 January.

**Senator MARSHALL**—Since you started the investigation have you received any requests or directions from the minister in relation to this investigation?

**Mr Wilson**—No.

**Senator MARSHALL**—Is the investigation ongoing?

**Mr Wilson**—Yes, it is.

**Senator MARSHALL**—Are there any preliminary conclusions that you have made?

**Mr Wilson**—None that I can share with the committee.

**Senator MARSHALL**—I am going to ask you some questions, and I understand that you may not be able to provide an answer. I am trying to get a picture of the sorts of things that are being investigated, without necessarily going into the detail.

**Senator Abetz**—You will need to keep in mind that it is an ongoing investigation and it is very dangerous ground even to discuss broad categories.

**CHAIR**—If it is under investigation it is hardly likely that Mr Wilson will be able to answer any of the questions.

**Senator MARSHALL**—What act are you investigating breaches of?

**Mr Wilson**—Do you mean pieces of legislation?

**Senator MARSHALL**—Yes. Is it Work Choices?

**Mr Wilson**—We are investigating whether or not there are breaches of the Workplace Relations Act and whether or not there may be a breach of an industrial instrument made in accordance with that act.

**Senator MARSHALL**—Are you able to tell me under what section is the possible breach of the Tristar agreement?

**Senator Abetz**—That is exactly the sort of territory. It is like saying that somebody is under investigation and under what section of the Criminal Code are you investigating him? That will give the whole game away as to the sorts of matters.

**Senator MARSHALL**—If that is your advice then I am happy to accept that. Is there any difference in your powers now that the Tristar agreement has been terminated and, if so, how?

**Mr Wilson**—Not that I am aware of. I would need to say that that is not a legal question that we have turned our mind to.

**Senator MARSHALL**—I will just come back to your ability to investigate and prosecute agreements, if an agreement no longer exists.

**Mr Wilson**—I understand the question now. The way to answer that is in two parts. First of all, our powers are both current and retrospective, in the sense that, if there has been a breach at some point, and the industrial instrument was in place at that point, clearly that is something we can look at. The other part of the answer is that, by virtue of the decision of Senior Deputy President Marsh in the Australian Industrial Relations Commission, there are certain parts of the certified agreement that continue. As you would be aware, the things that continue go to the redundancy payments.

**Senator MARSHALL**—Do you have a general power to enter workplaces to investigate for the purpose of gaining information, or do you need a suspected breach before you investigate?

**Mr Wilson**—We have a general power, which is the one set out in the legislation, to investigate whether or not the act and the instruments under the act and various other parts of the act are being complied with. There is not, on our advice, a requirement to have a complaint or an apprehension of a breach before commencing an investigation.

**Senator MARSHALL**—Do you have the power to investigate breaches other than that of the Workplace Relations Act?

**Mr Wilson**—No.

**Senator MARSHALL**—It is clearly limited to those things that we talked about earlier. The new minister, Mr Hockey, stated in January:

If you are a ratbag employer ... then I will not hesitate and the government will not hesitate to have you investigated and possibly charged.

Are you able to investigate general issues of unfairness, moral issues or ratbag issues?

**Mr Wilson**—Our obligation is to investigate compliance with the Workplace Relations Act.

**Senator Abetz**—It is up to political discourse as to whether breaches of the Workplace Relations Act could be described as being ratbag behaviour. The chances are that most people would say that if you are in breach of that to a substantial extent then that is ratbag behaviour. Others might use more flowery language or less flowery language, but I do not think that that of itself is something that these officials can necessarily comment on. As a government, we set up the Office of Workplace Services and the legislative regime to address certain types of behaviour, which Mr Hockey described in legalese as ratbaggery. I do not think there is anything untoward or anything to be noted about that. That is why we have this regime in place.

**Senator MARSHALL**—Minister, maybe you could tell me: what power does the minister or the government have to investigate and charge people?

**Senator Abetz**—The power that the government has had is that, when confronted with what to do, it has passed legislation, set up the Office of Workplace Services to ensure that for people who behave in a ratbag way, to use Mr Hockey's expression, there is a mechanism within the community that allows for that behaviour to be investigated and prosecuted.

**Senator MARSHALL**—You told us earlier that the minister would never direct the Office of Workplace Services to do so.

**Senator Abetz**—That is right. As a government we have set a regime that allows for the investigation and prosecution of that.

**Senator MARSHALL**—The reliance on investigation and prosecution is held with the Office of Workplace Services—

**Senator Abetz**—That is right. Which was a creature of this government.

**Senator MARSHALL**—We do not need to argue about that. We will move on. Are you aware of the Billy Schultze BP issue?

**Mr Wilson**—Yes, I am.

**Senator MARSHALL**—When did you first become aware of that issue?

**Mr Wilson**—I believe that was a matter brought to our attention in a question from a member in the House of Representatives.

**Senator MARSHALL**—So, as a result of a question in parliament?

**Mr Wilson**—That is correct. The briefing that I have indicates that we commenced an investigation on 14 August 2006.

**Senator Abetz**—So I am clear, this matter was brought to your attention not by the member of parliament bringing the information to you but by asking a question in the parliament about it?

**Mr Wilson**—That is correct.

**Senator MARSHALL**—We discussed that last time. You can ask these officers questions any time. Maybe just let me ask the questions. I am looking at the time. I have a fair bit to get through and I know you do not have much to do.

**Senator Abetz**—I would encourage anybody in the community who thinks there are breaches to report it to OWS—

**Senator MARSHALL**—When did you first commence an investigation into the Billy Schultze BP AWA issue?

**Mr Wilson**—From recollection it was on the same day.

**Senator MARSHALL**—It started on the same day?

**Mr Wilson**—That is correct.

**Senator MARSHALL**—When did you first have communication with the minister's office in relation to this issue?

**Mr Wilson**—I believe, from my own recollection, that it would have been on the same day that it was brought to my attention by a person who was monitoring the question time. I believe there was a question asked to the Prime Minister by a member of parliament. As a result of that, I was contacted and asked to see the *Hansard* and consider whether it was something that OWS should look at.

**Senator MARSHALL**—Was that from the Prime Minister's office or the minister for workplace relations?

**Mr Wilson**—Without checking my files I could not be certain, but I would presume from the minister's office.

**Senator MARSHALL**—Was there a request made to commence an investigation?

**Mr Wilson**—There was a request that we consider whether or not it was something that should be investigated.

**Senator MARSHALL**—You obviously made a decision very quickly to do so.

**Mr Wilson**—It was after we had some preliminary discussions with the complainant, his family and the company, I believe.

**Senator MARSHALL**—It was your decision to commence the investigation, not a direction, an instruction or request from anyone else?

**Mr Wilson**—Correct. It was OWS's decision.

**Senator MARSHALL**—Can you briefly explain to me why it took six months to bring that matter to court?

**Mr Wilson**—That was an inordinately complex matter. There are three companies involved in that particular circumstance. We allege a transmission of business between a company by the name of Adelaide Petroleum and BP Australia and that there was then a subsidiary of BP Australia that became the employer. I am quite satisfied that our staff moved as diligently and expeditiously as they possibly could on this matter.

**Senator MARSHALL**—You have a request for tender on your website, which is OWS RFT 2007/01, and it is for the following services:

The OWS requires the services of a senior level consultant in Melbourne who can provide ongoing high level strategic communications advice for the period to 30 June 2008. The successful consultant will be required to provide services on an on-demand basis. The nature and purpose of this advice sought will be to provide practical solutions to reactive issues for internal implementation that will allow the OWS to effectively manage media spot fires.

What do you mean by 'media spot fires'?

**Mr Wilson**—First of all, I would indicate that I am not the author of that document. Our need for those services is to basically assist in the way the office provides responses to the media who may contact us at any moment about matters that have become the subject of some public controversy. Obviously, over the past year we have not had those services directly within our staff. We have been going through a process of employing staff with the skills internally, but we exercised a judgement that one thing that was still missing within our internal skill base was the strategic communications assistance.

**Senator MARSHALL**—Which of the existing roles relates to media management or response to media spot fires?

**Mr Wilson**—I am not sure what you mean?

**Senator MARSHALL**—Do you have anyone presently doing that?

**Mr Wilson**—As I have indicated, we have progressively built up a communications group. We have working for us now a person who is our media adviser and before that we have had people who were contractors.

**Senator MARSHALL**—Could the words 'media spot fires' really refer to breaches of Work Choices legislation which cause political embarrassment to the government?

**Mr Wilson**—No, not that I am aware of.

**Senator Abetz**—Who drafted that question?

**Senator MARSHALL**—It got a few chuckles around the room.

**Senator Abetz**—At you.

**Senator MARSHALL**—The obvious conclusion which everyone draws is that the laughter is probably about why I asked such an obvious question because the answer is obvious.

**Senator BARNETT**—That is your opinion.

**Senator MARSHALL**—Yes, it is my opinion.

**Senator Abetz**—These sorts of bodies like police departments have these sorts of people all the time and there is nothing untoward about it. The implication in that question does need an answer.

**Senator MARSHALL**—Cut it out! We have to put up with your long-winded speeches endlessly.

**CHAIR**—Order! Senator Marshall, you should ask your question again.

**Senator MARSHALL**—Will there be liaison between this media spot fire consultant and the minister's or the Prime Minister's office?

**Mr Wilson**—The office liaises with a large number of people. They include people within the Department of Employment and Workplace Relations, the Office of the Employment Advocate, other branches of the Office of Workplace Services and I would also assume that from time to time there would be a need for them to liaise with the people that you have mentioned.

**Senator MARSHALL**—Given it is on an on-demand basis, how will they be expected to liaise with the minister's office, Prime Minister's office and others? How will the on-demand nature of this be managed?

**Mr Wilson**—It will be managed by the people that the consultant reports to within our management structure. In the first instance, their services would be drawn upon by a communications manager, whom we are in the process of recruiting.

**Senator McEWEN**—So will you be having a communications officer as well?

**Mr Wilson**—The tender is for the provision of strategic services to the Office of Workplace Services. We would expect them to work as part of a small group providing a small number of hours of services on a monthly basis. They could be doing any number of things. They could be providing advice directly to the communications manager or our media adviser, or in certain circumstances they could be liaising directly with journalists.

**Senator McEWEN**—OWS is going to provide resources to help the media get its stories together. Would it be better to spend the resources on helping workers?

**Mr Wilson**—I can assure you that over the past year we have spent a very large amount of time dealing with journalists' requests about matters that we conduct. That is precisely why we need this assistance.

**Senator McEWEN**—To get better press.

**Senator MARSHALL**—Do you have a role in the investigation and enforcement of minimum salary levels or other terms and conditions of employment for workers on 457 visas?

