



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

EDUCATION, EMPLOYMENT AND WORKPLACE
RELATIONS LEGISLATION COMMITTEE

Estimates

MONDAY, 30 MAY 2011

CANBERRA

BY AUTHORITY OF THE SENATE

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SENATE
EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS
LEGISLATION COMMITTEE

Monday, 30 May 2011

Senators in attendance: Senators Abetz, Back, Bernardi, Bilyk, Bushby, Cameron, Cash, Fisher, Humphries, Hutchins, Mason, Marshall, Parry, Ryan and Wortley.

**EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS
PORTFOLIO****In Attendance**

Senator Evans, Minister for Tertiary Education, Skills, Jobs and Workplace Relations.

Department of Education, Employment and Workplace Relations

Ms Lisa Paul, Secretary

Mr Michael Manthorpe, Deputy Secretary

Ms Jennifer Taylor, Acting Deputy Secretary, Executive

Dr Michele Bruniges, Associate Secretary

Ms Catherine Wall, Acting Deputy Secretary, Executive

Mr Robert Griew, Associate Secretary

Ms Sandra Parker, Deputy Secretary

Mr John Kovacic, Deputy Secretary

Ms Robyn Kingston, Chief Internal Auditor, Internal Audit

Corporate and Network

Mr Michael Manthorpe, Deputy Secretary

Mr Craig Storen, Chief Financial Officer, Finance and Business Services

Ms Susan Monkley, Deputy Chief Financial Officer, Finance and Business Services

Ms Kylie Emery, Acting Group Manager, Communication and Parliamentary

Ms Barbara Grundy, Branch Manager, Communication and Parliamentary

Mr Timothy Pigot, Branch Manager, Communication and Parliamentary

Mr Brant Trim, Branch Manager, Communication and Parliamentary

Ms Deb Rollings, Branch Manager, Communication and Parliamentary

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

Ms Susan Smith, Group Manager, Organisational Development

Ms Vicki Rundle, Group Manager, People

Mr Benjamin Wyers, Branch Manager, People

Ms Sue Dawson, Group Manager, State and Regional Services strategy

Ms Nicky Govan, Branch Manager, State and Regional Services strategy

Outcome 1—Office of Early Childhood Education and Child Care

Ms Jennifer Taylor, Acting Deputy Secretary, Executive

Mr David De Silva, Acting Group Manager, Early Childhood Quality

Ms Joan ten Brummelaar, Branch Manager, Early Childhood Quality

Ms Lisbeth Kelly, Branch Manager, Early Childhood Quality

Ms Ngaire Hosking, Group Manager, Indigenous Pathways and Early Learning

Ms Robyn Priddle, Branch Manager, Indigenous Pathways and Early Learning

Mr Matthew Hardy, Branch Manager, Indigenous Pathways and Early Learning
Dr Russell Ayres, Branch Manager, Indigenous Pathways and Early Learning
Ms Joanna Stanion, Branch Manager, Indigenous Pathways and Early Learning
Ms Robyn Shannon, Acting Group Manager, Childhood Programs and Business Support
Mr Murray Kimber, Branch Manager, Child Care Programs and Business Support

Outcome 2—Schools and youth

Dr Michele Bruniges, Associate Secretary
Ms Catherine Wall, Acting Deputy Secretary, Executive
Dr Evan Arthur, Group Manager, National Schools and Youth Partnerships
Ms Rhyan Bloor, Branch Manager, National Schools and Youth Partnerships
Ms Helen McLaren, Branch Manager, National Schools and Youth Partnerships
Mr Patrick Burford, Acting Branch Manager, National Schools and Youth Partnerships
Ms Gabrielle Phillips, Branch Manager, National Schools and Youth Partnerships
Mr Anthony Fernando, Branch Manager, National Schools and Youth Partnerships
Ms Janet Davy, Group Manager, Curriculum, Assessment and Teaching
Ms Margaret Banks, Branch Manager, Curriculum, Assessment and Teaching
Ms Alex Gordon, Branch Manager, Curriculum, Assessment and Teaching
Mr Tony Zanderigo, Branch Manager, Curriculum, Assessment and Teaching
Mr Matt Davies, Acting Group Manager, Engagement and Wellbeing
Mr John Baker, Branch Manager, Engagement and Wellbeing
Mr Stephen Goodwin, Branch Manager, Engagement and Wellbeing
Mr Chris Sheedy, State Manager South Australia, Engagement and Wellbeing
Mr Craig Robertson, Group Manager, Infrastructure and Funding
Ms Oon Ying Chin, Branch Manager, Infrastructure and Funding
Ms Chris Woodgate, Branch Manager, Infrastructure and Funding
Ms Louise Hanlon, Branch Manager, Infrastructure and Funding
Mr Kieren Robinson, Acting Branch Manager, Infrastructure and Funding
Mr Atul Sehgal, Director, Infrastructure and Funding
Mr Anthony Parsons, Group Manager, Building the Education Revolution Program Management
Mr Stewart Thomas, Branch Manager, Building the Education Revolution Program Management

Outcome 3—Tertiary, skills and international

Mr Robert Griew, Associate Secretary
Mr Michael Maynard, Group Manager, Skills
Ms Katy Balmaks, Branch Manager, Skills
Ms Jan Febey, Branch Manager, Skills

Mr Daniel Owen, Branch Manager, Skills
Ms Kathryn Shugg, Branch Manager, Skills
Ms Julie Yeend, Branch Manager, Skills
Mr David Hazlehurst, Group Manager, Higher Education Group
Ms Lisa Schofield, Acting Branch Manager, Higher Education Group
Dr James Hart, Branch Manager, Higher Education Group
Mr Mark Warburton, Branch Manager, Higher Education Group
Ms Catherine Vandermark, Branch Manager, Higher Education Group
Dr Andrew Taylor, Branch Manager, Higher Education Group
Mr Phil Aungles, Acting Branch Manager, Higher Education Group
Ms Mary-Anne Sakkara, Acting Group Manager, Tertiary Framework
Ms Melissa McEwen, Acting Branch Manager, Tertiary Framework
Mr Richard Millington, Acting Branch Manager, Tertiary Framework
Ms Kate Driver, Acting Branch Manager, Tertiary Framework
Mr Martin Graham, Branch Manager, Tertiary Framework
Mr Neil McAuslan, Branch Manager, Tertiary Framework
Ms Leonie Horrocks, Branch Manager, Tertiary Framework
Mr Colin Walters, Group Manager, International Group
Ms Tulip Chaudhury, Branch Manager, International Group
Mr Jason Coutts, Branch Manager, International Group
Mr Vipin Mahajan, Branch Manager, International Group
Mr John Barbour, Acting Branch Manager, International Group
Mr Robin Shreeve, Chief Executive Officer, Skills Australia

Outcome 4—Employment, strategy and Indigenous strategy

Ms Sandra Parker, Deputy Secretary
Ms Jenny Harrison, Acting Group Manager, Employment Services Management, Procurement and Evaluation
Ms Marsha Milliken, Group Manager, Income Support
Ms Margaret Sykes, Branch Manager, Income Support
Mr Brett Harris, Acting Director, Income Support
Ms Margaret McKinnon, Group Manager, Job Services Australia
Ms Linda Laker, Branch Manager, Job Services Australia
Ms Fiona Buffinton, Group Manager, Specialist Employment Services
Ms Ingrid Kemp, Branch Manager, Specialist Employment Services
Mr Stephen Moore, Group Manager, Employment Systems
Ms Margaret Kidd, Group Manager, Labour Market Strategy
Ms Alison Durbin, Branch Manager, Labour Market Strategy

Ms Stephanie Bennett, Branch Manager, Labour Market Strategy
Mr Darren Hooper, Branch Manager, Labour Market Strategy
Mr Ivan Neville, Branch Manager, Labour Market Strategy
Mr Malcolm Greening, Branch Manager, Labour Market Strategy
Dr Alison Morehead, Group Manager, Social Policy and Economic Strategy
Mr Mark Roddam, Branch Manager, Social Policy and Economic Strategy
Ms Rose Verspaandonk, Branch Manager, Social Policy and Economic Strategy
Mr Scott Matheson, Branch Manager, Social Policy and Economic Strategy
Ms Helen Innes, Acting Branch Manager, Social Policy and Economic Strategy
Ms Debbie Mitchell, Branch Manager, Strategy–Strategic Priorities
Ms Jo Wood, Group Manager, Strategy–Indigenous Economic Strategies
Ms Katrina Fanning, Branch Manager, Strategy–Indigenous Economic Strategies
Ms Tania Rishniw, Branch Manager, Strategy–Indigenous Economic Strategies

Outcome 5—Workplace relations

Mr John Kovacic, Deputy Secretary
Ms Michelle Baxter, Group Manager, Workplace Relations Implementation and Safety
Mr Jeff Willing, Branch Manager, Workplace Relations Implementation and Safety
Ms Meredith Fairweather, Branch Manager, Workplace Relations Implementation and Safety
Ms Flora Carapellucci, Branch Manager, Workplace Relations Implementation and Safety
Ms Sarah Sullivan, Acting Branch Manager, Workplace Relations Implementation and Safety
Mr Jeremy O'Sullivan, Group Manager, Workplace Relations Legal
Mr Peter Cully, Branch Manager, Workplace Relations Implementation and Safety
Mr Henry Lis, Branch Manager, Workplace Relations Legal
Mr David Bell, Branch Manager, Workplace Relations Legal
Mr David Bohn, Branch Manager, Workplace Relations Legal
Ms Susan Devereux, Group Manager, Workplace Relations Policy
Ms Tara Williams, Acting Branch Manager, Workplace Relations Policy
Ms Jody Anderson, Branch Manager, Workplace Relations Policy
Ms Yvonne Dunlop, Acting Branch Manager, Workplace Relations Policy
Ms Jacinta Galluzzo, Acting Branch Manager, Workplace Relations Policy
Ms Barbara Turnbull, Acting Branch Manager, Workplace Relations Policy

Safe Work Australia

Mr Rex Hoy, Chief Executive Officer
Mr Andrew Craig, Chief Financial Officer
Ms Amanda Grey, Branch Manager

Mr Andrew Wagner, Branch Manager

Mr Wayne Creaser, Branch Manager

Ms Julia Collins, Branch Manager

Ms Julie Hill, Director

Ms Ivanka Debevec, Director

Fair Work Ombudsman

Mr Nicholas Wilson, Fair Work Ombudsman

Mr Michael Campbell, Executive Director

Mr Bill Loizides, Group Manager, Field Operations

Mr Steven Ronson, Executive Director–Regional Services and Targeting

Ms Leanne Fry, Executive Director–Communications and Solutions

Mr Russell Thackeray, Acting Chief Financial Officer

Ms Janine Webster, Chief Counsel

Mr Michael Clark, Group Manager–Customer Service

Fair Work Australia

The Hon. Geoff Giudice, President

Mr Tim Lee, General Manager

Mr Terry Nassios, Director

Ms Bernadette O'Neill, Director

Mr Brendan Hower, Director

Mr Dennis Mihelyi, Director

Comcare

Mr Paul O'Connor, Chief Executive Officer

Mr Steve Kibble, Deputy Chief Executive Officer

Office of the Australian Building and Construction Commissioner

Mr Leigh Johns, Commissioner

Mr John Casey, Chief Financial Officer

Ms Heather Hausler, Assistant Commissioner–Corporate

Mr Brian Corney, Assistant Commissioner–Legal

Ms Linda Addison, Assistant Commissioner–Operations

Mr Clifford Pettit, Executive Director–Legal (Central/West)

Australian Curriculum, Assessment and Reporting Authority

Dr Peter Hill, Chief Executive Officer

Mr Robert Randall, General Manager, Curriculum and Deputy Chief Executive Officer

Mr Peter Adams, General Manager, Assessment

Australian Institute for Teaching and School Leadership

Ms Margery Evans, Chief Executive Officer

Ms Shelagh Whittleston, Deputy Chief Executive Officer

Ms Keren Caple, General Manager—Corporate and Teacher Standards

Mr Anthony Mackay, Chair

Australian Learning and Teaching Council Limited

Dr Carol Nicoll, Chief Executive Officer

Skills Australia

Ms Susan Beitz, Assistant Secretary

Committee met at 9.01 am

CHAIR (Senator Marshall): I open this public hearing of the Education, Employment and Workplace Relations Legislation Committee. The Senate has referred to the committee the particulars of proposed expenditure for 2011-12 and related documents for the Education, Employment and Workplace Relations portfolio. The committee must report to the Senate on Tuesday, 21 June 2011 and has set Friday, 22 July 2011 as the day by which answers to questions on notice are to be returned. Under standing order 26, the committee must take all evidence in public; this includes answers to questions on notice. Officers and senators are familiar with the rules of the Senate governing estimates hearings. If anyone needs assistance, the secretariat has copies of the rules. I particularly draw the attention of witnesses to an order of the Senate of 13 May 2009, specifying the process by which a claim of public interest immunity should be raised, which I now incorporate into *Hansard*.

The extract read as follows—

Public interest immunity claims

That the Senate—

(a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;

(b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;

(c) orders that the following operate as an order of continuing effect:

(1) If:

(a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and

(b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee, the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.

(2) If, after receiving the officer's statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.

(3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.

(4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.

(5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.

(6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.

(7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).

(8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).

(Extract, Senate Standing Orders, pp 124-125)

The committee will begin today's proceedings with the discussion of cross-portfolio issues and will then generally follow the order as set out in the circulated program. Proceedings will be suspended for breaks as indicated on the program, except for tonight, when the dinner break will be from 6.30 to 7.45.

Department of Education, Employment and Workplace Relations

[09:03]

CHAIR: I welcome the Minister for Tertiary Education, Skills, Jobs and Workplace Relations, Senator the Hon. Chris Evans; the departmental secretary Ms Lisa Paul; Mr Michael Manthorpe; and other officers of the department and agencies. Minister, would you like to make an opening statement to the committee?

Senator Chris Evans: No, thank you, Mr Chairman, other than to say that I look forward to spending the next four days with you.

CHAIR: Thank you. We also have been looking forward to this for a long time.

Senator Chris Evans: I did not say all of you, I just said the chairman.

CHAIR: Ms Paul, would you like to make an opening statement to the committee?

Ms Paul: No.

CHAIR: We will go straight into question.

Senator MASON: Good morning, Minister and officers. Can we go to the incoming government brief for the last election. I understand there was a regional analysis of all seats not held by Labor, Liberal or National parties, and this analysis included information on

issues for the community, demographic, employers, industries, income, the labour market and current DEEWR programs and strategies. Is that right, Ms Paul?

Ms Paul: Yes.

Senator MASON: Who authorised that regional analysis?

Ms Paul: I would have authorised it.

Senator MASON: Why was the analysis performed on the six electorates not held by Labor or the coalition?

Ms Paul: Because it was clearly of interest, in the context of a likely minority government being formed, to know what the status of those electorates was. It is not entirely uncommon for us to do such an analysis; we have done those analyses before. Those analyses, as you might imagine, were done for both the red book and the blue book and follow a typical format.

Senator MASON: It was under your authority during the caretaker period; is that right?

Ms Paul: The extended caretaker period.

Senator MASON: Some might say you were ahead of the curve, Ms Paul, not necessarily such a bad thing. How was the information gathered? You have access to all this?

Ms Paul: We have; this is information we hold. There is nothing new about the sources of information.

Senator MASON: I am very impressed with it, I must say, and I hope that one day when we get back into government, whenever that happens, we can make use of it, because it is quite comprehensive. Thank you. The process was not performed for all other electorates simply because the government would be more interested in concentrating on these ones?

Ms Paul: We would have done it in that extended caretaker period where it became clear that that was going to be of interest to either government which formed, and so we did.

Senator MASON: How do I put this gently? Of course, Ms Paul, as you know, I am always gentle. No matter who formed government, in developing a relationship with the members of those particular electorates?

Ms Paul: Yes.

Senator MASON: That is fair enough. I will just go briefly to the efficiency dividend, something that I have never quite understood. I know all governments do it but I suspect public servants hate it; you probably cannot say that, Ms Paul. In the 2011-12 budget it was announced that the efficiency dividend would be increased from one per cent to 1.5 for 2011-12 and 2012-13 and 1.25 for 2013-2014, before reverting back to one per cent in 2015-16. Apparently this will save about \$1.1 billion over the next four years. How will the department meet that target?

Ms Paul: I might ask Mr Manthorpe to start the ball rolling.

Senator MASON: Do you hate efficiency dividends, Mr Manthorpe?

Ms Paul: I do not think he is allowed to say, just as you have said.

Senator Chris Evans: He regards it as a great opportunity to drive efficiency within the department

Senator MASON: Well said, Minister!

Senator ABETZ: He is thankful to the government, no doubt!

Ms Paul: Of course, we have faced efficiency dividends for many, many years.

Senator MASON: It is a common thing, I know.

Mr Manthorpe: The question is how we are going to accommodate the efficiency dividend.

Senator MASON: Yes, how you will meet the first targets.

Mr Manthorpe: With respect to the increased component of the efficiency dividend, we think there is scope for us to continue to look for ways in which we operate our business more effectively. We are a large organisation; we need to continue to seek opportunities for business improvement in the way we go about things. More specifically, there are opportunities, in areas like our property activities, in the extent to which we use contractors and those sorts of areas, to find the necessary adjustments over the course of 2011-12 to meet the increase.

Senator MASON: Have you managed these sorts of efficiency dividends in the past and met them, Ms Paul?

Ms Paul: Yes, absolutely; we have managed them.

Senator MASON: In other words, is this efficiency dividend something you have never achieved before or is this something you have commonly had to achieve?

Ms Paul: We have commonly had to achieve efficiency dividends. The amount of requirement goes up and down. This is lower than we faced at the beginning of the first term of this government. I think I have been through efficiency dividends right through my secretaryship, which started in 2004. Each year, as the minister says, it is something we use to try to drive efficiencies into place, and so we are. We have met it, yes.

Senator MASON: Have you met them?

Ms Paul: Yes.

Senator MASON: Since you have become secretary of the department in 2004, you mentioned—that is six or seven years—you have had this constant pressure to find—

Ms Paul: Yes.

Senator MASON: I suspect you earn your salary, Ms Paul. Something perhaps far more colourful—but perhaps the savings are not nearly as great—is plants, which we have discussed before, Ms Paul; I know it is one of your favourite subjects. Thank you, you have given me a comprehensive answer to a question on notice.

Ms Paul: Can you give me the number?

Senator MASON: The number I have is 390—would that be right; 390? It does not sound right; it might be right.

Ms Paul: We will see if we can find it. It is a parliamentary question. We have it.

Senator MASON: In that you mention that the department has spent no money on the purchase of plants but you spent almost \$400,000 on the lease and in 2009-10 a touch over \$375,000 on leased plants. In 2010-2011 the department and its agencies had already spent \$239,000 on leased plants. The department alone had already spent about \$191,000. What sort

of plants does the department lease, Ms Paul? Any sort of Venus Fly Traps or any of those plants that eat fish or something? What sort of plants do you get up there?

Ms Paul: I could not answer what sort of plants. I imagine they are fairly standard office plants delivered—

Senator MASON: There is no botanist in the department, Ms Paul?

Ms Paul: Not any more. I think they went over to another department with the science portfolio.

Senator MASON: I am jealous because we used to have plants, didn't we Senator Humphries, but the Department of the Senate took them away, Ms Paul, so we are not very happy about it. You are not sure what sort of plants they are?

Ms Paul: They would be covered by the contract.

Senator MASON: Do you know how many plants are being leased at the moment?

Ms Paul: I doubt it. I think it just covers the cost of leasing.

Senator MASON: No, how many?

Ms Paul: I would imagine that we would not know.

Senator MASON: Can you find out or is it too difficult? If it is too difficult just tell me it is too difficult?

Mr Manthorpe: We could take it on notice.

Senator MASON: All right.

Mr Storen: These contracts are across the whole country as well so we have individual contracts in different capitals. We do not have one single national contract for all plants so we would have to collect the data across the contractor in Brisbane, Darwin, Perth and so forth. Remembering this is for the whole country and the provision of plants will be different in different geographical locations as well.

Senator MASON: It just seems like a lot of money to me. It is not something I know a lot about, hiring plants, to be honest.

Ms Paul: If I can put it in context, perhaps briefly. The cost of our departmental operations is over \$800 million a year. That is mainly people; we have about 5,500 people. How we save money to meet efficiency dividends and such like is always a fine call. You can always balance out amenity for people through plants which people do enjoy, for green reasons and oxygen reasons and all the right reasons.

Senator MASON: I enjoyed mine until they were taken away.

Ms Paul: What we have tried to do is to make our savings in ways which deliver larger, more meaningful savings. For example, we are making good savings in property. We have reduced our number of leases from dozens to many fewer, particularly in Canberra. We are saving millions of dollars through that measure. As Mr Manthorpe said, we will seek to save money through contracting and property and so forth. I can see where you are heading. This is something which we could consider

Senator MASON: I accept that.

Ms Paul: You have to balance out the amenity versus the impact on the bottom line and the impact on the bottom line at \$300,000 for one year is not so significant right across the country.

Senator MASON: Nearly \$400,000.

Ms Paul: I am always happy to consider ideas for saving, obviously, because that is the climate we are in.

Senator MASON: Why don't you buy them, Ms Paul? I know they are leased—can you buy these plants?

Ms Paul: I do not know. I do not know if anyone buys them.

Senator Chris Evans: There are plant shops around the country so I suppose it is possible.

Senator MASON: I do not know. I am trying to help Ms Paul achieve her efficiency dividend, as you know.

Ms Paul: I think if bought them they would be sure to die and that would be a false economy.

Mr Storen: In addition to the staff amenity that Ms Paul mentioned, there is also what they call green star ratings of buildings which factor in the total environment of a building, including electricity consumption and so forth. You get points in a green star rating of a building for different elements of the building. Consideration of pot plants within the building that affect air quality is one of the factors that goes into the rating of a green star building. The other issue, the purchase versus lease—if we were to purchase this number of pot plants, we would be employing a range of botanists, I am assuming, to keep them healthy and free of vermin and other things that get into pot plants. The leasing model provides the service of the pot plants to ensure they are helpful to the total environment.

Senator ABETZ: A person drives to the office to water the plants, what, twice a week and drives away from the office complex and is that greenhouse or carbon footprint taken into account?

CHAIR: Senator Mason I have had an outraged email because you, I think, in your comments said the Department of the Senate took away the pot plants. It was the Department of Parliamentary Services so I wanted to correct that.

Senator MASON: I do not want the President to get on to me. If you take those questions on notice, Mr Storen, that would be useful: how many plants? If it is not too difficult. In effect, we are looking for the total cost of each for leasing; that is the aim of it.

Senator ABETZ: How much carbon dioxide do they use, these plants?

Senator MASON: I always ask these questions, Ms Paul, about contracts of each portfolio.

Ms Paul: Thank you for giving them to us in advance.

Senator MASON: Before we commence on particular ones, has there been an increase in the number of contracts valued less than \$10,000, which is the minimum reporting threshold, in recent times?

Mr Manthorpe: I do not think we have that information with us. I do not know the answer to that.

Senator MASON: Could someone find out whether the proportion of contracts valued less than \$10,000 is increasing?

Mr Manthorpe: We can take it on notice.

Senator MASON: You see behind that because that is the minimum reporting under the AusTender arrangements.

Ms Paul: I would be surprised because most of our work is pretty big, but we are happy to have a look.

Senator MASON: I move to contract notice 376504—Spencer Family Trust—and 376505. They are both relating to the provision of human resource services; about \$55,000 each. Does the department normally outsource those services?

Mr Manthorpe: On occasions we do. These are for the provision of specialised executive search support for the department with respect to a couple of senior positions within the organisation where it is not at all uncommon for agencies to seek assistance from the market.

Senator MASON: Mr Manthorpe, you would have an organisation that would be seeking senior departmental officials.

Ms Paul: It is an executive search firm doing executive search for the two deputy secretary positions which are vacant in my department.

Senator Chris Evans: I do not understand whether that infringes for the techs positions as well, I think.

Ms Paul: Yes, that is true.

Senator Chris Evans: We do techs and those sorts of—

Senator MASON: Clearly, more junior officers would be done by the department, wouldn't they?

Ms Paul: Yes, that is right. It would be for external appointments, as the minister says, or for my executive.

Senator MASON: That is what both of those are about, \$55,000? It is pretty expensive going after these senior officers, isn't it, Mr Manthorpe? It is quite an expensive operation, I can tell.

Mr Manthorpe: It is an important investment.

Senator MASON: You are worth it, of course, Mr Manthorpe.

Mr Manthorpe: That is for others to judge, but it is an important investment, to make sure that we get the best people we can.

Senator MASON: Very modest. You will never make it in politics, Mr Manthorpe, if you are that modest. We move on to CN369270-A2 and CN380403, childcare affordability. One supplier is Newd Corporation Pty Ltd for about \$962,000; the other one is Media Branch Australia for about \$2.846 million. Mr Manthorpe, what is that about?

Mr Manthorpe: That is about the childcare rebate and childcare benefit affordability campaign that the government has been conducting. The first one, Newd Corp, also known as Vinten Browning—

Ms Paul: There must be another pronunciation, surely, for Newd.

Senator MASON: I am doing my best, Ms Paul. As you know, I am such a modest person.

Mr Manthorpe: Perhaps I will use the trading name, Vinten Browning. Vinten Browning is a longstanding advertising agency. They have been doing the creative part of the childcare affordability campaign. The other figure, the \$2.8 million, is for the media buy, I think.

Ms Paul: That is correct.

Senator MASON: For buying media?

Mr Manthorpe: Yes, space, through the government's approved advertising placement agencies.

Senator MASON: Going back to an earlier question, would this be the sort of area where you would find an efficiency dividend? I am not saying this particular program, but is this area where departments—

Ms Paul: This would have been a decision of government, to run a campaign targeting parents about their potential eligibility for a benefit. It is not something which is part of the departmental base, so, no, it would not. It is a programmatic matter.

Senator MASON: You are administering it, in effect, but it is the government—

Ms Paul: On behalf of the government.

Senator MASON: I understand. We go to CN374126; that is delivery of a series of policy workshops at the ANU. What is that about?

Mr Manthorpe: These are policy workshops that we have been offering to cohorts of our senior executive, as part of a suite of senior executive leadership programs, and executive level staff, again, as part of professional development for them. The work we have been doing with the ANU has been under the heading 'The Policy Innovation Challenge', which basically involves working with notable people at the ANU, people like Andrew Podger, to take our people through an analysis and a set of workshops on the complex and longstanding complex policy issues that the department and governments have grappled with.

Senator MASON: How many people would have attended these workshops?

Mr Manthorpe: The contract value is \$300,000, but the expenditure on the contract is far less than that at this point; it is around \$60,000. We have had 29 people participate in the different programs so far, within the preceding—

Senator MASON: It has only cost \$60,000?

Mr Manthorpe: Yes—\$64,000, in fact.

Senator MASON: Twenty-nine people have gone through.

Mr Manthorpe: That is right, in two different categories.

Senator MASON: What is that, about—

Mr Manthorpe: A couple of thousand each.

Senator MASON: These are SES—

Mr Manthorpe: Some are SES and some are executive level; the group below the SES.

Senator MASON: How many workshops were held? What value does the taxpayer get from this?

Mr Manthorpe: We always keep these things under review. I do not think we have done a formal evaluation of this particular program as yet, but that price for that number of participants, drawing on the skills of the sorts of people who are delivering the programs for us, represents, prima facie, a good deal.

Senator MASON: What is the duration?

Mr Manthorpe: As I said, there are two different forms of the program. The Policy Innovation Challenge involves a full-day workshop upfront, four half-day workshops focused on costing, managing stakeholders, evidence, evaluation, constructing policy alternatives, half-day wrap-up, mentors who are available to help the individuals during the course of the program—quite an extensive set of activities. The other form of activity is shorter; six two-hour sessions for the executive level public servants. It is a fairly intensive program.

Senator MASON: You spent 60-odd out of the 300 and you will put more people through this program, or a similar program?

Mr Manthorpe: We expect another seven SES to do the Policy Innovation Challenge over the course of this financial year.

Ms Paul: It was an offer made in the context of a flagship development program for the SES; it was an offer made to all of them. There is a whole range of different things they can choose to do and this is one of them. We had to allow more money in case everyone had taken it up but that has not been the case, and that is fine. We will not spend anywhere near what was originally allowed for.

Senator MASON: How many SES officers do you have, just as a matter of interest? I should know that but I do not.

Mr Manthorpe: Active at the moment, about 175 or 176; something like that.

Ms Paul: About 10 per cent less than a year ago.

Senator MASON: A big department. We look at CN376499 and CN376531; it is the engagement of panel members to judge the 2011 Endeavour Awards.

Ms Monkley: You asked about the panel members for the 2011 Endeavour Awards.

Senator MASON: Yes. What is this for?

Ms Monkley: The Endeavour Awards are an internationally-competitive merit-based scholarship program providing opportunities for citizens of Asia-Pacific, Middle East, Europe and the Americas to undertake study, research and professional development in Australia. There is also the opportunity for Australians to undertake a similar sort of program overseas. These two contracts that you refer to were for the appointment of two of the panel members to judge those awards. There are approximately 15 panels that are constructed each year and there are approximately 14 panel members. Each panel is constructed with a different combination of panel members.

Senator MASON: I do not quite understand that. You have got 14 panel members; how large are the panels? That is the question I did not ask.

Ms Monkley: I will just take some advice on that.

Ms Paul: The Endeavour Awards have been around for a long time.

Senator MASON: Yes. I do not know a lot about them but I certainly have heard of them.

Senator Chris Evans: They are among that group of things we do in terms of soft diplomacy; they are very good value for money.

Senator MASON: Soft power is very important.

Senator Chris Evans: Yes. Whenever you travel in Asia, it is interesting the penetration those things get.

Ms Monkley: My advice is that there are normally three panel members per panel.

Senator MASON: That makes sense; now I understand. This is to pay for the panel members?

Ms Monkley: Yes, it is.

Senator MASON: To pay for their expenses, not as a salary but as a bursary?

Ms Monkley: It is to pay them on an hourly rate. We also cover their travel expenses as well so that would include—

Senator MASON: What is the hourly rate?

Ms Monkley: I will get my colleague Mr Walters to answer that part of the answer.

Mr Walters: I think it is about \$70 or \$80 an hour, depending on whether it is the chair or the members.

Senator MASON: It does not seem excessive to me. Okay. Thank you very much.

Senator Chris Evans: By academic salary levels, Senator, it is good money.

Senator MASON: Perhaps it is, but, in the context of parliament and government boards, it does not seem over the top.

Senator Chris Evans: No.

Senator MASON: In the minutes left to me, the last group of questions—I think I put these in, did I, Ms Paul? There are a whole raft of contract notices relating to the provision of insolvency services. Have you got that?

Ms Paul: Yes.

Senator MASON: There is a whole stack of them. There must be, what, 30-odd, I think?

Ms Paul: Yes.

Senator MASON: All about insolvency, which makes me worry.

Ms Paul: Do you want us to talk about them in—

Senator MASON: There are strange names. There is one here, the Trustee for the Moron Unit Trust. I do not know what that is supposed to—

Ms Paul: Yes, later on I thought I had read 'Morton Unit Trust' and I suspect we have given—

Senator MASON: I am sorry, Ms Paul, but—

Ms Paul: I am not sure. Anyway, we can—

Senator ABETZ: You thought it was an offshoot of Labor!

Senator Chris Evans: She has tantalised you by putting 'moron' in there!

Ms Paul: It drew my eye too, I must say!

Senator Chris Evans: There is no sign of them going into liquidation; lots of them are bad.

Senator MASON: What are they all for, Ms Paul?

Mr Manthorpe: These are insolvency practitioners. Each one of them is a separate instance of an insolvency practitioner providing assistance to the department in the administration of the GEER Scheme, the General Employee Entitlements and Redundancy Scheme. This is a longstanding arrangement going back to the creation of the previous government's employee entitlement scheme a decade or so ago, where, in order to make payments to employees of insolvent companies in instances where insolvent companies are unable to pay the employee entitlements, we need to work with insolvency practitioners to work out what the employees are owed and then administer payments to those employees. Each of these contracts represents a relationship between the department and the relevant insolvency practitioner.

Senator MASON: Mr Manthorpe, what has that got to do with the department? I do not understand the connection.

Mr Manthorpe: The department is the administrator. That is probably a poor choice of words because we are not an insolvency practice, but we run the General Employee Entitlements and Redundancy Scheme.

Senator MASON: You have a very soft voice, Mr Manthorpe. The General Employment what?

Mr Manthorpe: The General Employee Entitlements and Redundancy Scheme, GEERS, a longstanding program. We run the program. The program is for the benefit of employees of insolvent companies in circumstances where a company goes broke and the employees do not get their entitlements.

Senator MASON: This is any private company?

Mr Manthorpe: Yes.

Ms Paul: Yes.

Mr Manthorpe: It is a longstanding program, and the employees are able to make claims to recover a portion—in fact, the lion's share—of their lost employee entitlements.

Senator MASON: Superannuation and so forth?

Mr Manthorpe: Leave, wages, things of that sort. This has been in place for many years in various forms, but, to make the system work, we have to work with the insolvency practitioner of the insolvent company because they are the people that have the books and records of the company, the employee entitlement records and so forth, and so each of these contracts represent—

Senator MASON: I see, and that is why there are so many different providers?

Mr Manthorpe: That is right.

Ms Paul: Yes.

Senator MASON: It is not one or two; you have got dozens.

Ms Paul: Yes, every single company will have its own insolvency practitioner.

Mr Manthorpe: Correct.

Senator ABETZ: Because they are not a workplace relations—

Senator MASON: Not my thing, Senator Abetz. It is relatively clear, Mr Manthorpe, so I think—

Senator Chris Evans: It has been said that the department does not choose them. We work with the insolvency practice that has been appointed as receiver, as it were. We do not choose them; we develop a relationship because of the employees affected.

Senator MASON: I see. And I had my education hat on; of course, this is workplace relations. I always forget—

Ms Paul: Yes, workplace relations.

Senator MASON: An important part of your department, Ms Paul.

Ms Paul: That is right.

Senator Chris Evans: It is not a club, Senator. We are not allowed to refer to it as a club anymore, I am told.

Senator HUMPHRIES: I am probably looking for guidance on this point rather than asking direct questions. I wanted to ask about the department's negotiation of the Clean Start award for people in the cleaning industry. I understand that the department has sponsored this Clean Start award, which provides for higher than usual rates for people in the cleaning industry. I wanted to ask about the impact of that award on cleaning contracts let by various government agencies. Where would I ask such questions?

Ms Paul: If it is about the policy of that—

Senator HUMPHRIES: Yes.

Ms Paul: then it is probably in Workplace Relations tonight, which is after dinner on the program. If it is about, for example, my department's cleaning contracts, it would be now. I am hearing a mix of that, so I am not quite sure. Perhaps you could explain a bit further to see if we could do it now.

Senator HUMPHRIES: I think it sounds like it will be tonight.

Ms Paul: I think it is probably tonight, yes.

Senator HUMPHRIES: Other agencies' cleaning contracts are an issue here, but I cannot ask, I assume, any questions about why certain companies have won and others have lost cleaning contracts.

Ms Paul: No. That is correct.

Senator HUMPHRIES: It is the broader policy I am after.

Ms Paul: If it is the broader policy, that would be tonight.

Senator MASON: I forgot to ask these questions, Ms Paul, amid the excitement about insolvency, so excuse me. Can I ask about the education tax refund briefly: did the department provide any information to the Treasury about the education tax refund in terms of background information about student eligibility and so forth?

Ms Paul: I do not think I have the people here who could answer that. I do have those people; can I get it to you in a couple of days?

Senator MASON: All right.

Ms Paul: I will ask my own people to check this but I think the way the policy responsibility is split is, as you know, with the main responsibility resting with Treasury.

Senator MASON: Sure.

Ms Paul: I think we have offered, over time, some advice on what might be covered.

Senator MASON: Yes.

Ms Paul: I do not think we have gone beyond that. That is my recollection of that, but I do not think I have the people here at present on that.

Senator MASON: If this is all right, Minister and Ms Paul, maybe I can ask this on Wednesday. Would that be more appropriate, under Education?

Senator Chris Evans: Yes.

Ms Paul: Yes.

Senator MASON: Because my questions do relate to that provision by the department on information to Treasury.

Ms Paul: It is either tomorrow or Wednesday. Can I let the chair know? I am not quite sure.

Senator MASON: That is fine.

Senator Chris Evans: I need to find the right program to make sure the right officers are here for you, and we will let you know what program is best to deal with it.

Senator MASON: Yes. Is that all right?

Ms Paul: We will let the chair and the secretary know today which is the right subprogram.

Senator BACK: Minister, can I refer you to the *Hansard* of 12 May, when the deputy chair of the Senate Committee used standing order 74(5) to pursue the answers to a number of questions that were placed on notice at Senate estimates in February, because on 12 May there were 159 questions that were still unanswered. The deadline, in fact, was 8 April, at which time 209 questions were unanswered—57 per cent of the questions asked. There were a number of portfolios. Were these questions with the department at that time, 12 May, waiting to be answered or were they with you and other ministers?

Senator Chris Evans: I will get the department to answer; as you might be aware, I would not have that information personally. You are after questions on notice from the last estimates round?

Senator BACK: From additional estimates in February, yes.

Senator Chris Evans: Yes.

Senator BACK: Just to recap, at 8 April, which was the deadline for answers, 209 questions were unanswered. When I raised this in the Senate chamber on 12 May, there was still 159 unanswered.

Ms Paul: I might start the ball rolling and Mr Manthorpe can fill in. We may not have with us precisely where they were. I will note that, overall, in our own defence, we have got 100 per cent of them in earlier than usual.

Senator BACK: Is 'usual' the required cut-off date?

Senator ABETZ: That is not the KPI?

Ms Paul: That may not be the KPI but historically, given how many questions this department and its agencies receive—probably 400 or 500 at a time—I would posit that getting them all in is good. However, it is always better to meet the deadline and we did not, as you say, although mostly we come in within a few weeks of that. Perhaps Mr Manthorpe can expand on that. I do not think we have with us where they were. We would have to take that on notice.

Mr Manthorpe: No, we do not.

Senator BACK: Perhaps if I could recap. It has gone up and down in terms of performance. In the additional estimates in 2010, February, 24 per cent remained unanswered at the required date; then, for the budget this time last year, in fact, 88 per cent of questions were not answered by the required time. Fortunately, that improved; for the supplementary budget period in October last year, it was 45 per cent and, as I mentioned, it was 57 per cent. If you could take that on notice and which ministers they were still with, I would be most appreciative.

Ms Paul: My guess would be that most of them would have been with the department at that stage. That is probably because it was a very intense budget period for us, so there would have been many competing priorities, but I am very happy to take that on notice and spell it out for you.

Senator BACK: There were two, in particular, which were submitted to the committee on 16 May and they were responses to questions from Senator Fierravanti-Wells, which was EWO904-11, and that related to the Mature Worker Program; the other was a question from Senator Mason, which was EWO61-11, regarding the next schools to review the NBN rollout. I am not sure whether Senator Mason dealt with that.

Ms Paul: No, he did not.

Senator BACK: My question to you in relation to both of those, either to the minister or to you, Ms Paul, is: is there any particular reason why those two, relating to the Mature Worker Program and the NBN rollout, were released so late? Was it any particular purpose that required extra assessment by the minister; was there any area of particular concern for those two? I am interested to know why they, in particular, were so late in being—

Ms Paul: For the mature one, the Experience Plus one, which is 0904, I do not think there would have been any particular reason, it is a very straightforward question and a straightforward answer, so I would have to guess it was the pressure of other priorities and I apologise for its lateness. On 861, the NBN, I see that we had to consult, if you look at the answer there, with another department. The answer basically is data derived from another department; so I would say that is absolutely—

Senator BACK: The delay was in the information coming through. Unrelated to the earlier questions but turning now to a topical topic, climate change: what advice, if any, has

the department provided to the Climate Change Committee? Have you been asked to provide advice to the Climate Change Committee?

Ms Paul: I am not aware of any advice we have been asked for, but I will check that.

Senator BACK: Could you take that on notice, if that is the case.

CHAIR: On questions, the 400 or so questions that were taken on notice with the previous government, are they still out there in the wilderness? Did we ever get answers to them or, with the change of government—

Ms Paul: We do not; that is correct. The hundreds and hundreds which will were outstanding are not proceeded with.

CHAIR: My recollection was that, out of those 400 questions, some of them were outstanding for 18 months, I think, in some cases, from estimates after estimates after estimates that we could never get answers to.

Ms Paul: I understand so.

Senator ABETZ: Did your mother tell you two wrongs do not make a right.

CHAIR: Senator Back asked about what is normal. In fact, what is normal in this situation is that rarely did we get answers to questions when we were in opposition. From time to time I have commended the department on their quite prompt answering of questions in this respect.

Senator Chris Evans: As I recall, Mr Hockey used to say no.

Senator BACK: I am enlightened by that dialogue, thank you very much.

CHAIR: That is right, thank you. Not that I have been here too long, but I do have a memory—

Senator BACK: Perhaps I have not been here long enough.

Senator ABETZ: Minister, a question for you that relates to the issue of press clippings. I understand the department gets a range of clippings via a media monitoring service. Is that correct, Ms Paul?

Ms Paul: That is correct.

Senator ABETZ: Why is it that that cannot be shared with the opposition spokespeople?

Senator Chris Evans: I will have to take that on notice to remember the detail, but I think it has been past practice; it certainly was past practice when I was shadow minister.

Ms Paul: It has been longstanding practice.

Senator ABETZ: It seems to vary department to department, depending on the demeanour and what a minister had for breakfast, it would seem; like, foreign affairs, defence, in those sensitive areas, the media clips are shared. When I was a minister I was always happy to share them. I remember when I had the exulted position of Shadow Minister for Innovation, Industry, Science and Research, I finally convinced Minister Carr to share the media clips with me. If somebody as friendly, nice, polite and kind as Senator Carr could bring himself to provide media clips, I was wondering why you do not have that same charming demeanour, Minister.

Senator Chris Evans: It might be 12 years in opposition being treated very poorly by ministers might leave scars, but I am happy to take it on notice. I do not get time to read them. They are usually quite voluminous.

Senator ABETZ: That is what motivates the government decision-making in this area, bitterness and twisted minds. Chances are you are pretty even-handed because you have got a chip on both shoulders, by the sounds of it.

Senator Chris Evans: Live by the sword, die by the sword.

Senator ABETZ: I am glad that is on *Hansard* because that just indicates the mentality that we are unfortunately being provided with in this area. When even Senator Carr can bring himself to it, one would think the Leader of the Government in the Senate might be able to bring himself to Senator Carr's standard of dealings but, if it is not to be, it is not to be, and that will remain on the record.

CHAIR: Senator Carr is the benchmark for good behaviour in the Senate.

Senator ABETZ: Now you are misleading the Senate.

Ms Paul: From the department's point of view, the practice is as it always has been; certainly under my secretary-ship.

Senator ABETZ: Yes, but the department does as the minister requests. If the minister were to ask the department to make a copy available to the shadow minister, the department would provide it, would it not?

Ms Paul: The minister has taken it on notice.

Senator ABETZ: Yes, but you were telling me about the department's practice. I am suggesting to you that the department's practice has been dictated by ministers, past and present, not of the department's own volition. That is correct, is it not?

Ms Paul: I would have to go back to the decision-making process.

Senator ABETZ: Take it on notice then, if you have difficulty with that, because, with respect, I think we know what the answer will be. As I understand it, and it is no credit to my side, they used to be shared and then, when the government got itself into difficulty, around the 2004-5 mark, whatever mark it was, with a particular policy platform, that is when they were no longer shared. That is my understanding of the situation. I must say I am not proud of the fact that the party in government I was associated with took that decision, but that is what they did, but it is no justification for this government, or indeed any future government, not to share a resource which is relatively freely available and would make ease of transfer of information, I would have thought, for the opposition as well, if we believe in Operation Sunlight and assisting in having a robust opposition.

CHAIR: The minister has taken that on notice. Any other questions in cross-portfolio? No, that is terrific. We will move on to portfolio agencies. The first agency we will be dealing with is Fair Work Australia.

Fair Work Australia

[09:52]

CHAIR: We now welcome officers from Fair Work Australia—Justice Guidice, Mr Lee, Mr Nassios and Ms O'Neill. Do you have an opening statement you would like to make to the committee?

Justice Guidice: Not from me.

Senator ABETZ: Welcome to the president and officials. In the portfolio budget statement, we are told, on page 277:

FWA performs its functions and exercises its powers in a manner that is efficient, adequately serves the needs of employers and employee—

I assume that should be plural, 'employees'—

fair and just, quick, informal and avoids unnecessary technicalities, open, transparent—

et cetera. Do you have a set of key performance indicators or a methodology whereby these very worthy goals are measured so we can see whether or not you are dealing in a manner that is, for example, fair and just, open and transparent?

Mr Lee: We have a number of indicators across the organisation. They include measuring the time it takes us to deal with matters, from the time that they are lodged with us to the time that the tribunal deals with them and moves them through; there are quantitative performance measures. We also, from time to time, survey what the response of stakeholders has been in key areas, in terms of key parts of the business. For example, last time we were here we discussed the TNS research into the unfair dismissals area, which provided us with some good empirical work on the reaction of those that had used that particular service to deal with unfair dismissals. There are a range of indicators across the organisation that enable us to be informed as to how we are faring in terms of these matters. There are quite a number provided in the annual report, obviously on an annual basis. There we indicate how we are proceeding in terms of the processing time for enterprise agreements. We have quantitative measures around applications in relation to termination of employment that have been finalised, the numbers of enterprise agreements that have been lodged and finalised for the period, a number of indicators across all of the case load categories.

Senator ABETZ: Yes, but how do we know that those averages are good, bad or indifferent? You tell us that it takes so many days to do whatever. That is all well and good, that information is handy, but how do we objectively assess whether that is a good performance, an indifferent performance or a bad performance?

Mr Lee: On page 284 of the budget statements a number of indicators are provided; they go to improving or maintaining the time elapsed from lodging applications to finalising conciliations in unfair dismissal applications; obviously, the completion of the annual wage review, which is required to be done by 1 July—

Senator ABETZ: That is one that is set by statute, or whatever, that you do it by a certain date. That then is an objective assessment; that is what you are required to do by the parliament. And you achieve that, so you can give that a big tick, but, in relation to how many unfair dismissal cases are dealt with within a certain time frame, how do we know that that is a good time frame or that it might not be improved upon?

Mr Lee: In terms of unfair dismissals specifically?

Senator ABETZ: No, just generally; I use that as an example.

Mr Lee: Again, the indicators are to improve or maintain. So what we do is look at where we have been historically, in terms of past outcomes; that tends to feed into what we put to government in terms of what should be published in the budget papers as our targets, and we seek to meet those targets and to improve on those outcomes over time. It is similar for the

other indicators that are there: improving or maintaining the time taken to list applications relating to industrial action, a very important measure for us, with a target of three days; and improving or maintaining the agreement approval time, with a target of 32 days.

Senator ABETZ: How are we going on that? I thought Ms Gillard said, a few ministers ago now, that she was hoping the EBAs would be done within seven days.

Mr Lee: For single enterprise agreements, from lodgement to approval, the median time taken, up until the end of April this year, was 20 days.

Senator ABETZ: Does Fair Work Australia consider that it should abide by the benchmark suggested by the former minister, Ms Gillard, in relation to approvals, or was that, in your experience, an unrealistic goal and benchmark?

Mr Lee: I could not say whether it was realistic or unrealistic. What I can say is that we continue to strive to improve the speed at which we deal with agreements. There has been a lot of discussion here in the past about the varied nature of agreements that are lodged with us. Some are straightforward to deal with; others, sometimes reflective of the industry that they come from, are by their very nature more complex. It is difficult to be able to say what a particular aspirational outcome could possibly be. In that context we continue to work to improve on the numbers that we have achieved.

Senator ABETZ: I happen to agree with you. That is why the former minister, plucking a figure like seven days out of the air, was singularly unhelpful. But, given that that has been the suggestion made and now the benchmark that is out there, can you advise the committee as to why Fair Work Australia is unable to get, as I understand it, the vast majority approved within seven days? Is it because they are all so complicated or difficult? It stands to reason that, on an average, there would be some more difficult and some easier. The suggestion by Ms Gillard was that it ought to be done within seven days but, as I understand it, that is hardly ever achieved.

Mr Lee: The *Hansard* would probably bear me out on this, but in past hearings here there have been long discussions about the different types of agreements, as I was alluding to earlier, and, from recollection, the president in particular has made it clear that some agreements are more straightforward to process than others. It may well be—and I expect that it would be the case—that a number of those agreements are dealt with in much less than even the 20-day median to which I refer. Obviously, when you are looking at measures of central tendency like a median, you are going to get variations away from that, to the higher end as well to the lower end, and so it is reasonable to expect that a fair number are dealt with in a much more speedy manner. The extent to which we can quantify that, I am happy to take on notice.

Senator ABETZ: Yes, but the average is 20 days?

Mr Lee: The median is 20 days, that is right.

Senator ABETZ: Yes. Which, as a result, means that there are quite a few that take even more than 20 days?

Mr Lee: Some would take more than 20 days; that is correct.

Senator ABETZ: If you can tell us how many, in raw numbers and percentage terms, are dealt with in seven days, and then the reason why the others cannot be. I assume it was not your department because you did not necessarily exist in the days that that aspiration was

made, and when I say the 'former minister', I should have said the 'former shadow minister'; it was her aspiration that things would be done within seven days. Are you able to go back to people who had experience with the Australian Industrial Relations Commission and ascertain whether any advice was sought from them as to the reasonableness of putting forward this seven-day figure, or whether it was simply thought out by the shadow minister herself, or whether there was some evidence basis to the suggestion that this could be done.

Mr Lee: I can take elements of that on notice. I can deal with what you raise in terms of quantification of variations around the median, and we will endeavour to give you an answer to that. As to some of the broader issues you raise about what may have been, I cannot obviously deal with those.

Senator ABETZ: See what you can find out, because it is reflecting poorly—chances are, unfairly so—on Fair Work Australia, when this was the assertion made by the shadow minister, who then became minister, implemented it all and said, 'Fair Work Australia will,' and you guys are taking, in general terms, three times as long as that which had been suggested. I suspect there is a good defence and robust argument as to why it is taking three times longer, and that is why I do not seek to criticise Fair Work Australia in this. But it then begs the question where the shadow minister got her seven-day figure from, though there will be an opportunity to discuss that at a forum other than this.

Senator Chris Evans: Fair Work Australia cannot be expected to comment on what allegedly a shadow minister said some years ago, but they will do what they can to answer the substantive question which is about the time frames for dealing with questions.

Senator ABETZ: Yes, but what is happening, Minister, and you should be cognisant of this, is that Fair Work Australia's reputation in some quarters is being trashed because they are not living up to the expectation that was created by the shadow minister that these agreements could be dealt with within seven days when clearly the average is taking three times as long. I do not say it is Fair Work Australia's fault—

Senator Chris Evans: I do not know which circles you are moving in, but it certainly has not been raised with me. To suggest that Fair Work would have their reputation trashed because of some alleged comment made by a shadow minister some years ago is a bit far-fetched, but we will help you to the extent the officers can.

Senator ABETZ: Keep living in that illusion and you will not be doing yourself or Fair Work Australia any justice. Where does Fair Work Australia have offices around the country?

Mr Lee: We have offices in every state and territory. By far the largest office, in terms of staffing numbers, is in Melbourne. We also have an office in Sydney, and in Brisbane, Adelaide, Perth, Hobart, Darwin and the ACT.

Senator ABETZ: So you have offices in all the capital cities. Do you have offices elsewhere?

Mr Lee: We also have—after the referral of powers from New South Wales—operations in Newcastle and Wollongong.

Senator ABETZ: Do you have one in Penrith?

Mr Lee: No.

Senator ABETZ: Minister, possibly you can take on notice for us why, on 12 November 2007, the shadow minister, Julia Gillard, together with Labor candidate for Lindsay David Bradbury, announced that there would be a Fair Work Australia office in Penrith, via a press release on 12 November 2007. It is interesting to know that, three years later, that election promise still has not been delivered. I assume Fair Work Australia does not have funding to have these offices scattered around Australia; is that correct, Mr Lee?

Mr Lee: I do not think I could say that that is correct. The issue is in terms of how we have proceeded as an organisation; we have not identified a need to open the tribunal in areas other than that which we already have in place. There is a capacity for the tribunal to service regional areas where members travel—not quite on a circuit but they do travel—from place to place. They secure temporary premises for the purposes of hearings as is required, and we have, generally, as a tribunal, found that to be a satisfactory arrangement.

Senator ABETZ: I will move on now to the issue of unfair dismissals. What is Fair Work Australia's policy on refunding unfair dismissal application fees? Does that happen from time to time?

Mr Lee: Refunding fees that—

Senator ABETZ: For example, if a matter is concluded, at whatever stage of the process—phone conference, conciliation et cetera—is it possible for the applicant to receive a refund on their application fee? Is there any policy on this?

Mr Lee: I do not think that we would have, but I will ask Ms O'Neill or Mr Nassios.

Mr Nassios: My memory does not quite tell me where in the act or the regulations there is a provision for the refund of the fee where a member of Fair Work Australia has not dealt with the matter and has settled or it has concluded prior to the member dealing with it. If a conciliator, for example, deals with the matter and it is concluded, settled or withdrawn, or whatever the outcome, so long as it does not go to a member of Fair Work Australia, the money is refunded.

Senator ABETZ: Has this been publicised at all that this can be part and parcel of the deal of settlement, that a conciliator can say at the hearing, 'If it helps to settle it we will refund your \$70'?

Ms O'Neill: As Mr Nassios indicated—I have a similar lapse in memory as to whether it is a rule or a regulation—it is prescribed within the legislative framework that the fee can be refunded at any point prior to the matter being substantively being dealt with by a member of FWA. Accordingly, the telephone conciliations of unfair dismissal applications that are conducted by FWA staff members rather than members means that, if a matter is resolved at that stage, the trigger for a refund has been met because the matter has not been dealt with by a member and that entitlement to claim a refund is—I cannot say on every occasion but certainly not uncommonly—pointed out to the parties by a conciliator during the conciliation.

Senator ABETZ: Is it part of the information sheets that people are provided?

Ms O'Neill: I would need to take that on notice.

Senator ABETZ: Yes.

Ms O'Neill: It may be but I cannot be confident.

Senator ABETZ: Does Fair Work Australia, in making its determinations about ballots for, let's say, a protected action ballot and then orders are made that people can vote at a certain marquee et cetera, we are interested in achieving a good outcome in these protected ballots—are there any rules or requirements in relation to the badging that can be on these marquees as in is it like a polling booth on election day where, hopefully, there is no political paraphernalia within the polling booth but, if people want to stand outside, they can hand out materials. It has been suggested to me that some of the marquees, in fact, are heavily union identified. I was wondering in the ballots that are taken whether Fair Work Australia has any jurisdictional capacity in relation to the markings on marquees?

Mr Nassios: Once the order is made by Fair Work Australia it is the responsibility of the Australian Electoral Commission to conduct the ballot. To the extent of being able to answer your question, I would not be aware.

Senator ABETZ: I was thinking that I may have missed out on that and I should have asked last week of the Australian Electoral Commission. That would be solely within the jurisdiction of the Australian Electoral Commission; Fair Work Australia only makes the order that a protected action ballot should be held. Fair Work Australia may say the dates, times and location of where those ballots take place?

Mr Nassios: There are certain directions that would comprise the order. I would have to go into the exact section of the act to be able to answer your question completely. I am not familiar with any orders having been made that would go to the detail in terms of the marquees. In terms of the times and dates, I believe they would be generally prescribed not in exact dates. I believe that is a responsibility of the AEC to try to work out the appropriate dates and places. I would have to double check that in terms of the—

Senator ABETZ: I have a particular order in front of me from Fair Work Australia which talks about timetable and locations which tells me that, 5.20 am to 8 am, at a particular main, in the marquee on site in the northern end of employees' car park, which suggests that it is a marquee that is already there and one that the Australian Electoral Commission may not necessarily be establishing. How do we ensure that it is not an HR Nichols Society marquee or, indeed, a CFMEU marquee that workers have to walk into to be able to cast their ballot?

Mr Nassios: There is capacity to make certain directions. I would have to have a look at the exact matter that you are referring to and the exact section that prescribes how far you can go in terms of making directions.

Senator ABETZ: Yes, I would invite you to do all that other than the matter that I am quoting from because what I am dealing with here is general principles as opposed to a decision made by a certain commissioner on a particular date. I do not want to traverse into that, I want to traverse into what jurisdiction Fair Work has to guarantee that we do not have that which has been reported to me. Whether it is right or wrong, I do not know.

Senator Chris Evans: We will take on notice to see if we can help any further in terms of Fair Work Australia's jurisdiction, if you like, but the evidence is that AEC then conducts the ballot and would have to be confident about—

Senator ABETZ: Conducts the ballot but when the order tells us—

Senator Chris Evans: No I accept that.

Senator ABETZ: that it will be done in a particular marquee at a particular site it would suggest that it is not an AEC marquee but somebody else's and that is—

Senator Chris Evans: Yes, I have no idea whose marquee it is but we will get you further advice as to, if you like, the limits of the jurisdiction of Fair Work Australia. Clearly they made orders that are quite specific in that case but then you will have to refer the queries to the AEC in terms of how they satisfy themselves. We will get you what further information we can about the jurisdiction and extent of the powers of Fair Work Australia.

Senator ABETZ: Yes, I am here for the duration so, if senators come in, I am more than happy for them to intervene. I move to adverse action: does Fair Work produce any information about the type and nature of adverse action claims that can be taken?

Mr Lee: No, I do not believe we do.

Senator ABETZ: Can I leave that with you as something that you might like to think about. Does Fair Work Australia collect, have and/or produce any information about the actual outcome of adverse action claims and, in particular, how they may have been resolved?

Mr Lee: I will take that on notice.

Senator ABETZ: Whether they involve the payment of compensation and, if so, what amount of compensation and/or the reinstatement of an employee. I cannot remember but last time in relation to unfair dismissal claims I asked Fair Work Australia to provide us with categories. In relation to those that are re-instated, that is clear. In relation to compensation, if you could advise those that were settled, let's say, in categories of less than \$2000, less than \$5000, less than \$10,000, less than \$20,000 and above \$20,000?

Mr Lee: In that same vein, we have advised you before.

Senator ABETZ: Yes, in relation to unfair dismissals. That would be very helpful.

Mr Lee: To be clear, Senator, it is the proportion of claims that are so settled?

Senator ABETZ: Yes, thank you, preferably in raw numbers, and we will try and nut out the percentages ourselves. But, if you have percentages available, that would be helpful too. Do you have information about the nature of such claims—for example, do they relate to dismissal, discrimination or other factors? Adverse action, as I understand it, is a fairly wide area where claimants can bring up a whole range of issues.

Mr Lee: I would also take that on notice, as to whether or not we could provide that.

Senator ABETZ: Do you have any indications that employees might be using adverse action as a de facto unfair dismissal claim when they are dismissed from their employment under the six-months and 12-months unfair dismissal thresholds?

Mr Lee: I do not think I would have any information that would be supportive of that claim but I am happy to examine—

Senator ABETZ: You do not have any information because it has not been sought?

Mr Lee: Even based on the information that we would have, that would be some supposition there that people were using it in a particular way. I am not sure that I would be able to confirm that one way or the other for you.

Senator ABETZ: It would be, would it not, on the file whether somebody had been employed or not employed at a certain place for six or 12 months and whether that rule would have applied in their particular circumstance?

Mr Lee: It is possible. I do not think it is something that we would ordinarily examine but I am happy to see whether or not it is possible and how onerous a task it would be.

Senator ABETZ: I can understand that. As a result of a request from a Senate committee, I am sure you would be—

Mr Lee: Always responsive.

Senator ABETZ: Yes, always responsive. Thank you.

Senator Chris Evans: The officer was making the point that there may be a limit to that if that means going back through every file to get that information. If there is something reasonable he can bring, he will do that.

Senator ABETZ: If that becomes too onerous, possibly you might do a snapshot of six months' worth, for example, to ascertain what those files might indicate.

Senator Chris Evans: I think your question goes to the question of motivation and Mr Lee was making the point that he will not be in a position to make a judgment about that.

Senator ABETZ: But he can indicate to us whether adverse action claims were taken in situations where the person would have been denied the capacity to take an unfair dismissal claim because of the six and 12 month thresholds.

Mr Lee: I will take that on notice, subject to how onerous it will be to put that together.

Senator ABETZ: Thank you.

Senator RYAN: This is my first time in this hearing, so excuse me if this question has been asked at a previous estimates. Does Fair Work Australia keep detailed statistics on the use of its various information services, number of unique browsers viewing its website, numbers of phone calls made to the helpline?

Mr Lee: Yes.

Senator RYAN: Do you keep those in time series, so we can look at patterns of access to those, whether it be monthly or quarterly?

Mr Lee: Yes, we do.

Senator RYAN: I will not go through it now, but I could put some questions on notice seeking further information about patterns of use since their introduction.

Mr Lee: Could you be specific as to what—

Senator RYAN: I was particularly interested in the use of the telephone helpline and web services but, if I put detailed questions on notice—I am not going to go through it now—you would be able to access that information and provide it.

Mr Lee: To be clear, in terms of the telephone, we collate the number of calls coming in and we have provided to the committee in the past.

CHAIR: They would probably have the information with them, Senator Ryan, if you want to ask the questions, because these are common questions that have often been asked.

Senator RYAN: Can you divide them by where they are coming from, like parts of Australia? I would not be sure if that information is collected?

Mr Lee: Yes, we can by region. We also collect information on the type of matters that people raise with us and we have provided that, to be helpful, to the committee on previous occasions in terms of topic areas, if you like.

Senator RYAN: I do not want to go through those now, because I have quite a detailed list of questions I would prefer to go into. Minister, are you familiar with a report by the Australian Human Resources Institute of November last year titled, 'Impact of the Fair Work Act within Australian workplaces'? There are questions that are probably more appropriate to the minister than Fair Work Australia themselves.

Senator Chris Evans: I have some vague recollection but, to be honest with you, I cannot say yes. It is a title that is—it is six months ago.

Senator RYAN: I am going to throw a few of the findings at you because I would be interested in your response, presuming that you had a chance to look at it six months ago. More than half of the respondents reported the Fair Work Act—this is businesses—had made their job more difficult and more than three-quarters of respondents reported an increased need for legal advice. Do those findings concern you at all?

Senator Chris Evans: They do concern me, but I make two points. We get of surveys done by employers, unions and other interested parties. I always like to check the methodology and the scope of those they have surveyed before commenting on the veracity but, as you know, this government invested quite a lot of effort and resources in assisting employer organisations to educate their members and to support their members in the transition under the Fair Work legislation and, as I think Fair Work Australia can testify, the award-simplification process went extremely well and the numbers of agreements being registered under the system are very high. Generally, we have very positive feedback on those processes but I would not like to comment on the specifics of the particular report; I do not have it in front of me. I am always keen to check the methodology and survey scope.

Senator RYAN: I understand that but the Australian Human Resources Institute report, with Deakin University, has a touch more veracity than some of the ones I remember you throwing from the other side of the table, Senator Evans.

Senator Chris Evans: Sorry?

Senator RYAN: This report in particular, by Deakin University and the Australian Human Resources Institute, is quite a comprehensive report.

Senator Chris Evans: Who did they survey?

Senator RYAN: They surveyed a substantial number of businesses and stakeholders in the area.

Senator Chris Evans: Who, though? How did they determine—

Senator RYAN: I am not going to go through the detail of the report now.

Senator Chris Evans: You cannot expect me to respond when you do not give me a copy of the report and if you are not prepared to tell me who they surveyed, I am not able to give you detailed responses.

Senator RYAN: Do you think that the need to access external legal advice, if that is higher than it was previously and it does not decline, is a metric by which the success of the act should be measured? The burden being placed on business to seek expert advice, advice they have to pay for, should that be a metric that the success of the act is measured by? Should it be something they need to seek advice on constantly?

Senator Chris Evans: I am not sure it would be a metric on which you would measure the success of the act, but we encourage the capacity for employers and employees to seek access to Fair Work Australia without necessarily retaining counsel. I do not know whether Fair Work Australia can help you with statistics on whether they measure numbers of people who access using representation; the officers can answer if you want to ask them that question. People have to make their own judgments about those things but, as people become more familiar with the act, I would expect the need for people to seek advice to lessen. We supported employer associations and unions to run education campaigns and support for their membership to quite a large extent and a lot of activity went into that to provide that sort of advice, and the major industry organisations are all supported in that regard. There are avenues of advice for employers that were supported by government funds.

Senator RYAN: Did you have written performance metrics or measures to measure the success of those campaigns, particularly on the employer side?

Senator Chris Evans: I do not know whether Fair Work or my department is best able to talk about that. When the department comes back, it is probably best to ask for feedback on that.

Senator RYAN: Which outcome would be best—I thought I should raise it here—where should I raise that?

CHAIR: When the department is going—

Senator RYAN: I will come back when the department returns.

CHAIR: We will find that out.

Senator Chris Evans: I will get the department to find the right section and get the secretary to advise you.

Senator RYAN: Yes, I am very happy with that.

Senator Chris Evans: I am advised by Mr Lee that Fair Work Australia does not keep statistics on the percentage representation by counsel.

Senator RYAN: Thank you.

CHAIR: It has just been drawn to my attention that we are going to suspend for morning tea.

Proceedings suspended from 10:31 to 10:45

CHAIR: We will resume the estimates hearings and we will go Senator Abetz.

Senator ABETZ: In relation to adverse action claims, are we able to be provided with the numbers per quarter since the regime commenced, please, and take that on notice?

Senator Chris Evans: What do you mean by the 'regime'? The government or the Fair Work Act?

Senator ABETZ: The Fair Work Act. There were no adverse action claims when you guys came into power.

Mr Nassios: I did not quite hear the question, but if you are asking for the number of applications?

Senator ABETZ: Yes, number of applications. Can you do it by—

Mr Nassios: I can give you some figures if you like.

Senator ABETZ: Per quarter?

Mr Nassios: Per quarter I think I may struggle today.

Senator ABETZ: Annually? What have you got?

Mr Nassios: I have some figures in front of me for the financial year from July 2010 to 30 April this year.

Senator ABETZ: How many?

Mr Nassios: I will have to break them up slightly for you in the sense that, when you talk about adverse action, we have those under two particular sections of the act: one is section 365, which deals with a general application in which a dismissal has occurred; and section 372, in which a general protection of dismissal has not occurred. To the extent that I can give you the section 365 matters, for the period I am talking about, we have had 1,523.

Senator ABETZ: Thank you for that because it takes me back to the discussion that we had with Mr Lee earlier. Out of those we should be able to sort those that fall within the six- and 12-month threshold periods, should we not?

Mr Lee: Subject to the proviso that I mentioned earlier in terms of how onerous that will be administratively, we will do our best endeavours.

Senator ABETZ: Under section 372?

Mr Nassios: We have had 403.

Senator ABETZ: The adverse action clearly is being used by a factor of four times more in relation to dismissal claims than the other general areas. Is that correct, Mr Nassios, just roughly?

Mr Nassios: Doing it as an arithmetical calculation, yes, correct.

Senator ABETZ: Those figures that you just provided to us: are they published on your website? Are they updated on a regular basis?

Mr Nassios: I believe they would be part of our quarterly reports.

Senator ABETZ: On your website?

Mr Nassios: Yes.

Senator ABETZ: Does Fair Work Australia have a rule that an individual flexibility agreement cannot be judged or determined if there is a non-monetary component in it because it is impossible to judge whether a person will be better off if there is a non-monetary component in it? Is that correct? How do IFAs get dealt with by Fair Work Australia?

Mr Nassios: I am not exactly sure. I would have to take that one on notice.

Senator ABETZ: I have no idea whether it is true or not but it has been put to me that there has been a great reluctance dealing with IFAs or giving advice on IFAs on the basis that,

if it is a non-monetary issue, there is a difficulty in making a determination. If you could take that on notice, I would be obliged.

Under the regime and legislation of Fair Work Australia, in determining wage increases et cetera is it a legal or statutory requirement that Fair Work Australia take into account productivity offsets?

Mr Lee: Under the legislation, in terms of determining increases for minimum rates the annual wage review is conducted on an annual basis. The matters that the full bench are required to take into account in determining that are set out in the legislation.

Senator ABETZ: Does that include productivity?

Mr Lee: I do not sit on the full bench but I can go to the legislation to determine whether or not that is the case.

Senator ABETZ: If you could take that on notice for us. I do not want it to be a memory test today, so that is fine.

Mr Lee: Sure.

Senator ABETZ: What is the time limit on an application for adverse action?

Mr Nassios: Sixty days is my recollection.

Senator ABETZ: Sixty days from the event of the adverse action or 60 days from when the person becomes aware of the adverse action?

Mr Nassios: In terms of the action that relates to a dismissal then it would be from the dismissal. In terms of the others I would have to go into the legislation to—

Senator ABETZ: If you could please take that on notice for me because it has been suggested to me that it potentially can be for a substantial period and I will put the scenario to you to help focus. It has been suggested, for example, if Senator Ronaldson made application for a job, a reference was received about Senator Ronaldson saying he is very good but he was, let's say, a union troublemaker and on that basis Senator Ronaldson did not get the job. In those circumstances, if Senator Ronaldson only becomes aware of that reference, let's say three, four years later and the prospective employer in reading had said, 'No, I am not going to employ him', as soon as Senator Ronaldson became aware of that, is that when the 60 days would start ticking? If you could take that on notice because many businesses tell me that if, somebody does not get a job, the job applications are not necessarily kept on file and so what may or may not have been a reference that may have informed them or the human resources manager at the time may have moved on and, given the reverse onus of proof, they are unable to provide any evidence as to why the hapless Senator Ronaldson missed out on that particular job. It is in that sort of a scenario Mr Nassios if you could have a look for me I would be much obliged.

Senator Chris Evans: There is so much material when you work with Senator Ronaldson and so little time.

Senator FISHER: Senator Abetz if Fair Work Australia cannot answer that question, is that a question that that is properly asked Chair—

Senator Chris Evans: No—one has said they cannot answer the question. They have been asked to take it on notice and they have agreed to do so.

Senator FISHER: If they cannot answer it now—

CHAIR: They were asked to take it on notice, Senator Fisher.

Senator ABETZ: I move to question on notice 0730, average time sought for extensions of unfair dismissal claims. I was told the average number of days extension sought is not recorded by Fair Work Australia. The fact that you do not do it is fine; it does not tell us that you cannot do it and that you should not do it. That is why I am revisiting the question to see whether this information can be obtained because it seems to me it might be of benefit to government and opposition as I indicated previously from a policy basis as to what the data reveals. As the Fair Work Act was put together under the Workplace Relations Act it was 21 days. Under the proposed bill it was seven days. We then settled on 14 days and I am wondering whether that 14 days has hit the mid-mark and is working well or whether Fair Work Australia is being inundated by applications between 14 and 21 days seeking an extension of time. That was the purpose of the question and, if you do not keep that data, could I invite you to see whether there is a data set or something that can be searched to reveal what the answer is, please?

Mr Lee: We can examine that against a background of whether there would be some utility for us—performance would be one consideration. Collecting data does require some administrative resource and also against that we would want to factor in, in that sense, how onerous it would be to do. Subject to those provisos, we will take that on notice.

Senator ABETZ: We must know what the cohort is, how many sought an extension of time; we must know that number, surely.

Ms O'Neill: Not necessarily.

Senator ABETZ: In that case could I invite you to try to get such a cohort because, whilst I can understand you might have questions about the utility from Fair Work Australia's point of view, from a policy setting point of view if the vast bulk are between 14 and 21 days, it might make sense for the legislation to go back to where it was under the Howard era as opposed to what it is currently. If all of the applications are post 21 days, then the gap between 14 and 21 clearly makes no difference. I have been asking about this for a while now as to how this might be working itself out. Can I rely on best endeavours?

Senator Chris Evans: No, you can rely on Fair Work Australia taking onboard what you suggested and making a decision about the policy decision, about whether they should collect that information or not. They are saying that they are not able to collect it or do not collect it. They will have to make a policy decision about whether they do collect it. Given your interest, no doubt they will take that positively but they will have to make a decision.

Senator ABETZ: I do not want to play semantics. I hope they are not going to make a policy decision. They may well make a practical decision that it is too onerous but a policy decision, with respect, in relation to what is provided to the committee or not should not be based on policy. It should be based on whether it is a request that can be reasonably accommodated or not.

Senator Chris Evans: No, if you are asking people to change systems or start collecting information in a different way, that is a policy decision for them and they will help you to the extent they can with the information. If you are suggesting that a senator of a committee can require them to operate in a different way, that is not correct. They will take on board, I am

sure, your interest in the area and make a decision about how or whether they collect that information.

Senator ABETZ: I think it is semantics. I do not see it as a policy issue but one of how onerous it is to provide the information. I move to 0732, the average length of time between the last day of the hearing of a matter and a decision being handed down. We have been told that the average number of days in arbitrated proceedings is 43. Is this an acceptable delay? Do we consider that to be an okay performance, good, bad, indifferent? Is anything being done to try to truncate that or encourage commissioners to bring down decisions earlier, Mr President?

Justice Giudice: Each member has a statutory obligation to deal with matters. They deal with them on the basis of the material and submissions in the case, having regard to their statutory responsibilities, and we do not, in any sense, impose policies on them. They each have an independent oath of office and they must carry out their statutory responsibilities as they see fit.

Senator ABETZ: For the overall reputation and smooth running et cetera of Fair Work Australia, is there any consideration given as to whether 43 days is acceptable? I do not know how that compares to, for example, the Family Court. I know that, when I was practising, there was a Court of Requests action, which I thought was exceedingly simple, that took over 12 months to deliver a decision. When things like that happen, unfortunately, the reputation of the court itself becomes somewhat tainted. I would have thought 43 days might be slightly long, but there may be a few difficult cases that took a considerable period of time to work out, which has then skewed the average up to 43. Do we have raw data available as to the numbers that fall into each category—seven days, 14 days, something like that—in relation to decisions coming down since the final submissions? It stands to reason, if there was one that stood for 12 months before a decision was made, that it bumps up the average considerably and, therefore, paints an incorrect picture of how expeditiously Fair Work Australia processes these decisions.

Ms O'Neill: We do not have that raw data sitting behind that number with us today.

Senator ABETZ: How did we get the average? You must have had all of them and got the average, so we must be able to—

CHAIR: I think Ms O'Neill said she does not have the information today.

Senator ABETZ: Today?

Ms O'Neill: That is right.

Senator ABETZ: Sorry. I was anticipating you would take that on notice.

Justice Giudice: We do, as a matter of course, discuss issues such as the length of time it is taking for a particular matter to be dealt with. We do that fairly regularly. We do have some internal ways of monitoring and perhaps looking at that. I would not like you to think it is neglected, but it is not a matter which we would publicly discuss. It would be quite inappropriate, you would agree, to do so.

Senator ABETZ: Yes, but it is done informally, I can accept that, and you would not do it publicly. The fact that there are mechanisms in place so that commissioners become aware of it and are made conscious of that, courtesy of internal discussions, is—

Justice Guidice: I think most courts and tribunals do have those sorts of internal arrangements.

Senator ABETZ: They do, yes. Thank you.

Senator RONALDSON: I have some questions in relation to the Health Services Union and Mr Craig Thomson. Who has the title general manager? Is that you, Mr Lee?

Mr Lee: I do.

Senator RONALDSON: I presume, from some of these answers, that you have taken over this investigation.

Mr Lee: Perhaps if I explain: the final decision as to any action that may be taken in respect of—

Senator RONALDSON: With the greatest respect, I asked you a question, so could you give me an answer. Have you taken over the investigation?

Mr Lee: I am answering the question.

Senator RONALDSON: Have you replaced Mr Nassios as the person investigating this matter?

Senator Chris Evans: Chair, the officer only had about three seconds before he was interrupted. If we give Mr Lee a couple of minutes to answer the question and then Senator Ronaldson is not happy and wants a follow-up, that is perfectly appropriate, but I think Mr Lee ought to be allowed to get a couple of words out before he is interrupted.

CHAIR: Yes, I think it would assist the committee if Mr Lee was able to finish his answer.

Mr Lee: The powers that can be exercised at the conclusion of this or any other investigation are ultimately exercised by me or the person who occupies the role as the general manager. To answer your question: in terms of any sense of takeover, the reality is that I am, at the end of the day, accountable for what happens or does not happen at the conclusion of the investigation.

Senator RONALDSON: I assumed that. Now can you answer my question: have you taken over the investigation of this matter, the day-to-day handling of it, or does that still lie with Mr Nassios?

Mr Lee: That still lies with Mr Nassios. Mr Nassios remains, to be clear, the delegate who is conducting the investigation.

Senator RONALDSON: The person with the day-to-day responsibility for investigating this matter, for undertaking this.

Mr Lee: It remains Mr Nassios, that is correct.

Senator RONALDSON: When Mr Nassios makes a decision about whether certain questions are going to interfere with the conduct of the investigation and he says that they will not, what gives you the right to override that when you have not had any ongoing involvement in the day-to-day examination of this matter? Do you know the matter I am talking about?

Mr Lee: I am presuming this is the matter of the HSU investigation.

Senator RONALDSON: I have just said that, yes, but this is in relation to the question I asked Mr Nassios last time round. I will just read it very quickly:

Clearly, Mr Nassios, your attitude in relation to some of my questions has changed since last May, and I have got to say that I am very pleased about that. There are some things you have advised me today about which you would not have last time, so on the back of that—I assume that they were questions asked along the same vein—would you now advise me whether you have interviewed Craig Thomson, Pauline Fegan, Criselee Evans, Matthew Burke and Jeff Dickson?

Mr Nassios: Certainly if we could go one by one.

Mr Evans: I just ask whether we take advice about whether we should be detailing who you have interviewed in a current investigation. I would have thought that was a bit unusual to be providing publicly who you were interviewing if an investigation is continuing. Has that been done in the past?

Mr Nassios: I cannot recall it being done in the past. When the senator was asking me these questions last time I felt that it would not be helpful to my investigation to divulge that sort of detail. I certainly cannot say it would hinder my investigation at this point.

Mr Lee, two estimates ago, Mr Nassios, who has the primary responsibility for the conduct of this investigation, made a decision that questions I was asking might potentially interfere with the proper conduct of this matter. Last time round I asked him these questions again and he made the quite deliberate decision that they would not in any way—

CHAIR: There is no need for yelling.

Senator RONALDSON: I was not.

CHAIR: There is no need to yell, please.

Senator RONALDSON: I am quite entitled to ask the questions the way I want to.

CHAIR: No, you are not.

Senator RONALDSON: Yes, I am.

CHAIR: You will ask your questions appropriately—

Senator RONALDSON: I am asking them appropriately.

CHAIR: and courteously, and you do not need to be yelling.

Senator RONALDSON: If you want to whisper, that is your problem. I am telling you that I will ask the questions the way I want to.

CHAIR: I am not whispering. I am just speaking in a normal voice and I am asking you not to yell.

Senator RONALDSON: Okay. Last time round, Mr Lee, the deliberate decision was made by Mr Nassios that it would not impede his investigation or improperly reflect on it. Why do you know more about this matter than Mr Nassios does?

Mr Lee: Last time we were here, a number of HSU related investigation questions were asked. Mr Nassios, as he should, has endeavoured to be helpful. Some of those questions were answered and some of them were taken on notice. The question of public interest clearly arose with respect to a number of those questions. Subsequent to the hearing in February, to which you refer—

Senator RONALDSON: Mr Lee—

CHAIR: Wait for the answer to the question, please.