**Mr Wilson**—We currently do not have jurisdiction as such for the minimum salary level, but the policy which we run is that, in the course of assisting an employee or employer about their obligations under the Workplace Relations Act, if it becomes obvious that the employee is a 457 subclass visa worker, we will also be cognisant of whether or not the minimum salary level is being honoured and complied with. As I said, we do not have jurisdiction as such for that, but we ensure that, if we have any questions at all, we would refer that case of where there is an underpayment that we think exists to DIAC for their investigation.

**Senator MARSHALL**—DIAC?

**Mr Wilson**—Correct.

**Senator MARSHALL**—Who is DIAC?

**Mr Wilson**—The Department of Immigration and Citizenship.

**Senator MARSHALL**—It is not DEWR?

**Mr Wilson**—No.

**CHAIR**—I hope you have finished because Senator Barnett has some questions.

**Senator BARNETT**—Can you advise the committee of the number of employees with the Office of Workplace Services?

**Mr Bongi**—We have 261 employees with the office at the moment.

**Senator BARNETT**—That is quite a big increase on the last 12 months. Has that levelled out now? What are the projections compared to, say, 12 months ago and the projections for the future?

**Mr Bongi**—We reached our critical mass in late October-early November and we are just about at our maximum. We are now resourced.

**Senator BARNETT**—How many locations do you have now around Australia?

**Mr Bongi**—We are located in 27 separate locations across Australia.

**Senator BARNETT**—Is that the capacity or do you have plans to extend that?

**Mr Bongi**—Apart from Alice Springs, we are in all the locations that we need to be in. Alice Springs should be available to us later this year.

**Senator BARNETT**—Are you happy to table the locations or take it on notice and let us know the exact locations?

**Mr Bongi**—I tabled a list of these locations at the last Senate estimates.

**CHAIR**—Yes, we did get that.

**Senator BARNETT**—That is why I was asking if there had been any change since the November hearings. Has there been no change, apart from Alice Springs?

**Mr Bongi**—No change, but we have moved into more permanent locations now that the fit-outs have been completed.

**Senator BARNETT**—I would like to know if there has been any change since the November hearing. That is why I am asking the question regarding the locations.

**Mr Bongi**—In terms of that list, there has been no difference.

**Senator BARNETT**—How many inspectors do you have?

**Mr Bongi**—200 inspectors at the moment.

**Senator BARNETT**—How many claims have you received and how many have you completed?

**Mr Bongi**—Since 27 March we have received 9,907 claims and we have finalised 6,665.

**Senator BARNETT**—Can you advise the committee about the funds recovered?

**Mr Bongi**—We have recovered \$7.58 million over the same period.

**Senator BARNETT**—Very good; that is a significant figure. Have you got a state-by-state breakdown for that, or could you provide that to the committee in due course?

**Mr Bongi**—There was a question on notice where we did provide a breakdown of that.

**Senator BARNETT**—How many court cases have started?

**Mr Bongi**—We have lodged 32 cases to date.

**Senator BARNETT**—There are 32 underway?

**Mr Bongi**—They are before the courts or have been completed.

**Senator BARNETT**—Can you advise the nature and scope of the education campaigns that you undertake?

**Mr Bongi**—We have run four national and a number of local campaigns. I will ask my colleagues to check this, but I think the number is either 14 or 18 campaigns. So far through those campaigns we have contacted some 46,600 employers as part of our mail-out informing people of the campaign and of the rights and obligations under the act, and we have finalised some 2,177 audits as a result of those campaigns.

**Senator BARNETT**—Regarding the industries targeted, can you advise if there has been any change since November or can you advise the committee of those industries?

**Mr Bongi**—I think the change is that we are in the process of writing to the cleaning industry. We are writing to 3,500 employers within that industry at this moment.

**Senator BARNETT**—Do you have a plan for this coming year for other industries that you are particularly targeting, or is it a generic approach consistent with the past 12 months?

**Mr Bongi**—We are targeting different industries over a period. We do not have anything in the pipeline that is immediately coming up. We are trying to consolidate the campaigns that we have got on our plate at the moment. As I mentioned last time, we are doing quite a bit at the moment with the youth campaign within South Australia with the intention of expanding that Australia wide early next financial year.



**Senator BARNETT**—I am interested to know if you can advise the committee of how many referrals you have received from the ACTU or other union organisations?

**Mr Bongi**—I am not sure if our database will lend itself to that query. Can I take that on notice?

**Senator BARNETT**—Yes. Can you also take on notice any referrals that you may have received from state governments, their agencies or departments?

**Mr Bongi**—Certainly, but as a broad brush it is not many.

**Senator BARNETT**—Relatively few?

**Mr Bongi**—Relatively few.

**Senator BARNETT**—Can you take that on notice and advise the committee?

**Mr Bongi**—Yes. I have just been reminded that we have also conducted since November a regional campaign where we have gone out to regional centres and targeted a variety of industries within those regional centres. Instead of doing only one industry we have done this on a geographic basis but across a number of industries.

**Senator BARNETT**—Considering the size of your organisation, with 261-odd staff and with the significant number of education campaigns that you undertake both nationally and locally, I am not surprised one little bit that you have outsourced at least to some degree for communications assistance. I am putting it on the record that I am not surprised that you have sought that assistance.

**Senator MARSHALL**—You have got an additional appropriation of \$17-odd million. Is it to support an increase in your compliance and enforcement activities in regional areas?

**Mr Wilson**—Correct.

**Senator MARSHALL**—Which regional areas have been identified to receive the increase in compliance and enforcement activities?

**Mr Wilson**—I will ask Ms Valentine, who is our chief financial officer, to assist in these answers.

**Senator MARSHALL**—I am only going to ask where, really.

**Mr Wilson**—In a strict sense, the additional funding is to ensure that we can roll out the 26 centres which we have committed to and make sure that they are properly resourced with staff, property and other facilities as well.

**Senator MARSHALL**—Is that the existing facilities?

**Mr Wilson**—Correct.

**Senator MARSHALL**—So there are going to be no new facilities anywhere?

**Mr Wilson**—That is right, apart from the Alice Springs location which we mentioned.

**Senator MARSHALL**—Even though you have your bases, have you targeted specific areas where extra enforcement or compliance activity will take place?

**Mr Wilson**—That is part of our comprehensive strategy over the next year about where we are putting our efforts. As you are aware, the work that the office undertakes is partly in the

investigation field, and we take that work as it comes and from wherever it comes from throughout the country. The other work that we undertake is the targeted compliance work that we were just talking about. The campaigns which have been identified by us this evening were put together in the very full knowledge that these will be conducted throughout the nation in accordance with those locations that we mentioned.

**Senator MARSHALL**—Who will decide what areas need special attention? Is it your officer alone?

**Mr Wilson**—The process that we go through is to undertake a consultative process. We have already done that in quite a number of instances with the industries which we have selected.

**Senator MARSHALL**—What about other levels of government? Departments?

**Mr Wilson**—I would expect so.

**Mr Bong**i—In terms of obtaining statistics of where the businesses are and where potential vulnerable workers may be located.

**Senator MARSHALL**—Marginal seats?

**Mr Bong**i—No.

**Mr Wilson**—I can give you an example; we have gone through that consultation recently. There is a campaign presently being worked on in South Australia which is a pilot youth education and compliance campaign. The state manager of OWS in that state held meetings with stakeholders within the private sector, the trade union movement, the state government sector and the non-government sector. They held those discussions about framing the program over a period of time. That then formed the way in which we decided to undertake the work, and that targeted compliance work is now being undertaken. To us, that is quite a model way of putting the program together and making sure that it is robust in the sense of covering the areas of need but also having some prospect of getting down to where people need help the most.

**Senator MARSHALL**—Thank you.

**CHAIR**—We will now call Comcare, the Safety, Rehabilitation and Compensation Commission and the Seafarers Safety, Rehabilitation and Compensation Authority.

[8.40 pm]

#### Comcare

**CHAIR**—Welcome, Ms Bennett. I understand Senator Marshall has questions for you.

**Senator MARSHALL**—Last time we spoke we were planning to spend a good couple of hours together but we have just about run out of time, unfortunately, so this will be much quicker than I had planned. Can you give us a breakdown of how many inspectors you have by state, and are you able to do a realistic comparison with the number of state inspectors in each regime?

**Ms Bennett**—Comcare currently has 31 staff appointed and available as investigators. By 15 March we will have completed some additional recruitment and we will have 36 staff

appointed. We have received additional funding, which is recorded in the additional estimates and which will allow us by 30 June—the end of this financial year—to have 49 appointed and available inspectors. This growth in the number of our inspectors reflects the increased number of employees that are coming under the jurisdiction due to the change in the OH&S legislation that will come into effect on 15 March, so we are growing our capacity as more employees and employers come in.

On a state-by-state basis, we have staff located in Queensland, Sydney, Melbourne, South Australia and of course here in Canberra. They move to where there is an instance or an issue or if something is reported; so our staff float around. In addition to those investigators that are appointed that are our staff, we also have a panel where we purchase expertise that could be in a particular area of safety as well as additional resources if it is in an area where we may not have sufficient resources to deal with that issue at the time.

On the ratio of the number of employees to inspectors, we believe that it is reasonably consistent with the figures that are publicly available from the states under the comparative information that is available. Broadly, we believe we have an inspector that matches the number of employees in a jurisdiction, although I think that is a bit of an artificial measure. We are certainly growing as needed and believe that, between our internal capacity and our capacity to draw on external expertise, we are able to be a good safety regulator.

**Senator MARSHALL**—Your safety at work guide online says:

Proactive investigations are generally scheduled and advised in advance...

You do have the power to conduct random investigations without notice, though, don't you?

**Ms Bennett**—Yes, we do.

**Senator MARSHALL**—Do you do any of those?

**Ms Bennett**—I do not have the figures with me but there are certain areas where we are doing investigations that are not as a result of an incident. They are looking at the systems of some of the employees. For example, in the handling of asbestos with the Department of Defence, we are conducting investigations across numerous sites to confirm the information that they have provided to us; we have sent inspectors into those places. That is just an example. We are looking at the profile of our employers and the nature of the issues that they deal with, and we have a balance between sending investigators to look at instances that have happened and looking at the systemic management of safety by our employers within the jurisdiction.

**Senator MARSHALL**—I have some questions about investigations—how many, where and what sort of blitzes you have done—but I might put them on notice. I did just want to go back to some questions that we have been dealing with in terms of a legislation inquiry regarding the deeming rate issue. I think you were preparing some extra information and some examples for the committee to consider—of course, it is not only a matter for that inquiry but it is of interest to this committee generally. I would ask you to briefly go through that information that you have got and table it. I would also ask whether you have done any calculations or whether you could do any calculations that would advise the committee on how much money it would cost to retrospectively adjust the deeming rate along the same basis that it is being adjusted by the legislation that is before the parliament now, to

compensate people for the loss they have incurred given the high deeming rate over the last 10 years or so.