Mr Lee: I thought it important to consider how to approach the questions on notice that arose from that hearing. In that context, in terms of my ultimate exercise of responsibilities to take action or not on this matter, I thought it sensible to seek legal advice on the public-interest implications of answering those questions. The advice that I received was clear: as the investigation is not yet concluded and no decision has been made by me, as general manager, whether to take action under any of the powers available to me, there is a substantial prospect of inflicting prejudice on persons and organisations that are the subject of the investigation; it could also prejudice the investigation or subsequent proceedings. Therefore, in dealing with questions asked in relation to this matter today that seek information about the details of the investigation—

Senator RONALDSON: Do you want to table this advice that you are reading from?

Mr Lee: It is not advice; this is a personal aide memoire that I am reading from. I, or my delegate Mr Nassios, are likely, against the background of the advice that we have received, to take any such questions on notice with a view to getting further legal advice to determine if it is possible to answer the question. I should stress that we will continue to answer questions that relate to the status or to the progress of the investigation, as is proper.

Senator RONALDSON: Mr Lee, that is simply not correct, and I will get to that shortly. I will withhold that comment for later on. You have said in this answer, the answer to EW0734_11, that:

The prospect of inflicting prejudice on the investigation through the provision of the details sought is substantial.

But the person who is conducting the investigation said no such thing. The person investigating this matter said:

When the senator was asking me these questions last time I felt that it would not be helpful to my investigation to divulge that sort of detail. I certainly cannot say it would hinder my investigation at this point.

How come you know more, Mr Lee, than Mr Nassios does, who has got the day-to-day conduct of this investigation?

CHAIR: It is the same question. I think Mr Lee just answered that.

Senator RONALDSON: Were you advised by the minister's office, Prime Minister and Cabinet or anyone else as to how these matters were to be answered?

Mr Lee: Sorry?

Senator RONALDSON: Were you directed by the minister, or Prime Minister and Cabinet, or anyone else as to how these questions were to be answered?

Mr Lee: Absolutely not.

Senator RONALDSON: You were not?

Mr Lee: That is correct.

Senator RONALDSON: In relation to another question I asked, where I was clarifying some matters with Mr Nassios in relation to the two reports, whether there were indeed two reports—are you aware of what I am talking about?

Mr Lee: Yes, I recall the question.

Senator RONALDSON: Which ones were they?

Mr Lee: You were asking about a BDO Kendall report and a Slater and Gordon report.

Senator RONALDSON: Yes. Can you possibly tell me how the question as to whether there were one or two documents can in any way trigger the public interest provisions? Tell me, please, how that could possibly trigger it—not what was in them but whether there were one or two reports?

Mr Lee: There is clearly a contested space here in terms of our obligation, which we take very seriously, to be able to inform the committee as to the progress and status of the investigation as against the requirement on me, which I also take very seriously, to protect the integrity of the investigation and, in particular, any subsequent proceedings that may flow from that, be they civil or criminal, and—

Senator RONALDSON: Can you tell me how—

CHAIR: Senator Ronaldson, just wait for the answer to be completed, thank you.

Senator RONALDSON: This is just pat.

CHAIR: No, it is not. If you do not want the answers, do not ask the questions, but you have asked the question and you will give Mr Lee an opportunity—

Senator Ronaldson interjecting—

CHAIR: Senator Ronaldson, I am not going to have an argument with you like this.

Senator RONALDSON: When you're on a margin of one, I can only imagine what the directions are to the various people in relation to—

CHAIR: Do you not want an answer to the question you have asked?

Senator RONALDSON: When you have a margin of one—I think that might be answering a few questions in relation to this—

CHAIR: If you want answers to your questions, you will give—

Senator RONALDSON: I am not getting an answer. If you tell me I have been given an answer, then I would be very grateful.

CHAIR: You have interrupted Mr Lee giving his answer.

Senator RONALDSON: I asked him to answer the question.

CHAIR: You do not like the answer. That is not a problem for Mr Lee.

Senator RONALDSON: He hasn't given me one!

CHAIR: Mr Lee has been attempting to answer your question and you have been refusing to let him—

Senator RONALDSON: All right, I will ask it again then, just so he can just repeat it from before.

CHAIR: I have been encouraging you to listen to the answer, so you should do that. I would like you now to sit back and wait for—

Senator Ronaldson interjecting—

CHAIR: No—

Senator RONALDSON: But I want an answer to a specific question.

CHAIR: I am not giving you the call, Senator Ronaldson, until Mr Lee has completed the answer, so please do not interrupt again.

Mr Lee: Further to that, I sought advice about the particular questions on notice that were asked, and the advice was clear in respect of that question to which you refer, and the others, that there was a real prospect of inflicting prejudice, and so I have answered consistent with the advice that I have been given.

Senator RONALDSON: Where was the advice from?

Mr Lee: I obtained advice from senior counsel.

Senator RONALDSON: Internal or external?

Mr Lee: I do not have any senior counsel working in Fair Work Australia; it was external to Fair Work Australia.

Senator RONALDSON: The external counsel said to you, for example, that asking how many written subpoenas there had been was going to potentially prejudice the outcome of this investigation?

Mr Lee: That was the basis of my answer to the question.

Senator RONALDSON: The request for information about audited statements; are you aware of that matter?

Mr Lee: Yes, I am aware of the question.

Senator RONALDSON: Can we go through that. You see, Mr Nassios and I had a discussion about these audited reports from the HSU. I asked him, from recollection, whether Fair Work had received any audited reports and Mr Nassios said that he had not. Then I asked him if he had asked for audited reports in the last 12 months and he told me that he had asked for them. I then asked if one of the staff had requested an audited report in the last 12 months, and that was taken on notice because Mr Nassios was unsure when the last request was made. You are able to tell me that you had not received audited reports—that is permitted—and you can tell me that you had asked for reports—and that is permitted—but you cannot tell me the last time you asked for them; that is not permitted. Senior counsel told you that that was going to impede the investigation of this matter, did he? Did you give senior counsel all this information, the background?

Mr Lee: Senior counsel was briefed in terms of providing the advice that was given, that is correct.

Senator RONALDSON: Senior counsel was provided with a copy of the discussion between Mr Nassios and myself in relation to these audited reports?

Mr Lee: Senior counsel was given all the instructions necessary in order to be able to provide the advice.

Senator RONALDSON: Was senior counsel given the transcript of my discussions with Mr Nassios in relation to these audited reports?

Mr Lee: I would have to take on notice whether that particular component was supplied. I do not recall.

Senator RONALDSON: Can we expect that you do not know the public interest in relation to that as well?

Mr Lee: I do not know. I can honestly say to you that we will always endeavour to answer the questions that you ask; hence why I would prefer to take that on notice.

Senator RONALDSON: Anyone looking at this realistically would say it beggars belief that a question about whether, having given the background to the audited reports in my discussion with Mr Nassios, the question that was asked would invoke the public interest test. Anyone looking at this would say, surely, Mr Lee, that a question about how many subpoenas have been issued, how that in any way, when there was no question about who they were issued to, could possibly interfere with the outcome of the investigation.

CHAIR: That is a view you might come to, but is there a question?

Senator RONALDSON: I suspect that a reasonable man looking at this would come to the very same—and then the reasonable man would probably ask the next question—

CHAIR: Again, you can speculate all you like but do you have a question?

Senator RONALDSON: A reasonable man would ask the next question: why is the government taking the approach they are in relation to this matter? And I think the reasonable man knows the answer to that, and that is to protect your very slim majority because you cannot afford the member for Dobell to lose his position in this place—you know that and I know that.

CHAIR: Senator Ronaldson, you can say what you like but it is just you speaking there. Do you have a question?

Senator RONALDSON: Mr Nassios, you and I had a discussion last time around the Supreme Court proceedings in New South Wales which I think they have been finalised now, haven't they? The defamation proceedings?

Mr Nassios: My understanding is that they have not been finalised.

Senator RONALDSON: They have not been finalised.

Mr Nassios: That is my understanding, sir.

Senator RONALDSON: That is interesting because there were media reports that it had been but your understanding is that the defamation proceedings have not been finalised?

Mr Nassios: I am not party to them so that is my understanding.

Senator RONALDSON: No, I understand that. That is very interesting.

Senator Chris Evans: I think Mr Nassios was indicating that he was only trying to be helpful but he is not actually responsible, so all you are getting is an opinion.

Senator RONALDSON: Yes, I do not think I was actually—

Senator Chris Evans: No, I was just being clear that he is not able to factually answer the question necessarily. I do not want you to be misled that he is giving official advice. He may be wrong, it is fair to say.

Senator RONALDSON: Mr Nassios, when he gives me an answer, that is the answer to the best of his knowledge. I have never had any doubt about that at all over the last 12 months in relation to these matters. The same cannot be said for others.

We were talking about you requesting various information in relation to these proceedings and I think you have used the words you, 'expected something very, very soon' or 'very, very

shortly'. I am wondering what has happened with that request for information and whether you have been provided with any information by the Supreme Court?

Mr Nassios: I am going to try and be consistent with the statement of Mr Lee and certainly indicate in terms of the progress or state of this matter. The Australian Government Solicitor has written to the solicitors for Fairfax seeking information.

Senator RONALDSON: That has not been received yet.

Mr Nassios: We have not received anything to date.

Senator RONALDSON: Last time around we were having a long discussion about this investigation. How far off finalisation do you think this inquiry is; your investigation?

Mr Nassios: My aim has always been to do this quickly as possible. At this stage I would be suggesting that the latter half of this year would be the completion date.

Senator RONALDSON: So we are aware of the process—because I intend being back here later in the year and I am sure you will be Mr Nassios—once you have finished your investigation, what is the process from there?

Mr Nassios: If I can give you an indication of what we have done in relation to the Victoria No. 1 Branch, which is an investigation that I have been conducting at the same time, that will answer your question.

Senator RONALDSON: Yes.

Mr Nassios: In terms of that investigation, once we compiled all the material, all the evidence, we drafted a report. In terms of any adverse findings in that report, we have provided that to the persons that we have made adverse findings against to provide them an opportunity to in some way comment on the material. We take those comments back. We will finalise the report. That has not yet been done in terms of the Victoria No. 1 Branch but we will finalise the report. My obligations under the act are, if there are any contraventions by the reporting unit, to advise the reporting unit of those contraventions and I will provide that report to the general manager.

Senator RONALDSON: Mr Lee is the one that then makes the decision, is he?

Mr Nassios: Under the act Mr Lee cannot delegate that latter function. I only have the function of gathering the information and evidence.

Senator RONALDSON: Have you got any contact with the Australian Electoral Commission or does Mr Lee have any contact with the commissioner this year since the last Estimates?

Mr Lee: No.

Senator RONALDSON: No contact at all this year, Mr Nassios?

Mr Lee: No.

Mr Nassios: Are you asking have we initiated contact or has—

Senator RONALDSON: No, have you had any contact?

Mr Nassios: I understand the AEC have contacted one of my staff, yes, in relation to the last time we were here.

Senator RONALDSON: What information did they request, do you know?

Mr Nassios: Off the top of my head, sorry, I cannot recall. It was in relation to, I think, something that you had asked of the AEC at the time. My recollection at that time in answering your question was that there was no commonality or at least I am in no way involved in whatever inquiry the AEC is conducting.

Senator RONALDSON: If you take that on notice. Mr Lee, are there two separate reports that have been held by Fair Work Australia, one from BDO Kendalls and one from Slater and Gordon?

Mr Lee: I would have to take that on notice consistent with what I was outlining to you in response to your earlier question.

Senator RONALDSON: Thank you Mr Nassios.

Senator ABETZ: I understand that Fair Work Australia provides the statistics to the Australian Bureau of Statistics on union membership; is that correct?

Mr Lee: No.

Senator ABETZ: That was my hunch as well that somebody has indicated to me that you do. I was wondering if you did, how you would collect it, how it comes into your possession. I would have thought the ABS does it by asking people however often they go out into the field but—

Mr Nassios: That is what I would have thought to the extent that we have information in relation to union membership, reporting units, entities, organisations. Unions are required in their financial statements to include the number of members they have so—

Senator ABETZ: Right, they have to register with you, in effect, or report to you?

Mr Nassios: Report is probably the better word, yes.

Mr Lee: It is part of the reporting requirement.

Senator ABETZ: They do that to you?

Mr Nassios: Correct.

Senator ABETZ: You just accept that at face value?

Mr Nassios: They are part of the financial statements. As part of the financial statements we go through the financial statements to see whether they comply with the Registered Organisations Act.

Senator ABETZ: For example, if the Australian Workers Union were to tell you they have got 300,000 more members than they actually do have or whatever, there is no way that you are able to verify that or indeed bother to look behind it because that is not part of your task?

Mr Nassios: Certainly we would not know what their figures were in terms of how accurate they were.

Senator ABETZ: You accept them at face value?

Mr Nassios: Yes.

Senator ABETZ: Can I ask you to take this on notice—if you do not know—is all that information is publicly available?

Mr Nassios: Yes.

Senator ABETZ: You would not, as of necessity, have to pass that on to the Australian Bureau of Statistics. They, chances are, access that themselves?

Mr Nassios: They can, if that is what they wish to do. They can access that as a—

Senator ABETZ: There is no formal mechanism whereby you advise the Australian Bureau of Statistics of those figures?

Mr Nassios: No.

Senator Chris Evans: ABS, I think, use their own methodology is what the answer is.

Senator ABETZ: Potentially the ABS does have access to that which is registered courtesy of Fair Work Australia's requirements?

Mr Nassios: All reports are on our website.

Senator ABETZ: Are you able to give us an update in relation to unfair dismissal claims that have been lodged with Fair Work Australia? I think the last figures I have are February 2011. Do we have them for March?

Mr Nassios: The numbers that are lodged?

Senator ABETZ: Yes, March-April figures: are they readily available?

Mr Lee: Ms O'Neill can provide those.

Ms O'Neill: The number of lodgements—this is for the period of 1 January 2011 to 30 April 2011.

Senator ABETZ: That is for the four months?

Ms O'Neill: Yes, in fact, there has to be typo in this note because that number cannot be right; apologies.

Senator ABETZ: Take it on notice, these things happen.

Ms O'Neill: Here, I have it. It might be easier to take that on notice because the number does look odd when I—

Senator ABETZ: I was told, in answer to parliamentary Senate question number 534, that in January 2011 there were 790 applications and, in February 2011, 1122. I was seeking a further update as to whether we have any for March and April but you are not sure of the figures?

Ms O'Neill: I am, but the note in front of me I suspect needs another look at it.

Senator ABETZ: Of course these things happen and that is fine.

Mr Lee: We do publish on a quarterly basis a range of volume indicators, if you like, on our website and that includes a number of—

Senator ABETZ: But those April figures would not be on it as yet?

Ms O'Neill: No.

Mr Lee: No, because it is quarterly they will not be on it. You will see the April figures emerge when we publish at the end of June.

Senator ABETZ: But you would have the April figures?

Mr Lee: Yes.

Senator ABETZ: That is why I am asking for them now because we were given the—

Senator Chris Evans: If you are happy, I will ask the Fair Work Australia to double-check their numbers and present it later in the day if they have got it.

Senator ABETZ: Excellent. That is very kind.

Senator Chris Evans: It is available, it is just the officer does not want to make a mistake. I think that is appropriate, but there is no need for it to be taken on notice from—

Senator ABETZ: I look at my notes from time to time and think things do not look quite as they should be, so I fully understand.

Senator Chris Evans: If it does not look right, it is probably not right.

Senator ABETZ: I fully understand. No criticism there at all. The right of entry by union officials: they need to pass a test, is that correct, before they—what is the term—are certified or allowed to engage in right of entry procedures?

Mr Nassios: They need to be a fit and proper person.

Senator ABETZ: Yes. Is that the only test?

Mr Nassios: They need to also be either an employee or an official of the organisation. There are various other questions that are asked of them in terms of have they had criminal convictions and the like but that is generally speaking part of the fit and proper person test.

Senator ABETZ: Yes, but what about the capacity to understand what they are allowed to ask for, deal with et cetera. Is that in any way tested before they are given their—what is it called—their licence?

Mr Nassios: Their permit.

Senator ABETZ: Permit, thank you. Their permit?

Mr Nassios: One of the aspects that we look at is the very aspect that you are referring to as part of the training that an applicant undertakes. Fair Work Australia has adopted an approach in which the training material that a person is provided with we vet that training material, to the extent that that training material is then used subsequently. We do not ask for it the subsequent occasions so we try to vet upfront and that people can then—organisations can use until we decide, for some reason, the legislation changes et cetera that we need to change that material. In terms of the persons themselves, organisations have different methods of providing that material or providing the training. Some do it through the ACTU online method; others do it in-house. It is really a matter for the organisation how they do it.

Senator ABETZ: The organisations we are talking about they are all unions by virtue of the right of entry, correct?

Mr Nassios: Yes. As part of the declaration that both the member of the committee of management that declares that the applicant has undertaken the training and the applicant themselves has declared that they have undertaken the training so they are required to put in those declarations with us and we examine the declarations and decide accordingly.

Senator ABETZ: There is no national benchmarking undertaken in this area?

Mr Nassios: I am not sure what you mean by that?

Senator ABETZ: In the education portfolio there are certain tests that are taken at I think trades 3, 5 and 7 to see whether students have attained a certain degree of numeracy, literacy et cetera.

Senator Chris Evans: We are always grateful they do not apply that to ministers or shadow ministers though, aren't we?

Senator ABETZ: I would more than happy to be tested, Minister; I can understand your reluctance. Mr Nassios, it has been reported to me by somebody who, in fact, used to rejoice in the position of being a union official, that these materials that are sent out that the union puts it on the screen with the answers provided, off-screen the person just fills it in. As a result, the union has the detail that the person has done the test or the examination gone through it, got all the answers right and the union signs the declaration which you people then act upon. I am wondering whether it might be an idea from time to time to do a random check to ascertain whether people know what their powers and entitlements are under the legislation. If you were to think that were a good idea, is neither here nor there at the moment, would you have the power to do so if you came to that conclusion?

Mr Nassios: I am not sure if I can answer your question in terms of once a person has a permit, I would have to try to work out what—

Senator Chris Evans: Mr Nassios, it is question of what your powers are under the act effectively.

Senator ABETZ: Yes.

Senator Chris Evans: Just answer what the powers of the act are.

Senator ABETZ: I do not want to go into the policy area as yet. I just want to ascertain whether you could do so?

Mr Nassios: I do not know the answer to the question.

Senator ABETZ: All right, take that on notice, if you would, please, and then, before the permit is granted, do you have the power to put the prospective permit holder through a bit more of a robust test than allowing a union to self-administer to those that they want to be permit holders?

Mr Nassios: If I was made aware that that was a practice that was being undertaken and as part of my role in determining whether the person has received sufficient training, then I could take that into account. Whether that would involve me then going asking questions or simply asking the organisation, well what is happening? Certainly I would have a role prior to the permit. Exactly how that role would be exercised, I could not say at this point.

Senator ABETZ: As I understand it there is no independent assessment by Fair Work Australia in relation to that aspect?

Mr Nassios: We rely on the declaration; that is correct.

Senator ABETZ: What about the police record? Do you require access to and the capacity to sight the police record for a prospective permit holder or does the declaration just say the person has no relevant convictions?

Mr Nassios: We would largely rely on the declaration. There may be instances where we would become aware of a breach of some law, in particular, in terms of possibly the Building Construction Act. To that extent if that is not divulged I would go back to the organisation and ask why they did not divulge that sort of information. In terms of police records I do not access police records.

Senator ABETZ: Therefore, there is no independent assessment if a union were to write to you and say Joe Bloggs—I will not pick on Senator Ronaldson in his absence—has done this alleged test but he has no police record, he is a fit and proper person, you will accept that at face value?

Mr Nassios: We rely on the declaration. To the extent that there are falsehoods in that declaration I would believe that would be an offence but I would have to confirm that that is the case.

Senator ABETZ: Can you tell us if there is a falsehood in the declaration as to what the penalties might be under the legislation? Take that on notice, please.

Mr Nassios: I will take that on notice.

Senator ABETZ: Unless you know the answer?

Mr Nassios: No, I do not know the answer.

Senator ABETZ: That is not surprising that you do not. Yes, I accept that. Mr President, if I can turn to you, last time we had a discussion about those commissioners who had a higher number of appeals upheld against them than others, and you made certain commentary as to how that might prejudice the administration of law. I think that is a fair summary. For what it is worth, I sought advice from the Parliamentary Library that has provided me with all this information and, interestingly, it revealed that one commissioner has had six appeals and all six appeals have been upheld. I am wondering, in the context of what you indicated earlier, that there are informal discussions within Fair Work Australia about timeliness of decisions and other matters, as happens in other courts, are there, without going into the detail, also discussions, or potentially even individual discussions, with those that have an unfortunate record in relation to appeals?

Justice Giudice: I do not think that is an appropriate matter for me to comment on.

Senator ABETZ: We talk to commissioners about timeliness of their decisions and most of us think that the timeliness of decisions, whilst important, is not as important as getting them right. When a commissioner has a six-nil appeal record, I would have thought that may be something of concern to the president that runs the show to seek to ensure that—and I do not want to know about this particular one, or any particular one; all I want to know is whether of things are discussed from time to time.

Justice Giudice: All I can say about it is that the way in which errors in decision making are dealt with is through the appeals system.

Senator ABETZ: That is right.

Justice Giudice: Yes. That is the way it is dealt with. The appeal bench gives reasons for decision and, so far as I am concerned, there is nothing I want to say to add to that public record of the way in which errors are dealt with.

Senator ABETZ: That is fine, and to err is human, but to have all your appeals upheld against you does, I would have thought, possibly trigger some concern. If it was one or two, and they were only two appeals, but when you have got in a relatively short period of time, as I understand it, half a dozen, all of which have been upheld, I would have thought that might be cause for concern. If a commissioner, or indeed, in another jurisdiction, a judge or a magistrate, started getting a record or a reputation that, before you even go to the initial

hearing you start preparing the appeal papers because you know that there is a fair chance that, if he or she comes down on the wrong side, you will be able to appeal it and the success rate has been pretty high, I would have thought for the robustness and reputation of the tribunal you would be interested in trying to minimise that.

Whilst I do not want to know about particular commissioners or particular cases, I was wondering whether, in general terms, that is something that is discussed, be it over morning coffee from time to time with individual commissioners, or you invite an individual commissioner to have a cup of coffee with you or even later in the day something a bit stronger to discuss the time taken to deliver decisions or the number of appeals that are upheld against a particular commissioner.

Justice Guidice: I do not have anything to add to what I have already said. I do not think it is appropriate for me to make any further comment about it.

Senator ABETZ: So if there were a commissioner that continually got wrong decision, after decision, after decision, that commissioner would simply continue on his or her path, without any hint or suggestion of counselling or direction by the president or, indeed, some other person within Fair Work Australia—if that lot happens to fall to a vice-president, so be it, but some senior person—encouraging that particular commissioner to consider their approach or the reasons why the commissioner might be being appealed on such a regular basis and having the appeals upheld.

Justice Guidice: I do not have anything to add.

Senator ABETZ: That is for you to determine. I just would have thought, if such a scheme were in place, it would add to the confidence levels of the way Fair Work Australia conducts its business.

Senator BILYK: I am not sure whether this is to Mr Lee or to Justice Guidice, but I was interested in the test case that has been run in regard to the Social and Community Services Award. I presume it was fairly challenging, seeing as how it is, I think, the first time a case like that has been run. I was wondering if you could tell us how it was run, what worked well and if there were any lessons to be learnt out of running that case.

Justice Guidice: From my perspective, I would not wish to add anything to the public record in relation to that; it would be inappropriate for me to do so. In any event, the matter has not concluded and, were I to make any comment whatsoever, it might prejudice my further involvement in the case.

Senator BILYK: Is that because there are still issues around the payment processes?

Justice Guidice: The case has not finished.

Senator Chris Evans: The case is very much ongoing. The president who I think sat on the bench for that particular case would obviously put himself in a totally impossible position if he were to discuss it. The preliminary decision is publicly available, but the case is ongoing. There are plenty of other people commenting on it.

Senator BILYK: There certainly are, which is why I wanted to ask the question, but I will save it until maybe next time for comment.

Senator FISHER: I refer to the 2002-03 annual report of the commission, as the predecessor of Fair Work Australia.

Senator Chris Evans: Which we are all very familiar with!

Senator FISHER: Indeed, the annual report of the commission.

Senator Chris Evans: You might have to refresh our memories.

Senator FISHER: I shall do so. I want to ask about the following comments made on page 7 of the annual report:

There are other ways in which the administration of the Commission may be improved ... In the case of the Commission ... the administration is not in the hands of the Commission but of a separate officer, the Industrial Registrar—

Of course, Mr Nassios had predecessors at that time—

who has the primary responsibility for financial and staffing matters and who is in turn responsible for a separate entity, the Australian Industrial Registry ... the Industrial Registrar is appointed by the Governor-in-Council and the Commission has no role in the appointment. A reappraisal of those arrangements may be opportune. On one view the administration of the Commission would be more effective if the Commission and the Registry were part of the one integrated body under the direction of the President.

What was meant by those comments and has the situation changed?

Mr Lee: I was not engaged and was not responsible for that particular annual report, so I cannot help you with that.

Senator FISHER: President, you signed off on it in September that year; I think Tony Abbott was minister at the time, 21 September 2003. Have you got any comments on those comments?

Justice Guidice: No.

Senator FISHER: From the 2003-04 report of the commission, I want to refer to comments made again in the introduction, on page 5, of that annual report, which, again, President, you provided to the then minister, this time Kevin Andrews, in September 2004. The paragraph is as follows:

The second matter of ongoing concern is funding. Under the prevailing legislative arrangements the Commission ... is not self-administering and financial issues are primarily the responsibility of the Industrial Registrar. Nevertheless the current funding situation has the potential to effect the Commission's operations.

What was meant by those comments in the introduction to the annual report which you provided to then minister Kevin Andrews, President?

Justice Guidice: I simply do not recall at this stage what the budget position was and what in particular I was referring to in my report to the parliament. It would be inappropriate for me to make any comment about it, in light of the changed circumstances, in particular, the fact that we now have a different legislative arrangement.

Senator FISHER: Indeed. Each of those paragraphs to which I referred, you use the word "self-administering". Can you provide any detail on that, given that you used it in two consecutive annual reports?

Justice Guidice: To be honest, I do not really recall the context and I am very reluctant to make a comment that is likely to lead people into error. Furthermore, I do not want to be making any errors myself.

Senator FISHER: It is a sentiment that was expressed at least in two consecutive annual reports of the commission, 02-03 and 03-04; in 09-10, things changed. At any stage prior to those changes, that is, the implementation of the Fair Work Act, did you write to any then Ministers for Workplace Relations expressing similar sentiments?

Justice Guidice: I had discussions with Mr Reith, Mr Abbott, Mr Andrews, I do not recall whether I had any discussions with Mr Hockey, and I also wrote to them about such issues.

Senator FISHER: Thank you. On notice, is the committee able to be provided with copies of those letters?

Justice Guidice: I do not believe it would be appropriate to do so. I regard my discussions with ministers as confidential.

Senator FISHER: You did write to each of those ministers, and you cannot recall whether you did to Mr Hockey, in similar terms, did you say?

Justice Guidice: About such matters generally, but I cannot recall exactly what was in the letters. I have had many discussions with those ministers about many matters.

Senator FISHER: Indeed. The annual reports preceding the Fair Work Act: do you agree that there was one report from the then Industrial Commission and then there was, for example, in the 03-04 annual report, a separate annual report from the industrial registrar?

Justice Guidice: As I understand it, there was a legislative requirement for two separate reports.

Senator FISHER: Indeed, from Mr Nassios' predecessors. What happens now under the Fair Work Act?

Justice Guidice: It is one report, but with the important qualification that the responsibility for financial matters is the responsibility of the general manager.

Senator FISHER: Without commenting on that, you do agree that, under section 656 of the act, you have the responsibility for providing the annual report to the minister, and the annual report for that part of the organisation in the registry, which used to provide its own report, if you like?

Justice Guidice: Subject to the qualification I have mentioned.

Senator FISHER: The Fair Work Act, as did the Workplace Relations Act, talks about the prospect of the industrial registrar having outside employment, and now the Fair Work Act also refers to the general manager and that issue, given that you now exist under the Fair Work Act, Mr Lee; and, secondly, disclosure of interests: under the Workplace Relations Act, there were provisions dealing with, if an industrial registrar had interest to disclose, and, now, the Fair Work Act deals with both the Industrial Registrar and the general manager having to disclose any relevant interests. To whom did, Mr Nassios, your predecessor have to raise any prospect of outside employment and make any disclosure of interest?

Mr Nassios: It is going to be hard for me to answer. I am not sure I have ever had to do that so, to the extent that I have had to do it, on those occasions that I have acted in the job—when you use me as the predecessor—I have never been the Industrial Registrar, so to that extent, I really cannot answer that question.

Senator FISHER: On notice, you might answer that question, but my understanding is that the Workplace Relations Act required both of those to be taken directly from the

Industrial Registrar to the minister, to the then minister. If you were to contemplate outside employment or wanted to disclose any relevant interest today, Mr Nassios, to whom would you take those issues?

Mr Nassios: It is possibly more for Mr Lee to answer that question.

Mr Lee: That is right. In terms of any disclosure that I need to make, that would be made. In my circumstance, there was no need for any disclosure, I do not see any conflict and I do not engage in any outside employment.

Senator FISHER: If those issues were to arise—

CHAIR: This is a bit of a hypothetical question, Senator Fisher.

Senator FISHER: I am asking about a provision of the act, Chair. What does the act provide in terms of to whom the general manager must take those issues?

Mr Lee: I cannot immediately recall; it is not something that I have to turn my mind to, as I do not need to exercise that action.

Senator FISHER: Fair enough. I think you will find that it is the president in both cases but, if I am wrong, on notice, you might correct.

Mr Lee: Certainly.

Senator FISHER: Mr Steven Andrew conducted an interview I think for Thomson Reuters, which was reported in 2010, an interview of you, President and others, but it was entitled 'An insider's look at Australia's new IR system'. In that article there is the following paragraph:

In her 30 May 2007 National Press Club address confirming Justice Giudice's appointment to the FWA, the Deputy Prime Minister and federal Education, Employment and Workplace Relations Minister, Julia Gillard, said Labor was putting the appointments system 'beyond politics'. 'Labor will also end the conflict of interest that has the Industrial Registrar serving two masters', Gillard said.

What do you understand the minister meant by that?

CHAIR: I am not sure you can ask the officers to give an opinion on that.

Senator FISHER: Thanks, Chair. The article then went on to observe:

Senior FWA staff would be answerable to the president, not the Workplace Replace Relations minister.

Mr Lee: The various responsibilities that the general manager has, including, most particularly, my responsibilities pursuant to the Financial Management Act and my responsibilities for staff are clearly spelt out. I think the best way to answer the question is to look at—we could go back through it—the relevant provisions of the legislation, which set out what the responsibilities are of the statutory appointees and to whom.

Senator FISHER: Does the Industrial Registrar still serve two masters under the act?

Mr Lee: There is no Industrial Registrar. There is a general manager position.

Senator FISHER: Does Mr Nassios, in his current capacity, serve one master or two?

Mr Lee: I am the general manager of the organisation and Mr Nassios reports to me. He is a senior executive employed under a senior executive contract and he is, in that sense, one of my senior staff and reports to me.

Senator Chris Evans: He may have two masters but that may be his domestic arrangements; I certainly have more than one.

CHAIR: You do not need to help, Minister.

Senator FISHER: On page 17 of the report of the article, President, you were quoted as saying:

Dispute resolution is an interesting field, it's all about building relationships. While I'm not involved as much as I would like in hearing matters these days due to my administrative functions everything I do involves human relationships and addressing conflict.

If that is an accurate quote, can you expand on it?

Justice Guidice: I am trying to work out what you could possibly be interested in—my personal musings about job satisfaction. All I was trying to communicate was that the responsibilities of my office mean that I do not get involved in the day-to-day resolution of disputes as much as I used to.

Senator FISHER: I'm not involved as much as I would like in hearing matters these days' and you have said 'used to', so what has changed?

Justice Guidice: Fourteen years ago I was appointed President of the Industrial Relations Commission and I ceased to be directly involved in cases as an advocate and, generally speaking, from that time I have sat only on appeals and not on first instance dispute resolution, termination of employment or any other type of case.

Senator FISHER: In saying, 'these days', were you drawing a contrast between 14 years ago prior to your appointment as president, rather than a contrast between various iterations of the Workplace Relations Act and the now Fair Work Act?

Justice Guidice: I am not sure exactly what was in my mind at the time but if you ask me now what I think it is it is simply that—becoming the head of the national Workplace Relations Tribunal put me in a certain position where I was not able to be directly involved as much as I used to be.

Senator FISHER: In this interview, while it was reported in 2010, what did you mean by, 'whilst I'm not involved as much as I'd like in hearing matters these days due to my administrative functions'; what did you mean by 'administrative functions'?

Justice Guidice: The work of administering the tribunal.

Senator FISHER: In a question on notice I asked about superannuation, if I can take you to that: 0757. Do I understand correctly that, when my first real question was, 'Who or what is eligible to apply for nomination of the default super fund?' the answer is a fund or funds agreed by the parties provided that it meets legislative requirements or a fund that was nominated as a default fund in an award based transitional instrument relevant to the coverage of the modern award. The difficulty being that the answer to my question has been largely served up to me as extracts from decisions so I am trying to piece the jigsaw together. Is that understanding correct?

Justice Guidice: I feel as if we have probably been over this territory before but in relation to matters that—

Senator FISHER: Humour me or indulge me, should I say, let us do it again.

CHAIR: Let us just not interrupt, Senator Fisher.

Justice Guidice: Fair Work Australia decides applications on the basis of the material and submissions before it. It is very important that members of the tribunal do not make comment

about those matters other than by reference to the public record of the proceedings. What has been served up to you, as you say, are Full Bench decisions that seem to be relevant to the question you were asking.

Senator FISHER: I will take that point in that aspect of the answer noting that the consequence does mean that, unless a fund is the subject of agreement between the main parties to an award or has previously been named in some preceding instrument as a default fund, they are out of the action. It does not appear that there is any way that a fund, Minster, that might have come into existence and post-dated those events can put up its hand and seek nomination as a default super fund, is that right?

Senator Chris Evans: I am happy to try to help. I do not pretend to be across the detail of this so perhaps—

Senator FISHER: No, I am only just getting there too.

Senator Chris Evans: I think the President has tried to help you in terms of Fair Work Australia in its decisions. I think you are getting to a policy question which perhaps would be best dealt with when the department is here and I can seek some advice, otherwise I will have to take it on notice. I am sure officers of the department will be able to help; I am just not able to help.

Senator FISHER: Yes, that is later tonight.

Senator Chris Evans: Yes.

Senator FISHER: That would help; then I have one question of process of Fair Work Australia. It arises from the second last paragraph—really, the paragraph to the answer which is other than a quote from a decision. I wanted to know, still want to know: in respect of Fair Work Australia communicating with or providing notice to any interest parties, a range of questions around How does Fair Work Australia do that, and the answer indicates:

The method of notifying parties is based on a subscription services available through the tribunal's website all subscribers to relevant industries and awards are advised by email as material including applications to vary submissions and directions regarding timeframes is posted to the website.

Is there a charge for the subscription service, award by award?

Mr Lee: It would be sensible if I asked Mr Hower to approach the table, and he might be able to help you with any of the details regarding how that provision operates.

Mr Hower: No, there is no charge.

Senator FISHER: When the decision is taken to notify all those who subscribe to an award or service, at what point in time in the process is that decision taken, for example, if, during the process of an application, another party subscribes to an award the subject of that application? Is it live?

Mr Hower: Emails go out to subscribers any time a document is added to the particular part of the website. There is a page created for the application to vary, and the applicant is added to the subscription service immediately. All subscribers are notified as soon as that application is lodged, and then, if the tribunal issues any directions or notices of listing, or any parties put in any submissions, any day that material is added to the website, parties are notified.

Senator FISHER: If a party is interested in superannuation and indeed in trying to be nominated as a default fund but is not a subscriber to award X, which is the subject of award modernisation and superannuation progress, is there any way that that party would know that that particular award is under consideration in respect of superannuation?

Mr Hower: No. They would have to look at the applications on the website.

Senator FISHER: You have to be in the game to know that the game is being played, really.

Mr Lee: We can only notify those who have subscribed.

Senator FISHER: I gather that, to access the website for award X, you have to subscribe to that service; so someone who does not subscribe would not be able to access applications about award X, is that right, through the website?

Mr Hower: Anyone can access the applications, and all the material relating to the applications is available on the website; the subscription service notifies you that there has been a change to the page, or something added to the page.

Senator FISHER: Otherwise, you would be monitoring it yourself.

Mr Hower: That is right.

Senator FISHER: You also use the subscription services, the de facto interested-party mechanism?

Mr Hower: Yes.

Senator FISHER: Senator Abetz asked about productivity offset clauses. Are you able to provide on notice how many agreements registered with Fair Work Australia thus far contain productivity offset clauses?

Mr Lee: We can take that on notice, but I would expect that that is a matter that would be more properly dealt with by the department, which would examine, to the extent that they do, agreements on their database. It is not something that we do.

Senator FISHER: I will ask that of the department. I do not need you to do that on notice. In an article in the *Financial Review* on 19 May 2011, there was reference to job security guarantees—in essence, clauses in agreements which restrict arrangements between contractors and subcontractors. Stephen Woodbury, who is a partner specialising in employment law at Blake Dawson, is quoted as saying:

Now that contract labour is an area that, according to Fair Work Australia, can be included in enterprise agreements, unions will continue to press the claims.

Is his observation accurate?

Mr Lee: I cannot comment on that. It is providing some commentary on the discretion of the tribunal in terms of approving agreements.

Senator FISHER: Can contract labour provisions or job security guarantee provisions be included in enterprise agreements?

Mr Lee: There is a series of statutory tests that commissioners and members of the tribunal apply in determining whether or not to approve agreements. Those tests are set out clearly in the legislation. To the extent that they are applied, it is discretionary. It is not something that I can comment on at all.

Senator FISHER: To what extent is Fair Work Australia seeing job security clauses contained in agreements that come to it for approval?

Mr Lee: Similar to the question that you asked about productivity, that is not something that we routinely collate at all.

Senator ABETZ: Did Fair Work Australia approve the Clean Start Agreement?

Mr Lee: I would have to take that on notice.

Senator ABETZ: They are the Fair Work Principles Additional Requirements for Cleaning Contracts. That does not ring any bells for anybody?

Mr Lee: There have been a lot of agreements approved by the tribunal, and the agreement files are public, but I am certainly happy to look for the title that matches the one that you have described and advise the committee.

Senator ABETZ: There is a schedule 18, Fair Work Principles Additional Requirements for Cleaning Contracts, there is the tenderer's name and there is question 2:

Do you work to a Clean Start agreement approved by Fair Work Australia (a Clean Start Agreement is compliant with all aspects of the Fair Work Principles and is not subject to further assessment)?

What I am trying to ascertain is whether you are the initiator of these Clean Start Agreements, or was it departmentally driven?

Senator Chris Evans: I think this question is for the department.

Senator ABETZ: If it was departmentally driven, yes, it is. If it is a Fair Work Australia agreement then clearly it is a question for Fair Work Australia. That is what I am trying to clarify.

Mr Lee: We do not initiate agreements. The parties come to the tribunal and seek approval and the process is followed.

Senator Chris Evans: I am volunteering for the pain. I am told I am your man, when the department is here, because we administer those—

Senator ABETZ: Thank you.

Senator Chris Evans: As much as I would like to say it is Fair Work Australia's responsibility, it is my role.

Proceedings suspended from 12:19 until 13:22

Fair Work Ombudsman

CHAIR: We now have before the committee officers from the Fair Work Ombudsman. Welcome Mr Wilson, Mr Thackeray and Mr Campbell. Do you have any opening remarks you would like to make to the committee before we commence?

Mr Wilson: No, we do not.

Senator Chris Evans: Senator Abetz asked a question before about a commitment to open a Penrith office of Fair Work Australia. My understanding is that a commitment to do so was announced prior to some of the changes that occurred in the act but that the Fair Work Ombudsman has opened a Penrith office. If you are happy, Senator Abetz, I might get Mr Wilson to tell you that, and that will answer your earlier question.

Senator ABETZ: That is helpful. But the media release—if I recall—of 12 November 2007 was announced clearly before the Fair Work Act 2009 came into being. Ms Gillard was

then the shadow minister and she and the Labor candidate announced it. So changes to the scheme cannot be blamed on us, because the now government has full control of it. Fair Work Australia was in the media release. If the burghers of Penrith were also promised a Fair Work Ombudsman's office, that is nice, and we can hear about that.

Senator Chris Evans: You can continue to make what you think are smart political points. I am trying to help you. The commitment was, as I understand it, focused on services being available to people. Those services ended up being in the Fair Work Ombudsman's office. If you want, the officers can explain to you that there is a Penrith office they operate. If not, we can press on.

Senator ABETZ: Let us press on, because the press release talked about Fair Work Australia, not about a Fair Work Ombudsman, although the two were clearly distinct in Forward with Fairness.

Senator Chris Evans: Sorry, Senator; I did not know you were interested in the press release; I thought you were interested in information.

Senator ABETZ: I ask Mr Wilson: why did your office think it appropriate to attend a lunch on Wednesday, 23 March 2011? It was a lunch about climate change.

Mr Wilson: I do not have a recollection of that lunch.

Senator ABETZ: Supposedly it was a CEDA lunch.

Mr Wilson: Yes, I do.

Senator ABETZ: Yes, and it says, 'We would like to thank the following members for hosting a corporate table at today's events', and Fair Work Ombudsman was one of the hosts. I am wondering how much that costs the taxpayer and whose idea it was.

Mr Wilson: I cannot help you with the cost of it.

Senator ABETZ: You could if you took it on notice.

Mr Wilson: We could take it on notice.

Senator ABETZ: Yes, please, and the reason and rationale for attending. Sure, Mr Garnaut is a government appointee to advise the government on low emissions technology and things of that nature and that is all good, but I am wondering how the Fair Work Ombudsman fits into this space providing 10 people to the lunch.

Mr Wilson: I do have a recollection of that particular meeting. From time to time we receive advertising flyers and they do come from CEDA and from others. I saw that particular flyer. I believe it was a Sydney lunch and I am looking quite constantly for opportunities for some of our senior staff and other staff to really get an understanding of contemporary issues within Australia, so we ask people to attend. It was in Sydney—I did not attend personally—but we can find you the details that you want.

Senator ABETZ: Yes, it was at Sydney, at the Westin. I do note you did not attend, but as I understand it 10 people did. I would be interested in the cost and the rationale. Can I take you to parliamentary question 597. I asked how many former Maritime Union of Australia officials are now employed as fair work inspectors. I was told in the answer the Fair Work Ombudsman is not aware that any of its fair work inspectors are former Maritime Union of Australia officials. I would have thought that sort of information must be in their applications. When they applied for these positions they would have given some indication as to their

background, their expertise, their experience, and this information must be, I would have thought, on their applications.

Mr Wilson: I am not sure I agree with you that it must be on the applications. We have 900 or so staff and we also have about 300 come in through the state contracts we have with New South Wales, Queensland and South Australia. I would not leap to say that it must be on the CVs of every one of those people. You would assume that it could be, but whether it must be is another point.

Senator ABETZ: One would assume in the vast majority of cases if there are any people that have been Maritime Union of Australia officials it would leave a substantial gap on their CV if they did not include that service. It would be somewhat bizarre if anybody who had held that position would not have included it on their CV.

Mr Wilson: I hear the contention. I stand by the answer that we gave, which is we were not aware that any of our inspectors are former MUA officials, but it could well be that they are.

Senator ABETZ: You are not aware of any. Is that you personally, Mr Wilson, or the Fair Work Ombudsman as a total body of people? One would imagine the person that has engaged these inspectors would have an idea that there were a few officials of various unions amongst them.

Mr Wilson: I am not aware of whether any of our staff are members; sorry, I withdraw that.

Senator ABETZ: I am sure they are no longer.

Mr Wilson: I am not aware that any have that in their background. As I said, we directly employ over 900 people and there are about 300 through our contract arrangements. If there is a proposition that certain staff have that background and that that is inappropriate, then by all means put that to me and we will ask that.

Senator ABETZ: I am not saying it is inappropriate. You are jumping. I am asking whether we can be told the numbers to ascertain whether or not there is a disproportionate number potentially in relation to Fair Work inspectors.

Mr Wilson: We do not have that information and it is not information which is disclosed within our human resources database as far as I am aware. I think it would be unreasonable to expect us to search the CVs of those 1,200 or so staff. As I said, if you have a position where people are former officials and you want to put those details to me then we will investigate that.

Senator ABETZ: Surely former work history is relevant to applying for a job with the Fair Work Ombudsman.

Mr Wilson: Yes.

Senator ABETZ: Yes. If part of that former work history was that you were a Maritime Union of Australia official, the Fair Work Ombudsman's office must have that information available to it unless it was not disclosed on the application.

Mr Wilson: I agree with that proposition.

Senator ABETZ: Thank you. We were able to be told about the appointment of the Fair Work commissioners whether or not they were from a trade union background. Are you able

to tell us in relation to the Fair Work inspectors how many are from a trade union background?

Mr Wilson: No, I am not.

Senator ABETZ: Are you able to take that on notice for us?

Mr Wilson: No, I do not think it would be a proper exercise of our resources to do that. As I explained previously, I do not think we have information in that particularity. We have people from all sorts of backgrounds. It is well known that I come from an employer association background. Equally we have staff members who come from a union background. But to suggest that our human resource database reveals that information in respect of every person I do not think is correct. Quite frankly, it would be an unreasonable diversion of our resources to now ex post facto go and check that information.

Senator ABETZ: Do you know why I asked you the very first question?

Mr Wilson: No.

Senator ABETZ: Because I was anticipating that answer. It is a diversion of your resources but you can pay to send 10 of your highly paid officials to a lunch for two hours.

Senator Chris Evans: Even by your standards this is getting a bit low.

Senator ABETZ: Thank you for that. Why is it that it would be an inappropriate use of resources for the Australian community to learn the division of former union officials and those that come from the private sector and those that might come solely from the public sector without a private or union background.

Senator Chris Evans: You are now extending your question so that it does not just try and single out just union officials, you want to single out the background of every employee of Fair Work Australia.

Senator ABETZ: No, the categories to ascertain whether or not there is a particular bias in favour of former public servants, former private enterprise employees or—surprise, surprise—possibly a bias in favour of former trade union officials.

Senator Chris Evans: You referred earlier to Fair Work Australia and the appointment of commissioners. They are selections made by cabinet and people have inquired after those and the details of them for some time, and I understand that. I think you are now asking a public service agency to trawl through the CVs of its employees, to mark down criteria for which you have an interest and to add those up so as to identify people of a certain background; so to search their files, perhaps search the CVs submitted when people applied for a job with the ombudsman's office and find particular categories which interest you. I remind you that the selection of public servants in the Fair Work Ombudsman's office is done by the Public Service selection on merit method.

Senator ABETZ: Like the Fair Work commissioners, we were told.

Senator Chris Evans: There is a proper selection process and, as you know, the opposition will be consulted before there are any other appointments, as the states will be. But this is quite different. This is a Public Service selection methodology. Mr Wilson, quite appropriately, said to you that to ask him to go back and interrogate, I presume, the files—I do not know whether you have been suggesting he ought to take the interrogation to interrogating the officers themselves, as to their backgrounds—would seem not to be a good

use of resources. I would suggest that might raise other issues about whether it is appropriate for an employer to be doing that.

Senator ABETZ: When it is not associated with names there would clearly be no privacy or other issue. I am not asking about a particular name or all those that have a Maritime Union of Australia background. I was only seeking the numbers. If somebody were to apply to be a Fair Work inspector, could one do so over the net?

Mr Wilson: Yes.

Senator ABETZ: And they could supply the CV over the net as well?

Mr Wilson: Yes.

Senator ABETZ: And so a word search such as 'union' or 'union official' in relation to those would not be such a hard exercise, would it? It is not opening up 900 paper files to see whereabouts 'union official' might be.

Mr Wilson: The question that was not asked was whether all of our staff apply in that way. The answer to that question is no, they do not. The staff of the agency, as with any Public Service agency, have the full spectrum of histories of employment, ranging from the past year through to the past 30 years. We do favour internet applications but I know that many do not come through like that.

Senator ABETZ: All right. Can you provide us with those that apply via the internet?

Mr Wilson: I just do not know whether that is possible.

Senator ABETZ: In that case, I am sure that as you are so obliging you would be willing to take it on notice, to see if it is possible.

Mr Wilson: Certainly.

Senator Chris Evans: I would want to take some advice, too, about a policy of this Joe McCarthy-type witch-hunt for Maritime Union officials within the Fair Work Ombudsman's office. I think there are some terrible connotations about what you are suggesting, so I will also take on notice whether that is actually appropriate behaviour. Former Maritime Union officials have the right to work, like anybody else—

Senator ABETZ: Of course they do.

Senator Chris Evans: They have a right to be selected on merit.

Senator ABETZ: There is no argument there.

Senator Chris Evans: But your implication is that it is not appropriate if there are any former officials working for Fair Work Ombudsman to hold down that work or, somehow, that they must be outed. I just think it is a really dangerous path you are going down. I think it has terrible overtones to it and I would suggest you reconsider that. I certainly will take on notice whether it is appropriate for us to be interrogating our staff files for you to be able to name the number of former Maritime Union officials who may or may not be employed by the Fair Work Ombudsman.

Senator ABETZ: Thank you for that homily. I made it very clear I did not want individual names; therefore nobody would be outed. What I am asking for is whether or not, in general terms, given the data, there would be disclosed a disproportionate number of Maritime Union officials who are now so engaged in this office. That is all that I am seeking

to query and if there are half a dozen amongst the 900 I would have thought, in fairness, that would be, statistically, an appropriate figure. Whereas if out of the 900 we happened to find that there were 800 of them then I think we would all agree that a stack may have happened, going on either extreme. So all we want to do—

Senator Chris Evans: Should I interrogate whether there are any members of the HR Nicholls Society employed as Fair Work Ombudsman officers?

Senator ABETZ: By all means!

Senator Chris Evans: Do you think that is an appropriate thing? I would have thought it would be inappropriate to ask that of them. This is a democracy, they have a right to be members of the HR Nicholls Society and have employment with the Australian government.

Senator ABETZ: If they had been employed by the HR Nicholls Society then, of course, it should be disclosed on the job application as part of their CV. I would have thought that would have been available by doing a word search of HR Nicholls to see whether it appeared on anybody's application. You have raised a very valid point, Minister. I have asked only about officials, not members. My question was: how many former Maritime Union of Australia officials are now employed as Fair Work inspectors? The answer was, 'Nor does the agency retain records of Fair Work inspectors' prior union membership.' I am not interested in prior union membership; I am interested in whether they were officials, which is a different category. The minister has reminded me of that misinterpretation of my question in the answer. I asked about officials, not members.

CHAIR: Let us move on. The question has been asked. The minister has agreed to take your question on notice. I think that is where we are at. Let us move on to another point.

Senator ABETZ: That is a fair call, Chair. Let us move on to a question on notice—EW0777—from last estimates. I was asking about the changes and corrections made. Somehow, Mr Wilson, we did not want to use the word 'correction' but 'changes'. I thought this was a bit of a euphemism so I asked:

... in relation to each of those 58 can you please take on notice why the change was made and what the change was. We will see how euphemistic the word 'change' actually is.

You kindly did take it on notice. We have been given a list of corrections. 'Corrections' is one category. I thank you for that. We then have another category: 'publishing error'. When is a publishing error not an error that needs correction? As far as I am concerned, it did not matter how the error was occasioned; it was the robustness of the information that people were accessing that was drawn to your attention and then changed because it was not correct. It may well be that, in publishing it or typing something up, somebody typed 'four' instead of 'five' and that then came to your attention. With respect, I would have thought that that is still a correction. What is the definition of 'publishing error'?

Mr Wilson: I ask Mr Campbell to speak to that initially. If we require more detail, one of our other staff will be able to assist.

Mr Campbell: As I understand the answers provided to you, 'Publishing error—no rates showing in guide' is a reference to—I do not want to use the wrong adjective to start that discussion as we did last time—a glitch. Where somebody clicked on a guide attached to, say, the retail award, or a NAPSA in the retail industry—which we provide right across the range of NAPSAs—it might have popped up with some information missing from that page. If that

has been identified to us, and some of the information has not appeared when someone has clicked on that link, we have gone through and made sure that that information does appear.

Senator ABETZ: So that was a nonprovision of information that should have been provided?

Mr Campbell: It is not a correction, in that there was not an error. Some information did not appear when somebody clicked on a link. Again, I am not trying to get into semantics with you, but—

Senator ABETZ: I will not play semantics over that this afternoon. But I would have thought the lack of information, as in not having all the information that should have been there, may be categorised as such. But that is fine. I have the explanation. The record will speak for itself. Thank you for that. What does 'Classification linking amended or added creating a new phased rate' tell me? If you have to 'link an amended' or 'add creating' a new phased rate, it sounds similar to me. Certain information was not provided or the wrong link was provided or—

Mr Campbell: I suspect that, where we have a link from a former pay scale from a NAPSA to a modern award, and a classification within those two, and that link is broken, we record it as such; hence the answer we provided you.

Senator ABETZ: In layman's terms, I would have thought that was also a correction—

Mr Campbell: We were attempting to provide you with as much separation as we could between the various issues you raised last time. I do not think we were trying to be clever so much as just trying to give you a picture of the type of issue that we were addressing.

Senator ABETZ: I appreciate that. Thank you. How robust do we think it all is now? Have any changes been made, and I use that term advisedly, since whenever the answer was provided in very recent times?

Mr Campbell: Yes, since the last time we reported on this subject and others with regard to the pay suite tools we have had five queries, and four have resulted in amendments being made.

Senator ABETZ: It is still a work in progress and changes are being made. I will not ask you to categorise them, but thank you for that. Who advises the Fair Work Ombudsman about the Fair Work Australia decisions that affect modern awards? How does that happen?

Mr Campbell: I will ask Mr Clark to come and speak to that.

Mr Clark: Fair Work Australia provides information directly to us that we then use to update our pay and classification system which underpins the products we have just been talking about.

Senator ABETZ: Does that happen, as close as is practicable, immediately?

Mr Clark: As close as is practicable. That is correct.

Senator ABETZ: So if a decision is made, let us say about adding a transitional schedule to a modern award, it would be up on your information facilities within 24 hours?

Mr Clark: The timeliness depends on the complexity. Mr Campbell was giving you an indication of some of the changes.

Senator ABETZ: Which is a fair point.

Mr Clark: As to the tools we are talking about, there are over 65,000 classifications and well over 125,000 transitional pay rates, so depending on the complexity of the change or the information provided from Fair Work Australia we may need to do some manual manipulations of our systems. That could cause short delays, but generally speaking we aim to have the information available as quickly as possible once a decision is made.

Senator ABETZ: I have a particular case in mind, but I daresay if I ask it you will ask to take it on notice anyway, so I will put that one on notice. Thank you for that.

CHAIR: Do you have an office in Penrith and, if you do, why?

Mr Wilson: We have an office in Penrith, and thank you for the question. The office is administered by the New South Wales government as part of the Office of Industrial Relations. I am told its address is 2-6 Station Street in Penrith, and there are five staff there who are badged as Fair Work inspectors.

Senator ABETZ: You are very well prepared.

Mr Wilson: It is part of a contract with the New South Wales government. I forget the exact data, but that contract brings in another seven or eight offices throughout metropolitan and regional New South Wales, including Wollongong and Penrith—the other towns escape me for the minute. But certainly we have opened an office there.

Senator ABETZ: Is that a stand alone office of the Fair Work Ombudsman?

Mr Wilson: No.

CHAIR: You always did want to know.

Senator ABETZ: Now that you have asked for verification on these matters, Chair, I will ask if it is run by the state government.

Mr Wilson: It is run by the state government.

Senator ABETZ: When did the Fair Work Ombudsman set up shop in Penrith?

Mr Wilson: I believe it was 1 January 2010 or whatever the next business day was.

Senator ABETZ: In anticipation of an election coming up, no doubt somebody thought that instead of a Fair Work Australia office we will have a Fair Work Ombudsman's office. That is good and I am sure it provides excellent services to the burghers of Penrith, but that is not what was promised. That is all well and good. The Fair Work Ombudsman quite appropriately pursues employers and prosecutes employers in certain circumstances where they underpay employees, but if a particular business asks the Fair Work Ombudsman to give a binding advice on precisely what they should pay, you still do not provide that binding advice, do you?

Mr Wilson: We do not have the legislative ability to provide binding advice.

Senator ABETZ: Right, but if you were clothed with that authority—it stands to reason—you could.

Mr Wilson: The Fair Work Ombudsman has statutory obligations to provide education advice and assistance and compliance activities. We do that all the time. The activities that we do are to respond to particular circumstances and provide advice. Necessarily that is a confined set of facts and so the advice is confined in that way as well. What I mean by that is that we do not hold ourselves out to be business advisers. We certainly could not spend four

or five hours, a day or several days forensically analysing the law. What we can say with some detail is that in our opinion the retail award applies to this particular establishment and that the classifications of your workers are classifications 2 and 3. Because we are not exclusive litigants it of course is up to the employees to contest that they are not 2 and 3, but rather they are 3 and 4. They obviously can take that to court if they so wish—similarly an employer or other duty holder who chooses not to follow our advice. That is good. That is what they can do and clearly they run the risk at some later stage of us being found to be correct.

Senator ABETZ: I move on to flexible work arrangements. As I understand it, the national employment standards provide a statutory right for eligible employees to request flexible working arrangements to assist them for example to care for a child. I understand the employer can reject such a request on reasonable business grounds and that is not subject to any review, appeal or otherwise. Is that correct so far?

Mr Wilson: That is my understanding.

Senator ABETZ: Are you aware, or has it been brought to your attention, that where employers are rejecting these grounds on reasonable business grounds they are then facing adverse action claims based on discrimination? Has that been brought to your attention at all?

Mr Wilson: No, our officers and indeed I myself are not aware of that occurring. That is not to say it has not occurred, we are just not aware of it.

Senator ABETZ: If you are not aware, that is fine. As an avid reader of the *Northern Territory News* I discovered—

Senator Chris Evans: You know a lot about crocodiles then.

Senator ABETZ: That is why this story appeared on page 5 and not on page 1 or page 3—it is not a crocodile story. But the Fair Work Ombudsman, we were told, is contacting employers in the Top End to make sure they are aware of their obligations, and inspectors will get in touch with 50 new businesses and supply information—all good news. Well done on that, so they get off to the right start. Do you do anything like that for employees as well so that they might know what their rights and entitlements are and what their obligations might be under the Fair Work Act?

Mr Wilson: I will ask Mr Campbell to respond.

Senator ABETZ: Yes indeed. I think it was Mr Campbell who got his name in print on 14 March in the *Northern Territory News*—a dizzy new height, no doubt.

Mr Campbell: Indeed, Senator, thank you. That is a reference to our New Start campaign, which we conducted in NT and South Australia. With regard to the services we provide employees to educate them about their rights and obligations, we would take a range of different approaches. For example, articles like the one you referred to are aimed at ensuring that our services are communicated as broadly as possible to the community. We conduct communications campaigns, where we again communicate through a range of media about various rights and entitlements, as we have discussed in the past. We conduct campaigns with migrant workers, international students or those who are just coming out of university. So we take a pretty broad approach in the education space.

Through our compliance activities and our advisory activities, we answer many hundreds of thousands of calls each year from employees on our info line and take many hundreds of

thousands of hits on our website. So we have a pretty broad approach to educating the community.

Senator ABETZ: But I would have thought that, if you were heading up to the Northern Territory, you may have advertised more broadly or sought to get media more broadly that you are there for both the employee and the employer, to give accurate information.

Mr Campbell: We have an office in Mitchell Street that is very active in the community with both employers and employees. The snippet you referred to would have been only part of a communication exercise around the New Start campaign where we would have written to local unions, community organisations and employer associations to make them aware that these were the services we would be providing. So I would not want you to take that in isolation.

Senator ABETZ: So you are saying that, unfortunately, the *Northern Territory News* only talked about the employers, alongside crocodile articles and the unions.

Mr Campbell: I cannot refer to that article, but I am confident we would have done some radio and had a run in some of the other press up there as well.

Senator ABETZ: That is fine—thank you for that. In answer to question on notice 0762 you gave me an extensive answer with a spreadsheet that I must say I need a magnifying glass to read.

Senator Chris Evans: A cunning plot!

Senator ABETZ: Yes. Even with my reading glasses I cannot read it. That aside, can I ask: how were they chosen?

Senator Chris Evans: Don't ask Mr Wilson a question on it, because he cannot read it either!

Senator ABETZ: I think we might be in a particular age group, so stop these young officials producing charts like this! Were there about 30 of them? Whatever the number, how were they chosen?

Mr Wilson: These go to two targeted campaigns affecting contractors. I might ask Mr Loizides to respond to that.

Senator ABETZ: I am not asking for an answer in relation to each one, just the generic or general—

Mr Wilson: So the question is how we came to choose those particular employees?

Senator ABETZ: Yes, the process that you go through.

Mr Ronson: Senator, the way we choose our campaigns is based on the evidence that we have received and built up, I suppose, just through our own database, intelligence sources that come from the community or from key stakeholders, or local intelligence sourced by inspectors over years of experience.

Senator ABETZ: A very generic answer. All right; I will not delay us anymore on that. Thank you very much. In answer to question on notice No. EW0767_11, I was told about the priority given to people affected by the Queensland floods. So, if calls came in, preference was given to them. It seems like a good idea and the proper thing to do. Was any literature or generic material supplied, or any advertising done, to let people know that if they were in that

space they would be given priority; or was it that, if the (07) telephone prefix came up, they would then, by virtue of the mechanism in place, be given priority?

Mr Clark: Senator, in relation to the response to natural disasters, we certainly provided information on our website. On 7 February, we published a new fact sheet, the Fair Work guide *Employment entitlements during natural disasters or emergencies*. That was one of our major efforts to provide information, advice and examples. In terms of stand-down provisions and alternatives, there was personal and carers leave and community services leave. So that was one of the approaches we took to inform people at that time.

Senator ABETZ: Yes, at that time—because it then did not extend to Cyclone Yasi, did it?

Mr Clark: Absolutely, and that fact sheet was entirely relevant to both of those events.

Senator ABETZ: Sorry? It was relevant to both of those events?

Mr Clark: Relevant to both of those events; that is right. The fact sheet was about employment entitlements during natural disasters and emergencies. It was developed for the flood crisis and then it was entirely relevant for Cyclone Yasi, and it will continue to be relevant for future events.

Senator ABETZ: Right, but callers affected by Cyclone Yasi did not get priority.

Mr Clark: Priority was given to callers from Queensland during the month of January, and there were two reasons we were able to give Queensland callers priority. The first was the scope of the disaster and the fact that it was affecting almost the entire state of Queensland. The second was that, due to our technology platform and telephony, we are able to prioritise calls from a state—but we are unable to prioritise calls from a particular postcode or region. So, in our response to the flood crisis, we were able to prioritise those calls because that was affecting the bulk of Queensland. With Cyclone Yasi, we were unable to prioritise calls from a particular locality or region.

Senator ABETZ: That is fair enough. How did you determine whether a phone call originated from Queensland? Did you ask the person calling or did the telephone number pop up?

Mr Clark: The technology that we have in place provides the number of the phone that the caller is calling from if that phone number is a listed number, and our systems will identify what state they are calling from. We also do verify the caller's state of origin. So, while the system will tell us that that person is calling from Queensland, depending on the intent of their inquiry we will also verify that they are actually from Queensland.

Senator ABETZ: All right. So, if someone rang from a landline, it would tell you?

Mr Clark: That is correct.

Senator ABETZ: But would it tell you if the person rang from a mobile phone?

Mr Clark: Not all mobile phones, unfortunately. Our technology does have that limitation. We are actually in the process of looking to upgrade our technology.

Senator ABETZ: Now, who had the great fun of checking out the vineyards in South Australia's Barossa Valley?

Mr Wilson: I cannot claim that one, Senator.

Senator ABETZ: I would have thought that that was something that you personally would have needed to intervene in, Mr Wilson!

Mr Wilson: I tried the McLaren Vale during my holidays, but not the Barossa!

Senator ABETZ: On 20 March 2011 a media release was provided. It says that Fair Work inspectors visited 62 wineries and vineyards in the region last November—that would be only two a day, so it must have been good—looking at bookkeeping and pay slip practices, and in rough terms two-thirds were found to be compliant. In general terms, is that a good or a bad figure—two-thirds compliant?

Mr Wilson: Mr Ronson might wish to take this a little bit further, but in general terms compliance at that level is quite good for the kind of auditing that we undertake. We often are not auditing just one particular issue; rather, it is a range of matters relating to the workplace. Mr Ronson, maybe you can take that further.

Mr Ronson: I agree with what the Fair Work Ombudsman has just stated. The purpose of this campaign was, as you have outlined already, about record keeping and focusing on pay slips. It was, I suppose, an educational campaign, if you like, to a large degree. The inspectors and the way the report was produced suggest that the compliance rate was not alarming but nonetheless the campaign was worth having and—

Senator ABETZ: I am sure it was.

Mr Ronson: to that extent we were not greatly alarmed.

Senator ABETZ: As I understand it, all the employers where you did find issues voluntarily complied and accepted and were, if not necessarily thankful, at least accepting of the advice that was provided to them.

Mr Ronson: Yes. One of the features of our audit campaigns, particularly in a campaign designed like this one, is to require the employer to sign what is called a compliance undertaking, which is effectively just a statement that they will look to their own records, look to their own practices and improve from there on.

Senator ABETZ: Mr Campbell, we saw you mentioned up in the Northern Territory and you were mentioned in this press release as well, in the Barossa Valley, so you are much travelled, and good luck to you. I am wondering whether you were in the Great Southern region in 2009 as well, where a similar campaign was undertaken—or are you in an office, just commenting on what other officers do?

Mr Campbell: A bit of both.

Senator ABETZ: Good. I would hate you to miss out!

Senator Chris Evans: I understand that he does not do the abattoirs but he does the wineries well!

Senator ABETZ: We should not be flippant, because it is an important role that Mr Campbell undertakes, but the 'Great Southern wine region'? I only know of one great southern wine region, called Tasmania, but I assume you are not talking about Tasmania. What geographic area are we talking about with the Great Southern wine region?

Mr Campbell: Is that a reference to that press release or the one from 2009?

Senator ABETZ: Yes. It says:

Mr Campbell says the rate of compliance was similar to that found in a campaign—

Mr Campbell: Can I have a copy of the press release, Senator, if that is okay?

Senator ABETZ: Yes, absolutely.

CHAIR: When you tailor campaigns like this about compliance and record keeping, do you then investigate other issues that may come consequently? For instance, if there is someone working who does not have work rights, but they are getting a proper pay slip, do you identify that and do something about it, or do you simply, with blinkers on, just look at the purpose of the audit?

Mr Wilson: It is broader. Maybe Mr Ronson can speak about the exact methodology. Did you hear the question?

Mr Ronson: No, I am sorry; could you repeat the question?

CHAIR: I am just wondering. When you have specific campaigns like this, which is about pay slip compliance, would you can look at broader issues as they come to your attention? I was using rather a stark example: if someone had no work rights in Australia but was receiving a proper pay slip, would you then investigate the fact that they were able to work or not?

Mr Ronson: Yes. In terms of standard operating procedure, if the inspectors come across, say, some noncompliance or what appears to be noncompliance which is outside the scope of the campaign, they do not turn a blind eye to it. They would report it and then consider what an appropriate compliance activity would be in that particular matter.

CHAIR: Just generally, when you do these campaigns what sort of percentage—or however we may be able to describe it—of other types of noncompliance do you identify as well? Is it generally 10 per cent or 20 per cent, or is it all over the place?

Mr Ronson: It is a very difficult question to answer because that will depend on what records are being brought back to the office or what records are being looked at and inspected on site. It is probably too difficult to answer that question.

CHAIR: Now we go back to Senator Abetz' press release.

Senator ABETZ: Now for the question: why did we target the wine industry as opposed to, as the minister suggested, abattoirs? Or have we done that as well? What sort of industry sectors have we pursued to date, and what was the rationale for them?

Mr Wilson: We operate our targeting through a national framework, which is set by a targeting manager who reports to Mr Ronson. That framework is established at least yearly and then updated from there. We always have four national campaigns running in the course of a 12-month period, but we then ask our states to take that down to the next level. That depends very much on the mix of regions we have and the mix of intelligence which is coming through from the individual inspectors and so on. That might be a cluster of underpayments in a particular district or industry, or it might be complaints from a particular person. That will then be worked into the national framework. For example, the Coffs Harbour office would be given licence to conduct particular local campaigns.

We also take into account the need, I suppose, to have a footprint right across industry, not just simply the ones that we always go to. So it may be that we have decided to work in a particular industry this year because another industry has been done in previous years, or it is

on the horizon for next year. In relation to the specific wine and abattoir mix that you mention, I will ask Mr Ronson to take over—

Senator ABETZ: That was flippant, we do not need the specific response to that! But I can understand why you would, let us say, target one area of the wine industry in a year, for example, and then whatever you may have gleaned from that you would, hopefully, get out to the industry generally. But the Great Southern region was also targeted in 2009 and I am wondering if it was that good that you have forgotten where it was—

Mr Campbell: No, I will go back and get the report. Obviously, a lot of good wine comes from the southern parts of Australia. If you do not mind, I would like to check.

Senator ABETZ: Is the wine sector targeted because of, for example, the number of seasonal workers and a concern that there may be a lot of people who are underpaid? Why would you pick on that one as opposed to any other sector?

Mr Ronson: I do not think it is a question so much of picking on one as opposed to another. It is probably a case of working through whatever intelligence sources we have at the time, or whatever evidence is on hand. The way you approach audits is to take either a particular geography or a particular sector. I need to look again at the precise triggers of the Great Southern wine region and why we did it, but it might not be dissimilar to what you are proposing. It could be the fact that we were concerned that, perhaps, seasonal workers were not getting their lawful entitlements.

Senator ABETZ: So was it if you did attend the Great Southern region—

Mr Campbell: Maybe I can assist, I hope—

Senator ABETZ: There is a forestry sector down there and there is an abattoir sector down there, and I am wondering if when you do them that you only do, let us say, the wine? Or do you try to cover a number of sectors when you move into a geographical area?

Mr Campbell: I was going to come back to the reference to the Great Southern region, just so I can close that out for you hopefully. The reference in the press release that you have shared with us was a reference to some audits we conducted in Western Australia's southern west and Great Southern regions, where about two-thirds of businesses were identified as being compliant with their obligations under workplace laws. It was two different audits conducted in two different states over two different years. So that goes back to your first question.

Senator ABETZ: Yes, but one would imagine, if there were particular difficulties in, let us say, the wine sector, you would pick that up and hopefully transmit it.

Mr Campbell: You may well be correct because the emphasis of both the audits—I apologise; I am catching up on the 2009 one—was also with regard to pay slips and records.

Senator ABETZ: You would undertake hundreds of these sorts of audits, would you not?

Mr Campbell: That is correct.

Senator ABETZ: The fact that you may have forgotten something in 2009 is not exceptional. That is fully understood. I understand Senator Fisher might have a few questions, Chair.

CHAIR: If she has, let us go to Senator Fisher.

Senator FISHER: Page 309 of the PBS, the key performance indicators, program 1: I am wondering why all the numbers are static.

Senator Chris Evans: I hope they are static if they are on the page.

Senator FISHER: Should I rephrase that, Minister? They are the same. On the number of targeted campaigns, the KPI remains four for the years of the budget projections. The investigations into complaints about breaches et cetera remain at 80. If the KPIs are so reliable, why aren't you seeking to increase or decrease or do something therewith?

Mr Wilson: That is very good question. If I can work through the questions, in terms of the numbers of targeted campaigns, for us to move from four national and two state is really not within our capacity at the moment. We can do that quite well, but to expand that would be quite difficult. I will come back to investigations into complaints about breaches in a minute. Calls to the contact centre resolved at the first point of contact: that is a benchmark which we have achieved, I gather, pretty consistently in recent times and it is one which is very much a good thing for our info line to be able to do, given the volume of work and the length of the calls. Similarly, with the availability of the contact centre, the reason that is 99 per cent is that it essentially relates to information technology up time or down time, which explains that in the course of the year. Even one per cent is far too much to be down, but any more than that would be dramatic for us. It is the same too with the availability of the website. In relation to investigations into complaints about breaches and so on, the traditional target is 80 per cent within 90 days. It is not moving at the moment because we are not achieving that. It is something that we do struggle with, but we are certainly pretty zealous in terms of looking within our internal processes to make sure that we can return to that level. In a two- to three-year period we have been in the mid-seventies, but probably in the past year that has been lower than that.

Senator FISHER: Is it all your fault or your doing? It is a reasonably blunt instrument, KPI, in the sense that it is irrespective of how many complaints you are receiving.

Mr Wilson: It is a combination of things. The three main outputs of our investigation staff are investigation of wage complaints, audits and other educative activities, and then litigations. You could pretty easily solve the problem of timeliness with our investigations by simply doing no audits. That would not be a good thing for the community to do that. We try to keep the ratio of one proactive educative visit to four or five investigations that we do. That is, certainly internally, considered to be more beneficial than really punishing the agency to get to that KPI. We have put a lot of work into the matters which go for a very long time, but unfortunately that means the interim part, the 90-day part, has slipped. That explains why, certainly for the next forward years, we have got it aspirationally at 80 per cent within 90 days. We are confident we can get to that, but it certainly will need work internally to do.

Senator FISHER: So this time next year, hopefully, we will be able to comment on perhaps some increased numbers in the forward years in that respect?

Mr Wilson: I am not about to commit to it, but I hope so.

Senator FISHER: I did say 'hopefully'. What is the ombudsman's experience with the Small Business Fair Dismissal Code in terms of the ability of employers and employees to understand what it means?

Mr Wilson: I am not completely confident that we have an understanding or an experience as such. The way that the Small Business Fair Dismissal Code would come up is in calls to our infoline—'I've just been dismissed; what can I do?' That probably would be the high point of the conversation. 'You work for a small business and they need to follow these kinds of rulings.'

Senator FISHER: When you go down that path, how are you finding the response of employers in terms of their ability to reconcile what you might be saying, in the course of investigating a complaint, with their understanding or not of what the code means they should be doing?

Mr Wilson: That is probably a little bit more complicated question than the answer I was endeavouring to give. I will explain why in a second. But if I can continue down the path that I was on: the calls to the infoline are kind of one-offs. They are either the employee saying, 'I'm in this circumstance,' or the employer saying, 'I'm in this circumstance.' That is a matter of pointing out to people: 'These are your rights and obligations. You are a small business and if you are contemplating terminating someone's employment then the code may apply to you. The code says, "1-2-3."' If it involves a situation where the person is dealing with an inspector, then that is probably because there has been an underpayment at the same time as the dismissal has occurred, or it might be through some other complexity which requires the inspector to be involved.

Senator FISHER: Hence you are not able to give a more definitive answer, are you saying, of employers' understandings of the guide?

Mr Wilson: I do not think so. I will just check with Mr Campbell. Do you have experience of it?

Mr Campbell: A different sort of experience. I guess our inspectors would only get involved in an unfair dismissal case so much as they could, in the sense that they could assist parties to understand their obligations in a procedural sense but would not necessarily give them advice on how to. That being said, the educational materials we provide through our website, which have been growing in number and complexity over the last year and a half—in a good sense—indicate to me that there is a pretty good engagement by employers with our information about termination of employment.

Take, for example, our best practice guides. The most popular one is 'Managing underperformance'. While that does not necessarily always end in termination, it obviously gives employers guidance on how they can engage with their employee to improve performance and, failing that, how they can better record the interactions they have with their employees about performance discussions, which will ultimately assist them if it comes to an unfair dismissal application and then ultimately complying with the requirements of the Small Business Fair Dismissal Code. So, for example, while the warning is not required to be in writing, one of the templates we provide which is very popular is a template document on being an employer and having a discussion with my employee and I record the outcome of that conversation and the steps we put in place to improve performance. That is then something that can be kept on the record and if that was required to be brought before the conciliator or a member of Fair Work Australia then that might be useful. So it is sort of an anecdotal answer, I admit, but that is my experience with it.

Senator FISHER: You said, if I understood you correctly, that stuff on your website to help people has been growing in number and complexity, in a good sense, in the last year and a half. How so and why?

Mr Campbell: When I said complexity in a good sense, that was me catching myself using the word 'complexity'.

Senator FISHER: It is meant to be a simpler Fair Work system.

Mr Campbell: I recognised the word as it came out of my mouth. The point I was trying to convey was that the tools we provide are more in-depth. We provide a template, for example, to assist employers engage employees. It is a letter of engagement that sets out the expectations of the employer, the rate that the employee is going to be paid, and other factors about time of work and classifications et cetera. So we are actually providing a free employment contract, if you like, for employers to engage their employees are then use as the record to ensure that both the employer and the employee are clear about what their rights and obligations are within that particular employment arrangement. When I said 'complexity', what I was trying to convey was that we provide a more in-depth or perhaps more useful service through the tools we have on our website.

Senator FISHER: Has the private sector raised with the ombudsman concerns about a taxpayer-funded organisation effectively competing with the private sector, for example in the sorts of forms and useful tips that you have been talking about, particularly when on your own say-so you are not giving anywhere near definitive legal advice about the effect of laws but rather, I am sure very well unintended, you are trying to assist the parties to comply with their obligations. Has the private sector at any stage ever told you they are getting cheesed off with a taxpayer-funded organisation pulling the business rug, arguably, out from under their feet?

Mr Wilson: No, they have not. However, we do consult from time to time with both the ACTU and the Australian Chamber of Commerce and Industry and the Australian Industry Group and they put to us all sorts of fairly robust advice about what we should or should not be doing. It is not in the form of, 'You are starting to compete with us, don't do it,' but it is certainly in the form of, 'This is what we think your office should be doing or should not be doing.' In respect of the kind of material that we do have available, it is one thing to provide a website standard letter saying, 'Here is a standard form on how to warn a staff member not performing.' As we all know, it is then a far more value-added proposition to actually turn that into an operation for, 'In this particular circumstance, this is something which is meaningful'—meaningful in the sense of the employer and employee. What we say to anyone in that kind of category is, 'Look, you do need to get advice, and the best place to do that is through an industry association or a lawyer.'

Senator Chris Evans: Large sections of employers are not in industry organisations and large sectors of workers are not in trade unions. I have had the same argument put to me before about the Fair Work Ombudsman prosecution for underpayments et cetera, and this has always been part of the role of the inspectorate. Quite frankly, I think the Fair Work Ombudsman are doing it better than it has been done before. I have heard those arguments. I think that that broad educative role is an important part of what they do. The cut-off point obviously is providing specific advice, because that is where people have to take independent advice.

Senator FISHER: Of course, Minister, out there in the populous there are more than employer organisations and more than unions that would be willing bidders for providing those sorts of services.

Senator Chris Evans: Yes.

Senator FISHER: Other than lawyers, as well.

Senator Chris Evans: Some of them would be good at it and some would be terrible, as we know!

Senator FISHER: I guess the aim is to have legislation that makes it easier for them to be good at it.

Senator Chris Evans: Senator, as you and I well know—and I do not want to divert too far—many lawyers pretend to be expert at every field of law and not necessarily expert in a particular field. I am amazed at some of the bad advice that people get, rather than using industrial lawyers who do know their knitting, as it were, in the area. I divert.

Senator FISHER: Sham contracting—I am not sure whether you have discussed this aspect today. Please tell me if you have. In terms of the government's stated intent to crack down on sham contracting, what is the Fair Work Ombudsman doing to give them a 'cracker'?

Mr Wilson: I am not sure we are part of that exercise. Certainly we do take a look at sham contracting arrangements from time to time. We have a set of work which is going on at the moment in a number of industries to test the extent of sham contracting in about 90 to 100 different entities in the cleaning, call centre and hair and beauty industries. This is responding to some community concern that has been expressed about emerging use of contractors as sham arrangements. We are midway through that and we expect that there could be a report by the end of June or July, I think. The progress to date is the curate's egg—a bit mixed—but that is probably what you would expect at this stage of the investigation.