**Ms Bennett**—There are a number of questions that were asked. One question that was raised by you in particular was about the treatment for Mr Emery, and I indicated at that stage that if you were able to obtain approval from Mr Emery we could do that work.

**Senator MARSHALL**—Senator Trood emailed the chair and me, and I forwarded it to the secretary to say that was all okay. Based on Senator Trood's email, we are saying yes.

**CHAIR**—Yes.

**Ms Bennett**—The question that you asked was if the deeming rate had been adjusted from the year that Mr Emery received his lump sum payment, matching it to the 10-year bond rate, which is what is proposed under the legislation, what would have been the net consequences. At that time you indicated that Mr Emery's personal assessment was that there was a \$188,000 difference. We have been able to obtain the 10-year bond rate from 1994 to 2007 and our assessment is that the difference for Mr Emery, if that deeming rate had reflected the 10-year bond rate, would have been \$63,510. I can table that information which shows that on a year by year basis.

There is some additional information that has been provided which shows the 10-year bond rate from 1988, which does not relate to Mr Emery, but it is some of the additional information that you requested. With regard to the question on whether we could calculate the impact of the bond rate being used across all Comcare benefit recipients and what the impact might have been for them, at this stage that has proven to be quite complex because of the number of people in and out of the scheme, the time that they have left and the calculations, so we do not have that information available at this stage. What we have done is some modelling that would indicate that the average lump sum payment received is \$53,093 and somewhere between 1,100 and 1,200 people have received a lump sum payment sometime between 1988 and 2007, and that that payment has been subject to the deeming rules.

**Senator MARSHALL**—Unfortunately, I am going to have to leave it there.

**CHAIR**—Thank you, Ms Bennett. We appreciate that information. Thank you, too, Mr Dolan. We will move on to the cross-portfolio at this stage. I would ask those officers to come in. During today's proceedings we have had a number of questions that were to do with questions that were posted on notice in the November estimates. I do appreciate that there were some 800 questions put on notice in the November estimates, but it appears that only slightly over 400 of them have come back. I do appreciate what was said this morning, and by Ms Paul yesterday, about the Christmas break and I also appreciate that the questions need to go to the department and then for a further review, but the committee would appreciate if some attention could be paid to those outstanding questions on notice.

**Dr Boxall**—I did see some of the evidence from the portfolio agencies about the questions. As you quite rightly point out the portfolio—not the department—as a whole received 814 questions. When an agency such as OWS or OEA complete a question they do send it to our parliamentary area but it is just reviewed for form and often they are passed on within two hours, so it is not a question of questions prepared by agencies being bottled up in the parliamentary area of the department. There is no delay there whatsoever. As you know from

previous testimony from the department, we provide advice to the minister in answer to the questions as soon as practicable and the minister decides when to table them.

**CHAIR**—Thank you for that.

**Senator Abetz**—Before we start, Senator Marshall you should stay here and watch me eat humble pie. I thought that would bring him back in. I have been advised that during a discussion on the Office of Workplace Services I referred to them as an independent statutory authority. They are not; they are an executive agency established under the Public Service Act and directions on inspectors must in fact be published. The chances are it is the same thing but the wrong terminology was used and I apologise. As soon as that was drawn to my attention I have sought to correct the record.

**Senator WONG**—I would like to start with one issue that I should have covered in outcomes one and three. I assume that you will need to take this on notice. I wanted to know whether, with respect to workplace modification funding, the Commonwealth government would access that program in terms of its own workplace modifications or whether that is only for non-government employers?

**Ms Golightly**—I will check whether I have that here.

**Senator WONG**—If you could, that would be useful. I have questions about advertising across the portfolio.

**Dr Boxall**—Yes.

**Senator WONG**—Can you provide me with details as to the advertising campaigns already implemented—that is, where a decision has been made through the communications unit? I am sorry, I have forgotten the name.

**Senator Abetz**—It is the GCU, the Government Communications Unit, and the MCGC, which is the Ministerial Council on Government Communications.

**Senator WONG**—I am referring to advertising campaigns in the portfolio that have already been subject to a decision by those two bodies.

**Mr Kovacic**—In terms of outcome 2, you would recall the Work Choices advertising campaign which was undertaken prior to the introduction of the Work Choices legislation into the parliament. I think we have provided plenty of details previously on the record.

**Senator WONG**—Is there any further expenditure in respect of that campaign?

**Mr Kovacic**—Not in terms of that. There is a subsequent education campaign, which does not involve any advertising. It involves expenditure such as the Employer Advisory Program. Similarly, it involves a range of education activities such as seminars conducted by departmental staff as well as the production of a range of fact sheets, the provision of the Work Choices information line, and the operation of the Work Choices and the workplace websites, which are again additional sources of information for employers and employees.

**Senator WONG**—What is the additional expenditure in respect of the educational campaign and the components that you have outlined?

**Mr Kovacic**—Communications activity involves things such as booklets, the advertising of seminars, as well as the continuation of some research work around the evaluation of the

Work Choices advertising campaign and some preparation of educational material for the imminent implementation of the independent contractors legislation. We are talking about \$2.842 million in 2006-07. In terms of the education program there are a number of components there. For the Employer Advisor Program there is \$9.473 million; there is a national adviser network program, which is \$3.2 million, providing a total of \$12.673 million.

**Senator WONG**—Is there anything else in that broad category of education campaign under outcome 2?

**Mr Kovacic**—No.

**Senator WONG**—Is there any other advertising campaign in outcome 2?

**Mr Kovacic**—No.

**Senator WONG**—I would like you to tell me about the evaluation. I am not sure if you have previously answered this, but was that tendered?

**Mr Kovacic**—It has not been undertaken yet. It will be undertaken at the conclusion of the education program and we anticipate at this stage that that will be towards the end of this calendar year.

**Senator WONG**—Has that tender been commenced?

**Mr Kovacic**—In terms of both the process and the nature of the evaluation, those details have not been settled at this stage.

**Senator WONG**—Is there any additional media buy other than what has already been tabled in respect to the Work Choices campaign?

**Mr Kovacic**—No. I will draw your attention to the portfolio additional estimates statements. There is an additional amount—I will take you to page 15—for this financial year of \$12.484 million, which is additional funding for a continuation of the Employer Advisory Program. That is the only additional funding this financial year.

**Senator WONG**—How does that relate to the figures that you gave me previously, the \$2.842 million and the \$12.673? Is this additional to that?

**Mr Kovacic**—I think what I have done in terms of the Employer Advisory Program is provide you with expenditure for part of the year and perhaps in the first half of this financial year there is an additional amount on top of that \$9.4 million. I will clarify that and come back to you in a moment. The \$12.484 million relates to expenditure on the program which was through to 15 December 2006. We have approval to spend an additional amount of just over \$20 million in calendar year 2007 and those resources will be provided in the budget.

**Senator WONG**—Was it an additional \$20 million?

**Mr Kovacic**—Yes. That is this calendar year, of which roughly half is within the first half of the calendar year.

**Senator WONG**—Is that on this program, the continuation of Work Choices, the Employer Advisory Program?

**Mr Kovacic**—Yes, the Employer Advisory Program.

**Senator WONG**—Can you tell me what that program does?

**Mr Kovacic**—In essence, what we have done is we have contracted out to a range of providers to undertake a range of educational activities for employers and employees around Work Choices. It includes seminars, one-on-one contact with individuals, answering questions and the provision of information, so it is the full gamut of educative activities that you might anticipate.

**Senator WONG**—Who is running that?

**Mr Kovacic**—We have engaged a range of providers, 34 in total. That is as a result of undertaking a tender process to select candidates.

**Senator WONG**—What is the nature of the organisations that are providing this? Are they industrial organisations or recruitment agencies?

**Mr Kovacic**—It is a range of organisations. Some of them would be employer organisations; some would be industry bodies. There would be other organisations that may not fall strictly into either of those categories, such as the Victorian Automobile Chamber of Commerce and a consulting group, so there are a range of organisations.

**Senator WONG**—Would you be able to table a list of the 34, please?

**Mr Kovacic**—I would have to take that on notice because the version that I have has some additional information, which I am not sure is public at this stage and it may be sensitive.

**Senator WONG**—Are you able to table it without that information?

**Mr Kovacic**—I will take that on notice.

**Senator WONG**—Should I just ask who they are and we can write them down?

**Mr Kovacic**—I can read them out to you if you wish.

**Senator WONG**—I am happy to do it that way.

**Mr Kovacic**—Aged and Community Services of Australia; Aged and Community Services of New South Wales and the ACT; Air Conditioning and Mechanical Contractors Association; Australian Business Ltd; ACT and Region Chamber of Commerce and Industry; Australian Furniture Removers Association; Australian Hotels Association.

**CHAIR**—If this is alphabetical then we are in for a long haul.

**Mr Kovacic**—It is.

**Senator WONG**—I did say that if he just wanted to photocopy it without the information—

**CHAIR**—No. Please go on.

**Mr Kovacic**—The Australian Industry Group; Australian Medical Association; Australian Minerals and Mining Association; Australian Newsagents Federation; Australian Retailers Association; Business SA.

**Senator WONG**—We have got to the Bs.

**Mr Kovacic**—Only one B, fortunately. There is the Chamber of Commerce and Industry, Western Australia; Clubs Australia; Commerce Queensland; Electrical and Communications Association; Employment Advocacy Solutions; Furniture Industry Association of Australia;

Hotel Motel and Accommodation Association; Housing Industry Association Ltd; Local Government Association of Queensland Incorporated; Master Builders Association; Master Plumbers and Mechanical Association; National Electrical and Communications Association; National Farmers Federation; National Retailers Association; NT Chamber of Commerce and Industry; Pharmacy Guild of Australia; Printing Industries Association of Australia; Recruitment Consulting Services Australia; Restaurant and Catering Industry Association; SED Consulting Group and, last of all, Victorian Automobile Chamber of Commerce.

**Senator WONG**—Did this go to open tender?

**Mr Kovacic**—Yes, it did.

**Senator WONG**—Are you able to give me the amounts under the contracts as yet?

**Mr Kovacic**—I am advised that information is commercial-in-confidence. I will take the question on notice.

**Senator WONG**—Take it on notice, if you could. I do not want to have another argument today about what the Clerk said. There is a range of ways in which we pose commercial-in-confidence questions. I draw your attention to various advices of the Clerk and decisions of the Senate.

**Mr Kovacic**—I will take that on notice, but it is commercial-in-confidence because commercial negotiations may be continuing.

**Senator WONG**—I accept that if they are continuing.

**Mr Kovacic**—That is the basis of it.

**Senator WONG**—I am not clear. Is the totality of the \$12.84 million for these organisations for the period to 31 December?

**Mr Kovacic**—Yes, it would be and we are just in the process of conducting a tender for phase 3, as we refer to it, which is for this calendar year.

**Senator WONG**—Is that the \$20 million?

**Mr Kovacic**—That is correct.

**Senator WONG**—Are the organisations that you have just read out contracted for phase 2 or phase 3?

**Mr Kovacic**—Phase 2.

**Senator WONG**—Are they still competing for phase 3?

**Mr Kovacic**—That is correct.

**Senator WONG**—Are they all guaranteed a place in delivering for phase 3?

**Mr Kovacic**—I think they are all competing for it.

**CHAIR**—We will call a 15-minute tea break. I am sorry to interrupt proceedings but we need to do that. We will reconvene at 9.25.

**Proceedings suspended from 9.09 pm to 9.24 pm**



**CHAIR**—The committee will reconvene. Senator Wong is asking cross-portfolio questions.

**Senator WONG**—Mr Kovacic, what was the cost of phase 1?

**Mr Kovacic**—It was \$8.339 million. That was for 28 March 2006 through to 30 June 2006, so it was that three-month period post the introduction of Work Choices.

**Senator WONG**—Did that go to open tender as well?

**Mr Kovacic**—Yes, it did.

**Senator WONG**—Can you, on notice, provide me with the names of the organisations—

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

**Senator WONG**—Yes, on notice. Presumably they are no longer commercial-in-confidence because they are not negotiating the amounts in respect of each organisation.

**Mr Kovacic**—I would expect so.

**Senator WONG**—Outcomes 1 and 3, advertising campaigns and those?

**Dr Boxall**—Unfortunately, the people who deal with that from outcome 1 have gone home. But fortunately one of them lives very close, and she is coming back. She will be back here in a few minutes and then we will be able to answer that.

**Senator WONG**—I am sorry; I thought I indicated that I would come back to advertising when it was raised by Mr Carters. But I appreciate your assistance. I think Senator Marshall has some questions.

**Senator MARSHALL**—I want to ask questions about the workplace agreements database.

**Mr Kovacic**—Certainly.

**Senator MARSHALL**—Can you tell me what it is?

**Mr Kovacic**—The workplace agreements database dates back to the mid-nineties in terms of the introduction of enterprise bargaining. It is, in essence, a database which tracks, I suppose, provisions of collective agreements. It was designed primarily to assist the department in undertaking or preparing the regular report on agreement making that has been required by the Workplace Relations Act and its predecessor, the Industrial Relations Act. Up until recently it focused solely on collective agreements. We have replicated a database in respect of AWAs to coincide with the introduction of Work Choices. It is not an analytical tool, in the sense that it does not enable us to analyse, I suppose, the results of bargaining. It really is a tool to assist us in the preparation of the report on agreement making.

**Senator MARSHALL**—Is it a public resource?

**Mr Kovacic**—No.

**Senator MARSHALL**—How often is the report on agreement making made?

**Mr Kovacic**—The next report on agreement making will cover the three years ending December 2006, and it is required under the act to be provided to the minister by no later than 30 June this year and ultimately tabled in the parliament by the minister.

**Senator MARSHALL**—Will it be able to define a report on post Work Choices?

**Mr Kovacic**—That is something that we are yet to settle in terms of the nature of the report—what it will and will not do—at this stage. Previous reports have, in essence, provided just an overview of bargaining developments, if I can characterise it that way.

**Senator MARSHALL**—Are the reports public documents?

**Mr Kovacic**—They are tabled in the parliament.

**Senator MARSHALL**—How many agreements are kept in the database?

**Mr Kovacic**—It is a universal sample of collective agreements, so it would have been all of the agreements that would have been previously certified by the Industrial Relations Commission. In terms of post Work Choices, it is all collective agreements that are lodged with the Employment Advocate. In terms of AWAs, it is a sample of AWAs, both pre Work Choices and post Work Choices. As at 14 February, there were 7,150 AWAs that had been coded into the database, of which 2½ thousand were pre-Work Choices AWAs. Five hundred of those pre-Work Choices AWAs were approved in 2004, 500 were approved in 2005 and the remainder in the March quarter of 2006. That is to give us a spread of agreements across the three-year reporting period for the next report on agreement making.

**Senator MARSHALL**—So post-Work Choices and pre-Work Choices AWAs will be dealt with separately?

**Mr Kovacic**—I am sorry?

**Senator MARSHALL**—Will pre-Work Choices AWAs and post-Work Choices AWAs be dealt with separately?

**Mr Kovacic**—That is a matter that we have still to settle in terms of how the report will finish up.

**Senator MARSHALL**—But you can identify them as pre and post?

**Mr Kovacic**—We could do that.

**Senator MARSHALL**—The Employment Advocate told us that there will be an annual sample of 10,000 AWAs. Is that your intention?

**Mr Kovacic**—We receive from the Office of the Employment Advocate each quarter 1,500 AWAs, which is 6,000 per annum.

**Senator MARSHALL**—Last November he said this:

The agreement with the department is that in coming months, in regard to AWAs, we will commence a process where annually a sample of 10,000 AWAs is made available to the workplace agreements' database ...

The 10,000 was his expectation at the time. There is no requirement for that?

**Mr Kovacic**—No. The 6,000 figure is one that we have settled on the basis of some advice that the department took from the ABS—its statistical sort of consultancy unit—as a meaningful sample based on the number of AWAs that were approved annually pre Work Choices. I think, with the number of AWAs that are being lodged post Work Choices, at some stage we will probably need to review the size of the sample, but at this stage that has not occurred.

**Senator MARSHALL**—He has given you AWAs quarterly so I suspect it is updated and maintained quarterly?

**Mr Kovacic**—We actually almost continuously code—if I can put it that way—in terms of entering the details of AWAs into the database. At various times it may fluctuate, just depending on a range of factors.

**Senator MARSHALL**—Did you give me the figure of post-Work Choices AWAs that he has provided to you?

**Mr Kovacic**—That figure is 4,650.

**Senator MARSHALL**—Yes, you did give me that.

**Senator WONG**—The intention was 6,000 a year.

**Senator MARSHALL**—The Employment Advocate told us in the May budget estimates that he would be providing a large number of AWAs to DEWR's research area for analysis 'specifically in relation to protected award conditions'. I am not sure how that fits with what you have already told us. What precisely are you doing in terms of analysis of AWAs in your database?

**Mr Kovacic**—The workplace agreements database does not enable us to undertake any analysis of protected award conditions along the lines that I think were referred to by Peter McIlwain at the May estimates of last year.

**Senator WONG**—Do I understand the report to which you referred in answer to a question from Senator Marshall to be the report required under section 844?

**Mr Kovacic**—That is it.

**Senator WONG**—The requirements in relation to that report are set out in the act.

**Mr Kovacic**—That is correct.

**Senator WONG**—And subsection (e) states:

... the effects that such bargaining has had in Australia during that period on the employment (including wages and conditions of employment) of women, part-time employees, persons from a non-English speaking background and young persons.

So you are required by law to provide information in the report to parliament about the effects of AWAs, et cetera on those wages and conditions, are you not?

**Mr Kovacic**—That is correct, and the report will meet the minister's obligations under the act.

**Senator WONG**—Given that you cannot analyse the effect on protected award conditions, how can you do that analysis?

**Mr Kovacic**—We can do that in terms of, I suppose, incidence of things such as family friendly provisions. If you look at previous reports, that is the sort of information that we can deduce from the workplace agreements database. What we cannot do is overcome the methodological issues that Peter McIlwain alluded to in his evidence, both at November estimates and earlier today, in terms of being able to analyse the complete package, if I can put it that way, particularly in respect of AWAs. For instance, the fact that a protected award

condition may not be included in an AWA might reflect the fact that it is not relevant to the particular workplace or, indeed, to the particular individual. A good example there might be a business that does not work shifts. The noninclusion of a shift loading would not necessarily imply that a protected award condition has been removed to the disadvantage of employees.

Secondly, without looking at individual agreements, you cannot get a sense of the overall package and, indeed, in terms of AWAs, there are some real practical difficulties in terms of how, from the employee's perspective, you place a value on the benefits of flexibility.

**Senator WONG**—But these are all practical issues. The law requires you to give an analysis of the effect bargaining has on employment conditions. How can you meet your legal obligations, how can you do what the law requires to you do, if you cannot analyse which award conditions are removed by agreements?

**Mr Kovacic**—I am not sure that the requirement is as specific as you suggest, but certainly, as I mentioned before, our intention is to produce a report for the minister to table which complies with the requirements of the act. The workplace agreements database may not be the only source of information that we rely on. There is a range of statistics that the Australian Bureau of Statistics produces which would be, I would suggest, equally relevant in terms of meeting our obligations.

**Senator WONG**—Have you sought legal advice in relation to the scope of 844(e) and the capacity of the workplace agreements database to be utilised for that purpose?

**Mr Kovacic**—No.

**Senator WONG**—Have you sought legal advice about the scope of 844(e)?

**Mr Kovacic**—No.

**Senator WONG**—Has this approach—that is, not analysing the removal of award conditions—been the subject of discussion with the minister's office?

**Mr Kovacic**—No.

**Senator WONG**—You have not been directed not to analyse whether or not people's entitlements are removed as part of this?

**Mr Kovacic**—We have not been directed at all.

**Senator WONG**—So this is just a decision that the department has made.

**Dr Boxall**—No. This is the department preparing the report which the department believes will comply with the act for the minister to table. The department has yet to complete the preparation of the report.

**Senator WONG**—So how are you going to comply with the act when you are required to look at the effect of bargaining on wages and conditions of employment?

**Dr Boxall**—Because we are going to prepare a report which addresses what is in the act, and we will present that to the minister by 30 June.

**Senator WONG**—You cannot analyse whether people have lost entitlements. You cannot analyse whether people have lost award conditions. How can you possibly prepare a report that accurately assesses the effects that bargaining has had on wages and conditions?

**Dr Boxall**—With due respect, you will have to wait and see the report. You can be assured that the report will comply with the act.

**Senator WONG**—Do you have the capacity to analyse the removal of protected conditions?

**Dr Boxall**—No. We have the capacity to prepare a report which complies with the act.

**Senator MARSHALL**—So you do an analysis of wages?

**Mr Kovacic**—In terms of the workplace agreements database, we use the collective part of the database to produce a quarterly report on trends in enterprise bargaining, which provides data on the average annualised wage increase in collective agreements. It does so on two bases: one, agreements that have been lodged in the relevant quarter; and there is a second figure which covers all collective agreements that are operative.