Senator ABETZ: What about the building sector? Are you inquiring into that sector as well?

Mr Wilson: No, we are not.

Senator ABETZ: Why not?

Mr Wilson: The arrangement we have with the Australian Building and Construction Commission is that matters relating to building industry participants within the meaning of that act are dealt with by the ABCC. In relation to those building industry people who are not building industry participants, if that makes any sense—

Senator ABETZ: Yes.

Mr Wilson: They are not scoped within this particular set of investigations. However, over the past five years there have been, from recollection, a couple of instances where we have taken to court and succeeded against employment arrangements which were characterised as contracting arrangements. If we see it from time to time, we will certainly take it on. Regarding this particular matter, the suite of industries was selected as being one that we had not looked at a lot previously and we thought it would usefully test whether or not there are problems.

Senator ABETZ: What about previous prosecutions or investigations—I am not sure of the terminology—related to the building sector?

Mr Wilson: I can certainly think of one. We would have to take notice the detail. There certainly have been a few.

Senator ABETZ: In the past you have looked at the building sector?

Mr Wilson: Yes, but of course the distinction is between those within the province of the BCI act. I have forgotten what it is called.

Senator ABETZ: Sham contracting is sham contracting, irrespective of the type of sham contracting it might be—be it in the hair and beauty area, call centres or, indeed, the building industry. Your organisation would have an established body of expertise in relation to that area that you are continuing to use?

Mr Wilson: It has changed, I believe, since March. I need to confer with my colleague. The answer to your question is yes, we still do have that role and expertise.

Senator ABETZ: Just in case the ABCC is listening, that leads me to the question as to why they are duplicating that at taxpayer expense, but we can have that debate later.

Senator Chris Evans: I think there is an MOU, isn't there, between the two?

Mr Wilson: There is an MOU between our two organisations and that relates to the referral by us of work which falls within the BCII Act. Of course, not every building company is within the BCII Act if it is under a certain threshold size or not working on mainstream projects.

Senator ABETZ: When was that MOU signed?

Mr Wilson: In March, I believe, Senator.

Senator ABETZ: With the new commissioner?

Mr Wilson: With the new commissioner.

Senator FISHER: Are you expecting to have to renegotiate an MOU or tear one up at any time soon?

Mr Wilson: Not that I am aware of; no.

Senator FISHER: So you have no expectation of the government delivering on its promise to abolish the ABCC—a promise which I do not like much, needless to say?

Mr Wilson: That is possibly putting too many words in my mouth. Of course, if there is legislative change we will revisit it.

Senator Chris Evans: You will get a chance to debate it later this year.

Senator FISHER: Did the appointment of a new commissioner necessitate the renegotiation of the MOU, or was its time up in any event?

Mr Wilson: In relation to the MOU previously, there was an exchange of letters between myself and Mr Lloyd in 2006. One of the curiosities from my point of view was that there had been, I think, two changes of the organisation in between and it had not been updated. So it was certainly timely to update. In terms of the motives of the BCI commissioner to make the change you would need to speak with him, but what was put to me—and I would certainly agree with it—was that there was a benefit in the ABCC becoming a full service regulator and that therefore it needed to consider underpayments of wages as much as the other matters that it deal with.

Senator ABETZ: I think we have agreed previously, Mr Wilson, that you have the expertise and experience gathered from day one, and previously in a different guise, to undertake that sort of work. You had been doing so exceptionally well for everybody. Given that you had that expertise it made good sense for the commission to refer matters to you, where you had the specialist expertise. That is a matter for further debate.

CHAIR: A very good question, Senator Abetz!

Senator ABETZ: Thank you, Chair.

Senator FISHER: Are you saying that the March 2010 or 2011 MOU—

Mr Wilson: 2011.

Senator FISHER: dealt with underpayment of wages in a different way from the previous arrangements? I am getting a head nod from Mr Campbell.

Senator Chris Evans: Is it me experiencing *deja vu* or did we cover this ground at the previous estimates? I am just trying to understand because—

Senator ABETZ: We have, and we will continue to—

Senator Chris Evans: I am not criticising. That is not—

Senator FISHER: February was before March.

Senator Chris Evans: That is what I am trying to remember. I think Mr Johns gave evidence about it, so it must have been in prospect then, was it? I am just trying to get it clear in my own mind because I thought it was already signed then. It must have been in prospect, was it? It is not for me to ask questions but I just want to be clear.

Senator FISHER: Whose question are you answering now, Mr Wilson?

Senator Chris Evans: I would have been grateful if you had asked that question.

Senator FISHER: Did it change the ground rules for underpayment of wages?

Mr Wilson: It changed the ground rules in the way it was played out. If you took the face of the two documents it might be possible to say what the difference is. Three or four years of practice had built up in which wages matters were dealt with almost exclusively within, first of all, the Office of Workplace Services and then the Workplace Ombudsman et cetera. The March 2011 MOU changed that practice—quite determinedly so. It now sets out a framework for us to refer wages and conditions matters explicitly to the ABCC. On the face of the two documents it could be inferred that that was the original intention anyway but that is not how it played out. How it did play out was that there were certain matters that the ABCC referred to the Fair Work Ombudsman which were seen to be almost entirely pretty low-level wages matters. There were a few matters—only three or four a year—which were then referred from our organisation to the ABCC. Those cases were where there was clearly, in our view, more than simply a wages matters to be considered—it was more systemic.

Senator FISHER: Do I understand you to indicate that the MOU in March actually came about at the request or suggestion of Mr Johns?

Mr Wilson: The way it came about was that, shortly after his appointment, Mr Johns indicated to me that he wanted to revisit the exchange of letters, and we then spent some time talking about what that really meant. That led to the MOU being written up. I had no difficulty with the change in arrangements and could see that that would suit his organisation.

Senator ABETZ: It meant less work for you—the ombudsman's office—didn't it?

Mr Wilson: Indeed.

Senator FISHER: Back to the sham contracting allegations. You talked about cleaning, call centres and hair and beauty on the basis of information that you had received, I think. Can you expand more on why those sectors and not others?

Mr Wilson: I will ask Mr Lozides to come forward and speak to that.

Mr Lozides: The areas that we selected for this particular intervention were based on a number of parameters. First, we have had some compliance matters raised with us in those industries. Second, some stakeholders were raising concerns in their industry groupings that this may be of concern to them. Based on that information and some anecdotal information from our own inspectorate we decided on those three areas.

Senator FISHER: So there have not been suggestions about non-compliance in respect of sham contracting or complaints from stakeholders in any other sectors in respect of sham contracting?

Mr Lozides: There have also been complaints to the Fair Work Ombudsman in the building industry, but, as the Fair Work Ombudsman has alluded to, that is now within the ambit of the ABCC.

Senator FISHER: So, beyond the building industry, there has been nothing as far as the Fair Work Ombudsman is concerned?

Mr Lozides: Yes, there was one other area: the security industry has also raised concerns with us.

Senator FISHER: Why has the ombudsman not chosen to do the same with the security industry?

Mr Lozides: Is a matter of resources at this point in time. We are considering doing a follow-up audit in the security industry later this year, because in 2010 we did some auditing in security and felt that, at this stage, as part of the sham contracting audit, we would not participate. In addition, we are doing some work in the ACT in the future through a DEEWR initiated program that security may be involved in as well.

Senator FISHER: So is it fair to say that, as far as the Fair Work Ombudsman is concerned, if there is any concern about sham contracting, it is in cleaning, hairdressing, call centres, the security industry and the building industry, but that is the beginning and end of it?

Mr Lozides: I would not say that it is the beginning and end, but based on the areas that we would like to pursue at this time and the matters that have come to our attention, those are the areas.

Senator FISHER: But you have not been able to suggest to me any other industry that has been subject to either allegations of non-compliance or that concerns being expressed to you by relevant stakeholders, so on what—

Senator Chris Evans: I think your question was fairly general, and the officer was probably being a little cautious. You sort of said, 'So you can say there's no concern?' I think he was probably being a bit cautious. I think he ought to answer in terms of complaints they have received, and that is the answer to your question. So whether that would be—

Senator FISHER: Which is 'no'.

Senator Chris Evans: That is fine if that is the answer to the question of whether we have received complaints from other sectors or not.

Mr Lozides: Not that have come to my knowledge in regard to undertaking the sham contracting intervention at this stage.

Senator FISHER: All right. That is somewhat of an indicator about the extent to which so-called sham contracting is an issue at all, or an issue at large. What are the actual activities that the Ombudsman is doing in investigating or assessing. You have talked about an audit of those industries—is that it, and if so what does your audit entail? And if not, what else?

Mr Lozides: The auditing is only one facet. We have also developed some education tools that are up on our website. There are also fact sheets that we have developed in terms of contracting relationships in the three areas I have mentioned. So it is not just the auditing phase. We have also been to a number of major events across Australia where we have provided that information, things like the National Careers Expo, CleanScene and the Big Meet to help educate employers and employees in regard to contracting relationships.

Senator FISHER: I know you said Mr Wilson will report at the end of July, but, without wanting to pre-empt that what are you able to say about the permeation of a problem in any of those sectors; any indicators about size of workforce or size of business where it is more prevalent rather than less?

Mr Lozides: Can I take that question on notice please, Senator.

Senator FISHER: We will probably get the report before then.

Mr Lozides: Senator, I cannot answer the question—if I can take it on notice?

Senator FISHER: Yes, thank you, Mr Lozides. The casual conversion clauses. Mr Wilson—I think you addressed, or I am told that you addressed, the fourth annual IIR Fair Work Summit on 16 and 17 May, where I understand that you canvassed the issue of casual conversion clauses that are common in some awards, do you recall?

Mr Wilson: That part I do not recall.

Senator FISHER: Did you suggest that in some circumstances an employee that has earlier been in receipt of a casual loading might subsequently retract that election if the receipt results from an election, and then claim leave retrospectively without being obliged to repay the loading? Do you recall any discussion or reference to that sort of an issue?

Mr Wilson: I do not recall discussing that myself. That was not part of my prepared text and I do not recall the question on the subject. I do recall the speaker after me talking about that subject. I do not wish to verbal him, but that may have come from him.

Senator FISHER: Then I accept that, obviously. Can you shed any light on that sort of a suggestion? Is there any circumstance in which you think that could occur, or in which the ombudsman would advise employers or workers that that could occur.

Mr Wilson: It clearly depends on the facts of the individual circumstance. The casual election clauses vary from award to award. The compliance policy that we would roll out would be a common-sense one which is that if the person has profited in the sense of an additional loading for being casual then yes, there might be a breach of the award in terms of not following the specific clause. It is possible that a court might order some sort of penalty

over that. I would struggle to think we would be in a circumstance where we would demand that they be provided with leave as well.

Senator FISHER: No, that would effectively provide a windfall after the event, would it not?

Mr Wilson: I am not quite sure of the circumstance you are talking of, no.

Senator FISHER: Thank you, I will leave it at that for now.

Senator ABETZ: If as a result of a successful Fair Work Ombudsman prosecution an order is made for the payment of back wages and the Fair Work Ombudsman has undertaken the cost of pursuing the prosecution but the employer does not make the payment, does the Fair Work Ombudsman also fund the enforcement proceedings or is the worker then required, at their own expense, to go to the Federal Court to have the judgment executed?

Mr Wilson: I will ask Ms Webster to answer that question.

Ms Webster: When we take a matter to court, ordinarily there are two orders that come out of that proceeding. One is an underpayment and the other is a penalty. Underpayment orders which are made by the court are made in favour of the complainants, not the Fair Work Ombudsman, and accordingly we are not able to proceed ourselves to seek to enforce those orders. Having said that, we may be engaged in the process of attempting to recover our own penalties. In those circumstances, we keep in contact with the complainants and assist them to the extent that we can to recover those moneys.

Senator ABETZ: Is there anything stopping the Fair Work Ombudsman from seeking an order that the money be paid to the Fair Work Ombudsman for distribution to the complainant so that they are able to undertake the enforcement proceedings?

Ms Webster: I believe that, if you look at the words of the act, unfortunately that is not something we are able to do.

Senator ABETZ: Minister, for what it is worth, it has been brought to my attention that there is such a case, not with penalty but with underpayment. An order was made, the business is not paying and the Fair Work Ombudsman has basically indicated to the complainant, 'You're on your own now. You've got to enforce it in the Federal Magistrates Court at your personal expense.' From what you are saying, Ms Webster, that would be the way it has to be because you cannot get the moneys out of the recalcitrant employer.

Ms Webster: Ordinarily we would assist complainants in attempting to recover the moneys if they are not paid when they are due.

Senator ABETZ: How?

Ms Webster: Ordinarily there would be a penalty imposed as well. In the process of seeking to enforce the penalty we would keep in contact with the complainant and inform them of the steps that we are taking.

Senator ABETZ: You impose a further penalty and you get the penalty money, but the worker who has complained still does not get wage justice. Is that right?

Ms Webster: I would need to understand the full details of the matter you are referring to.

Senator Chris Evans: I know you are trying to make a broader inquiry, Senator, but perhaps if you provide Mr Wilson with the details of the particular case he could look at and maybe advise both you and me. As you know, when you hear one side of the story it can often

be unclear. I am not suggesting there is anything inaccurate in this, but you know what I mean. It would be useful if Mr Wilson had a chance to review the particular case. I would be happy if he then wanted to advise you and me—

Senator ABETZ: The details of this have in fact been provided to the Prime Minister in a letter of 6 April 2011 and also, and I never knew this, Senator the Hon. Christopher Vaughan Evans—the minister at the table—me and a lot of others. Without mentioning the name or the case, Minister, if you can provide that to the Fair Work Ombudsman, that would be appreciated.

Senator Chris Evans: No doubt we have sent it down to him for advice.

Senator ABETZ: In fact, I also notice, under the CC recipients of this letter: Mr Nicholas Wilson, Mr Michael Campbell, Mr Andrew Conway. So the chances are that it is in your office. I make no complaint of the fact that you are not—

Senator Chris Evans: Senator, would you, perhaps in the tea break, give us the name to make sure we have the right letter—not on the record; just privately.

Senator ABETZ: Given all the CCs I am sure you will know—

Senator Chris Evans: Just so that we—

Senator ABETZ: but I am more than happy to, because there was literally thousands of dollars outstanding in this case that was an order. See what we can do. It somehow ended up with the Australian Taxation Office as well.

Mr Wilson: There were many involved in that matter. We know it well.

Senator ABETZ: You know it well?

Mr Wilson: We know it.

Senator ABETZ: You now know the case I am talking about?

Mr Wilson: Yes, I do. We will make sure you both receive a briefing about the involvement.

Senator ABETZ: If you could, I would be much obliged. Talking about unpaid moneys, I got another good update courtesy of answer No. 0772 from the last estimates. You seem to provide that on a six-monthly basis. The last one was on 31 December, so it stands to reason that 30 June would be the next, unless you have interim figures. I thought I might be cheeky enough to say that, given the delay in getting the responses, if I were to ask now, by the time I do get a response we might have the 30 June figures available.

Senator Chris Evans: If we responded quickly enough, we would be able to—

Senator ABETZ: Exactly so. I do not know how to approach this; you are quite right. Do we have interim figures?

Mr Wilson: I can give you data to 31 March.

Senator ABETZ: Thank you very much.

Mr Wilson: At 31 March 2011 the Fair Work Ombudsman held \$1.63 million.

Senator ABETZ: Do we have the break-up of 90, 180 and over 180 days or not?

Mr Wilson: We do. That \$1.6 million is for 6,465 people. The 0 to 90 days is \$53,971; 91 to 180 day is \$32,653, and then greater than 180 days is \$1,543,466.

Senator ABETZ: How are we going now? Last time I think we were talking about people that might be overseas, and how we might be pursuing them. Was it through Facebook and other things?

Mr Wilson: We have done those things. We have located a further 52 employees and have either returned or are about to return \$96,000 for those 52.

Senator ABETZ: I assume they would be in the over-180 day category.

Mr Wilson: I think that is a fair bet. If I need to change that I will come back and say.

Senator ABETZ: Thank you.

Mr Wilson: By definition, as that data shows, it very rapidly becomes greater than six months—simply because you cannot locate the person.

Senator ABETZ: Of course. I would have assumed that to be the case. I was just wondering whether we might send Mr Campbell overseas—besides the Great Southern region and the Barossa Valley—to pursue some of these.

Senator Chris Evans: I think Mr Campbell might have a tough time when he gets back to the office after these few days. He has had a bit of a pounding at estimates.

Mr Wilson: He doesn't need ideas!

Senator ABETZ: What is the Ombudsman's view in relation to whether annual leave loading is payable on unused annual leave, where an employee has an entitlement to such loading and where their employment is either voluntarily or involuntarily terminated? I think we can agree there have been some issues around this matter.

Senator Chris Evans: I think we covered this at the last estimates.

Senator FISHER: It was yet to be sorted.

Senator Chris Evans: In terms of Mr Wilson's advice, I probably covered that last time.

Senator ABETZ: If nothing has changed since last time—

Senator Chris Evans: I had just better check.

Mr Wilson: Nothing has changed since then.

Senator Chris Evans: The decision is with the department and me. His advice was canvassed at the previous estimates.

Senator ABETZ: So, nothing from last time. My next question is: have you, Ombudsman, had discussions with the minister or his office about this matter?

Mr Wilson: Not beyond simply talking very briefly this morning about how nothing has changed, no.

Senator ABETZ: So, in the meantime, what are we advising employers to do?

Mr Wilson: Our policy is to take the law as we see it. Certainly, as we said at the last Senate estimates, the view we have about annual leave loading is the one that we give to employers through the phone services and when our inspectors see them, which is that we believe that for those relevant awards—about 29 of them—the National Employment Standards override what might be different within the award.

Senator ABETZ: And we are awaiting the government's advice as to what they intended the NES to actually mean in relation to that. Is that correct?

Senator Chris Evans: We probably should cover it when we get to the department—

Senator ABETZ: Come 5 pm it will be asked there as well.

Senator Chris Evans: Yes; but the department will take you through both the processes we have had in place and the decisions with me.

Senator ABETZ: So it was a matter of, if you do not pay it as an employer, chances are there might be problems—and you will have to pay it, I assume, once the position is resolved—whereas, if you pay it and the determination is that you did not have to pay it, good luck trying to get back.

Mr Wilson: At the risk of opening this too wide, we view it as settled. Certainly, we understand that the minister and the government are looking at a range of policy options, but the advice we give to employers and employees has no ambiguity within it: we regard that as settled.

Senator ABETZ: Are you aware that employer organisations are advising their members that, where the member is operating under an agreement that specifically provides that no loadings is payable on unused annual leave, they should not pay it? Are you aware that that is happening?

Mr Wilson: I am not aware specifically that employer groups are giving that advice.

Senator ABETZ: All right. Is there anybody else at the Fair Work Ombudsman's office where that that might be happening? No? Everyone is unaware. All right. That is one question—

Senator Chris Evans: Just so you are clear, Senator, certainly the employer organisations are very much aware of the advice that the Fair Work Ombudsman is providing and of the issues that were canvassed at the last round of estimates. In fact, I have discussed it with them at our meeting between the various organisations and the ACTU et cetera. We have discussed those issues, and the department has had a process of engaging with the peak organisations. So, just to be clear, those organisations are well aware of what the attitude of the Fair Work Ombudsman is and how he is handling the matter. They are also aware of our last Senate estimates coverage of it, and my department has been engaging with the stakeholders. So, whatever they are advising, they are certainly doing it in the full knowledge of where we are at.

Senator FISHER: Which is up in the air.

Senator Chris Evans: However you want to describe it, at the last estimates the Fair Work Ombudsman made it clear how they were handling the matters. People may or may not agree with that, but all I am saying is that whatever advice is being provided is in the full knowledge of all of those circumstances.

Senator ABETZ: Does that also extend to the situations where they are operating under an agreement that specifically provides that no loading is payable on unused annual leave?

Mr Wilson: That raises all sorts of legal questions which we are not equipped to answer here today. The employer groups have not put that directly to us. If they wish to, then obviously they can.

Senator ABETZ: You are not equipped to answer it; what is—

Mr Wilson: Today I am not equipped, during these proceedings.

Senator ABETZ: Sorry—today. So an employer that is concerned about this could ring the hotline and get a definitive answer?

Mr Wilson: I am not trying to be cute here, but the point you raise is whether or not the content of a particular enterprise agreement that is contrary to the National Employment Standards was in the first place capable of approval, and, in the event that it was or was not, whether or not that term is operable now. We just do not have that information here this afternoon. We would probably say exactly the same thing through the info line and we would probably have to check.

Senator ABETZ: And get back in touch.

Mr Wilson: Indeed. As far as where they have not put this directly to me or to any of our senior staff, if employer groups wish to then obviously they can, and we will talk to them about that.

Senator ABETZ: If you could take that on notice for me—

Mr Wilson: Sorry, I am not sure what I am taking on notice.

Senator ABETZ: You said you could not give advice today in relation to the particular issue: where an employer is operating under an agreement that specifically provides that no loading is payable on unused annual leave. I asked: what would you be advising an employer in those circumstances? You said you could not advise us today.

CHAIR: I thought Mr Wilson indicated it would depend on the circumstances of the clause.

Mr Wilson: Yes, I did. Senator, I hate to interrupt, but Mr Campbell reminds me that we dealt with this question on the last occasion.

Mr Campbell: Senator Fisher asked some questions of me and we had a discourse on the subject.

Senator FISHER: In respect of the road transport industry award—the modernised award.

Mr Campbell: It was a hypothetical question, if I recall.

Senator FISHER: To the extent that it was based on—

CHAIR: A hypothetical.

Senator FISHER: You can laugh, Chair.

CHAIR: I can; I do.

Senator FISHER: Not justifiably. You just kicked your own goal with a laugh, if you can do that. The discussion about the Road Transport and Distribution Award 2010 was the discussion about a modernised award, which expressly said that, in the circumstances about which Senator Abetz is speaking, no leave loading would be payable. Senator Abetz is asking about agreements, but the discussion in February last year was about: what about an award that the industrial umpire has modernised that expressly says that no leave loading is payable in this circumstance, and will your organisation be advising that, in that circumstance, leave loading is payable? I recall the answer was: yes, you bet.

CHAIR: Before we go to more questions—

Senator FISHER: So you can laugh now.

CHAIR: I do, and do often, Senator Fisher. But what we are trying to establish now is what Mr Wilson is taking on notice from Senator Abetz. We are simply trying to clarify that point so that we can move on.

Mr Campbell: In a hypothetical circumstance, where an enterprise agreement had been certified by Fair Work Australia and it included a clause which was inconsistent with the NES, we would argue that the NES survives and that therefore annual leave loading on termination was payable, where it is otherwise payable on annual leave taking during employment.

Senator ABETZ: All right. So that is the attitude you would take.

Mr Campbell: I did not want to make it sound like an attitude, but that is our interpretation of the clause.

Senator ABETZ: Sorry. I did not want anything pejorative to be attached to the word 'attitude'. That is your—

Senator FISHER: Approach.

Senator ABETZ: Approach—thank you, Senator Fisher. I accept that. What if an employer has the toss-up between the Fair Work Ombudsman's approach and an employer organisation's approach and they conflict and they opt for the employer organisation's view and, in the fullness of time your approach may be upheld as being the correct one? Do they make themselves potentially liable to prosecution in that sort of matter? This is in general terms. I accept that you always have to take all the specifics into account. But if somebody acted in good faith on the employer organisation's advice, could they just make up by payment rather than being prosecuted?

Mr Wilson: I will divide my answer in two: the circumstances before January this year and the circumstances after. We tabled, in the last estimates hearing, the advice we had received from senior counsel and that articulated very clearly why we took a particular view. Now, no employer organisation—and no body, for that matter—has come to me and said, 'That advice is wrong, and your silk has overlooked something or other.' Our attitude is that we certainly regard that period after January as settled. Obviously, we understand that a different policy approach can be taken, and we will deal with that if and when it is. But, if an employer group were giving advice that we are not entitled to follow the view that we are following, then I think that would be pretty close to negligent advice on their part. Good on them, they obviously can do that, but I do not think that they could then argue that the advice was provided in good faith and the employer was acting in good faith. I think that would be a little bit difficult. For the period before January, when—

Senator ABETZ: Could I stop you just there, if I may.

Mr Wilson: Sure.

Senator ABETZ: In the case of a small business employer who might not trawl through the Fair Work Ombudsman website on a regular basis but might just get advice from the employer organisation and act on that—absent any knowledge of what the Fair Work Ombudsman may have determined—would you still say that the employer was acting negligently or with reckless disregard for an employee's entitlements?

Mr Wilson: That becomes a matter between them and their employer association.

Senator ABETZ: From a technical point of view, yes. But I trust that if an employer acted in good faith because of what an employer organisation had told them, in the absence of any other knowledge, they would then not be subjected to a prosecution.

Senator Chris Evans: That is why, Senator, when you raised the issue of advice being provided by employer organisations, I was a bit surprised. That is why I took you through the consultative processes that had occurred and the fairly wide knowledge that the industry associations I have dealt with have of this issue. I have conceded that there is a problem in that the interpretation of the NES is in conflict with what is in the modern award, and I do not think that is a desirable situation. I think everyone agrees with that. No-one agrees on the solution to that, and I am currently dealing with the matter. I wanted to mention that because I would be disappointed if employer organisations who are in the know on this issue did not provide advice to employers who tried to provide some protection for their employees because that is what they should be doing.

Senator ABETZ: And I would have thought that that was quite right and the right approach. But, in the event of an employer simply acting on advice without knowing all the detail that we have canvassed over a few Senate estimates, I trust that they would not be dealt with in an unduly harsh manner.

Senator Chris Evans: Mr Wilson expressed how he intended to deal with that at the last estimates when we went through this. I think he expressed the view that he would take a pragmatic sort of approach, and he can speak about that. But, clearly, there is an issue here, and it is difficult. I think Mr Wilson's key point is that they have received legal advice on how to interpret the state of play, and he seems to be saying today that he is not having that legal advice seriously challenged anywhere. I am not sure whether that is the case or whether, in fact, when there is a prosecution, someone will challenge that.

Senator ABETZ: I understand and accept all that.

Mr Wilson: Could I maybe try to put people's minds at rest. We are not looking for litigations over, for example, annual leave loading on termination. The matters that we would take to court would involve many, many types of underpayments. If the final part of the underpayment was a failure to pay annual leave loading on termination, then of course that would be in the statement of claims, but that in itself would not be the motivation for us to take the matter to court.

Senator ABETZ: Thank you. I think Senator Fisher has a follow-up question.

Senator FISHER: Thank you, Senator Abetz. If your legal advice is correct and is then implemented, there are others beyond the Fair Work Ombudsman who could well launch a prosecution of an unfortunate employer for, arguably, a fortunate employee, aren't there?

Mr Wilson: Yes. I cannot speak for other litigants.

Senator FISHER: That is right—or their representatives.

Mr Wilson: Or their representatives. But, as you know, the fact about court proceedings is that they are costly. I struggle to find the value-add in the transaction for an annual leave loading failure on termination.

Senator FISHER: Thank you. I have one final question on this issue. Given that it reared its head shortly before last estimates, some months ago, given that the Fair Work Ombudsman's legal advice turns on its head what has been industrial practice over many,

many years and given that the questions on notice answers show that there was no explicit discussion of this issue in the lead-up to and the passage of the Fair Work Act, why doesn't the government issue a moratorium or something until you sort it, if it has taken this long?

Senator Chris Evans: I am happy to give an answer now but I obviously do not want to go through this twice later on, when the department is here. You have raised the issue of a moratorium previously. That is not a policy option that we are seriously considering. There are a range of policy options before me to try and resolve this matter, but it is difficult. We have engaged with the parties. I have sought information. We will be making a decision soon, but it is not simple. We would all rather that we had not got here, but a moratorium is not part of the advice I have got as being an appropriate way out of this.

Senator FISHER: Some sort of holding pattern until you sort it. Call it what you will.

Senator Chris Evans: I think you can expect a decision very soon and, therefore, the need for a moratorium will not be necessary.

Senator FISHER: How soon is 'very soon'?

Senator Chris Evans: Very soon, Senator.

Senator ABETZ: Is the ombudsman involved in those discussions, or is it purely departmental and minister discussions?

Mr Wilson: We are not involved.

Senator ABETZ: You are not involved.

Senator Chris Evans: I will just clarify that Mr Wilson was asked earlier. We had a chat with my senior department official beforehand about where we were up to, just in the room.

Senator ABETZ: Mr Wilson has given evidence as to that.

Senator Chris Evans: Yes.

Senator ABETZ: That is understood in that context.

Senator Chris Evans: We knew you would have two goes at it—one when he was at the table and one when the department was at the table. So just as well we had the chat.

Senator ABETZ: Quite clearly I have been in opposition too long. What is the ombudsman's approach if some of the leave loading accrues prior to the National Employment Standards coming into being? Will it be retrospective as well?

Mr Wilson: Senator, I am afraid that I have never wanted to be an actuary; that would be a bridge too far. We have not got to the issue of retrospectivity or any other aspect of it. We simply formed the view, I suppose, that the payment is due on a particular occasion, which is the termination of a worker's employment. At the point that it becomes due, the law that applies at that point prevails.

Senator FISHER: If I read it correctly, your legal advice turns on a provision of the Fair Work Act in any event—that is, the NES.

Mr Wilson: Yes.

Senator FISHER: So pre-NES you would have to suggest that your legal advice does not give you a basis for pursuit.

CHAIR: The difficulty I have with this—and I have been very tolerant; maybe too tolerant—is that a lot of this revolves around hypothetical questions and—

Senator FISHER: Workplaces are having a lot of difficulty, Chair.

CHAIR: But it is problematic when we say, 'What would your view be if this happened, which actually has not happened yet.' In general terms, let us—

Senator ABETZ: These hypotheticals have happened. Whilst you might think I sit in my office all day dreaming up questions, the basis for most of my questions are as a result of consultations within the employment space and workplace relations space. And as much as I would like to think I was the brains behind all these questions, in fact they are real scenarios but people's names have not been mentioned.

Mr Wilson: Sure.

Senator ABETZ: It just seems to me that this aspect is an important one: that you believe the NES et cetera comes into play. That is fine. But what if there has been a substantially accrued period where the agreement said that there would be no leave loading payable and an employer is told, 'As of now it has changed and it is payable,' and there is the issue of reaching back and retrospectivity? Could you please take that on notice rather than delaying us further?

Mr Wilson: I will take that on notice.

Senator ABETZ: It is a genuine live issue for some employers who would like to have some certainty. You may have to assist me as I am not sure whether I have asked this question—

Mr Wilson: We will do our best.

Senator ABETZ: as yet in these estimates or whether I have only asked it of Fair Work Australia. The question is about whether or not adverse action provisions are being accessed by employees as a de facto unfair dismissal? Have I asked that?

Mr Campbell: You asked a related question at the start about flexible working arrangements.

Senator ABETZ: Yes. It has been put to me by a number of people. I must have asked it of Fair Work Australia and not the Fair Work Ombudsman, but I was intending to ask you as well. Is there any evidence to suggest that adverse action provisions are being used by employees as a de facto unfair dismissal claim for those dismissed from their employment under the six months and 12 months unfair dismissal thresholds? Do you have any evidence?

Mr Wilson: I do not think we have any knowledge of that.

Senator ABETZ: Were there any requests on your hotline or whatever as to what an employer's rights or, indeed, an employee's rights might be?

Mr Wilson: We will need to take that aspect on notice.

Senator ABETZ: If you could. If I am an employee and were to ring the ombudsman about an IFA, you would be able to provide advice on that?

Mr Wilson: We could.

Senator ABETZ: If I as an employee were to ask whether it would be considered that I were better off overall, do you apply a particular test or set of criteria to determine that? In particular, is it only monetary or do you also consider other factors? If so, how do you value them?

Mr Wilson: There are a number of ways that we approach it, including to look at the monetary value and the particular circumstances of the employee concerned. It might be a little bit difficult to flush that out through an info line, but we also deal with individual flexibility arrangements through the inspectorate and also through some other parts of the organisation. We would provide advice, but, like the legislation, it is at a very normative judgment that needs to be made.

Senator ABETZ: Yes. If it is a monetary value, the chances are that it is relatively easy, but there is the much used example that Minister Gillard had in the explanatory memorandum of being able to coach the son's soccer team. That is not necessarily something you can put a monetary value on. How is a judgment made in relation to whether somebody is better off overall?

Mr Wilson: In that particular circumstance—my recollection of the example is a bit hazy—but there were three or four criteria which were spelled out, including that the individual had initiated the request, that they had reached agreement about the transaction which was to occur and that they then put that into effect by writing it up and the person concerned had not walked away from it. That is my recollection.

Senator ABETZ: I do not want to make this a memory test. Could you take that on notice just to be sure of all of those factors, or to see whether you would wish to add to any of those factors. Do you have a published check list in regard to this, so that if an employer and employee want to enter into such an arrangement, these are the steps that should be gone through?

Mr Wilson: We do.

Mr Campbell: We have a best practice guide on the use of IFAs—individual flexibility arrangements. It sets out the way that employees and employers can enter into such arrangements, how they should be constructed legally and the various obligations on the employer and the employee with regard to the terms of those arrangements. The best practice guide also goes to an example where an individual looks to adjust his working hours to suit his personal circumstances. Again, that talks about the individual seeking out that arrangement with the employer and talks about it being an individual arrangement between that employee and that employer and not en masse through the workforce. It is very particularised.

Senator ABETZ: Does it still have the non-monetary benefits on the web site dealing with the IFAs?

Mr Campbell: The best practice guide?

Senator ABETZ: Yes.

Mr Campbell: I will need to check but I thought—

Senator ABETZ: I am assuming the best practice guide is on the web site.

Mr Campbell: Yes; it is.

Senator ABETZ: Does that still deal with the issue of non-monetary benefits?

Mr Campbell: The example would have had to have been changed since I last read the document but I will happily take that on notice. It certainly dealt with that, because the individual was looking to start work early for a purpose related to their family circumstances.

Senator ABETZ: Can I ask whether the Ombudsman has had a spate—or whatever we would call it—of complaints in relation, especially, to young people being asked to undertake trial employment and then not being paid for that? As I understand it, it is illegal—full stop—to say to somebody, 'Work for me for a day or a week for no pay. We will see how good you are and if you are good enough we might put you on.'

Mr Wilson: We will take on notice the issue of whether there has been a spate or spark of them. It is certainly a hardy perennial.

Senator ABETZ: Yes. A number of complaints have been received by my office. As it happens there was one poor fellow who got hit twice—once for a fortnight's work and once for a day's work.

Senator Chris Evans: I had an incident in Perth years ago of the same thing. Somebody did two weeks work in a pub on trial for no pay. It was particularly prevalent a few weeks back. I think it is probably partly impacted by the level of unemployment.

Senator ABETZ: Yes. As I understand it, it has never been allowed.

CHAIR: Can that be avoided by simply calling someone an intern?

Mr Wilson: I hope not. No. It is appropriate to demonstrate that a worker has the skill to pull a beer, make a cappuccino or what have you, but our policy line is that it would be a pretty quick demonstration to determine that you had the underlying skills. It would certainly not take a whole week or month or anything of that nature. But there are numerous practices around that are pretty sharp and when we see them we take a firm line.

CHAIR: So if a job description actually entailed a very similar work to someone who was being paid to do the work but they are going to be called an 'intern' and expected to work for a fixed period, say 12 months, for no wages, would that be legal?

Mr Wilson: I very much doubt it. I will be more than definitive than that: no, it cannot be legal.

Mr Campbell: Any work experience needs to be attached to a legitimate vocational training arrangement.

Senator ABETZ: The other questions will have to go on notice, given the time. Thank you.

Senator FISHER: In the explanatory memorandum to the now act, the then minister, now the Prime Minister, said:

... the Government is committed to monitoring the impact of the provisions contained in the Bill through a post-implementation review. This review will provide a comprehensive analysis of how the Government's new workplace relations system is operating and its impact on employers, employees, the community and governments. The review will assess if the provisions in the Bill have led to any differential impacts across regions, industries and occupations.

It is now almost two years since the Fair Work Act. Do you know anything about a review?

Senator Chris Evans: This is a subject for the department and me to answer for the department. The review is a responsibility of the department.

Senator FISHER: Thank you, Minister. I am nonetheless asking the Fair Work Ombudsman whether they know anything about a review.

Mr Wilson: No, I do not.

Senator FISHER: If a review were in prospect, would you expect your organisation to be involved in it in any way?

Mr Wilson: I would expect many things. Yes, I would, but I am not aware of a review.

Senator FISHER: Some two years, and nothing. Thanks, Mr Wilson.

CHAIR: Thank you. I think that completes our questioning of the Fair Work Ombudsman. Thank you for your attendance at the estimates today.

Proceedings suspended from 15:31 to 15:46

Office of the Australian Building and Construction Commissioner

CHAIR: We will resume these estimates hearings. We have now moved on to the Australian Building and Construction Commission. Welcome, Mr Johns, and to other officials from your department. Do you have any opening remarks you would like to make to the committee?

Mr Johns: No, thank you, Chair.

CHAIR: We will move straight to questions. Senator Abetz?

Senator ABETZ: Thank you, Chair, and welcome to Mr Johns and members of the ABCC. First of all, it is nice to see four people sitting at the table. I understand last time there was only one, Mr Johns, and I thought that there was a particular reason for that. Is that right, that you thought that it was not necessary to have others at the table or is my recollection incorrect in that regard?

Mr Johns: I do not think I was asked any questions about that, Senator.

Senator ABETZ: You weren't? How many people appeared with you at the last estimates?

Mr Johns: I appeared with Mr Casey, the CFO.

Senator ABETZ: We now have two others here with us. What is Mr Corney's role, and Ms Addison's?

Mr Johns: Mr Corney is the group chief counsel. He heads up all of the legal function. Ms Addison is the group manager for field operations. She heads up all the field operations group.

Senator ABETZ: I am sure you are prepared for this question, Mr Johns, but I note you are no longer a member of the Labor Party. Can I congratulate you on that and ask you on what date did you finish up, if you can remember?

Mr Johns: It was late March, Senator.

Senator ABETZ: Was there any particular trigger to that, or it was unrelated to the questioning here and elsewhere?

Mr Johns: There was no particular trigger, sir.

Senator ABETZ: I must say I was starting to doubt myself when the CFMEU came out on my side. I thought I might have got it wrong in relation to this issue, but then I saw that you had decided to relinquish the membership, anyway, so that is fine. I understand that one of your listed interests was, or has been, the Australian Health Promotion Association. Are you still involved with that?

Mr Johns: I am the independent chair of the audit committee of the Victorian Health Promotion Foundation, which is commonly referred to as VicHealth.

Senator ABETZ: Is VicHealth related to the Climate and Health Alliance at all?

Mr Johns: Not that I am aware of.

Senator ABETZ: That body does not mean anything to you? You will not be appearing in an advertisement with Cate Blanchett any time soon, by the sounds of it. Can I move onto the arrangements in relation to certain jobs. I was wondering if you could tell us about the organisational chart, especially as it relates to the executive director public affairs and the executive director, legal central/western. Are those two positions currently filled by acting appointments?

Mr Johns: They are currently filled by non-ongoing appointments.

Senator ABETZ: Does that mean acting or not? I suppose I do not know. Let us first start with the executive director public affairs. When was that person appointed?

Mr Johns: Senator Abetz, I am calling to the table Heather Hausler, who is the head of our corporate group.

Senator ABETZ: When was the executive director public affairs appointed on a non-ongoing basis?

Ms Hausler: It was sometime in November. Do you want the exact date?

Senator ABETZ: Yes. I think we were told that last time, but if you could remind me that would be helpful. Having offered it, can you supply it? If you cannot, do not bother and we will not delay.

Ms Hausler: No, I have it.

Senator ABETZ: How long is it anticipated that this non-ongoing position will be held by the current occupant?

Ms Hausler: The position has been advertised and interviews have been held.

Senator ABETZ: When was the position advertised?

Mr Johns: Senator Abetz, I might ask Mr Corney to answer those questions. He is the chair of the selection committee.