**Senator MARSHALL**—What about AWAs?

**Mr Kovacic**—In terms of AWAs, in terms of wages data, there are some real issues in the sense that, one, you do not necessarily have a previous document to form a judgement as to what the previous wage rate was for the individual employee. In many instances, an AWA, particularly if it has a life of more than one year, will have perhaps a starting salary included in it, but wage increases will be subject to either annual review and/or performance assessment. So it is not possible to get a comprehensive snapshot of what is happening in terms of wages in AWAs. There are some practical difficulties there that we need to work our way through, but, indeed, this is where ABS data may be able to assist us. In the not too distant future, the ABS is going to release its employee earnings and hours data, which is based on a survey that it conducted last year, which should provide some of that information and fill the gaps where the AWA workplace agreements database cannot provide the detail for us.

**Senator MARSHALL**—So you will not be relying on the database in terms of AWAs to give an opinion on wage outcomes?

**Dr Boxall**—We will be relying on it in part and, as Mr Kovacic just testified, we will also be relying on ABS and other information.

**Senator MARSHALL**—When you say you are relying on it in part, explain to me how that works, because you are either analysing wages or you are not.

**Dr Boxall**—We will be analysing the material from the AWAs and then we will be using material, if necessary and where appropriate, from the ABS, in order to interpolate wage trends for AWAs.

**Senator MARSHALL**—So explain to me again what analysis you do.

**Mr Kovacic**—In terms of both databases, we code for over 200 different sorts of criteria, if I can put it that way. If I use collective agreements as an example, one of the criteria we code on is wage increases. To the extent that it is clear from an AWA what the wage increase is, we will code for that. If that information is readily available when we are coding the AWA we can rely on that, but that is certainly not universal to the same extent as it is in collective

agreements and, given that it is not universal, we need to rely on other mechanisms, such as the ABS data that I referred to a moment ago.

**Senator MARSHALL**—So, if an AWA specifically said, ‘This agreement will provide for a four per cent wage increase each year,’ you would code that in and then use that information.

**Mr Kovacic**—That is correct.

**Senator MARSHALL**—Then don’t you run into the same problem that you had before? How do you know that that four per cent wage increase was not in lieu of trading off several protected award conditions, which may in fact have been of even greater monetary value than the wage increase?

**Dr Boxall**—It is the same with certified agreements. There may be some certified agreements that do not provide for a wage increase each year, in which case we need to supplement with the ABS data. There may well be certified agreements which have wage increases, which have been negotiated to trade off conditions or they may have rather low wage increases because they are negotiated to include or enhance conditions. These are the issues that people will look at based on the database and then use the material from the ABS, where appropriate, to come up with a report on the trends, as required by the act.

**Senator MARSHALL**—That is fine, Dr Boxall, and that may well be the case, but I specifically asked Mr Kovacic—and you agreed—that, if an AWA actually specified a wage increase, that would be coded in as a wage increase and you will use that information.

**Mr Kovacic**—That is correct, but I think your question goes to the methodological problems I alluded to previously, and it is not restricted to protected award conditions; it extends to the breadth of agreements.

**Senator MARSHALL**—To remove a protected award condition, an agreement has to specifically do it.

**Mr Kovacic**—That is correct.

**Senator MARSHALL**—Why isn’t that able to be coded into your database?

**Mr Kovacic**—It is certainly not one of the grounds which we code. Indeed, the fact that an agreement might be silent on protected award conditions, again—

**Senator MARSHALL**—No. If it is silent, they are there.

**Mr Kovacic**—That is right; they are read into the agreement as a result of that. But really, one, it is not a feature of the database because, in essence, we took the infrastructure for the collective agreements database and basically used that as the AWA database.

**Senator WONG**—Was the ABS data collected pre or post Work Choices?

**Mr Kovacic**—I advised that it was May of last year. It is a survey conducted every two years by the ABS.

**Senator MARSHALL**—Can you provide to us your coding system so I have an idea of what you do actually code into your database?

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

**Senator WONG**—When was the decision made as to what would be coded and what would not, post Work Choices?

**Mr Kovacic**—The decisions were made in advance of Work Choices. The collective agreement database, as I mentioned before, dates back to the early to mid nineties.

**Senator WONG**—Yes, I am aware of that.

**Mr Kovacic**—And the infrastructure we have used has been largely replicated in the context of the AWA database.

**Senator WONG**—Prior to Work Choices coming into effect, did you revise the coding criteria? Just to explain, Mr Kovacic, you said that the decision was made prior to Work Choices—and I appreciate that this process has been in place for some time.

**Mr Kovacic**—Yes.

**Senator WONG**—Prior to Work Choices being passed through the parliament, when was the coding system last revised?

**Mr Kovacic**—We have not amended the coding system at all, largely because we wanted to maintain continuity.

**Senator WONG**—Since when?

**Mr Kovacic**—I think it goes back to when the database was first built in the nineties.

**Senator WONG**—So you have not amended the system to take into account any industrial relations changes since the mid-nineties.

**Mr Kovacic**—I will take that on notice, but that is my sense.

**Senator WONG**—Does your system have rest breaks coded into it?

**Mr Kovacic**—We think it does, but I would need to confirm that and I will take it on notice.

**Senator WONG**—Does it code incentive based payments and bonuses?

**Dr Boxall**—We are going to report that on notice.

**Senator Abetz**—That was taken on notice, so we can go through it all—

**Senator WONG**—I have, ‘Does it encode annual leave loadings?’

**Dr Boxall**—Mr Kovacic has already—

**Senator WONG**—I will go through the ones I want to know about.

**Mr Kovacic**—I am not entirely sure.

**Senator WONG**—I am going to go through a range of conditions and I want to know whether the Department of Employment and Workplace Relations tracks whether or not these are in AWAs through their workplaces agreements database: rest breaks, incentive based payments and bonuses, annual leave loadings, public holidays, monetary allowances, loadings for working overtime or shift work, penalty rates, outworking conditions and family friendly provisions including paid parental leave.

**Mr Kovacic**—I will take that on notice.

**Senator WONG**—All but the last two I think are protected allowable matters.

**Dr Boxall**—We will take that on notice. We have agreed to take on notice the coding system.

**Senator WONG**—You explained to Senator Marshall some of your wage parameters, including the ABS data et cetera. What analysis of conditions are you doing, given that the statutory requirement applies not only to wages but also to conditions?

**Mr Kovacic**—We are about to turn our minds to that, in terms of commencing to prepare the report on agreement making.

**Senator WONG**—Did you say that the ABS data was collected in March?

**Mr Kovacic**—May of last year.

**Senator WONG**—To what period does the wage data relate then?

**Mr Kovacic**—I will check. It is a survey taken on a particular date, so it is a snapshot, if I can describe it that way.

**Senator WONG**—What was the date?

**Mr Kovacic**—In May, but I am not sure of the precise date.

**Senator WONG**—So it was not very long after Work Choices commenced operation.

**Mr Kovacic**—That is correct.

**Senator WONG**—How will that wage information assist us in knowing the impact on—

**Mr Kovacic**—That is a question you need to ask ABS. I have not seen the data. We were not involved with conducting the survey. We will not actually see the data until the survey results are published by the ABS. The timing of the survey is a matter for ABS.

**Senator WONG**—In answer to my question about how you will work out the effect on conditions, you said, ‘We’ll work that out’—you are turning your mind to that now.

**Mr Kovacic**—That is correct.

**Senator WONG**—But, essentially, the decision has already been made, hasn’t it, because you are limited by what data you choose to collect. You have indicated to Senator Marshall that you are not able to extrapolate data around the effect on protected award conditions.

**Mr Kovacic**—One of the things we can do in terms of the database is incidence of aspects of agreements. But the extent to which that hampers or advantages us in terms of analysing wages and conditions in the context of reportive agreement making, as I mentioned, we are turning our mind to at the moment.

**Senator WONG**—How are you going to know? You do not have the capacity to know what the effect is on people’s award conditions.

**Dr Boxall**—Madam Chair, we are being asked questions about a work which is work in progress, which is due with the minister on 30 June. We cannot answer all the questions because we have not done the work.

**Senator WONG**—No, but you have made decisions about the data you collect. The point is that the data you collect does not enable you to tell the Australian public through the



parliament what the effect is on these supposedly protected award conditions. You have already made a decision that you cannot track the data, you cannot measure it, so there is no way of measuring the impact of AWAs under Work Choices on people's protected wages and conditions.

**Senator Abetz**—You can believe that if you want to, but it is not true. The legislation has a specific set of words against which a report needs to be provided and the department has given evidence that they can live up to the obligations of that legislative requirement. Senator Wong can hypothesise or whatever about whether they can or cannot but until such time as the report comes out, I would have thought it would be good to leave it alone and let us talk about it when the report does come out.

**CHAIR**—I must admit, Minister, it is a relatively fruitless line of questioning, given that the tabling of the report is some four months away—is that correct?

**Dr Boxall**—That is correct.

**CHAIR**—And the report is still being written.

**Senator MARSHALL**—Can I ask what modelling DEWR has performed at any time before or after Work Choices came into—

**Dr Boxall**—Madam Chair, Mary Balzary has been good enough to come in. I just wonder whether we can complete Senator Wong's questions so she can go back home.

**Senator MARSHALL**—Indeed.

**CHAIR**—Yes. Thank you very much for coming in.

**Senator WONG**—Ms Balzary, I appreciate your returning. Sorry to disrupt your evening even more. Very quickly, the advertising campaign in relation to outcomes 1 and 3?

**Ms Golightly**—If I could start, Mary can add the detail.

**Senator WONG**—You could have answered it before, Ms Golightly; you were here.

**Ms Golightly**—I can tell you the name of the campaigns and Mary can give you the detail.

**Senator WONG**—Okay.

**Ms Golightly**—There are two campaigns. One is the Welfare to Work campaign and the other is Support the System that Supports You campaign.

**Senator WONG**—Do you have expenditure associated with those campaigns available?

**Ms Golightly**—For Welfare to Work I have a total expenditure budget estimate of \$29 million, excluding GST.

**Ms Balzary**—And the estimate for Support the System that Supports You campaign is \$20 million over four years.

**Senator WONG**—How much in 2006-07?

**Ms Balzary**—In 2006-07 it was \$4.7 million.

**Senator WONG**—And in 2007-08?

**Ms Balzary**—In 2007-08 it was \$3.5 million.

**Senator WONG**—What is expenditure to date on Welfare to Work? Sorry, the \$29 million was over what period for Welfare to Work?