Mr Corney: I am not in a position to give the exact date, but it was some little while ago. That was obviously an open advertisement for both positions. A selection committee entirely consistent with normal public service practices was chosen, including an independent representative of the Australian Public Service Commission. The committee then assessed the applications, moved to short-list and has subsequently interviewed for both positions. Those interviews were held within the last fortnight. The committee is presently considering its decision, working through referee reports, and will subsequently submit a report.

Senator ABETZ: That is in relation to both the executive director public affairs, and the executive director legal central/western?

Mr Corney: Yes, Senator, it is both positions.

Senator ABETZ: If you could take on notice for me exactly when the non-ongoing occupant was appointed.

Ms Hausler: Excuse me, Senator, I can give you those dates now. The executive director public affairs commenced as a non-ongoing on 29 November 2010. The executive director legal Western Australia commenced on 16 December 2010.

Senator ABETZ: When were those positions advertised? Were they advertised at the same time or separately?

Ms Hausler: They were advertised at the same time.

Senator ABETZ: Do you know the date?

Ms Hausler: We are just finding that out.

Senator ABETZ: We will take it on notice. You do not need to come back at the moment. You anticipate an appointment shortly. How many were short-listed for each position?

Mr Corney: Senator, for completeness: we make a recommendation, as the interview committee, and the actual movement on the recommendation is of course not our decision. Whether it will occur immediately or in a little while is not something that I can speak to, but I anticipate that we will be putting a recommendation sooner rather than later, as we have said to everybody.

Senator ABETZ: How many were short-listed for each position?

Mr Corney: For the central legal position, two people were short-listed and for the public affairs position a significant number. But I do not have that material here.

Senator ABETZ: Take it on notice. Who makes the final decision, Mr Johns?

Mr Johns: I think I receive a recommendation from the committee.

Senator ABETZ: Mr Corney, you chair that committee?

Mr Corney: Yes, Senator.

Senator ABETZ: The committee you chair will make a recommendation to Mr Johns. Mr Johns, in due course, as commissioner, will decide whether or not to accept your recommendations in relation to those two positions.

Mr Corney: The committee is chaired by me. It has another public servant and also an independent representative of the APSC.

Senator ABETZ: The representative of the Australian Public Service Commission of course does not have a veto. He is there in an advisory capacity?

Mr Corney: No. That person is a full member of the committee.

Senator ABETZ: But he does not have a veto role?

Mr Corney: No, he is a full member of the committee. He is involved in the short-listing, in the setting of the questions and in the asking of question.

Senator ABETZ: You can be fully involved in everything but, at the end of the day, be completely outvoted on the committee, though. That is the practical capacity.

Senator Chris Evans: No, that is not the practical capacity, Senator. Under the merit selection processes, which the government endorses and introduced substantial changes to, the Public Service Commissioner gets to nominate a person to many of the panels, if not most of them, as a representative of the commissioner to be a full part of the selection process. It

sounds to me like there are three on the panel, and that person is a full member of an appropriate selection panel.

Senator ABETZ: But at the end of the day, the Australian Public Service Commission representative may have a differing view as to the suitable applicant or the name that should go forward. Just by dint of a committee of three, it stands to reason that, on occasion, a decision might be made on a two-one vote.

Ms Hausler: That is not correct, Senator. If the Public Service Commission representative disagreed, they would write a dissenting report so that the person making the decision would have full access to all of the information. It does not come down to a vote. If they come to an agreed position, then it is put forward as an agreed position. If there is disagreement, then there is a dissenting report. I have seen those being done.

Senator ABETZ: But you only need a dissenting report if you have been outvoted on the committee. Otherwise, you are part of the majority, and then you do not have to put in a dissenting report.

Ms Hausler: If you are part of the majority you agree.

Senator ABETZ: Yes.

Ms Hausler: It is not extra numbers.

Senator Chris Evans: The point is that, in the end, it is a decision of Mr Johns in this circumstance. He will have the advice of all members of the selection committee to consider when he makes the decision.

Ms Hausler: If the Public Service Commission representative is unhappy, they can tell the Public Service Commissioner. In fact, they are required to write a report at the end of the process to say whether they thought that all of the correct processes were followed.

Senator ABETZ: Usually what would happen, though, is that potentially a number of applicants would go forward as suitable and capable of fulfilling the role, without necessarily indicating a choice of one or another but saying to Mr Johns, for example: 'Here are two or three people that could fulfil the role.'

Ms Hausler: Potentially but, in my experience, there is normally one recommended.

Senator ABETZ: We will see what happens, but thank you for that.

Ms Hausler: You asked for the date. The SES jobs were both advertised in the public service *Gazette* on 3 March.

Senator ABETZ: Can I ask whoever is responsible for this: we have had people acting in positions for over two months—in one case over three months—before we have advertised. What is the reason for that? I would have thought that as soon as you have an acting person advertising may have been pursued promptly—especially the appointment of 29 November, because a lot of people do consider job applications over the Christmas period as well.

Ms Hausler: Senator, that would normally be the case if it were an ongoing position that was well established. But in this case Commissioner Johns was creating a new structure and he wanted to test if those positions were appropriate for that level. After the Christmas break and after he had had a couple of months to consider, he made the decision that those positions

were appropriate at that level and, at that point of time, he decided to advertise them for permanent filling.

Senator ABETZ: I would just make the observation that I trust that those that were given the non-ongoing positions initially have not been given the opportunity to so ensconce themselves that they make themselves the ideal applicant for the position. Having been in there, they will have been able to potentially scope the position. But we will see what comes out at the end of the process. I understand, Mr Johns, that you gave a speech on 3 November talking about new offices, if I am correct, in Canberra and Darwin.

Mr Johns: I do not know which particular speech you are referring to, Senator.

Senator ABETZ: It was on 3 May to the AIG conference.

Mr Johns: Yes.

Senator ABETZ: What are the staffing arrangements for the new officers?

Mr Johns: I will ask Ms Addison to—

Senator ABETZ: As I understand it, previously there was no Canberra office and no Darwin office. Is that correct?

Mr Johns: That is correct, Senator Abetz.

Senator ABETZ: Can we start at the very beginning. When did the Canberra office open? Let's deal with Canberra first.

Ms Addison: The Canberra office opened on 21 February 2011. As at the opening, it was staffed by two field operation staff that we recruited specifically to that office. We have subsequently commenced recruitment to expand that office.

Senator ABETZ: Were those two field operational staffers operations staff recruited internally or externally?

Ms Addison: Externally. One person was from the private sector in New South Wales. The other was from the private sector in South Australia.

Senator ABETZ: What level are these appointments?

Ms Addison: We have one at an APS5 level and one at an APS4 level.

Senator ABETZ: There are going to be another two appointments?

Ms Addison: There will be another two appointments.

Senator ABETZ: At what level will they be?

Ms Addison: Senator, we have advertised those for APS5s or APS4s. It will be subject to the recruitment process.

Senator ABETZ: And experience and all that.

Ms Addison: That is right. Senator, in addition, we have recently transferred on secondment a person at the EL2 level from the Fair Work Ombudsman's Office.

Senator ABETZ: On secondment for how long?

Ms Addison: Three months.

Senator ABETZ: Are you confident they will have enough work to undertake?

Ms Addison: Absolutely, Senator.

Senator ABETZ: They have been going now for, what—

Ms Addison: Since February.

Senator ABETZ: So is the workload there?

Ms Addison: Absolutely, Senator.

Senator ABETZ: What are they doing, splaying out sham contracting or—

Ms Addison: They are doing quite a bit of work in the sham contracting space, Senator, yes.

Senator ABETZ: What about other issues that might fall within the purview of the legislation?

Ms Addison: They have also had some matters related to alleged unlawful industrial action.

Senator ABETZ: Have there been any prosecutions arising from that as yet?

Ms Addison: We have had one successful prosecution in the ACT, Senator, recently. That matter arose from an investigation undertaken in 2009.

Senator ABETZ: I would have anticipated before the establishment of the office.

Ms Addison: Yes. That is correct, Senator.

Senator ABETZ: Would it be fair to say that the majority of the work of the Canberra office is currently devoted to sham contracting?

Ms Addison: There is a reasonable amount of claims related to underpayment-of-wage claims, of which there is a proportion of sham contracting. But, yes, most of the work they have at the moment is in that space. We received, in April alone, 18 tip-offs in relation to this particular sham contracting and underpayment related matters. So you would have to say the vast majority of cases they have at the moment are in that space.

Senator ABETZ: The other office was the Darwin office.

Ms Addison: Yes.

Senator ABETZ: When did that start?

Ms Addison: It has not commenced operation, Senator. As with the staffing of the ACT office, the commencement is subject to a recruitment process. We are finalising the recruitment to the Darwin office as we speak. One offer has been finalised to a staff member. What will be an internal transfer of someone from our Victorian office to Darwin. The other recruitment is a person who is external to the ABCC, based in Cairns, but they are from another government department. We are just finalising those arrangements as we speak.

Senator ABETZ: At what levels do you anticipate those appointments?

Ms Addison: APS5 and APS6, Senator. My expectation at this point in time is that the Darwin office will commence towards the end of July.

Senator ABETZ: Where do you coordinate all this from, Ms Addison—from the Melbourne headquarters?

Ms Addison: No, Senator, I am based in Canberra.

Senator ABETZ: So are you part of the staff complement that we were just referring to?

Ms Addison: I am, Senator.

Senator ABETZ: I do not need to know what level et cetera. You are coordinating this for all of Australia out of the Canberra—

Ms Addison: Yes, I have a national role, Senator, and I am based in Canberra. But in terms of the actual on-the-ground detail, I do not do that myself. I have other staff who do that. There is a person who looks after the Queensland, Victorian and Tasmanian offices and he will look after the arrangements for those offices. There is an officer who is based in WA who will be responsible for the Darwin office. He is also responsible currently for the South Australian office as well as the Perth office, and he is coordinating arrangements for the commencement of the Darwin office. The Victorian based staff person looks after New South Wales. The ACT is sort of linked to New South Wales, so he has responsibility there.

Senator ABETZ: Is your move to Canberra a permanent placement, a secondment?

Ms Addison: I have been permanently recruited to the ABCC, Senator. I am based in Canberra and I operate from Canberra.

Senator ABETZ: So for all intents and purposes Canberra is now your home base, whereas before it was Melbourne. Is that correct?

Ms Addison: Senator, when I was recruited the intention was that I would be based in Melbourne. When I joined the ABCC the Commissioner gave me the opportunity to be based in Canberra. I took that opportunity.

Senator FISHER: Senator, can I ask—

Senator ABETZ: Yes.

Senator FISHER: Ms Addison, how much of your day-to-day work is dealing with, on the ground, the industry in the ACT, as opposed to other states.

Ms Addison: I would primarily deal with other states—in the operations in other states, other jurisdictions.

Senator FISHER: What percentage would you nominate as on-the-ground work for the industry in the ACT?

Ms Addison: In the opening of the office, Senator, there were relationships that I built in my role in relation to the ACT, but I would be spread across those jurisdictions where our activities take place. My workload would align to other field operations' workloads. At the moment, we have a number of matters running in Queensland, so I am spending a lot of time talking to people in Queensland. Equally, if there are particular issues arising in other jurisdictions, that is where the focus of my attention will be.

Senator FISHER: So the majority of your on-the-ground work is in states and territories other than the ACT?

Ms Addison: Yes, Senator.

Senator FISHER: Why have an office in Canberra?

Ms Addison: The opening of the office was in relation to the activities in the ACT and the offences, if you like—the lack of compliance in the ACT. We have a significant proportion of activities in the ACT that justified the opening of that office.

Senator FISHER: I tried to ask this before: can you nominate a percentage of your time that is devoted to the ACT? You did not do so, which is fine, but you are now saying a 'significant proportion'. So which is it or what is it?

Ms Addison: Senator, can you clarify 'my' time or 'field operations' time? By time obviously is in a management role versus the time that we have that—

Senator FISHER: Fair enough. A preliminary question: are the field officers based in Canberra as well?

Ms Addison: We have two field operation staff currently based in Canberra, Senator.

Senator FISHER: I think it is fair enough to ask. My interest is to see to it that there are operational reasons for which there is an office in the ACT. So I think relative to that is the extent to which the day-to-day work of the field officers focuses on on-the-ground activity in the ACT.

Ms Addison: Yes. If I can give you an indication of our current investigations, Senator, the ACT represents 10 per cent of those matters. New South Wales, for example, and in contrast, represents 18 per cent.

Senator FISHER: Sorry, can you say that again?

Ms Addison: The ACT currently accounts for 10 per cent of our current investigations. New South Wales accounts, at the moment, for 18 per cent of our current investigations.

Senator FISHER: What about other states?

Ms Addison: Victoria accounts for 25 per cent, Queensland for 21 per cent, Western Australia for 23 per cent, South Australia for three per cent.

Senator FISHER: And I am not even there all the time!

Senator Chris Evans: South Australian senators are going to react to this. Maybe it is because you are law-abiding citizens.

Senator FISHER: Actually, the Cole royal commission found relatively little thuggery and lawlessness in South Australia, Minister. Other than South Australia at a splendidly paltry three per cent, the ACT is certainly minor, even when you take into account the work of field officers, because it ranks at 10 per cent. Everybody else is almost double. New South Wales is the next closest at 18 per cent, and then it ratchets up. I still ask: on what basis would you justify having the boss in Canberra as opposed to somewhere else?

Ms Addison: I think the organisation chose to recruit me. They thought that was an appropriate recruitment to occur. In terms of fulfilling a national role where I service the whole of Australia, where I operate probably is not as important as where our staff are on the ground, as long as I am able to effectively communicate with them.

Senator FISHER: Do other offices in other states have equal to, fewer than or more than the two operatives whom you supervise?

Ms Addison: Senator, I have two direct reports. One of my direct reports is in Melbourne, and the other direct report is in Western Australia, in Perth. I am responsible for the whole operational group. Of that, I have two direct reports and then those direct reports have relevant state directors reporting to them. State directors have team leaders and team leaders have staff.

Senator FISHER: The two very good, I am sure, bodies in the office with you in the ACT are indirect reports. They do not even report directly to you?

Ms Addison: No, they do not. They report to a team leader in New South Wales.

Senator FISHER: Mr Johns, why base Ms Addison in the ACT, especially when you recruited her, I understand, based on a Victorian base?

Mr Johns: I did not recruit Ms Addison, Senator. Ms Addison was recruited prior to my appointment.

Senator FISHER: Okay. Thank you.

Senator ABETZ: So the appointment was made for Melbourne. Was the offer for Ms Addison to work in Canberra made by you, as the new commissioner?

Mr Johns: Senator, I understand that when the position was first advertised it was advertised for either Melbourne or Sydney.

Senator ABETZ: The appointment was made for Melbourne?

Ms Hausler: Yes, that is correct.

Senator ABETZ: And so it was after the appointment was made that the offer or suggestion was made that this task could also be undertaken out of Canberra?

Mr Johns: I formed the view it could have been undertaken out of any state. It could have been undertaken out of Perth or any capital city. It is a national role.

Senator ABETZ: Can I then ask, just to clarify this: does the task, Ms Addison, require you to fly to Melbourne on a regular basis?

Ms Addison: I do fly there, Senator, yes.

Senator ABETZ: How often?

Ms Addison: I would certainly fly once a month to attend executive meetings, at a minimum.

Senator ABETZ: What about to Western Australia?

Ms Addison: I have been to Western Australia twice since my appointment, Senator.

Senator ABETZ: Thank you for that. By the way, we are still on your speech, Mr Johns, of 3 May. I think we traversed some issues round and about. In that speech you spoke about transparency et cetera. You gave an indication, if I am correct, that additional guidance notes are being developed on right of entry, witness and stakeholder management, site visits and national code processes. Is that correct?

Mr Johns: Yes, Senator.

Senator ABETZ: How are we going with the development of, first of all, right of entry?

Ms Addison: The document has been substantially drafted and it is going through its final clearance stages.

Senator ABETZ: And for whom is this document being drafted—from the employer perspective or from the permit holder perspective?

Ms Addison: It addresses both sides.

Senator ABETZ: Equally?

Ms Addison: My recollection is yes.

Senator ABETZ: So it is not one document for one and another document for another? It is the two together?

Ms Addison: Yes, Senator.

Senator ABETZ: What about witness and stakeholder management?

Ms Addison: That document is currently with me for review and we are working out way through that one.

Senator ABETZ: And then site visits?

Ms Addison: That document is also near to finalisation. It is basically completed.

Senator ABETZ: And the national code processes?

Ms Addison: That one is with me at the moment for review and my colleague and I were discussing it today.

Senator ABETZ: So by next estimates these will be on the website, do we hope? I do not want to hold you to it, because these things may always—

Mr Johns: I certainly hope so.

Senator ABETZ: Thank you. I accept that. Mr Johns, do you agree that subcontractors and their employees form the main or significant client groups for the ABCC?

Mr Johns: They are a significant client group.

Senator ABETZ: Do you think the transparency initiatives that you announced, including the litigation policy, guidance note on investigative processes et cetera will resonate with subcontractors and their employees?

Mr Johns: I hope they are a useful tool to all building industry participants.

Senator ABETZ: I am wondering how—if I can use the term—Bob the Builder or Bob the Subcontractor would actually come into contact with these documents and guidance notes et cetera. Are these things sent out to all registered builders or subcontractors or are you relying on them to access the website? How does Bob the Builder and his employees get to know about these things?

Mr Johns: We have a very wide distribution email list and so, when documents and so forth are published on our website, information goes to those subscribers. The guidance notes are very high level in terms of what the agency is saying about its regulatory work. They are then supported, if you like, by a range of information tools, including fact sheets, which are regularly provided to subcontractors and their employees when my inspectors and so forth undertake site visits.

Senator ABETZ: I am sure it is an impressive email list, but it would not have too many subcontractors on it, would it?

Mr Johns: I would have to take that on notice.

Senator ABETZ: Yes, all right. And I understand just as an aside that Agitate! is no longer on it. Is that right?

Mr Johns: I am sorry, Senator.

Senator ABETZ: Agitate! is no longer on your email list.

Mr Johns: I do not know who Agitate! is.

Senator ABETZ: It is an organisation that puts out missives every now and then about matters on workplace relations, and we were told that the ABCC has an automated media release system that sends copies of all media releases et cetera to those on the list. Agitate! has long been on that list. But since our critical comments we notice that releases no longer arrive. Just a technical oversight or a gremlin, we are sure.

CHAIR: Did they write to you about this?

Senator ABETZ: No. When they send—

Senator Chris Evans: It does not sound like a normal company, Senator.

Senator ABETZ: When they send this out to everybody, I am a recipient amongst, I would imagine, hundreds.

CHAIR: I do not think I am.

Senator BILYK: I am not on their list, obviously.

Senator ABETZ: They are very offended that somehow they have been dropped off the ABCC list. I will suggest to them that they make contact with you to be put back on. But the real question I want to ask is: what is the extent of your email list with Bob the Builder type subcontractors? So thank you for that. You also indicated in your speech that through internal procedures the Wilcox criteria had been adopted before deciding to issue a section 52 notice. That is a fair comment?

Mr Johns: Yes.

Senator ABETZ: Or summary of what you said. So what value do they add to the important section 52 process? What deficiency are they addressing in your mind?

Mr Johns: I will ask Mr Corney to address that.

Mr Corney: I think it addresses a number of matters. It provides that witnesses are now able to be recompensed for their travel and expenses which—

Senator ABETZ: And that is all witnesses?

Mr Corney: That has not been the case. That is correct, Senator. So the witnesses are now able to get that. There is additionally a clarification by way of the commissioner himself hearing the proceedings. Thirdly, that the commissioner would be asking the Office of the Commonwealth Ombudsman to conduct an own motion review of the use of the section 52 power. Fourthly, the Administrative Review Council would be asked to look at the use of the powers against the relevant 20 administrative law guidelines. I think that is a broader view.

Senator ABETZ: The payment of costs; what are we talking about here? Forgone wages, travel costs, accommodation—everything?

Mr Corney: The issue has not been raised greatly but, insofar as it has, it has generally been in connection with the payment for travel. Wages are, in most cases, met by the employer in my experience, but again it would be based on—

Senator ABETZ: But what if you are the employer or the contractor who is being asked as to whether or not something happened on a work site?

Mr Corney: I think the understanding is the reasonable cost of travel, accommodation and associated expenses including, in appropriate cases, lost wages.

Senator ABETZ: So how many people have been the beneficiary of this new procedure?

Mr Corney: There has only been one section 52 hearing in the last six months. I think one was conducted by the commissioner. I am not aware of any applications being made.

Senator ABETZ: So all this has not yet been actually tested in relation to the costs?

Mr Corney: I am not aware of any applications.

Senator ABETZ: And if there were any applications you would be aware?

Mr Corney: Yes.

Senator ABETZ: So, in other words, we can take it that there have been no applications.

Mr Corney: Yes.

Senator ABETZ: There has only been one section 52 hearing in six months. Is that a bit down on previous periods, Mr Johns?

Mr Johns: There have been four notices issued by me, but the conduct of only one examination.

Senator ABETZ: Examination is the term. Thank you.

Mr Johns: Yes. Three of the four notices were withdrawn because after the notices were served the intended examinees agreed to provide voluntary statements.

Senator ABETZ: And I am sure that happened in the past as well, that people served with notices then agreed to voluntarily provide information. So can I be told how many section 52 hearings have been held on an annual basis in the past?

Mr Johns: I can take that on notice. We ordinarily issue a half-yearly report that deals with statistics on section 52, but I can take on notice the year on year comparison.

Senator ABETZ: It just seems a little bit late, but thank you for that. Are the new procedures in relation to the section 52 process on the website?

Mr Johns: Yes.

Senator ABETZ: And did you consult as to whether there might be any adverse consequences at all as to the new processes?

Mr Johns: Sorry, Senator.

Senator ABETZ: Under section 52 processes you have adopted the Wilcox criteria, so things have changed. In coming to that determination, did you consider whether there might be any adverse consequences of doing so?

Mr Johns: I certainly turned my mind to what was in the Wilcox report. The Wilcox report traversed a range of material from a range of submitters so, to that extent, yes.

Senator ABETZ: You have. Thank you. And you were satisfied there weren't any?

Mr Johns: Yes.

Senator ABETZ: You have invited the Commonwealth Ombudsman to conduct an investigation of every ABCC section 52 examination. Has the Ombudsman been invited for the one that you have undertaken in the last six months?

Mr Johns: I have opened up a dialogue with the Office of the Commonwealth Ombudsman about post-conduct review and those arrangements have not been finalised as between my office and the Office of the Commonwealth Ombudsman.

Senator ABETZ: How far down the track are we with them?

Mr Johns: There has been a meeting and there has been some dialogue as between the two agencies. I cannot give you an indication of how long it might take to resolve the arrangements.

Senator ABETZ: Because no arrangement is in place, with respect to the one hearing that has been conducted the chances are it will not be subjected to this process or will you seek to have that one hearing subjected to the process as well, if you come to an arrangement?

Mr Johns: I will, yes.

Senator ABETZ: So you would want the Ombudsman to go back to that one. How many others would you want the Ombudsman to have a look at?

Mr Johns: That has not been determined.

Senator ABETZ: What I am trying to get a handle on is, once you have got an arrangement with the Ombudsman—if ever you do—would you then have the arrangement only for those hearings that then take place thereafter or would you be reaching back? And I understand the one that has been held within the last six months will be subjected to that. Is that correct?

Mr Johns: Yes.

Senator ABETZ: So why only that one as opposed to any others reaching back?

Mr Johns: I am not saying only that one. I am saying no determination has been made about other retrospective ones.

Senator ABETZ: But why have you determined in your own mind this particular one but no others? Why have you come to that determination?

Mr Johns: It is the only one I, as the commissioner, have conducted.

Senator ABETZ: And I think it is fair enough that you consider that to be the appropriate starting point, the ones that you conducted personally. And that is your rationale?

Mr Johns: It is why I think that one ought to be, yes.

Senator ABETZ: That makes sense. Coming back to the reimbursement of the costs, can you indicate to me the rationale of providing reimbursement of costs for somebody who has determined personally not to voluntarily supply that information? Why wouldn't you reimburse all those who voluntarily provide you with information? Why would you only reimburse people that are forced to provide you with information? Basically, if you want to provide information you would say, 'Well, the way I get my costs covered is to refuse; let them serve a section 52 and then my travel and other costs will be paid for.' So what is our rationale?

Mr Johns: It was one of the recommendations of Wilcox J QC, which I adopted. It is not unlike conduct money being provided to witnesses who are required to attend proceedings under a subpoena.

Senator ABETZ: In my day I think, you used to have to pay \$2 conduct money, or something ridiculous, but that was only for transport costs, as I understand it, as opposed to lost wages and other things.

Senator FISHER: Bus fares.

Senator ABETZ: Yes.

Mr Corney: Yes, I think the amount has been increased considerably. I think it varies on a state by state basis.

Senator ABETZ: I have not had to worry about this for about 17 years.

Mr Corney: I do recall the days of 10c or something like that, but I think it is considerably more now.

Senator ABETZ: You are dating yourself. I was at \$2; if you were at 10c, that is a worry.

CHAIR: A shilling when I was a lad.

Senator ABETZ: So you are saying it is akin to conduct money for court proceedings?

Mr Johns: Yes.

Senator FISHER: Apart from the obvious, can you spell out in what way it is akin to conduct money?

Mr Johns: In court proceedings where a witness is served with a subpoena and forced to attend before the court they are, as a right, entitled to conduct money. In this circumstance you have a person being forced to attend before an examination and so the reimbursement that is provided to them is, in that sense—and that is what I am trying to explain—akin to conduct money.

CHAIR: But the question was apart from the obvious.

Senator FISHER: To the extent that it goes—

Senator Chris Evans: The answer that was given by Mr Johns that Wilcox J recommended has been adopted and the model is the conduct payments. I think that is the answer.

Senator FISHER: But you are not replicating the conduct money arrangements, because you are intending to go further than simply conduct money.

Mr Johns: I think it is akin to conduct money, Senator.

Senator FISHER: Accommodation?

Mr Johns: Yes.

Senator FISHER: Wages?

Mr Johns: Mr Corney went to the issue of differing arrangements around differing states.

Senator FISHER: You say it is a recommendation of the Wilcox report. Have you either implemented or announced that you would implement every recommendation of the Wilcox report?

Mr Johns: On my first attendance here on 20 October I did so.

Senator FISHER: So how many have you actually got in train in terms of implementation out of the total number? You might want to take that on notice.

Mr Corney: Perhaps if we work through the issues. Internal procedures to adopt the criteria have been put in place. We have indicated that there will be a reimbursement, as we have just been discussing. The commissioner will be presiding personally over section 52 examinations. That is in place. Extending it a bit further, the powers under section 13 have been delegated so that the commissioner has delegated, by the use of section 13, its functions

under section 10 to all ABCC employees. And, additionally, the approach has been made to the Ombudsman to the ARC and also that the commissioner has decided to seek a direction that he consult with a member of the Administrative Appeals Tribunal when the section 52 powers are exercised. So all those issues are consistent with what has been identified by Justice Wilcox.

Senator FISHER: Perhaps I should have been clearer in my question. Mr Johns, when I asked are you implementing every recommendation of the Wilcox report I was meaning 'every' as in every, not just confined to section 52 related recommendations.

Mr Johns: I only turn my mind to those recommendations which are within my power to adopt and my recollection is that they went to section 52.

Senator FISHER: So you are of the view that there aren't any other Wilcox report recommendations that you could implement?

Mr Johns: That is correct.

Senator FISHER: Thank you.

Senator ABETZ: So you implemented all the Wilcox report recommendations that you could?

Mr Johns: Yes, Senator.

Senator ABETZ: And the Senate did pass that and we talked about that last time, didn't we, about the ministerial direction and the—

Mr Johns: There was a question on notice about that and we did indicate the differences between what was proposed by Wilcox—

Senator ABETZ: The direction and the Wilcox recommendations, yes, you did.

Mr Johns: And we made the point that we had not adopted the matters that were the subject of the direction.

Senator ABETZ: Of the direction, but of the Wilcox inquiry.

Mr Johns: Yes.

Senator ABETZ: Yes, I understand that. Just bear with me. You will be pleased I am writing 'outcome 5' next to this topic.

Senator FISHER: Are you still dealing with section 52, Senator?

Senator ABETZ: If you have got some more, go for it.

Senator FISHER: One more. Why are you inviting the Ombudsman to review however so many section 52 investigations you decide to ask, leaving open to what extent is retro. Why are you doing it?

Mr Johns: I think in answer to a question from Senator Abetz on the last occasion I explained that this is a unique power in the workplace relations environment. It is one that I have indicated publicly I think is a necessary power and I think it is important that there be as much public confidence in the exercise of the power as is possible. And one way I thought to do that was to invite the Commonwealth Ombudsman to conduct post-examination reviews.

Senator FISHER: Are you doing a cost-benefit-analysis of that proposition—increased confidence? So section 52 is a necessary part. There needs to be confidence in section 52. Senator Abetz has asked you about costs thereof.

Senator Chris Evans: Senator, I think the earlier evidence of Mr Johns mentioned that there was a discussion and negotiation going on with the Ombudsman's office about what the framework would be. I do not want to speak on behalf of the Ombudsman, but having heard his advice at an earlier hearing no doubt part of his consideration would be costs and resources. But I think Mr Johns's evidence is that they are still in the process of working that through. And, no doubt, one of the considerations is that—I have been through this with the Ombudsman on another portfolio matter—resource and regularity are required to provide that public assurance, but Mr Johns may have something more to add about that.

Mr Johns: Certainly the issue of cost is one that has been traversed with the Commonwealth Ombudsman.

Senator FISHER: It still has not been sorted, has it? Who will pay?

Mr Johns: No. As I said, the issue is being traversed. It is premature to—

Senator FISHER: So it has been discussed but not resolved. Likewise, the consequences of any adverse finding by the Ombudsman, if I understand correctly. What happens?

Mr Johns: I am sorry, Senator.

Senator FISHER: Likewise, the consequences of any adverse finding from the Ombudsman; does it void your initial discussions or what happens?

Mr Johns: No. It would go to a continuous improvement of the section 52 process. If there was a finding that there had not been a compliance with requirements, it would go to continuance.

Senator FISHER: So it would go to the process in the future but it would not affect the findings made during that section 52 investigation. Is that what you are saying? Or the observations, whatever you call them.

Mr Johns: It is probably not correct to characterise what comes out of a section 52 as a finding.

Senator FISHER: How would you characterise them?

Mr Johns: I would just characterise it as evidence.

Senator FISHER: A finding by the Ombudsman of deficiencies in, say, for example, your section 52 process would go to your process for section 52 things in the future, but it would not void the evidence that you obtained at that section 52 investigation. Is that what you are saying?

Mr Johns: I cannot answer that question, Senator.

Senator FISHER: Firstly, when will you be able to answer that question? And, secondly, in terms of a cost-benefit-analysis for this proposition I would have thought that is one of the things you would want to take into account, along with the cost, as to what will be the consequences of a positive finding by the Ombudsman and a negative finding?

Mr Johns: Yes, Senator.

Senator FISHER: Firstly, when will you decide and how will you decide what will be the consequences of a finding of deficiency or an adverse finding by the Ombudsman? When will you decide and how will you decide? And I am asking you that now. And then on notice a cost-benefit-analysis of the proposition.

Mr Johns: I cannot speculate about when arrangements between my agency and the Commonwealth Ombudsman will be concluded. I cannot give you a date on when that decision will be made.

Senator FISHER: So do you not have a view as to what—you have spoken publicly about this: 'It's a great idea. People need to have confidence in this unusual power. I'm going to open it up to the Ombudsman.' Haven't you got any idea what you think should be the consequence thereof?

Mr Johns: I have indicated that if there was an adverse finding it would feed into a continuous improvement process within the ABCC.

Senator FISHER: Yes.

Senator Chris Evans: Also, Senator, it would have the obvious advantage that the Ombudsman comes before Senate estimates and other parliamentary committees, so it would provide transparency for the parliament and the community if they had any concerns with the process.

Senator FISHER: Thank you, Minister. Mr Johns, you have clearly thought about this proposition long and hard. Haven't you got any view of your own as to what should be the consequence, if any, of an adverse finding by the Ombudsman for the evidence that you have got out of a section 52 investigation?

CHAIR: You have asked this question three times now and you have got the same answer.

Senator FISHER: Mr Johns has said 'process for the future'—I hear that. I am asking about evidence, Chair, not about process.

Mr Johns: Senator, I do not have a view about the legal implications for the evidence obtained during a section 52 examination in the event that the Commonwealth Ombudsman were to find a deficiency in the process.

Senator FISHER: Thank you.

Senator ABETZ: Thank you.

CHAIR: So you have finished, Senator Fisher?

Senator FISHER: On that issue, yes, but Senator Abetz has—

CHAIR: Senator Abetz.

Senator ABETZ: If I can return to one of the matters we were canvassing last time and that is have we organised a register of interests now with the minister?

Mr Johns: Senator, I can ask our head of Corporate to talk about those processes.

Mr Casey: The ABCC keeps a register of gifts within its corporate services area to record gifts that the ABCC Commissioner and other ABCC officials might receive in the course of their official duties.

Senator ABETZ: You are the holder of that register?

Mr Casey: Yes..

Senator ABETZ: In the scheme of things, in the pecking order, you would be under the commissioner?

Mr Casey: Yes.

Senator ABETZ: You determine then whether in effect your boss is entitled, for example, to take hospitality from, as it happens, at the tennis.

Mr Casey: Yes. I am the delegate for the ABCC Commissioner in terms of approval of gifts that the ABCC Commissioner might receive.

Senator ABETZ: You are lower in the pecking order than him, so can I assume that at this stage, Mr Casey, you have thought that every request by the commissioner thus far has been an appropriate one?

Mr Casey: Yes.

Senator ABETZ: Yes? Beg your pardon? No. He has answered that he has so—

Senator Chris Evans: Just the tone of voice: I think you ought to be fair to the officer. The officer can answer how he has handled each of them.

Senator ABETZ: If you want to complain about tone of voice, fine, talk to your Prime Minister, but let us concentrate on the words he has spoken.

Senator Chris Evans: Treat the officials appropriately, Senator. Don't impugn motives of an officer, that is all I am asking you to do. Ask your question.

Senator ABETZ: Very sensitive. I asked a question whether or not he had found himself, or words to that effect, in a position to reject or deny any of the requests by the commissioner, and I think we have got a very clear answer that no he has not, and that is correct, isn't it?

Mr Casey: Yes.

Senator ABETZ: Yes. So there was, and correct me if I am wrong, discussion at the last Senate estimates about the possibility of having a register with the minister's office or passing on the information from you, Mr Casey, to the minister's office. My recollection may be faulty as to that, but has anything like that occurred?

Mr Casey: No. I think we have received departmental advice on the policy that the department applies to the receipt of gifts for officials such as the chief executive, and the ABCC's policy is consistent with that of the department's.

Senator ABETZ: That will not necessarily reflect well on the department, but we can pursue that—

Senator Chris Evans: Senator, I think after it arose at the last hearing, the department undertook to speak with the agency about making sure there was compliance with the normal processes and the sort of departmental officers will be able to help you with any information in terms of the departmental advice.

Senator ABETZ: I would have thought in general terms that very invidious task for an officer more junior to have to sit in judgment on whether or not the commissioner's behaviour or request is an appropriate request for funding, say, to go to the tennis with his partner—

Senator Chris Evans: Senator, I think sitting in judgment probably overstates it but I think when the department are before you, you can ask about the policy advice. No doubt that is similar to other agencies and how that is handled. But I am flashing outside the off stump here. I am not aware of that other than another department had a conversation, as I understand

it, with the ABCC about this matter. When the officers are here they will be able to tell you what advice they gave and what the sort of procedure in other agencies like the ABCC is.

Senator ABETZ: Thank you. I scribbled myself a note exactly to remind myself to do that, so thank you for that, Minister. In relation to travel entitlement—

CHAIR: Can I just ask a question of the register?

Senator ABETZ: Yes, of course.

CHAIR: So the register has been kept since the beginning of the ABCC?

Mr Casey: Yes.

CHAIR: So it is all there, and it is the whole lot.

Mr Casey: Yes.

Senator ABETZ: Who actually gets to see this register?

CHAIR: That is a good point.

Senator ABETZ: It is held by you, a CFO, senior position but not quite as senior; there would be a few above you. Some might say it is not necessarily a career-enhancing manoeuvre if you were to overly question some of the requests that may come your way from people that are above you in the food chain.

Senator Chris Evans: I think the antidote to that, Senator, is he has got to turn up at estimates and explain anything that he has dealt with.

Senator ABETZ: Yes, but see the problem is, we do not know what is on the register and, quite frankly, I do not want it publicly displayed necessarily. That is why somebody above, at the ministerial level or even the secretary of the department, for example, were to have some oversight of it, it may be a more robust mechanism.

Senator Chris Evans: When it comes to policy advice, Senator, I think that is probably the best way to start this conversation.

CHAIR: Yes. Does the policy that you apply actually have guidelines about what is and what is not acceptable.

Mr Casey: Yes.

CHAIR: So you actually make decisions based on effectively a set of rules that you test against—it is not just something that you have a whim to decide whether something passes and something does not.

Mr Casey: Yes. I take the exercise of my delegation in this respect very seriously.

Senator ABETZ: I am sure you do. So are there guidelines?

Mr Casey: Yes.

Senator ABETZ: I assume they must be publicly available.

Mr Casey: They are outlined in our finance directions and also our chief executive instructions.

Senator ABETZ: Does that mean that they are publicly available or not?

Mr Casey: I would have to take that on notice.

Senator ABETZ: Yes, please take that on notice. Is there a definition of what official function might be or is it any function that the commissioner might get invited to that he could attend?

Mr Casey: Again, I would have to take that on notice.

Senator ABETZ: All right.

Mr Casey: They might be spelt out in more detail in the policy itself.

Senator ABETZ: The chances are, if you are able to make that available to us, then it will obviate any other questions, so thank you for that. I understand that in June 2009 the ABCC obtained an interlocutory injunction against one J McDonald and that prohibited this one J McDonald from engaging in unlawful industrial action on any Diploma Construction building site in Western Australia. I understand this one J McDonald has undertaken such a site visit—or a number of them in fact—which appear to be in breach of the injunction. Can somebody confirm to me thus far that I have got the history right—namely, that an injunction has been obtained for Diploma Construction building sites?

Mr Johns: The events you talk about predate my time as commissioner, but I can certainly take on notice that issuing of an injunction.

Senator ABETZ: You would not be aware of that? There was a big hit in the news, I thought, in recent times: Mr McDonald's visits.

Mr Johns: I would have to take on notice the scope of the injunction in order to determine whether or not present matters fall within that, so I am happy to take those matters on notice.

Senator ABETZ: Can you then also advise us as to the reasons, if what I am saying is correct—there was an interim injunction in June 2009 and the behaviour alleged appears to be in breach—why no contempt proceedings have been instituted?

Mr Johns: I will take that on notice.

Senator ABETZ: That is a very serious matter, and I trust that it was not on the basis that Mr McDonald said he was investigating sham contracting, but we will await to see what the outcome is. I also understand there is a similar case on the Gold Coast in Queensland and it involves the large project of the Gold Coast Hospital. Bovis Lend Lease, I understand is the head contractor there. I understand the site has stopped while the unions undertake a sham contracting audit and that lasted for two days involving 2000 workers. Does anybody know anything about that?

Mr Johns: I can confirm that we are investigating the alleged unlawful industrial action in relation to those matters.

Senator ABETZ: And to your knowledge were any sham contracts discovered by the unions?

Mr Johns: The full circumstances of that matter are under investigation presently, and I would not want to prejudice the law enforcement investigation.

Senator ABETZ: That is a fair comment, and I accept that. Are you able to tell us when you started investigating this matter—if not, take it on notice, if it is not readily available because time is getting very short. So take it on notice.

Mr Johns: We will take it on notice.

Senator ABETZ: Can I refer you to a front page of the *Saturday Age* of—

Mr Johns: Sorry, Senator, can I just go back to the last one?

Senator ABETZ: Yes, of course.

Mr Johns: It seems that we commenced investigating the matter on 17 March.

Senator ABETZ: And still no determination as to how this matter is going to be resolved?