**Ms Balzary**—Over three years.

**Senator WONG**—The expenditure to date on Welfare to Work and Support the System?

**Ms Balzary**—Welfare to Work expenditure to date in 2005-06 was \$8.728 million, and 2006-07 is obviously still—

**Senator WONG**—Expenditure to date within 2006-07?

**Ms Balzary**—We do not have a total of expenditure to date in 2006-07 because we are still in the middle of developing the advertising.

**Senator WONG**—Okay. Support the System?

**Ms Balzary**—For Support the System the total expenditure 2005-06, ex-GST, was \$11,496,647 and the forecast expenditure in 2006-07 is \$4.860 million.

**Senator WONG**—Where is your media buy up to in relation to the two campaigns?

**Ms Balzary**—In terms of Support the System, we have a media buy running currently.

**Senator WONG**—Has that already been finalised?

**Ms Balzary**—It started last week.

**Senator WONG**—What is the total cost of the current media buy?

**Ms Balzary**—The total media buy for this burst is \$3.736 million.

**Senator WONG**—Due to finish when?

**Ms Balzary**—The end of March.

**Senator WONG**—Is there another media buy later in the year?

**Ms Balzary**—Not this financial year.

**Senator WONG**—Have you done another media buy for—

**Ms Balzary**—For this calendar year?

**Senator WONG**—Yes.

**Ms Balzary**—No.

**Senator WONG**—For this calendar year there is no media buy?

**Ms Balzary**—No.

**Senator WONG**—What about in relation to the other campaign?

**Ms Balzary**—We are working on another media buy for later in this financial year.

**Senator WONG**—For which campaign is that?

**Ms Balzary**—Welfare to Work.

**Senator WONG**—How much will that be for?

**Ms Balzary**—Our projected cost for Welfare to Work—

**Ms Golightly**—I think the total for 2006-07 is \$10.7 million for Welfare to Work.

**Senator WONG**—I am sorry; I thought you gave me \$4.7 million before.

**Ms Golightly**—I think that was Support the System.

**Ms Balzary**—Yes.

**Senator WONG**—So 2006-07 for Welfare to Work is \$10.6 million. What about 2007-08?

**Ms Golightly**—That is \$8.7 million.

**Senator WONG**—I am sorry—your media buy for Welfare to Work for subsequent periods?

**Ms Balzary**—Our projected cost for the next media buy for Welfare to Work—it is actually a combination. We ran a short media buy in November last year, which is part of this financial year, so I do not have a breakdown between that and the residual cost. The last media buy—I would have to take the split on notice.

**Senator WONG**—Could you provide on notice that information in writing, perhaps, to set it out a bit more clearly. Thank you for coming back; I appreciate that.

**Senator MARSHALL**—What modelling has DEWR performed in relation to the effect of Work Choices legislation changes, which came into operation on 27 March 2006, and job creation?

**Mr Kovacic**—As I have indicated at previous estimates hearings, some research was commissioned by the department, and we received the report in October 2005, from memory, from the centre of public studies at Monash University. At this stage that report has not been released by the government. The only other sort of modelling we would have done would have been in the context of developing the government's submission to the initial wage review undertaken by the Australian Fair Pay Commission, which looked at the impact of minimum wage increases on employment.

**Senator MARSHALL**—Have you commissioned any outside modelling in relation to the issue of Work Choices and job creation?

**Mr Kovacic**—Those are the only two pieces we have commissioned. We have not commissioned any additional research other than that.

**Senator MARSHALL**—Have you done any modelling in respect of the effects of Work Choices changes and the removal of the application of unfair dismissal laws and job creation?

**Mr Kovacic**—No, other than the centre of public studies research that I mentioned.

**Senator MARSHALL**—Have you done any modelling in respect of the possible impact of the resources boom and/or ongoing growth in Australia and job creation?

**Mr Kovacic**—No.

**Senator MARSHALL**—Have you done any modelling in respect of the possible impact of the Work Choices legislation and jobs growth in the small-business sector?

**Mr Kovacic**—No. However, I would refer to some previous studies which go back to pre Work Choices. I think the one that comes to mind most readily is one undertaken by Professor

Harding, which estimated that in the order of 77,000 jobs had been impacted by unfair dismissal laws. I think that was 2005 or 2004—that sort of timing. But since then we have not done any additional modelling.

**Senator MARSHALL**—And you have not contracted anyone to do that work?

**Mr Kovacic**—No, we have not commissioned it.

**Senator MARSHALL**—Have you done any modelling on the relationship of the Work Choices changes and productivity growth?

**Mr Kovacic**—No.

**Senator MARSHALL**—You have not contracted any outside agencies to do any of that?

**Mr Kovacic**—No.

**Senator MARSHALL**—Have you done any modelling or research in respect of the levels of industrial disputation and the effects of the Work Choices changes?

**Mr Kovacic**—No. What we are relying on there is the Australian Bureau of Statistics data.

**Senator Abetz**—At the moment we are at the lowest levels since records were first kept, in 1910, I think.

**Senator MARSHALL**—Have you conducted any research in relation to the high number of agreements lodged in the weeks preceding Work Choices and current levels of industrial disputation?

**Mr Kovacic**—No.

**Senator WONG**—Does DEWR agree with Mr Parker, who gave evidence in Treasury, reportedly, in which he said, when he was asked about the economic effects of the introduction of AWAs, ‘We haven’t modelled it; there are too many things going on to untangle the effects of the industrial relations changes’?

**Dr Boxall**—We are not able to give an opinion on Treasury testimony.

**Senator WONG**—No, but do you disagree with that? Is that the position of the government or is that the position of DEWR or is that—

**Senator Abetz**—That is the position of Treasury.

**Senator WONG**—Was Treasury right?

**Senator Abetz**—It is not for us to say. That is their view. That is their approach. There have been others who have scoffed at the thought of 75,000 jobs being created after Work Choices.

**Senator WONG**—You had better go and have a chat to Treasury, because it does not appear that your own officials agree with your line, Minister.

**Senator Abetz**—I am not sure that is the case.

**Senator WONG**—If you said you have not read the transcript—

**CHAIR**—We are dealing the Department of Employment and Workplace Relations, and I would encourage all senators to keep their questions confined to that.

**Senator WONG**—Just to go back to one issue in relation to the report under section 844, another criterion in the act is subparagraph (d). The report has to outline:

... developments, in Australia during that period, in bargaining for the making of workplace agreements ...

Does the department consider that developments would include the effect on protected award conditions and wages?

**Dr Boxall**—The department is still working on these issues and working on the report and has no further comment at this time.

**Senator WONG**—No further comment on anything, Dr Boxall? Are you ruling it off?

**Dr Boxall**—No. No further comment on the production of a report which is due on 30 June.

**Senator WONG**—You cannot just decide that, Dr Boxall. You can choose to take it on notice, if you wish, but you cannot just decide that you have no further comment in relation to an issue because it is embarrassing that you have chosen not to track the effect of it on award conditions.

**CHAIR**—Senator Wong. I think we decided earlier that this report (a) is still being written and (b) is four months away from production.

**Senator WONG**—You might have decided that, Chair.

**CHAIR**—That is as stated by the officers.

**Senator Abetz**—The record is, Chair, that you are absolutely right that the report is for 30 June.

**Senator BARNETT**—That is a reflection on the chair, Senator Wong.

**Senator WONG**—I am just making the point. I am not sure we agreed that we would not ask questions about that.

**Senator Abetz**—No, you made a silly point, which was false.

**CHAIR**—Please proceed with questioning.

**Senator MARSHALL**—Has DEWR provided any advice or research to the previous or current workplace relations minister or the Prime Minister in relation to the dispute at Tristar Steering and Suspension at Marrickville?

**Dr Boxall**—DEWR has briefed the minister on Tristar matters.

**Senator MARSHALL**—The previous workplace relations minister or the existing one?

**Dr Boxall**—Probably both.

**Senator MARSHALL**—And the Prime Minister?

**Dr Boxall**—We do not brief the Prime Minister directly.

**Senator MARSHALL**—I am just asking. So the answer to that is no?

**Dr Boxall**—The answer is: no, we do not brief the Prime Minister directly.

**Senator MARSHALL**—When was the advice provided?

**Mr Kovacic**—The advice we provided to government on Tristar dates back to 2000, when Tristar was first affected by industrial action, which threatened to bring the automotive industry to a standstill, so it has been over an extended period of time, if I can put it that way.

**Senator MARSHALL**—What about in relation to the most recent dispute?

**Mr Kovacic**—My sense would be that it would have coincided in very broad terms with the issue being raised in the parliament, but it may indeed have been before then as well.

**Senator MARSHALL**—Was the advice provided before the Prime Minister's visit to Tristar on 24 January?

**Dr Boxall**—Sorry, the Prime Minister's visit or the minister's visit?

**Senator MARSHALL**—Sorry, prior to the minister's visit.

**Dr Boxall**—I am quite sure that advice was provided to the minister before that visit on 24 January.

**Senator MARSHALL**—Did the advice go to whether the actions of the employer at the site were criminal?

**Dr Boxall**—That goes to the nature and content of the advice.

**Senator MARSHALL**—So you cannot answer that?

**Senator Abetz**—It would be inappropriate.

**Senator MARSHALL**—If it is inappropriate, you cannot answer it? You are getting very touchy, Minister. Just settle down.

**Senator Abetz**—Because it is inappropriate, it should not have been asked in the first place. That is the point I am getting at.

**Senator MARSHALL**—Sometimes we get into grey areas and sometimes people will answer and sometimes they will not, depending on the question. If you had your way, we would not get any questions answered.

**Senator Abetz**—I do not think that is quite right and you know it.

**Senator MARSHALL**—Is occupational health and safety legislation including mine legislation regulated by state or Commonwealth law?

**Ms Parker**—The broad question on occupational health and safety is that it is regulated by both, Commonwealth and state. In terms of mining, by state.

**Dr Boxall**—Excuse me, Madam Chair. We seem to be well into outcome 2 now, which is fine with the department, but I wonder whether the people who would normally be here for cross-portfolio, such as IT and the financial management group, can go home.

**Senator WONG**—I have some staffing questions.

**CHAIR**—Perhaps you could ask those now, Senator Wong. Senator Wong will do cross-portfolio and, when she has finished, those officers are welcome to go home.

**Dr Boxall**—Thank you, Chair.

**Senator WONG**—Just in terms of taking over the portfolio, were any decisions implemented within the department in relation to contract and part-time workers?

**Dr Boxall**—No.

**Senator WONG**—Is it the case that a number of contract or part-time workers were dismissed recently?

**Dr Boxall**—Basically, no, but the department's budget is continually reviewed and subject to prioritisation in terms of tasks. There could well have been over the past few weeks some projects wound down while others were cranked up so that we can live within our budget.

**Senator WONG**—That is in general terms. Have there been any either dismissals or contract endings in the last week; if so, how many have there been?

**Ms Golightly**—There have been no dismissals that I am aware of. However, perhaps some of our IT projects were winding down, so there could well have been a small number of contractors whose contracts were ended.

**Dr Boxall**—But it has nothing to do with the change in minister; it is purely an internal departmental issue.

**Senator WONG**—So there was no direction from the minister—

**Dr Boxall**—Not at all.

**Senator WONG**—as to ending contract or part-time workers at any period?

**Dr Boxall**—Absolutely not.

**Senator WONG**—In terms of the time frames and whether or not there was a direction, you said that some IT contracts were paid out.

**Ms Golightly**—I would check, but I am pretty sure of that.

**Senator WONG**—Dr Boxall, in answer to my first question, essentially you said that obviously you have to manage these things in accordance with your budget. Have there been changes to the budget which have necessitated any reduction in particular areas of your staffing, particularly with part-time and contract work?

**Dr Boxall**—No. Ms Golightly this morning mentioned the vocational rehabilitation contestability. We need to be able to fund that because we did not get additional funds for it in the budget; therefore, we need to be able to absorb it. Having reviewed our budget in the mid-year, we have had to make some adjustments so that we can absorb that.

**Senator WONG**—What is the nature of the adjustments?

**Dr Boxall**—It is just the slowing down of a couple of other projects in outcome 1 so that we can free up sufficient resources to make sure that we can deliver on the vocational rehabilitation contestability.

**Senator WONG**—What other projects in outcome 1 have slowed down?

**Ms Golightly**—I think there are a small number of IT projects, as I have mentioned.

**Senator WONG**—Are they the only ones?

**Ms Golightly**—Yes.

**Senator WONG**—How many people's contracts were terminated as a result of that decision?

**Dr Boxall**—We do not know whether anybody was terminated. The person from outcome 1 who could answer this question has gone home, so we will have to take it on notice. It might well be that no contracts were terminated.

**Senator WONG**—Was a decision made to reschedule a number of these IT contracts, Ms Golightly?

**Ms Golightly**—As Dr Boxall mentioned, there has been a decision to slow down some of those projects. If that is what you mean by rescheduling, I think the answer would be yes.

**Senator WONG**—Perhaps, on notice, you can give me details of that rescheduling and the contracts to which it relates.

**Dr Boxall**—We can give you, on notice, details of the adjustments made to accommodate the vocational rehabilitation contestability.

**Senator WONG**—Since the appointment of Minister Hockey, have any directives been issued by the minister relating to the employment of staff within DEWR?

**Dr Boxall**—No.

**Senator WONG**—Have there been any changes to the method of engagement of staff?

**Dr Boxall**—No.

**Senator WONG**—I think I have asked you this, but have there been any dismissals?

**Dr Boxall**—No.

**Senator WONG**—Has there been any notice of any industrial changes within the department?

**Dr Boxall**—No.

**Senator WONG**—What was the extent of the absorption of cost that you needed for the VRS contestability, Dr Boxall?

**Dr Boxall**—It was \$3 million.

**Senator WONG**—Is the entirety of that being met through the slowing down of these programs?

**Ms Golightly**—Yes.

**Senator WONG**—Has any direction been given to staff to minimise travel?

**Dr Boxall**—There has been no central direction. An individual manager might have said to their staff, 'We need to be careful on travel so that we make our budget,' because managers are responsible for making their budgets, just like I am responsible for making the department's budget.

**Senator WONG**—Within the Job Network, have any directions been given to staff to limit their travel?

**Dr Boxall**—Not that I know of.



**Senator WONG**—Have there been any changes to CDEP implementation?

**Dr Boxall**—Not that I know of.

**Senator WONG**—Are you taking these on notice when you say, ‘Not that I know of’?

**Dr Boxall**—I will take them on notice, if you request me to.

**Senator WONG**—I would like you to.

**CHAIR**—However, the ones that Dr Boxall has said no to—

**Senator WONG**—No, the ones where he says, ‘I don’t know.’ So taken on notice are limitation of staff travel and the issue of changes to CDEP implementation. What about temporary staff? Have any temporary staff been let go of in any area?

**Dr Boxall**—Not that I know of and most likely no.

**Senator WONG**—In the Job Network?

**Dr Boxall**—Not that I know of and most likely no.

**Senator WONG**—So you will take that on notice?

**Dr Boxall**—Those two, if you request, we will take on notice.

**Senator WONG**—Anything you answered ‘I don’t know’ or not that you know of, Dr Boxall, I would like taken on notice.

**Dr Boxall**—Okay.

**Senator WONG**—I have questions in relation to the market research and recruitment agency, but I will put them on notice and let Senator Marshall get back to his area.

**CHAIR**—So that finishes cross-portfolio?

**Senator WONG**—I do not have anything more for cross-portfolio. I do not know whether Senator Siewert does.

**CHAIR**—Senator Siewert?

**Senator SIEWERT**—No.

**CHAIR**—Senator Marshall?

**Senator MARSHALL**—No.

**CHAIR**—In that case, cross-portfolio people may leave and thank you very much. We will keep on with outcome 2.

**Senator MARSHALL**—I have a series of questions in relation to mines and occupational health and safety. Can you tell me what role, if any, the Commonwealth has in relation to mine safety and mine manager liability under occupational health and safety or any other law?

**Ms Parker**—The Commonwealth manages its own employees and also has responsibility for those companies that are self-insured.

**Senator MARSHALL**—Under a licensing arrangement?

**Ms Parker**—Under the SRC Act, under a licensing arrangement. But, in the main, any mining companies are managed by the states and territories.

**Senator MARSHALL**—There are no mines with licensed agreements or Commonwealth owned mines, are there?

**Ms Parker**—Not at present.

**Senator MARSHALL**—Are there any other laws that relate to mines or the operation of mines that the Commonwealth has jurisdiction over?

**Ms Parker**—There may be—but not relating to the occupational health and safety jurisdiction.

**Mr Kovacic**—There is a coalmining long service leave industry fund, which is administered by the department, which is something that dates back to the late forties from memory. That is a mining related one in the broader sense but certainly not in an OHS sense.

**Senator MARSHALL**—Thank you. Has DEWR done any research or any other activities in relation to the development of a national occupational health and safety and/or workers compensation scheme, including the use or the potential use of the corporations power for that purpose?

**Ms Parker**—No.

**Senator MARSHALL**—Have you done any research or other activities in relation to the development of a national mining occupational health and safety or workers compensation scheme, including the potential use of the corporations power for that purpose?

**Ms Parker**—No.

**Senator MARSHALL**—Prior to or since the Prime Minister wrote to the states in December about mine manager liability and the shortage of mine managers in Australia, did DEWR conduct any research or provide any analysis or advice to the Prime Minister or to the minister or their officers in relation to that?

**Ms Parker**—Yes. Some advice was provided to the minister from the department.

**Senator MARSHALL**—Have you done any research work on the liability of mine managers under state law?

**Ms Parker**—No, we have not.

**Senator MARSHALL**—Have you done an analysis of mine manager liability between state and territory jurisdictions?

**Ms Parker**—No, we have not.

**Senator MARSHALL**—Have you done any research analysis or had advice on whether there was or is a shortage of mine managers in Australia?

**Ms Parker**—No.

**Senator MARSHALL**—Have you conducted any research, done any analysis or had any advice as to whether there is a link between the shortage of mine managers and the provisions of state occupational health and safety laws which deal with mine manager liability?

**Ms Parker**—No, Senator.

**Dr Boxall**—On the question before that last question asked whether DEWR has done any research on the shortage of mine managers. It is possible that somebody in outcome 3, where they look at skills shortages, might have done some work on that. But if your question is related to occupational health and safety, the answer is no, as Ms Parker said. If your question is related more broadly to skills shortages in mine management, then it is possible that there has been some work done in outcome 3. If that is your question, we will need to take it on notice.

**Senator MARSHALL**—Yes, I would appreciate that, thank you.

**Dr Boxall**—Will we take it on notice?

**Senator MARSHALL**—Yes, my question was broad. Thank you for pointing that out. Can you confirm that state occupational health and safety laws are based on a model which imposes broad occupational health and safety obligations concurrently on a variety of persons?

**Ms Parker**—Yes, that is correct.

**Senator MARSHALL**—Does any jurisdiction that you are aware of in Australia impose criminal liability for accidents solely on mine managers?

**Ms Parker**—I am not aware of that. We do not cover mine management, so I am not able to answer that.

**Senator MARSHALL**—There are none that you are aware of, but you are not excluding the possibility.

**Ms Parker**—I am not aware of it.

**Dr Boxall**—That is in reference to state laws, isn't it?

**Senator MARSHALL**—Yes.

**Dr Boxall**—The best we can do is say that we are not aware of it.

**Senator MARSHALL**—If you ever did have a mine that got a licensing arrangement or the Commonwealth decided to buy a mine—which is probably unlikely—Commonwealth law in its present form would not impose criminal liability for accidents solely on mine managers, would it?

**Ms Parker**—Not in its current form.

**Senator MARSHALL**—Does it impose criminal liability for accidents on managers in any instance?

**Ms Parker**—No.

**Senator MARSHALL**—Are you aware of the number of prosecutions of mine managers in Australia since 1996?

**Mr Kovacic**—That would be a matter for states. We do not track that at all. Given that the Commonwealth does not have any responsibility for mine safety management, that is really an issue for states.

**Senator MARSHALL**—But you are not aware of any?

**Mr Kovacic**—No.

**Senator MARSHALL**—You would not be aware of any between 1986 and 1996?

**Mr Kovacic**—No.

**Senator MARSHALL**—The Prime Minister's letter to the state premiers contained the following statement—

**CHAIR**—What is the date of that letter, Senator?

**Senator MARSHALL**—I knew you were going to ask me that, so I actually have it. Mr Howard wrote to the premiers in January asking them to rethink—

**CHAIR**—In January of this year?

**Senator MARSHALL**—Yes.

**CHAIR**—In January 2007?

**Senator MARSHALL**—Actually, no it was—

**Senator Abetz**—Steve Bracks will have to brief you better.

**Senator MARSHALL**—I am sorry; I will have to withdraw that. I do not have the date of the letter.

**CHAIR**—Yes, I think that is a good idea.

**Senator MARSHALL**—But the letter contained this, anyway—

**CHAIR**—If you cannot give us the date then it is hardly worth quoting it, because the officers will have no reference to it.