Mr Johns: Correct.

Senator ABETZ: But we are agreed that, on the face of it at least, the stop-work was related to the investigating of sham contracting?

Mr Johns: We are aware of reports that has been the claim.

Senator ABETZ: That is a better way of putting it, yes; thank you for that. On 2 April 2011, the *Saturday Age* had a front page story, 'Hells Angels' extortion bid'. Minister, you can laugh but unfortunately it is that sort of stuff that has been plaguing our work places, especially in the construction sector. The introductory paragraph says:

The Hells Angels tried to extort almost \$1 million from one of Australia's biggest construction companies during a dispute featuring Melbourne underworld bosses.

Is the ABCC investigating this matter?

Mr Johns: We do not investigate criminal matters.

Senator ABETZ: So nothing as a result of this has been drawn to any degree of investigation?

Mr Johns: I do not understand the report to make allegations of workplace relations breaches. It is a matter properly sitting with the police.

Senator ABETZ: There was, as I understand it, an ongoing dispute between, if you like, contractors.

Mr Johns: I do not know that I can add anything further.

Senator ABETZ: So you are not investigating this at all.

Mr Johns: I will take it on notice, but I understand we are not. As I think I have explained on previous occasions, whenever there is an allegation of a criminal matter and the police are investigating it, we always defer any involvement in a matter to the police.

Senator ABETZ: As, of course, you did with the firebombing of CFMEU headquarters in Sydney, which Senator Cameron was most vocal about in more recent times. But would you agree with me that at least these sorts of stories might suggest that there are still substantial unsavoury elements within the building and construction sector within Australia?

Mr Johns: Senator, I do not know that I can venture an opinion about matters outside my jurisdiction.

Senator ABETZ: Can you tell us about the memorandum of understanding that you are seeking to enter into in relation to cooperation with your commission and other players in the field such as, say, certain construction companies or associations?

Mr Johns: Certainly. My agency has proposed that there be a memorandum of understanding between the ABCC and a large number of construction companies about the voluntary provision of information.

Senator ABETZ: So when did these discussions first take place with any organisation?

Mr Johns: Just bear with me—8 February.

Senator ABETZ: Of this year; that was when the discussions started?

Mr Johns: Yes.

Senator ABETZ: Was that your idea, Mr Johns?

Mr Johns: Yes.

Senator ABETZ: So industry did not approach you; you approached them?

Mr Johns: Yes.

Senator ABETZ: What was the purpose of this memorandum of understanding?

Mr Johns: There has been no conclusion to a memorandum of understanding; there is ongoing dialogue about it.

Senator ABETZ: Yes, but it was your idea. What purpose, what were you trying to effect, what were you trying to achieve by this initiative?

Mr Johns: On my first occasion before the Senate I explained that there are many occasions where section 52 is used at the request of head contractors, and so the memorandum of understanding seeks to have them provide information voluntarily without resort to section 52.

Senator ABETZ: Why do a number of contractors and other people ask the ABCC to use the section 52 provision?

Mr Johns: I cannot answer on behalf of head contractors and the like, but people have expressed views to us that they fear repercussions if they are seen to assist the agency.

Senator ABETZ: That is one of the reasons why the section 52 process was included in the framework to protect people who feel intimidated and scared because of physical and/or commercial retribution in the event that they were to volunteer information. That is why it was deemed appropriate to have a section 52 process. How do you think that this memorandum of understanding, if it works out, will achieve a better outcome than the existing section 52 process?

Mr Johns: If information or evidence is provided voluntarily it will, of necessity, be provided more promptly than it would otherwise be through a section 52. So it would mean that an investigation could be concluded earlier, and if any resulting proceedings were to commence, they would commence earlier. So it would expedite an investigation if information is provided voluntarily.

Senator ABETZ: But what protections would you be able to offer people if it was provided voluntarily?

Mr Johns: I do not understand the question, Senator.

Senator ABETZ: I thought we were agreed that a section 52 process was because people were reluctant to provide information voluntarily because they feared repercussions therefore you serve the notice and it is seen for all the world that whoever the witness is has been dragged in on an involuntary basis; whereas you get them to sign up on a voluntary basis, doesn't it blow the cover of a section 52 protection, albeit an informal protection in relation to those that might seek to take retribution?

Mr Johns: People who are served with a section 52 can say, 'I gave the evidence because I was served with a section 52.' Under this arrangement, they would not be able to say that because they had not been served with a section 52.

Senator ABETZ: That is right. I still do not understand. People will give you information voluntarily in some circumstances; in other circumstances, they will not.

Mr Johns: Yes.

Senator ABETZ: Therefore you have the section 52 powers. Why would this memorandum of understanding make it more likely that people would give you information voluntarily if their concern is to be protected by being able to say to people that might seek to take retribution, 'Sorry, mate, I was dragged in. The law provides I had to.'

Mr Johns: If people want that continuing protection, it would be available to them. What that MOU seeks to do is indicate a preference for receiving information voluntarily and we ought to do investigations.

Senator ABETZ: Of course, and I would have thought most people would prefer if they felt comfortable in doing so to give the information voluntarily. If you are prepared to sign a memorandum of understanding voluntarily, then chances are any evidence you might have you would be willing to give voluntarily as well. I cannot really understand the rationale for this exercise, I have got to say.

Mr Johns: I think there is great utility in having head contractors indicate a preparedness to provide information voluntarily. It will hasten the conduct—

Senator ABETZ: Are you saying there are head contractors out there for all intents and purposes provide the middle-finger salute about providing evidence voluntarily irrespective of whether or not they fear retribution. I would have thought the only reason they would not be providing it is: they have got something to hide themselves or whether there is fear of retribution.

Mr Johns: I cannot speculate about that and I would not characterise it in that way.

Senator ABETZ: How far has this process got?

Mr Johns: It has been presented and I am waiting for a response.

Senator ABETZ: How long have you been waiting for a response?

Mr Johns: Since 8—was the date I gave 8 February?

Senator ABETZ: 8 February.

Mr Johns: Yes.

Senator ABETZ: That is quite a few months already—over three months.

Mr Johns: Yes, but the organisation to whom it was presented only meets once every three months.

Senator ABETZ: Fair enough. This was presented on 8 February, so when was this idea first thought of and first drafted. Clearly, it was not all done on 8 February.

Mr Johns: I would have to take that on notice.

Senator ABETZ: If you could, I would be obliged and we might pursue an update next time round. We were told courtesy of the HATE media, the *Australian* on 23 February 2011 in an article by Ewin Hannan on page 9:

The nation's building industry watchdog has signalled he will take on the construction union over its refusal to accept trade-offs in pursuit of a 24 per cent wage claim, as he revealed plans to expand his operations into the Pilbara.

Is that a fair report? None of that is in inverted commas, so it is undoubtedly interpretation by a journalist; is it a fair interpretation?

Mr Johns: Again, going to the speech that you have already gone to in May of this year to the AiG, what I traversed there was the role of us as the regulator in relation to good-faith bargaining. That is a more accurate description.

Senator Chris Evans: Rather a dramatic presentation.

Senator ABETZ: That is why I asked whether it was a fair representation or not. The heading was 'Building watchdog bares teeth...' That is a bit overdramatic by the sounds of it—bares tooth as opposed to teeth. Can you tell us the 24 per cent wage claim—is that a matter that you have pursued or been engaged with the unions about?

Mr Johns: No, we do not have a view about claims that are made or reported that they might be made.

Senator ABETZ: Possibly—and I do not need a word-by-word critique—but this is the article of 23 February 2011 page 9 in the *Australian*, if you can just give me a half-page summary of what this is on about and whether it is a fair representation or not rather than delaying the committee any further.

Senator Chris Evans: I do not think we can ask Mr Johns to give a critique as to whether it is a fair representation. As I understand it, he has given a speech which he can make available to you. I gather some of it might have followed from the previous estimates, but it would be unreasonable to say, 'Review the article' as it were and whether it is a fair representation. I think when we go to the record of what Mr John's said, it would be the best way to deal with it.

Senator ABETZ: As I understand it, the AIG speech as general in its terms; whereas this relates to a particular 24 per cent wage increase that allegedly you have expressed some opinion about.

Mr Johns: I think what happened was I made an opening address last time I appeared before Senate estimates and I made comments in that about our role in good faith bargaining. I think that article seeks to traverse that.

Senator ABETZ: Let us leave it on this basis: if you have any comments in relation to this article, to clear the record. The chances are it will be beneficial for both of us: I will be better informed and you will have cleared the record. Have you apologised to Mr Lawrence? Where are we? The *Australian* 25 February 11: 'ACTU demands apology from watchdog'. It says allegedly:

ACTU secretary Jeff Lawrence has demanded the building industry watchdog apologise after it questioned the construction union's refusal to accept trade-offs in pursuit of a 24 per cent wage claim.

I am assuming this is the same issue and that you have not apologised.

Mr Johns: No.

Senator ABETZ: Right. You might like to take those two articles together in anything you might like to tell the committee about those assertions. Once again, do not take too much time over it.

Senator Chris Evans: I do not want to be pedantic but I do not think it is a habit we ought to get into of asking officers to respond to articles. I am not trying to be difficult and I know you are worried about the time but it is not a precedent I want to set. If you want to ask about the facts of a case, that is fine. I do not think officers should be asked to respond—you might want to ask: has he written to Mr Lawrence? That is fine but I do not think he ought to be asked to run a commentary on newspaper reports.

CHAIR: The process is: questions are asked and answers are given, not opinions, essays or anything else. Officers are always trying to be as helpful as possible.

Senator ABETZ: I can ask a whole range of questions like: was an apology requested? If so, how was it provided? Was it by telephone? Was it by email? Was it by letter? If so, have you responded? How did you respond et cetera, rather than going through all that, I would agree with you if we came with a wad of newspaper stories and said, 'Right, please comment on each one of them.' This is a discreet issue where the ACTU allegedly got upset and has demanded an apology and the assertion was that Mr Johns was starting to bare his teeth. Just in that discreet issue of the 24 per cent wage increase, if you could assist us, I would be much obliged if you could—

Senator Chris Evans: I still make the point, Senator, if you have got a question, you ought to ask it now or put it on notice.

Senator ABETZ: In that case, I will ask.

Senator Chris Evans: Yes.

Senator ABETZ: Were you asked to apologise? And we will be here for a lot longer than necessary.

Senator Chris Evans: No, I say you can ask it now or ask it on notice but I am just saying I think it is only in fairness to both this commissioner and any officers that they not be asked to provide a commentary. But if you want to put a set of detailed questions on notice, that is fine, and Mr Johns is obliged to respond to those.

Senator ABETZ: Normally, when I have done this in other areas, officials do take it on board and provide what they believe is an appropriate response without going into pages of details saying, 'The comma's in the wrong place,' that just give you a broadbrush approach. But if that is the approach you take, Minister, here we go. So did Mr Lawrence ask for an apology from you?

Mr Johns: Yes.

Senator ABETZ: And did you read about that in the newspaper or was it communicated to you beforehand?

Mr Johns: I received a letter from him.

Senator ABETZ: Before it appeared in the media or not?

Mr Johns: I would have to take that on notice.

Senator ABETZ: If you could. And have you responded to that letter?

Mr Johns: Yes.

Senator ABETZ: And did that letter contain an apology?

Mr Johns: No.

Senator ABETZ: Why did you think an apology was not necessary?

Mr Johns: I formed the view that the characterisation of the article made by the ACTU was not one open on the article.

Senator ABETZ: So you believed that the ACTU had misinterpreted an article. Are you able to identify which article that was?

Mr Johns: I think it was the article on 19 February.

Senator ABETZ: Yes. And in the *Australian* newspaper?

Mr Johns: I think so.

Senator ABETZ: Yes, which is the area that we are talking about. And had you made any comments in relation to a particular union pursuing a 24 per cent wage claim?

Mr Johns: My recollection is that I was talking generally about the obligation of good-faith bargaining.

Senator ABETZ: We were told that ahead of an appearance before a Senate estimates hearing today—so we must be meeting and seeing each other on 23 February—but you had allegedly said that you intended to extend the ABCC's operations into the Pilbara noting mineral and petroleum projects valued at \$125 billion were under construction or about to be built in the region. The ABCC previously monitored it from Perth et cetera.

Senator Chris Evans: The answer to that, of course, is that the Hansard will be an accurate reflection of what occurred at that estimates.

Senator ABETZ: Yes—

Senator Chris Evans: So that is all on the record.

Senator ABETZ: but an apology was sought from the ACTU and it was not given. Did anybody else ask you for an apology?

Mr Johns: No.

Senator ABETZ: So the CFMEU or—

Mr Johns: My recollection is that the letter from the ACTU had a cc to the CFMEU.

Senator ABETZ: And did your letter have any ccs on it?

Mr Johns: I think it had the same ccs as the letters to me.

Senator ABETZ: If you feel free to provide the letter requesting the apology and your response, if you consider it appropriate, take it on notice if you do. If you can provide those two letters to the committee, I would be obliged. But, undoubtedly, you might want to think about it.

Mr Johns: I will take it on notice.

Senator ABETZ: Yes, thank you. And then we had this bizarre heading: 'Peace about to break out on Canberra building sites,' in the *Canberra Times* on 5 March. There was the suggestion that a sham contracting in that article was a matter that was being pursued by the CFMEU and that the Master Builders Association have drafted an agreement that will force

all contractors working on territory government construction jobs to be IR compliant. Have you been involved in that at all?

Ms Addison: Not directly, no. This is a matter for the ACT government, so ACT Procurement Services is pursuing an arrangement as part of their contracting arrangements and their consulting, have been consulting with the CFMEU and the MBA. In that process, they did consult with us as well.

Senator ABETZ: I am told, courtesy of another media story, that 'the ABCC confirmed it would investigate weekend strikes at the Wonthaggi or the Victorian desalination plant, as well as another on 21 February.' Is that media report correct that you are investigating, and if so, where are we at?

Ms Addison: I am not familiar, necessarily, with that media report, but we have a number of investigations ongoing related to stoppages at the desal plant.

Senator ABETZ: And what about the particular one that—take this on notice, then—is referred to in the *Age* on 8 March 2011 and where the investigation is with that.

Ms Addison: We will take it on notice, thank you, Senator.

Senator ABETZ: Our good friend Mr Ark Tribe came before a hearing, I understand, in South Australia; what was the outcome of that case?

Mr Corney: The Commonwealth Director of Public Prosecutions took that matter, and the matter was dismissed by the magistrate.

Senator ABETZ: Was that for refusing to cooperate with the ABCC?

Mr Corney: Yes, Mr Tribe had not followed a notice to attend, and that was the basis of the prosecution.

Senator ABETZ: How is our sham contracting inquiry going, Mr Johns?

Mr Johns: I will ask Officer Cliff Pettit to deal with the matter.

Mr Pettit: We have concluded all the public inquiries now and are collating information.

Senator ABETZ: And have you, Mr Pettit, or the commissioner or anybody else from the ABCC phoned any of the submitters about the submission?

Mr Pettit: Not at this stage, no.

Senator ABETZ: So there has been no proactive contact by anybody in the ABCC to submitters?

Mr Pettit: There would have been a representative by all of the submitters at the public inquiries, so the issues they raised were vented in the public forums.

Senator ABETZ: The public inquiries, of course. There would be interaction, but not at the public inquiries has there been any interaction by you, Mr Pettit, or, indeed, anybody else from the ABCC in relation to the submissions that have been made.

Mr Pettit: There has been no formal discussions with any individual submitters.

Senator ABETZ: What about informal discussions?

Mr Pettit: There would have been a number of informal discussions at—

Senator ABETZ: Relating to what?

Mr Pettit: industry events. It would have just been general conversation during industry events at which the parties attended.

Senator ABETZ: Sorry, during industry events, right?

Mr Pettit: Yes.

Senator ABETZ: It stands to reason you may have seen somebody and said, 'Yes, we received your submission,' or, 'I've read your submission, thanks for it.' But I am wanting to suggest something a bit deeper than just casual conversation as to the actual content. Has that been explored with any of the submitters other than at public hearings?

Mr Pettit: No.

Senator ABETZ: No. You are sure of that?

Mr Pettit: To the best of my knowledge.

Senator ABETZ: Mr Johns, can you give us the same assurance in relation to yourself?

Mr Johns: From time to time, I have a range of conversations or engagements with industry stakeholders. A number of them—I think, nearly all of them—made submissions to the sham contracting round table, and I would have had discussions with them about their submissions. It would have come up in conversation. I cannot say that I have not had conversations with submitters about what is in their submissions.

Senator ABETZ: Have you telephoned anybody about their submission?

Mr Johns: I have a recollection of having a telephone conversation with one of the submitters, I think, that I initiated, yes.

Senator ABETZ: Why didn't you volunteer that before, when I was asking about whether anybody had been contacted or these matters talked about? We were told about the informal at the public hearings, but you initiated the phone call, Mr Johns?

Mr Johns: I think it is consistent with—

Senator ABETZ: The record will disclose whether it was or was not. Did you initiate that phone call?

Mr Johns: Yes.

Senator ABETZ: And the purpose of that phone call?

Mr Johns: I wanted to understand some of the submissions that were made and what was the basis of those submissions.

Senator ABETZ: Because you were not particularly pleased by those submissions?

Senator JOHNSTON: I do not know that I would characterise it that way; I would characterise it as me wanting to understand what was the evidence that supported the submission.

Senator ABETZ: Why wouldn't you have undertaken that discussion at one of these open hearings for the public to be involved in because, if I might say, with respect, it would be like a judge—although I do not put you in that category—ringing a witness and saying, 'What do you mean by this evidence?' but not in open court. It seems, if I might suggest, not the best practice to have undertaken, to put it mildly.

Senator Chris Evans: I think that is a bit of a long bow. You and I both know that we sit on or have sat on Senate inquiries and people give evidence, but we also have conversations with them about their evidence and their perspectives as part of general work as a parliamentarian. I am not sure that Mr Johns sits in judgment in the same way in terms of this inquiry.

Senator ABETZ: He has an inquiry that is underway.

Senator Chris Evans: Sure.

Senator ABETZ: He has asked people to make submissions. Those submissions are on the web, I understand. All of them, Mr Pettit?

Mr Pettit: Yes.

Senator ABETZ: Yes. We were told it was going to be robust, open, transparent—all those wonderful virtues that have been described earlier on as being part of the ABCC's new way of doing business as was outlined to the AIG on 3 May 2011, if I recall.

Mr Pettit: Senator, can I just correct the record? There is—

Senator ABETZ: It just seems to be not to be a very open and transparent manner to ring one of the submitters and say, 'What did you mean by this?' I would have thought, if anything, you might have written to them and put that letter up on the website for all to see, and then say, 'There were certain things in this,' but for the world to see. 'I have written to them with these questions and awaiting their response,' rather than a private phone call that we would not have known about but for me questioning.

Mr Pettit: I did want to correct the record. There is one confidential submission which is not on the website.

Senator ABETZ: Was the phone call made in relation to the confidential submission?

Mr Johns: No, but now that Mr Pettit reminds me of the confidential submission: I have had a conversation with that submitter.

Senator ABETZ: As well?

Mr Johns: It wasn't a telephone conversation; I had a meeting with that person.

Senator ABETZ: But a meeting specified for the purpose of discussing the submission.

Mr Johns: Yes.

Senator ABETZ: So we now have two conversations. Any more? Any advance? It was zero, now one, now two.

Mr Pettit: That conversation was for the purposes of determining whether the submission should be treated in confidence; it wasn't regarding the substance of the submission.

Senator ABETZ: What the discussion may or may not have been about is another issue. It is the question of openness, transparency—

Senator Chris Evans: Senator—

Senator ABETZ: and all those virtues that—

Senator Chris Evans: Senator, you may not like that answer, but the officer was making it clear as to the purpose of that meeting so that the record was totally accurate, and so it is important that he gave that evidence.

Senator ABETZ: Absolutely important, absolutely important. It is just sad that it did not come out when I first asked about whether discussions had been had. We were told it was just informal at social functions of the character, 'Thanks for your submissions.' A lot more detail, one about the actual content of the submission; another one, detailed conversation as to why they wanted their submission to remain confidential—so thank you for that. Now, time is flying.

Senator Chris Evans: I would not say the time is flying; it does not feel like it.

Senator ABETZ: I can understand your discomfort, Minister; I can fully understand that.

Senator Chris Evans: Sometimes I just find my life ebbing away at these things.

Senator FISHER: Whilst Senator Abetz is—

Senator ABETZ: That would be helpful; I am trying to cull.

Senator FISHER: At the risk of labouring the point, section 52 examinations: Mr Johns, you said before that there has been one that has happened during your tenure, and that you issued four section 52 notices but three of the four resulted in the witness succumbing voluntarily. Are you able to say why each of those witnesses succumbed voluntarily to your seductive powers?

Mr Johns: I do not know that I can speculate as to why, once they received the notice, they decided to voluntarily provide the information.

Senator FISHER: Nonetheless, I suppose, the facts could be said to speak for themselves in that three-quarters of the section 52 examinations that you propose to hold, once you having issued a notice, resulted in voluntary submission—right, three-quarters of them?

Mr Johns: That is correct.

Senator FISHER: And you have earlier said that voluntarily is way better than compulsory—

Mr Johns: Yes.

Senator FISHER: because it is quicker. So given that, why change the section 52 regime?

Mr Johns: The changes that I have made, consistent with the recommendations of Wilcox do not affect the timing of the process. They do not present any impediment to the issuing of a section 52 notice. So, for example, the preparedness to pay conduct money or reasonable expenses is one that happens during the course of the examination or at the end of the examination. It is not an impediment to the conduct of an investigation.

Senator FISHER: That is debatable, because if it becomes apparent over time that reimbursement of expenses is par for the course with a section 52 examination, then that may not be what you call an impediment, but nonetheless, may that not be a disincentive to these three-quarters, for example, to people in the same situation as the three-quarters of the people to whom you have issued notices who have said, 'Yes, no worries, I'll volunteer.' Why wouldn't they hang out for the dough?

Mr Johns: I do not know that I can speculate about that.

Senator FISHER: Yes. It is, at the very least, debatable, is it not, that your—

CHAIR: We are not here to debate, Senator Fisher, so if you have got a question, let us ask the question and get an answer.

Senator FISHER: Thanks, Chair. Couldn't offering to pay people's expenses change the pattern of behaviour that you have happily seen thus far with proposed section 52 examinees in terms of three-quarters of them succumbing voluntarily?

Mr Johns: The three who succumbed, if I might adopt your language, would have had available to them the change that I had implemented. I do not know that I can speculate on the matter.

Senator FISHER: The change in terms of money?

Mr Johns: Yes. So that change was implemented and made public prior to those notices being issued, so those people had—

Senator FISHER: Okay. I must say, I had appreciated that.

Mr Johns: So it does not indicate that the offer of money was an inducement for them to hold out, if that is where you are going, Senator.

Senator FISHER: Yes, I was going there and I had not appreciated that. I think that does make a difference, nonetheless. This isn't a question but I would still tend to agree with Senator Abetz's observation about why pay those who are not doing your preferred option, which is volunteering. Okay; thank you. That is all on that issue. I have got a couple more, though, but—

Senator ABETZ: Go for it, yes.

Senator FISHER: Cases where the ABCC has prosecuted not just during your tenure, Mr Johns, but under the Fair Work Act: in how many cases have the courts or tribunals imposed a fine which exceeds the Fair Work maximum of \$33,000?

Mr Johns: I would have to ask Mr Corney to—

Mr Corney: Bear with me, Senator.

Mr Johns: So over what time period?

Senator FISHER: Since the inception of the Fair Work Act. I know that the prosecutions weren't under the Fair Work Act—

Mr Johns: Because earlier ones would have been under the Workplace Relations Act.

Senator FISHER: But I am wanting as a reference point the Fair Work Act's, in general terms, maximum penalty of \$33,000. So in how many cases have courts or tribunals imposed a fine in excess of that?

Mr Corney: I can provide you with some information in respect to percentages. To the particular question, we would have to take that on notice over the period.

Senator FISHER: Please, and then I will probably supplement it. But percentages, Mr Corney?

Mr Corney: I am looking at the averages. As of April 2011, there were 278 penalty orders made in respect of 37 finalised matters under the BCII Act, and on average, we have obtained penalties equal to 19 per cent of the BCII Act maximum.

Senator FISHER: Of \$110,000?

Mr Corney: Yes. So that is about 20,900 for corporations and \$4,180 for individuals.

Senator FISHER: Okay. Could you, on notice, provide more detail? The number of cases in excess of, in your terminology, 'matters'; how many impositions of the fines there have been, noting that there might be more than one fine per matter; the quantum, obviously, so the extent to which it has exceed, if at all, the \$33,000; and for what? What was the nature of the matter concerned.

Mr Johns: Yes. Senator, can I just clarify for our purposes in trying to answer it: we of course hold a concurrent jurisdiction in relation to unlawful industrial action, right of entry breaches, wage and entitlement matters, general protection matters under the Fair Work Act and the Workplace Relations—formerly, before that, under the Workplace Relations Act. So all of those matters where we have obtained penalties would be within the confines of those acts. So do you want us to report on those or do you just want us to report on those that we have obtained under the BCII Act? I hope that doesn't confuse it.

Senator FISHER: No, no, no. I think the latter will suffice. What I am trying to identify is the extent to which what the courts have done would be influenced if the government persisted with provisions that were in the earlier bill to downgrade the maximum penalty available.

Mr Johns: We will take it on notice and we will do our best. There might be some difficulty because oftentimes, for example, when we litigate an unlawful industrial action matter, we might litigate it under the BCII Act and then argue in the alternative under the Fair Work Act or the Workplace Relations Act. We will do our best.

Mr Corney: We will do our best.

Senator FISHER: Obviously, if in doubt, say yes to both.

Mr Johns: Right.

Senator FISHER: I do not want to be cut short on the data.

Mr Johns: Yes.

Senator FISHER: Thank you. I think I have one more, but after you, Senator.

Senator ABETZ: Thank you. Can we go back to the sham contracting inquiry, Mr Johns. You initiated a phone call to somebody: was that to praise them for their submission?

Mr Johns: It was to ask for the evidence that they were putting up in support of part of their submission.

Senator ABETZ: And what part of their submission was that?

Mr Johns: I do not recall the specifics, Senator, but I am happy to take it on notice and report back to you on what notes I took of the conversation—if I took notes.

Senator ABETZ: I assume it wasn't a phone call to praise them for their submission or to talk about the font size—

Mr Johns: I certainly extended them the courtesy of thanking them for making a submission, and I asked them about some of their evidence to support some of the propositions in their submission.

Senator ABETZ: Yes, but you have not proactively rung every submitter—

Mr Johns: That is true.

Senator ABETZ: to thank them for the submission, so I had the hunch that you may not have rung them for the specific purpose of thanking them. Common decency would say that you would start the conversation by saying, 'Thanks for the submission, but,' and then make whatever criticisms you may have wanted to have made, or explore with them your concerns about their submission. If you can tell us what it related to on notice—

Mr Johns: I am happy to.

Senator ABETZ: that would be helpful. I was given a helpful answer, Chair, 0712, and if you can please take on notice, provide us with an update of the statistics on that, however much further, if you are able to take that table. It was potential contraventions as of 23 February 2011. If you can just update that for us. Are you able to tell us—

Mr Johns: Sorry, Senator, to which date will you want that updated till?

Senator ABETZ: Whatever a convenient date is for you guys. If it runs day by day, then on the day you do it, if on a monthly basis, then—

Mr Johns: It is ordinarily monthly.

Senator ABETZ: at the end of the month.

Mr Johns: Yes.

Senator ABETZ: Just whatever update, if any, that you might have. These were all investigations: could you advise of these investigations that I got in 712 how many ended up with no further action; with it being resolved without the necessity of any court action being required; and how many have turned into matters that are now being litigated, please.

Mr Johns: We will take that on notice.

Senator ABETZ: 711, another written answer. You were telling us it would be inappropriate to speculate about possible outcomes, given the matter is still before the courts—that—was the Pluto issue.

Mr Johns: That situation is unchanged.

Senator ABETZ: That is unchanged, thank you. I thought that is what you might be saying. 702, you gave me a breakdown of travelling since Mr Johns' appointment. I was wondering, is there any way that that can be broken down as to airfares, travel allowance, whatever? Mr Casey, are you in charge of that?

Mr Casey: Yes, I need to take that on notice, Senator.

Senator ABETZ: Yes, of course. I was meaning that you would take it on notice. I understand that the website contains a number of sections about referring to other bodies, and you tell us that, where appropriate, matters can be referred to other Commonwealth or state and territory bodies, including the Australian Taxation Office, the Australian Federal Police, the Australian Securities and Investment Commission, the Director of Public Prosecutions and the Australian Competition and Consumer Commission. Is that what is on the website?

Mr Casey: I do not have it in front of me, and I do not doubt it if they are—

Senator ABETZ: I accept that. I have been told—and I have not viewed it personally—that there is no referencing Fair Work Australia or the Fair Work Ombudsman, so I am just wondering if that is the case, and if so, why, because I understand those bodies may have been on the website previously. But take that on notice, please.

Senator FISHER: Mr Johns, were either Mr Cryer or Mr Pettit known to you prior to their commencement with the ABCC?

Mr Johns: Both were.

Senator FISHER: In a professional capacity, personal capacity—

Mr Johns: Both.

Senator FISHER: Okay, thank you.

CHAIR: There were some press reports about a Victorian worker killed on Saturday on a construction site, and that is the fifth Victorian to die—

Mr Johns: Yes, at Sturt Street, Southbank. It is an LU Simon job.

CHAIR: What role does your organisation play in investigating those matters?

Mr Johns: None.

CHAIR: Is it in your remit to look at occupational health and safety matters, or—

Mr Johns: No.

CHAIR: In terms of when there is a dispute between an employer and employees, if the issue in dispute is being negotiated between them, do you directly intervene if you believe there has been a breach of the Fair Work Act or do you allow the parties to resolve the issues between them?

Mr Johns: I do not know that I quite understand the question, Senator.

CHAIR: If you believe that there has been a breach of the Fair Work Act, and one party believes they have been aggrieved but they are actually trying to negotiate an outcome, do you still intervene if you believe there has been a breach of the Fair Work Act, or the BCII Act?

Mr Johns: You could not answer that question in all circumstances. We have a litigation policy which talks about the circumstances that we have regard to when we commence proceedings and intervene in proceedings. The wishes of the parties is relevant to the exercise of regulatory discretion but it is not determinative of the exercise of power.

CHAIR: How many investigations have you conducted for breaches of an award?

Ms Addison: For which particular time period?

CHAIR: Over the last 12 months.

Ms Addison: In October last year we commenced undertaking looking at wage and entitlement matters within the ABCC, and further to an agreement with the Fair Work Ombudsman they commenced referring complaints to us from 1 March.

CHAIR: That's a good time.

Ms Addison: We have probably dealt with in the order of 125 inquiries in relation to matters. We have actually undertaken 83 wage and entitlement investigations, of which 39 have been finalised. Some or all of those may have involved questions about payments in accordance with an award and/or an agreement, but they would have all come from a complainant that had a concern about a payment being correctly made for wages and entitlements.

CHAIR: So do you seek to remedy the breach, or do you seek to prosecute breaches?

Ms Addison: We have a number of different regulatory responses, so it can vary and will depend on the circumstances of the matter. Where someone has been experiencing or we have found evidence of underpayment of wages, our primary objective is to get redress in terms of the payments being made, so we will take actions commensurate with achieving that outcome.

CHAIR: But if they are not issues of payment and wages, are other breaches of the award, what do you do with that? Do you seek a remedy, or do you seek to prosecute?

Ms Addison: Again, it will depend. We have a range of different responses when we investigate matters. We may issue a letter of caution if we think that is appropriate, or we may take the matter through to a prosecution, but it will depend on the circumstances surrounding the particular matter.

CHAIR: Are there some guidelines around the circumstances? Do you have a different approach for employers as opposed to unions?

Ms Addison: No, Senator. We do have a guidance note which goes to our investigative practices, which is guidance note No. 2. The commissioner referred to the litigation policy; we also have one that sets out our investigation processes which is available on the website.

Mr Johns: The litigation policy does not draw a distinction between who the complainant is. It goes to a range of factors which are considered in relation to each matter.

CHAIR: Do you monitor industry activity—would you monitor legal action taken between participants in the building construction industry?

Mr Corney: We do monitor interventions in FWA, and we also monitor significant matters in the courts as well, and will take action as required.

CHAIR: What is a significant matter, though?

Mr Corney: A significant matter would be one within the parameters of the litigation policy that helps guide us, so it is a matter of determining on the facts, and in the public interest.

CHAIR: So if building industry participants are seeking remedy for award breaches, in the Magistrates Court, for instance, would that come to your attention?

Mr Corney: Not generally.

Mr Johns: There is an obligation to report certain matters to us, and that is how most matters come to our attention. We then do monitor proceedings that then are maybe reported that are commenced in superior courts, but we would not have a watching brief on matters which were commenced in local courts.

CHAIR: Why not? If participants are seeking remedies for award breaches in courts, clearly that is part of your remit. Why wouldn't you be monitoring what is going on?

Mr Johns: I think it would be a particularly onerous undertaking to monitor all proceedings which are commenced in local courts around the country.

CHAIR: But are award breaches purely done in the Magistrates Court, or are they in different jurisdictions?

Mr Johns: Different jurisdictions.

CHAIR: So is it multiple courts in different jurisdictions, or just a single court in each jurisdiction?

Mr Johns: A litigant could commence a proceeding, for example, in Victoria. A litigant could commence an award breach proceeding in either the Magistrates Court, the Federal Magistrates Court, or the Federal Court of Australia. And, certainly, if it was commenced in the Federal Court of Australia it would likely come across our radar.

CHAIR: We thank you, Mr Johns, and Officers of the ABCC for appearing before us in these estimates.

Comcare

[17:56]

CHAIR: We welcome officers from Comcare. Do you have any opening remarks you would like to make to the committee before we proceed to questions?

Mr O'Connor: No, chair.

Senator ABETZ: I understand today the model bill has been released for comment. Is that correct?

Mr O'Connor: On Friday last week.

Senator ABETZ: There is a media release dated today saying, 'Model bill released for comment.'

Mr O'Connor: Correct.

Senator ABETZ: We have had questions now—was it with you?—on the Dr John Culvenor matter?

Mr O'Connor: It was, Senator.

Senator ABETZ: I would not mind revisiting because certain information has now come available courtesy of freedom of information, which sheds a bit of light on things. I understand that the DEEWR submission to Comcare strongly supported keeping and expanding the flexible delivery options. Could you confirm that for us?

Mr Kibble: I will have to take that on notice in terms of the detail of DEEWR's submission to that inquiry.

Senator ABETZ: The survey that was undertaken was given to the SRCC commissioners. Is that correct?

Mr Kibble: Yes.

Senator ABETZ: Who else received the survey?

Mr Kibble: Just to clarify, do you mean the results of the survey or the survey itself?

Senator ABETZ: The survey itself as opposed to the actual responses.

Mr Kibble: Just to clarify, the survey was conducted by consultants engaged by Comcare.

Senator ABETZ: Yes—Stoker and Wright.

Mr Kibble: Correct, yes. They were engaged by Comcare. They conducted the survey and then included the results of the survey in their report which Comcare provided to the SRCC.

Senator ABETZ: Yes, but survey questions went out to SRCC members for them to respond to.

Mr Kibble: I cannot recall that. They may have, but I need to confirm that on notice. I can give you that on notice.

Senator ABETZ: I have a document saying, Review of the Comcare Health and Safety Representatives HSR Training Course Accreditation Program, survey questions for SRCC members. So I was hoping they did—take that on notice. Who else received the survey?

Mr Kibble: The survey was provided to a range of health and safety representatives. It was put on the internet and also sent to employers in the Commonwealth jurisdiction and the survey was responded to primarily by health and safety representatives.

Senator ABETZ: Can you take on notice as well who else received it?

Mr Kibble: In total?

Senator ABETZ: Yes, so we get a detailed list and then who responded to the survey because I understand, for example, that 30 per cent, if my memory serves me correctly, came from the Australian Taxation Office.

Mr Kibble: I think from memory that is correct, yes.

Senator ABETZ: Nothing wrong with that and good on the ATO for proactively getting their people to respond, but, having seen that, it may be that that skews the results somewhat. But anyway, if you can tell us on notice who responded to the survey. The options that were made available to people included, as I understand it, 'Do you agree the training could be delivered flexibly, example, any of the below,' and then there were a number as a block, two short blocks, including face-to-face/workplace based. How many people in the survey agreed that it could be delivered flexibly with any of the arrangements suggested in the question?

Mr Kibble: I have to take that detail on notice.

Senator ABETZ: If you could, because as I understand it there was a survey for SRCC members, there was also a question for others, but then in another one of the surveys, and take this on notice, can you confirm for us whether the option of face-to-face/workplace based fell off the list of options available.

Mr Kibble: I will confirm that for you, Senator.

Senator ABETZ: Thank you very much. Are you able to tell us whether some of the HSRs would have chosen one of these options if they were actually offered them to say which of these would you actually prefer as opposed to saying, 'Do you agree the training could be delivered flexibly, example, any of the below?'

Mr Kibble: Yes, I can confirm that on notice.

Senator ABETZ: Thank you. Then looking at the responses from DEEWR, it clearly agrees with flexibility, and says that the variety in delivery mechanisms significantly improves access to training and outcomes for employees and employers. It says that variety in delivery mechanisms is valuable, it will improve access to training, it will improve outcomes and it will have benefits for employees and for employers. I do not want to verbal the department, but could you confirm for me that DEEWR was actually saying that flexibility should be kept?

Mr Kibble: I can confirm that on notice.

Senator ABETZ: Did the department also think that the range of options did not go far enough and suggested that distance learning and e-learning can be a valuable form of delivery, so possibly you can take that on notice as well.

Mr Kibble: Yes, Senator.

Senator ABETZ: If all that is correct, can you then tell us why you did not take notice of this fairly important submission from the department as to the importance of the flexibility. Is the author of the document, the report, on the SRCC? I am not sure whether that question is very clear to you, so allow me to give that to you on notice—and the fact that it is not clear to you is my fault, not your fault, just for the sake of the record. We are looking for HSRs from self-insurers consulted.

Mr Kibble: As I mentioned previously when I mentioned that we alerted all employers in the jurisdiction, that would incorporate self-insured licensees as well and so I think we provided this detail in the past on notice, but a number of HSRs from licensees did respond to the survey. I can provide you on notice a breakdown again of where the HSRs came from.

Senator ABETZ: If you could, that would be very helpful. Did Australia Post communicate with Comcare about all this?

Mr Kibble: I cannot recall.

Senator ABETZ: Well, take it on notice, because they indicated to you a problem in the survey design, and did they say that the fact that 60 per cent of survey respondents preferred face-to-face training was not surprising, given that the majority of the survey respondents may have only ever experienced a five-day block course.

Mr Kibble: I will confirm that on notice, yes.

Senator ABETZ: Can you also indicate to us that of the training providers, and I think there were about 20 of them, from memory, 80 per cent of them in fact provided face-to-face.

Mr Kibble: Yes, I can confirm most of the providers—

Senator ABETZ: So it stands to reason that, all things being equal, only 20 per cent of HSRs and other people would have had experience of alternative methods of delivering this training.

Mr Kibble: On the face of it, yes.

Senator ABETZ: Therefore it is not surprising that predominantly people would have come to the conclusion that, yes, face-to-face seems a good way to go.

Mr Kibble: I would not like to second-guess why people responded in the way they did.

Senator ABETZ: That is fair comment, yes. As I understand it, the Stoker and Wright report suggested there was predominantly support for face-to-face.

Mr Kibble: From memory, yes, I think that is correct.

Senator ABETZ: Then that became, by way of policy, exclusively face-to-face. So how did that morph from a recommendation that it predominantly be supplied face-to-face, to exclusively supplied, which of course cut out some training providers with excellent records in this area, with excellent outcomes such as Dr Culvenor's organisation?

Mr Kibble: This is going to the sort of factors the SRCC took into account in making decisions about the revised guidelines which they published in April 2010. The consultants' report was one element of their decision in this particular area about the form of training and one of the factors they took into account was the consultants' report. They also looked at what other jurisdictions were doing, and most other work health and safety regulators have face-to-face training for health and safety representatives.