**Senator MARSHALL**—All right. Let us forget that it is a quote from the Prime Minister's letter. I will just read out the words and see if you agree with them: 'In certain jurisdictions, occupational health and safety regulations impose criminal liability for accidents solely on individual mine managers and this is creating a shortage of mine managers.' Would you have an opinion on the veracity of that statement?

**Dr Boxall**—We can't give an opinion on that statement—

**CHAIR**—From an unattributed source, as you have said—

**Senator MARSHALL**—Well, what if I said it? Would you say I was right or wrong?

**CHAIR**—and therefore I don't believe you should expect the officers to pass a judgement on matters of opinion, especially if it was quoted as your opinion, Senator Marshall.

**Senator Abetz**—It would be easier if we knew it was his opinion!

**Senator MARSHALL**—You would say I was wrong straightaway! I have finished that line of questioning and we may be able to wrap up very shortly. I have a couple of questions about some of the amendments to Work Choices—firstly, about stand-downs. I understand the amendments included rules relating to stand-downs. The definition of an authorised stand-down is in circumstances where:

... an employee ... cannot usefully be employed during a period because of a particular circumstance; and

- (b) that circumstance is:
- (i) a strike; or
  - (ii) a breakdown of machinery; or
  - (iii) a stoppage of work for any cause for which the employer cannot reasonably be held responsible ...

If an employer stands down an employee for disciplinary action or to conduct an investigation into a workplace incident, it is not covered by this definition. So would an employer contravene the act if they stood down an employee for those reasons or for other reasons not falling within the definition of an authorised stand-down?

**Senator Abetz**—This is very much seeking legal advice.

**Senator MARSHALL**—It is about the application of your act, Minister, and the changes that have just been made to it.

**CHAIR**—In that case, we have just the person to answer it, I believe!

**Senator MARSHALL**—Yes.

**Senator WONG**—She can give people advice!

**Senator Abetz**—It is a question on legal advice—

**Senator MARSHALL**—You may well have written these amendments!

**Senator Abetz**—not at all related to anything.

**Ms James**—The provision to which you refer, Senator, was indeed inserted into the Workplace Relations Act in the recent round of amendments at the end of last year. The provisions are confined to stand-downs that occur for the reasons you mentioned at the beginning of your question. They do not apply to or confine stand-downs for disciplinary reasons or—I am not sure I recall the other example you gave.

**Senator MARSHALL**—Well, for any other reason that isn't mentioned.

**Ms James**—For other reasons falling outside those descriptions, stand-downs would need to be authorised or dealt with within the employment contract, certified agreement or award. Assuming we're talking about stand-down without pay—

**Senator MARSHALL**—Yes.

**Ms James**—the employer would need to have some basis for standing down people in those other circumstances. But those circumstances are not touched on by the provisions inserted into the Workplace Relations Act which, I might mention, are based on or very similar to provisions in the metals award and other similar awards. The circumstances that are set down are also similar to the circumstances that were set down for stand-down provisions that applied in Victoria prior to the Work Choices amendments and, I think, in some cases, afterwards as well.

**Senator MARSHALL**—Okay. So, if the industrial instrument is silent on the issue of stand-downs, you can only be stood down for the reasons specified in that amendment?

**Ms James**—Stand-down without pay?

**Senator MARSHALL**—Yes.

**Ms James**—That's correct, putting aside what the common-law contract might allow.

**Senator MARSHALL**—Sure. Thank you. I have another question for you. If an under-18 waives access to the information statement for seven days, does their parent or guardian have access to that information, given that they are only required to give consent to the terms of the AWA? Further, is a parent or guardian required to sign the waiver for each document?

**Ms James**—I would like to take the second part of your question on notice and reflect on it.

**Senator MARSHALL**—All right.

**Ms James**—In relation to the first part, it is required that all employees or potential employees be provided with a copy of the information statement. That cannot be waived. They have to be provided with that prior to executing any waiver or signing an Australian workplace agreement.

**Senator MARSHALL**—So for an under-18-year-old is it a requirement of the act that a parent be given the information—the information that goes with it?

**Ms James**—I would need to check that. I would like to take that on notice.

**Senator MARSHALL**—Yes, if you could. I have a question on the amendments. If an employee's redundancy entitlement is preserved for 12 months following the termination of their workplace agreement, what rate of pay would be used to calculate the preserved redundancy entitlement should the employee be made redundant during the 12-month period?

**Ms James**—I think our view would be it would be the rate of pay at which the redundancy accrued; if you like, the rate of pay that applied over the period that the redundancy entitlements accrued.

**Senator WONG**—What is the accrued adjustment?

**Mr Kovacic**—Indeed, Senator, in the Tristar example, where the agreement was terminated by Senior Deputy President Marsh, the rates of pay in the certified agreement, as it was, were also preserved to ensure that they continued to apply in terms of any redundancy payments that might be calculated in accordance with the agreement.

**Senator WONG**—So the rate of pay is at the date of redundancy?

**Ms James**—That is my view, yes.

**Senator MARSHALL**—Following on from that—and I know you said that was your view; if you think about it and have a different view, just let us know—

**Ms James**—I will not have a different view on this; I am fairly confident. Of course, it is not yet tested.

**Senator MARSHALL**—That is all right. I thought you were couching it in 'maybe I need to think about it more', but if you are certain, that is fantastic.

**Mr Kovacic**—What I would say is the experience in terms of the Industrial Relations Commission in applying the provision has been consistent with Ms James's answer to the question.

**Senator MARSHALL**—If there is a dispute in relation to the preserved redundancy entitlement, which dispute resolution procedure applies? Is it the one in the agreement or is it the one in the redundancy clause, if there is one, or the one in the model DSP in Work Choices or something else? This is a multiple choice question.

**Ms James**—You have not given me letters.

**Senator Abetz**—Or ‘none of the above’—that is another option.

**Ms James**—The amendments in all cases preserve not just the redundancy entitlement itself but entitlements that relate to—and I am looking for the actual words, but I think it is ‘incidental to or relating to’—the redundancy provisions. It would depend on the drafting of the agreement, but it would usually include the dispute resolution clause in the agreement to enable disputes about the redundancy entitlements to be dealt with.

**Senator MARSHALL**—Does the Industrial Relations Commission have any power to arbitrate in a disputed redundancy matter or to compel either of the parties to do anything?

**Ms James**—When you say ‘disputed redundancy matter’, are you speaking specifically about preserved redundancy entitlements under these amendments?

**Senator MARSHALL**—Yes, it is a follow-up question to the one as to if there is a dispute in relation to the preserved redundancy entitlements. It is in relation to the new amendments.

**Ms James**—It will depend on the terms of the dispute resolution clause in the original agreement. If that clause permits the commission to arbitrate then the commission will be able to arbitrate.

**Senator MARSHALL**—So it is only if the powers to do so are transferred specifically in the agreement?

**Ms James**—If the parties, when they negotiated the agreement, included a dispute resolution clause that provided for that then it would be preserved.

**Senator MARSHALL**—But if that is not there, does the Industrial Relations Commission have any power to do anything?

**Ms James**—I think it would depend on the circumstances. Every agreement must have a dispute resolution clause in it. If the dispute resolution clause that the parties chose did not allow the commission to arbitrate then whatever mechanism they chose to resolve that particular dispute would be the one that would apply.

**Mr Kovacic**—The parties could, of course, in the context of any proceedings, agree to submit to arbitration by the commission if they chose to.

**Senator MARSHALL**—Yes, but I am really considering the position where the dispute is there and it is ongoing and how it is ultimately resolved. It has got a dispute resolution procedure, I understand, but I am trying to work out whether or not there is a role for the Industrial Relations Commission in that. I think your answer, and correct me if I am being too simple in summarising what you have said, is that the Industrial Relations Commission only have a role if the parties allow them to—if they both agree that they can or have already agreed that they can.

**Ms James**—Based on the terms of the clause or what the parties agree, that is right.

**Senator WONG**—I want to go back to the pay rate at which redundancy would be paid in the circumstances that you are discussing with Senator Marshall. Your answer was the rate as at the point of redundancy.

**Ms James**—Sorry, I think that is the rate of pay as at immediately before the termination of the agreement. My view is that the rate of pay would be incidental to the redundancy provisions themselves, or of the machinery provisions in this context, and thus would be preserved as at the rate of pay immediately before the termination of the agreement.

**Senator WONG**—Is that your view even if the actual redundancy is effected subsequent to the termination of the agreement?

**Ms James**—Yes.

**Senator WONG**—On the basis that it is incidental too?

**Ms James**—Yes. It is part of the preservation of the entitlement, and it is necessary to properly preserve that entitlement.

**Senator WONG**—Otherwise it makes no sense, I suppose. My recollection of Tristar is that that was an undertaking by the company.

**Mr Kovacic**—No, the decision by Senior Deputy President Marsh preserved the rates of pay that were in the certified agreement that was terminated.

**Senator WONG**—It was a commission decision?

**Mr Kovacic**—The Industrial Relations Commission, yes, in the context of determining the application by Tristar to terminate their expired certified agreement.

**Senator MARSHALL**—Can the preserved redundancy entitlement be overwritten if the employees subject to a transmission of business situation or employment with a new employer are subject to a ‘take it or leave it’ AWA without a redundancy clause or a lesser redundancy entitlement?

**Ms James**—That is a fairly complex scenario. My view would be that, to offer employment—in that context of a transmission of business that you describe—in a take it or leave it manner under an AWA would constitute AWA duress.

**Senator WONG**—Okay, let us remove that. Let us say that it is not duress under the act, but the new employer offers and the employee accepts an AWA that is silent on the issue of redundancy. What is the effect on the preserved redundancy entitlement prior to the transmission of business?

**Ms James**—I am not prepared to provide an answer that is based, not on the actual legal framework but on a hypothetical legal framework.

**Senator WONG**—What does the legal framework say about the extent to which a preserved redundancy entitlement is removed by a subsequent agreement?

**Ms James**—If the parties choose to enter into a new agreement with different arrangements for redundancy during that 12-month period then it is those entitlements that the parties have agreed to that will apply.



**Senator WONG**—Okay, so the defence of the employee in the circumstance that Senator Marshall is outlining, if it is take it or leave it, would only be to argue that they entered the AWA under duress. Is that what you are saying?

**Ms James**—I am saying it would constitute, in my view, AWA duress for an employer to engage in that conduct.

**Senator WONG**—To say, 'I'll give you another job, but only on the basis of this AWA'?

**Ms James**—Correct.

**CHAIR**—There are no more questions. Thank you very much, Minister, Dr Boxall, and the department.

**Committee adjourned at 10.39 pm**