Senator ABETZ: But not for five days, did they?

Mr Kibble: Just to clarify, currently all jurisdictions require five days face-to-face training except for Tasmania, New South Wales and the ACT.

Senator ABETZ: So that is three out of how many jurisdictions?

Mr Kibble: And they require four days face-to-face training.

Senator ABETZ: So we cannot say that all jurisdictions, no. So there is variation.

Mr Kibble: Yes, Tasmania, New South Wales and ACT have four days face-to-face, and the other remaining jurisdictions have five days face-to-face.

Senator ABETZ: Do you sit on the SRCC, Mr Kibble?

Mr Kibble: No, Senator, I do not.

Senator ABETZ: . Mr O'Connor, you do?

Mr O'Connor: I do, Senator. I am happy to take the discussion now.

Senator ABETZ: Those questions I previously asked about the SRCC, you were studiously avoiding entering the discussion, and good luck and there is no criticism of that, but can I then ask whether all SRCC commissioners received the survey?

Mr O'Connor: I would have to take that on notice.

Senator ABETZ: Did you receive the survey?

Mr O'Connor: I cannot specifically recall that detail, but I will assume then if I did not—

Senator ABETZ: In relation to the responses, is it correct that, with the ATO representing 30 per cent of the entire survey, the ATO thus represented three times the entire private sector input in this survey?

Mr Kibble: We will take it on notice, providing a breakdown of where the HSRs came from. I cannot recall the breakdown. We would be surprised if that was the case.

Senator ABETZ: Were there emails circulating within Comcare from, for example, Colleen Kelly, expressing concern that the survey was being populated mainly by Commonwealth agencies, and what did Comcare do to overcome that concern? That was by way of a message, I assume, emailed, dated 17 July 2009?

Mr Kibble: I am not personally aware of that email, but we can look at that and respond on notice.

Senator ABETZ: There was a concern that it was not being representatively responded to. I understand that even a Sean Leonard had an email on 25 January, where the ATO pointed out the imbalance in the survey respondents. So why would you not put the results on hold until the survey is redone?

Mr Kibble: As I said, we will come back to you on notice in relation to the specifics about the emails et cetera, and also about the breakdown of who responded.

Senator ABETZ: As I understand, an SRCC commissioner was concerned, as was a Comcare staff member, as was the ATO, by the unrepresentative nature of the responses.

Mr Kibble: As I said, we will come back to you on notice in relation to the breakdown. As I said, the survey is one element of the information that was provided to and considered by the SRCC in making their decision about the new guidelines in April 2010.

Senator ABETZ: In the Senate estimates on 23 February—at, I think, page 8 of the *Hansard*—I asked:

As a result of those new guidelines, how many new courses have become available?

I am not sure I have got an answer on notice in relation to that. You, Mr O'Connor, indicated:

I will get that detail for you.

These things are overlooked, so there is no criticism and possibly I should have been more alert. So can I repeat that question and ask: as a result of the new guidelines how many new courses have become available?

Mr O'Connor: I understand that seven courses have been re-accredited under the new guidelines and there is a forthcoming meeting on Friday of this week in Melbourne where other applications will be considered by the committee that is mandated with the approval of those courses.

Senator ABETZ: And are any of those other courses new?

Mr O'Connor: I would have to take that on notice.

Senator ABETZ: If you could, because my advice is that none are and, in fact, all that has happened is the removal of one highly regarded course. So can I ask, not only rhetorically but seriously—and take this on notice: if I am correct as to that, how has the reduction of course availability helped in Comcare's task or mission to improve occupational health and safety? Time is unfortunately pressing. Did Comcare help write the conclusions and recommendations in the report?

Mr Kibble: I am not aware that we had assisted the consultants write the recommendations or the conclusions of the report, but if I am wrong in that understanding I will correct it on notice, but I am not aware that we did that, no.

Senator ABETZ: As I understood, the proposal submitted by Stoker and Wright says there will be a comparison of the accreditation systems in other jurisdictions. There is nothing about that in the report, is there?

Mr Kibble: From memory, I think there is commentary on the training arrangements in other jurisdictions, yes.

Senator ABETZ: But not a comparison. You know what the question was, Mr Kibble. Was a comparison suggested by Stoker and Wright and was that comparison then actually undertaken?

Mr Kibble: I will confirm that on notice.

Senator ABETZ: Thank you. And did the proposal from Stoker and Wright say at 2.2 that the draft report, including conclusions and recommendations, would be written in consultation with a Comcare project officer?

Mr Kibble: I will confirm that on notice.

Senator ABETZ: And then in the interim report there does not seem to be anything about removing the current provision that encourages providers to design flexible delivery methods.

Mr Kibble: I will get a little bit more detail.

Senator ABETZ: You can take that on notice.

Mr Kibble: Yes.

Senator ABETZ: And then tell us why it changed from the draft to the final report when, as I understand it, in the surveys nothing suggested that it should be exclusively face to face for five days. But take that on notice. In particular, did Comcare, in fact, help insert the recommendation that training be predominantly face to face? Can you take that on notice. Can you confirm for us that about one-third of the HSRs wanted some other format than five day classroom format, and that was in 2009.

Mr Kibble: I will put on notice the detail, but I think that is, from memory, about right, yes.

Senator ABETZ: Yes. So the survey did not allow people to indicate whether or not the trading guidelines allowing a variety of delivery methods should be maintained. That was not an option for the survey. Can you take that on notice as well.

Mr Kibble: We will take that on notice, yes.

Senator ABETZ: And was a question asked about the training duration as to what length it should be?

Mr Kibble: From memory, I think there was a question in relation to duration, yes, but I will confirm that.

Senator ABETZ: And, if so, can you point us to the actual question and in which surveys.

Mr Kibble: Yes.

Senator ABETZ: I am told that at page 40 of the Stoker and Wright report there is a suggestion that a mix is helpful. A strong thing from those commenting was that the best approach might be a mix of different strategies. Can you take that on notice for us, please.

Mr Kibble: I will. On that particular matter, the guidelines themselves do indicate what the mandatory requirements are for the training courses. But, of course, employers and HSRs might agree to go higher and have a range of different training methods.

Senator ABETZ: In relation to the various numbers of days for training, do the various states determine how that training is to be undertaken?

Mr Kibble: Yes, Senator, my understanding is, as I have said, that New South Wales, Tasmania and ACT require four days face to face training and the other jurisdictions all require five days face to face training as a core component of—

Senator ABETZ: We will have to put a lot of these questions and issues on notice, unfortunately. We could have taken up the whole day on this particular issue. Can I ask, in relation to the model work health and safety regulations, should I be discussing that here or with Safe Work Australia?

Mr O'Connor: That should be with Safe Work Australia. And I should note, Senator, that the draft regulations that have been put out for public consultation do highlight and expectation in the regulations of five days face to face training. And that has been put out for public comment and consultation.

Senator ABETZ: Nowhere else before has it been mandated, has it, that it has to be five days?

Mr Kibble: Just to clarify that.

Senator ABETZ: In relation to the state jurisdictions, for example.

Mr Kibble: As I have said, my understanding is they currently in all jurisdictions require face to face training. And in three of the jurisdictions it is four days face to face and in the other jurisdictions it is five days face to face.

Senator ABETZ: But the ones that do not have face to face there was never any doubt that they were not properly trained or they were not up to the appropriate capacities?

Mr Kibble: Senator, as far as I understand there is no jurisdiction that does not require some duration of face to face training for HSRs.

Senator ABETZ: Some duration, but not complete.

Mr Kibble: It is either four days or five days.

Senator ABETZ: But with the Comcare training that was the state. In the Commonwealth that was not an issue, was it?

Senator Chris Evans: I think the officer's evidence has been that each of the states and territories require either four or five days face to face training.

Senator ABETZ: But Dr Culvenor had a method of delivery which was accepted which did not have that.

Mr Kibble: We are coming back here to the point in principle that the commission, in all the circumstances and taking account of a range of views from training providers, unions, employers, HSRs et cetera, did come to a view on this particular issue when they revised the guidelines in April 2010 that they would require five days face-to-face training.

Senator ABETZ: We know that is the decision, but it seems that the department did not recommend it, a lot of the people responding to the survey did not recommend it, and then when it was predominant it became exclusive. There seems to have been a deliberate attempt, and I still do not fully understand why, to exclude a service deliverer who from all accounts, including from Comcare itself, had very, very good reports. In this modern day, to say it still has to be face to face learning—and the other suggestion made by the department is now out the window—sort of seems a very 19th century approach as opposed to a 21st century mix and match. At the end of the day I would have thought the proficiency of those trained should be the determinant as to whether or not a particular methodology is accepted or not. Surely we want the outcomes as opposed to the process.

Mr O'Connor: And these are points that I imagine Dr Culvenor and others will be putting to Safe Work Australia in response to the draft regulations, because, as I mentioned before, they do call out a requirement for five days training, but the delivery mechanism is not prescribed under the draft regulations and that will be a matter for other bodies to be able to take up. And this is something that I am sure will be the subject of public comment to Safe Work Australia as part of that public consultation process.

Senator ABETZ: Comcare themselves like the course that Dr Culvenor had developed so much that in 2009 the Western Australian office of Comcare asked to participate in the courses by giving presentations. I must say that had overwhelming support even from your agency and we have this outcome. Let me move on to the Villawood detention centre. Who can assist me with that? It has been described as a basket case in a headline, but I understand that Comcare has visited seven detention centres in the past fortnight; that was in a newspaper article dated 23-24 April 2011.

Mr O'Connor: That is correct.

Senator ABETZ: So you did visit seven detention centres?

Mr O'Connor: Seven immigration detention facilities were visited by Comcare with the relevant state or territory work health and safety regulator.

Senator ABETZ: And the article suggests that some of the investigators were left shocked. I know that is an emotive term, but can you provide or shed any light as to what those investigations may have revealed?

Mr O'Connor: The investigations and site visits to these immigration detention facilities did find that generally the work places were compliant with federal work health and safety laws. There were four areas of concern that were shared with the department and also, through the department, with the detention facility managers and Serco. They related to risk assessment, staff training, critical incident control and also the issue of adequate preparation to manage the risk of racial vilification. There were some specific issues with regard to Villawood, in particular, at Blaxland, the high security centre. They were raised with DIAC and immediate remedial measures were put in place.

Senator ABETZ: This was after the fire.

Mr O'Connor: Correct.

Senator ABETZ: Yes.

Senator Chris Evans: This is the high-security section.

Mr O'Connor: Yes, Blaxland.

Senator Chris Evans: So the high-security section is not generally occupied by asylum seekers; it is generally people awaiting removal. And the facility, quite frankly, has been in a very poor condition. I know that when I was minister we authorised some temporary alterations and then a rebuild, because it was very difficult to manage given that, quite frankly, some of the people detained there were fairly difficult clients, many with violent histories and long criminal records.

Mr O'Connor: I should clarify that there was a visit to Villawood before the riots and also one after the riots just to confirm the status of the facility and the work health and safety arrangements.

Senator ABETZ: In the one before the riots, did you come to any conclusions and express any concerns about risk assessments or that the guards were massively outnumbered by a volatile detainee population, for example?

Mr O'Connor: There were concerns that were shared with the department at that time, and that was in regard to some aspects of the relation of the transferee of detainees to the facility. We issued an improvement notice with DIAC and the majority of the areas of that improvement notice have been complied with and were complied with in a timely fashion.

CHAIR: Senator, we might leave it there and break for dinner. We will resume with Comcare.

Senator ABETZ: Thank you.

Proceedings suspended from 18:32 to 19:45

Senator BILYK: Mr O'Connor, at a previous estimates committee meeting I mentioned a case that is ongoing. It is now in its 23rd year, I understand, and is still not resolved. I will try to keep it general, but I am specifically concerned about this one client and some questions that have come out of that. The first thing is that apparently some of the files were lost and others have incorrect information on them. I am wondering what the procedure is to remedy that. The person has written to you, but as yet the files have not been corrected and of course this has an impact on the outcome of her claim. Could you tell me what the process is, in general, if there is a lost file or you are informed that there is incorrect information on a file.

Mr O'Connor: In general, I can advise that we do an exhaustive search of our records management centre. Most if not all of our records—going back to before, or in fact just after, the First World War—have been digitised. There are some occasions where paper records are just not able to be matched, but we certainly have a comprehensive program of being able to validate the documentation that we have. With regard to the specific matter that has been raised with us through your good offices, our recovery and support team—independent of the team that has been involved in this—are doing a comprehensive file review and making sure that all the issues that your constituent has raised with us, and legitimately so, are addressed and recognised. There was an attempt to discuss the matter with the particular constituent, but I do understand their reluctance, after so many years, to engage with us on a direct basis, so we are doing that file review and I think some staff from your office have been advised of that.

Senator BILYK: That is correct. Do you ever have face-to-face meetings with clients when these concerns come up?

Mr O'Connor: Yes, that does happen.

Senator BILYK: My constituent has been told that she cannot meet face to face with people.

Mr O'Connor: That is certainly not consistent with both my experience in undertaking and my personal activity with a number of federal workers in our team.

Senator BILYK: Just recently she was told, once again, that she needed to put the request to correct the errors in writing. But I know that they have been sent through more than once previously. As I said, this has an impact on her whole case. It has been going on for 23 years. The woman's life is basically wrecked. How many other cases are there that have been going on for 20-plus years? That is one of the questions I suppose I should be asking.

Mr O'Connor: There are a number of former federal workers who have relied on Comcare's ongoing support with incapacity or treatment payments for many years because of the long-term nature of our scheme. At the last estimates hearing, with Senator Xenophon from South Australia, we addressed a particular matter that had been picked up by the Ombudsman. I have been able to meet with that particular former federal worker, in person, to redress this and I give you my personal undertaking, Senator, that if a face-to-face meeting is needed to make sure that we can address your constituent's concerns then you have that commitment; we will make that happen. But we wanted to respect what we had been informed were her express wishes not to meet in person. But we can work that through. I am very happy to make sure that that does happen so that we can deal with this uncertainty. And We certainly have raised with her former employer the issues of trying to get some further records as well.

Senator BILYK: Do Comcare staff receive training for dealing with clients who are suffering from post traumatic stress disorder?

Mr O'Connor: Not specifically but that is something we have identified as a great opportunity for us. One of the proponents of that, in fact, Professor Patrick McGorry, has suggested that to us. We have been doing some work in this whole area of psycho-social improvements and making sure that our own staff have the ability to understand and empathise with and deal with people who are struggling with the psychological impact of either workplace injury or simply participation in the compensation system.

Senator BILYK: What is the time line which you envisage for that sort of thing to be set up?

Mr O'Connor: At a couple of levels, one of the things we are certainly hoping to put in place is for all of our staff to have mental health awareness training. But specifically for our recovery and support staff we are hoping over the next twelve months to look at a program for supporting those officers at Comcare who are regularly dealing with injured workers so that they are able to support them on that and make that awareness. This is a big feature of the new work that we are doing in our recovery and support group.

Senator BILYK: How are rehabilitation plans derived, and I understand that the plan might be different for every client? Do you consult with treating medical professionals or do you actually even consult with the client, because in this case this has not happened either?

Mr O'Connor: And we do understand that has been a limitation of the lack of support over the years that your constituent has shared with us, not just from Comcare but from her former employer. The normal case is that the employer is the rehabilitation authority and as a result case managers, and particularly in that constituent's employer's case, they have a very well-refined and sophisticated national program of support and our people are currently working with our colleagues in that agency to be able to see what rehabilitation steps can be put in place and to do that in consultation with your constituent's general practitioner.

Senator BILYK: How do you deal with those conflicts between the department and Comcare—I do not think for a minute this is a single case; I think this has probably happened more often and I think a lot of people probably give up, but my constituent is a bit tougher than that in that respect? She has been given conflicting advice as to whether the department should be looking after her or whether Comcare should.

Mr O'Connor: Yes.

Senator BILYK: How is that decision or the difference made?

Mr O'Connor: It comes down to being clear which agency is the rehabilitation authority, and federal law is clear about how that responsibility is assigned. Occasionally it does fall between the gaps, especially after machinery of government changes or where a particular employer no longer continues. So we are focussing on making sure that the federal workers do not fall between the gaps and on how we improve our processes and dialogue with these employers and the case managers there. In particular there is the support and the help provided by our injury management advisory team. They are allied health professionals and return to work rehabilitation specialists who help the case managers to get in contact with providers, support material, best practice et cetera and help to intervene in the difficult cases if they are raised.

Senator BILYK: But none of that is much help if your file was wrong and in fact your illness is listed as the wrong thing and takes 17 years to get corrected.

Mr O'Connor: I understand your constituent's frustration, Senator, and I apologise to you and her for the impact of that. This highlights where the compensation system should not be the cause of needless disability in its own right.

Senator BILYK: When you get letters from specialists in regard to injuries, do they get responded to or acknowledged?

Mr O'Connor: They would normally be added to the file and considered by the delegate who is reviewing the matter. I would have to take on notice whether or not each one is acknowledged as a matter of our process but certainly it would form part of the claims determination file.

Senator BILYK: To the best of my knowledge the specialist was asked to give some advice in regard to this person but they never heard anything back, so there was no contact made at all with the specialist. So I am wondering, generally, whether people at least get an acknowledgement note, or something, to say it has been received?

Mr O'Connor: I can certainly make sure that we do consider that as part of a standard practice. One of the other reforms that we are implementing is the establishment of clinical panels. These are part-time clinical allied health and medical experts who can actually reach out and treat a contact and help resolve some of these difficult issues. This has not been a feature of our system in the past 23 years, but certainly is going to be part of the way we do business going forward.

Senator BILYK: If a client undertakes a rehab program, does the rate of compensation change?

Mr O'Connor: I am not sure about that. I will take that on notice and get you the precise advice as to how federal law works

Senator BILYK: If you could, I would appreciate that. How long does it take to be considered eligible for compensation? Once again I understand that each case might be different, but in this specific case—and I know you know to whom I am referring—Comcare advised them in August 2009 but there was no movement from Comcare to the client until I actually wrote to the minister in October 2010. So is that a normal time-lag?

Mr O'Connor: No, it is not.

Senator BILYK: Or is this just a case of my constituent copping the short straw every time?

Mr O'Connor: We regret that any federal worker is short changed in terms of the service. That is certainly not our usual practice and it is why we have undertaken a comprehensive file review in this particular matter to address the constituent's concerns, because that type of gap in communication should not occur.

Senator BILYK: And how often would you normally contact someone that has got a claim in. She was contacted in February, but I actually had a letter from the minister in February saying that Comcare would oversee the rehab process and keep her updated in writing. We are at the end of May and she still has not received anything in writing, so I am just wondering if once again that is a normal time lag for getting something to the client?

Mr O'Connor: No, it is not. I would have to check with my colleagues, because this has been a matter of specific focus and attention and I do believe that there perhaps has been a breakdown of communication from our side in terms of clarity and why we were seeking the support of your office to be able to help us assist that. But we have got to get to the bottom of it and deliver on those expectations. Our normal process is that we would be doing outbound calls to the worker, to their case manager and, on occasions, to their treating practitioners to keep them informed and keep them up to date as to the status of their claim. Clearly, this has not happened to the satisfaction of your constituent and that is why I repeat my assurance and undertaking to make sure that that shortfall of information is addressed.

Senator BILYK: So should we be able to organise a face to face meeting with the constituent? Is that likely to be you coming to that meeting?

Mr O'Connor: I am happy to undertake it personally but it is more likely to be our general manager of that whole area, who has the accountability for the claims administration.

Senator BILYK: And obviously she could have anyone there she needed as a support person?

Mr O'Connor: Absolutely, there is no difficulty or barrier there from our side to be able to support that, because we want to put this right and make sure that that federal worker is supported and, to the best extent possible, back on the road to recovery and independence.

Senator BILYK: The minister's letter states that on receipt of reports from the treating practitioners to establish a current work capacity—because this woman has wanted to get back to work for 23 years—

Mr O'Connor: Correct.

Senator BILYK: and it is a long time to be having ongoing arguments and being stressed—that Comcare would make a written determination about her entitlements under section 31. Comcare has received the reports but then have written, just last week, to the constituent saying they request further information to assess her entitlements. I am just wondering how much more this woman has to go through.

Mr O'Connor: It is a fair point. I understand that the copy of the medical reports was sent to the constituent. We are working with her former employer to be able to make sure that we can get any assessment that is needed of incapacity entitlements under federal law paid to her. We are working and I know it is a propriety of that team. So, clearly, there is a gap between the work that is happening and the focus on this case and the interaction with her former employer, and communicating that to her. So you, again, have my commitment that we need to close that information gap.

Senator BILYK: And with a claim like this where there have obviously been more hurdles than you can imagine to jump over and there have been errors from the department's point of view and from Comcare's point of view and that obviously increases her inability to contribute or, I should really say, has contributed to her illness. Do you take that into account when managing the claim?

Mr O'Connor: It is something that we are needing to take account of and especially as we have a new way of segmenting our service delivery, especially for those federal workers who have been involved with Comcare for a long time. It is about our return to independence program—to be able to step out much more direct support so that people do not get trapped

like your constituent. It is unfortunate consequence and, as I said before, it is an outrage that somebody has been harmed at work. But it is even a further great concern that I take seriously if the system that they are in creates any needless disability. And that is what we have got to fix in terms of the way we do our work.

Senator BILYK: How many cases would Comcare see in a year? Say in a financial year.

Mr O'Connor: Since 1 July, so in this financial year to date, we have received about 3,700 new claims for compensation. But then there would be ongoing support for in excess of 10,000 former federal workers, because some of these workers have entitlements, depending on when they were harmed at their workplace, that survive with them until death in terms of medical rehabilitation and ongoing pharmacy. Some have incapacity support and have been supported by Comcare for many years.

Senator BILYK: How many complaints would you get in a year with those ongoing cases?

Mr O'Connor: Bear with me a moment.

Senator ABETZ: Including those at estimates.

Mr O'Connor: So far, this financial year, we have received 318 complaints. These are complaints about Comcare's interactions—they might be from employers or they might be from federal workers. It is also complaints that we receive as the manager of the scheme for the SRCC, the Safety Rehabilitation and Compensation Commission, where complaints might emanate from workers who are employed by national companies self insured under our scheme. So, since the 1 July last year, we have started keeping a track of that. And they are complaints that will come through to my office, through to Comcare generally, to the ombudsman and through to the minister. But maybe we should highlight and perhaps add, quite legitimately, Senator Abetz's suggestion about tracking matters raised here as well, but most of these matters are already known to us and are being remedied.

Senator BILYK: And there are procedures in place that people follow. Is that correct?

Mr O'Connor: That is correct. In fact a whole team has been established as part of the office of the CEO so that I have direct line of sight to these issues. We track them and we have service standards in terms of response times. In excess of three-quarters of the complaints that we handle are addressed within that ten-day working time, but sometimes the complexity of the matters, the history of the matters, the length of time, sometimes missing records, can stand in the way of resolving that federal worker's enquiry, or perhaps in the case of some practitioners who have been supporting them as well.

Senator BILYK: I will leave it there, but before I do perhaps I can get someone in my office to call you and sort out how we can organise a face-to-face meeting.

Mr O'Connor: I would be happy to facilitate.

Senator BILYK: I think it is the only way that is going to get resolved, because most of the letters that are sent to the client, to be honest, I would be embarrassed to put my name of the bottom of them. They do not do anything to help the client in dealing with it mentally as well.

Mr O'Connor: We are happy to assist, me and my colleague Miss Lesley Morrison. Either of us will be able to help there.

Senator BILYK: Okay. Thank you.

Mr O'Connor: You are welcome, Senator.

CHAIR: Thank you, Senator Abetz.

Senator ABETZ: Thank you, Chair. Just as a general principle, does Comcare visit certain Commonwealth facilities to make risk assessments of your own volition or are you invited in those circumstances?

Mr O'Connor: It is a mixture of both. We have what we call a cooperative compliance program, where we may, because of historical issues, complaints or premium issues, identify federal workplaces that are worthy of a joint effort and focus our attention. In other cases we will initiate because of a workplace incident, some harm to a federal worker—that will invoke our attention and investigation as well.

Senator ABETZ: Right, let's get to the nub: Villawood Detention Centre. When was the first time you visited that? Or have you visited that centre on a number of occasions?

Mr O'Connor: My understanding is that the Villawood centre and other immigration detention facilities have been visited on occasions before. I will take on notice when the first visit would have been. Certainly it is a facility that we are familiar with, as are our colleagues at WorkCover NSW, the work health and safety regulator that also has jurisdiction over that site.

Senator ABETZ: All right. If you could possibly take on notice for us, if it is not too much work, for all the detention centres in Australia, what visits have been undertaken over the past five years and what recommendations, if any, have come from that. As I understand it, before the rooftop protests at Villawood, Comcare issued the immigration department with a lengthy improvement notice. Is that correct?

Mr O'Connor: That is correct, Senator. That is the improvement notice I mentioned before the dinner break.

Senator ABETZ: Yes. And that was given to the department of immigration?

Mr O'Connor: It was, Senator.

Senator ABETZ: Are we able to get a copy of that improvement notice?

Mr O'Connor: I will defer to Mr Kibble on that.

Mr Kibble: Yes, Senator.

Senator ABETZ: All right. If I could invite you to table that, how long would that take for us to be able to access that? I do not expect tonight.

Mr Kibble: We can do that tomorrow, Senator.

Senator ABETZ: If you could provide that to the secretariat of the committee I would be much obliged, and then if it can be circulated. What matters were raised in that improvement notice? Were matters such as staff to detainee ratios mentioned?

Mr O'Connor: I would have to take that on notice. I do not have personal knowledge of that.

Senator ABETZ: Mr Kibble, do you?

Mr Kibble: I do not have personal knowledge to that level of detail, Senator.

Senator ABETZ: The notice, once you provide it to us, will tell us all, I would assume.

Mr Kibble: Yes.

Senator ABETZ: All right, thank you for that. Have you been asked to do a risk assessment for the potential Pontville detention centre in Tasmania?

Mr Kibble: Not as far as I am aware.

Senator ABETZ: And did you do an assessment on Christmas Island prior to the breakout on Christmas Island?

Mr Kibble: Not as far as I am aware.

Mr O'Connor: There were visits by our inspectors from our Perth office, together with colleagues from WorkSafe Western Australia, to look at those facilities—

Senator ABETZ: Before and after the riot?

Mr O'Connor: Yes, but they were last year.

Senator ABETZ: So you have made assessments before?

Mr Kibble: Just to clarify, Senator—maybe it is just the wording—we do not make risk assessments. Our investigators look at compliance with the federal work health and safety laws.

Senator ABETZ: Yes, of course, sorry. I stand corrected. So in relation to Pontville have you made any of those assessments to see if they are compliant et cetera?

Mr Kibble: Not that I am aware of.

Senator ABETZ: If you could take that question on notice, and whether or not any draft staff to detainee ratio has been provided or considered for the Pontville centre and your belief or otherwise as to the adequacy of that. And then can you tell us that for the Christmas Island detention centre as well? That would be helpful. And if you did make a list of—what do we call them?

Mr O'Connor: Immigration detention facilities?

Senator ABETZ: No, improvement notices; the improvement notice in relation to Christmas Island prior to the riot on Christmas Island.

Mr Kibble: I am not aware that we say improvement notice in relation to Christmas Island.

Senator ABETZ: All right. Is the term 'improvement notice' a technical term? It is?

Mr Kibble: Yes.

Senator ABETZ: Right. So you are going to provide us with a copy of the improvement notice for Villawood?

Mr Kibble: Yes.

Senator ABETZ: Are you in the business of providing other suggested improvements to departments that would not necessarily be in the form of the technical improvement notice?

Mr Kibble: If I could just provide some context about the federal workplace work health and safety laws? Our investigators have got a range of statutory tools that they can use. Improvement notices are one of them. They can also issue prohibition notices, which are statutory notices to an employer or another party to stop doing something. And they have got

a range of other tools that they can use. Improvement notices are a tool where they make recommendations to an employer or another party and seek the parties' compliance with those recommendations in a certain period of time. They then follow up afterwards and through either visits or documentation satisfy themselves that the requirements of the improvement notice have been satisfied.

Senator ABETZ: All right. How many improvement notices have been issued in relation to Villawood?

Mr Kibble: In this financial year, one, as far as I am aware.

Senator ABETZ: So just the one?

Mr Kibble: Yes.

Mr O'Connor: By us.

Mr Kibble: By Comcare.

Senator ABETZ: Yes, by Comcare; that is all that you would have knowledge of.

Mr O'Connor: Well, WorkCover NSW have issued some, but that is a matter—

Senator ABETZ: Yes, for them to determine. Thank you for that. Can you tell us anything about the asbestos found at the South Australian Inverbrackie detention centre?

Mr O'Connor: Yes. The concerns about the potential of asbestos exposure at that facility were raised with us late last year. What we have been able to confirm through our local work, health and safety investigators in their inspectorate there, together with their colleagues from SafeWork SA, is that there are no imminent safety concerns for workers and others at the centre. But our colleagues at SafeWork SA continue to monitor the situation. They are satisfied with the remedial measures that were put in place by Nation Build Pty Ltd, which was the contractor engaged to undertake the particular renovation. I understand that our colleagues at SafeWork SA have issued a media release this afternoon to clarify their perspective and confirming their collaboration with us over that particular site.

Senator ABETZ: So at this stage we are hoping for no compensation?

Mr O'Connor: We certainly hope that is not the case. Our understanding is that the potential exposure to some of the contractor staff, which is the interest of our colleagues in SafeWork SA, was considered to be minimal, but there is no guarantee or assurance there. Obviously there is concern, which is why we and our colleagues in SafeWork SA acted quickly to make sure there are no safety gaps so that for workers who are on the site, whether they are under state or federal jurisdiction, there is a comprehensive coverage of the work, health and safety arrangement at that facility.

Senator ABETZ: Can I quickly backtrack to the issue that I started on, and that is the training methodologies. I am advised that the SRCC did approve the guidelines—that is correct, Mr Kibble? But is it correct to say that it was on Comcare's recommendation that the SRCC adopted them?

Mr Kibble: From memory, that would be correct, yes.

Senator ABETZ: Right. So let's not hide behind the fact that the SRCC made the decision. Sure, they did, they finally rubber-stamped it, but it was on the basis of Comcare's recommendation.

Mr O'Connor: As a member of the commission and part of the decision-making body, it would be my personal view—I cannot speak for other commissioners—that it was not a matter of rubber-stamping, either in April last year, when the commission did turn its mind first to it and, particularly, more recently at its March 2011 meeting, when the range of issues and concerns that had been identified by Dr Culvenor were put in full to the commission, and the commission had a further consideration of the particular matters. So, yes, there was material that was supplied by Comcare staff as part of its requirement under federal law to provide secretariat services to the SRCC, but there was no—in my view, speaking as one commissioner—rubber-stamping of that particular matter. Dr Culvenor's full perspectives were put before the commission and a comprehensive response to his concerns was provided by the chairperson of the SRCC. We have also highlighted to Dr Culvenor the matter I spoke about before dinner, which was that the draft regulations do call for five days' training, but the mechanism of service delivery is not called out in the regulations, and that is a matter of public comment.

Senator ABETZ: It was Comcare, as I understood it, who accepted the recommendation that training be predominantly face-to-face, yet somehow it morphed into this exclusive method, which then, as I understand it, SRCC just adopted. Or did the SRCC avail itself of more information, new information?

Mr O'Connor: Certainly the SRCC, when it made its original decision in April 2010, took into account a number of factors including how the requirement for service delivery mechanism would satisfy the overarching objectives for the guidelines. We also had a regard to that survey. I am able to clarify that I believe that survey was done before I joined Comcare and was a commissioner, which perhaps explains my absence of recall of that.

Senator ABETZ: That is a pretty good alibi, I have got to say.

Mr O'Connor: Also, one of the other factors that was taken into account, if I recall, in that April meeting, was a desire for overarching national consistency, consistent with the desire to move towards more synchronised, harmonised arrangements around Australia. That said, all of the perspectives that Dr Culvenor had made to the delegate, in considering whether or not to have his course re-accredited, were put before the commission, including Dr Culvenor's extensive analysis of the issues. They were considered by the commissioners at that March meeting, but the submission and all of the reasons for the commission's thinking about this have been highlighted to Dr Culvenor recently.

Senator ABETZ: The rationale, with respect, is not that robust. As I understand it, Comcare put in their guidelines to the March meeting that there be exclusive provision, whereas they accepted the recommendation of the review that it be predominant. So if you can take on notice as to when that changed in Comcare's thinking, why and how, that would be very helpful, because all the evidence suggests that it might be predominant but should not be exclusive, and there was no real robust evidence. We have traversed those arguments before. Thank you.

Mr O'Connor: You are welcome.

CHAIR: Thank you for your evidence. I think that ends the questions for Comcare. And we will now proceed to Safe Work Australia.

Safe Work Australia

[20:20]

CHAIR: I now welcome witnesses from Safe Work Australia. Do you have any opening remarks you would like to make to the committee before we commence?

Mr Hoy: No, Mr Chair.

Senator ABETZ: In relation to the safe rates enquiry, should I be going to the department for that?

Mr Hoy: Yes.

Senator ABETZ: I thought that might be the case, so we can get rid of that first bit of paper. Budget paper No. 2 tells me that there is a funding for model work, health and safety laws implementation and in the coming year Comcare is being given \$7.1 million.

Mr Hoy: That is not Safe Work Australia, that would be a matter for Comcare.

Senator ABETZ: Yes, I am aware of that. That is why I said Comcare is being given that amount of money. I thought you were the lead agency in relation to the model work, health and safety laws, because I was in fact told to go through the draft regulations with you as opposed to Comcare.

Mr Hoy: Safe Work Australia is the lead policy agency to develop the national work, health and safety act, the supporting regulations and codes of practice. We are in the process of doing that. Then it is a matter for the various jurisdictions—the Commonwealth, the states and the territories—to enact and implement the legislation. So the figure that you are talking about presumably relates to Comcare's responsibility to implement it within the Commonwealth jurisdiction.

Senator ABETZ: Right, and you do not get a red cent.

Mr Hoy: No—

Senator ABETZ: I was trying to defend you and plead your cause!

Mr Hoy: Thank you!

Senator ABETZ: But you are not willing to cooperate with me, so that is bad luck!

Mr Hoy: Our funding is actually provided for under the intergovernmental agreement, which is co-funding from the Commonwealth and the states and territories.

Senator ABETZ: If there are certain drug issues in workplaces, is that something that Safe Work Australia deals with?

Mr Hoy: It depends what they are.

Senator ABETZ: I am completely out of the loop on these matters, but there is supposedly a herbal marijuana called Kronic and employers supposedly are noticing the effects of this on workers, but it is very difficult to fit in with the existing drug policies, because as I understand it you can purchase this material and there is sort of no tolerance measurement in relation to this substance. You either test positive or negative and not the extent that may be in the system, which, as I understand it, has similar attributes to marijuana. Has this matter been brought to your attention?

Mr Hoy: I read it about it on an online newsletter. We do not have responsibility for that and I have not tried it, so I cannot tell you.

Senator ABETZ: So you do not have a responsibility—

Mr Hoy: Not knowingly.

Senator ABETZ: The various states have responsibility, or—

Mr Hoy: Look, I am not sure about that. I suspect that the health department and its related agencies may have some role in the Commonwealth jurisdiction.

Senator ABETZ: But if this is being used in a Commonwealth workplace that you might have some concern for—

Mr Hoy: If it is in a Commonwealth workplace it would be a matter for Comcare.

Senator ABETZ: And they have just gone. Good luck to them.

CHAIR: I am sure they are running as we speak.

Senator ABETZ: What national research has been done in relation to the occupational health and safety draft regulations as to empirical research and the benefits that this might provide in relation to issues of occupational health and safety?

Mr Hoy: I will get my colleague Ms Grey to talk about that.

Ms Grey: We have done a range of research over a number of years, but the most relevant research I suppose is the regulation impact statement, so Mr Creaser will speak to that.

Mr Creaser: As part of developing any regulatory proposals we are obliged to prepare a regulatory impact statement and for the model act there has been a consultation regulatory impact statement and a decision regulatory impact statement prepared, and that was signed off through the Office of Best Practice Regulation and then subsequently used as part of the decision-making by the workplace relations ministers council in signing off the act. Subsequently we are doing a similar process for both the model regulations and the model codes, and there has been a consultation regulatory impact statement prepared for those, which was out for public comment recently. And we currently are in the process of developing the final decision regulatory impact statement based on the feedback from that, which will be presented to Safework Australia as part of a final package for signing.

Senator ABETZ: All right. In relation to the draft regulations, no doubt you consulted widely to get these together?

Mr Hoy: Yes, there was a four-month public consultation process which started in December 2010 and ended on 4 April. We received approximately 1,350 submissions which we have been through. We have analysed them. We are currently reviewing the regulations to take account of the public comment.

Senator ABETZ: So I suppose that would include chapter 6, which deals with construction work.

Mr Hoy: It dealt with all the regulations.

Senator ABETZ: But out of all of them, I have picked on chapter 6 just to highlight a few issues. Did the regulatory impact statement tell us about the impact of chapter six on the potential cost of a new dwelling place?

Mr Creaser: If I may answer that, Senator. That was covered off in a previous regulatory impact statement for the national standard for construction work on which the regulatory

provisions in the national model regulations are based. And because that was a signed-off national standard under the Australian Safety and Compensation Council process—

Senator ABETZ: When was that signed off on?

Mr Creaser: That was in 2005.

Senator ABETZ: And that formed the policy basis for the regulations, which are in the model regulations, therefore, because jurisdictions had already agreed to implement that as a regulatory process, through previous national agreements, it was not considered necessary to reopen that as part of this regulatory impact statement.

Mr Hoy: Of course, not all states at the time adopted the national standard, in particular South Australia.

Senator ABETZ: And Western Australia?

Mr Hoy: I am not sure about Western Australia.

Senator ABETZ: Chances are they would have been on board at that time.

Mr Creaser: My understanding is that Western Australia did pick up the—

Senator ABETZ: All right. Because it seems that, under these model regulations, any residential dwelling is now going to become classified as 'high-risk construction work'.

Mr Hoy: Senator, the regulations have not yet been finalised, so it is a bit early to be drawing conclusions about what will be in there.

Senator ABETZ: But the problem is, you must have been relatively satisfied with them, Mr Hoy, to put them out for public discussion, and I do not want to come back later on and hear: 'Sorry, they were all locked in. There was a public consultation period and that is what we've decided.' I want to take you through some of the issues in the model regulations to ascertain how we came to the conclusion that anything that involves the risk of a person falling more than two metres becomes high-risk construction work.

Mr Hoy: Senator, what I can say is that Safe Work Australia did develop model regulations. They are, as Mr Creaser said, based on the national standard. That particular matter was subject to public consultation along with the rest, and we are currently reviewing that particular regulation.

Senator ABETZ: I hope you review that, along with the suggestion that 'high-risk construction work' means construction work that, under (g), involves a tunnel. What is our definition of a tunnel for the purposes of these draft regulations?

Mr Hoy: I will need to get some advice on that, Senator.

Senator ABETZ: Does it mean boring under a concrete path for the purposes of inserting a water pipe or an electric wire?

Mr Hoy: Just bear with me, Senator. I will get some advice on that.

Senator ABETZ: If it is not readily available, take that on notice, but they are some of the concerns, I must say, that I picked up. A construction project is a project that involves construction work of \$200,000 or more, which basically means, now, every single residential dwelling—

Mr Hoy: Senator, can I just say that all those matters are currently under review.

Senator ABETZ: Yes, but how did it find its way into the model?

Mr Hoy: Because Safe Work Australia made those decisions.

Senator ABETZ: That is right, and I am questioning those decisions.

Mr Hoy: Yes. Those and a number of other matters were in the draft regulations. We specifically put them out for public comment. We are now dealing with the public comment, and I expect that some of those things will be changed in the light of public comment. That is the process, Senator.

Senator ABETZ: Let us hope so.

Senator Chris Evans: Senator, I would have to say that I have similar feedback both from employers and unions about their concerns. Quite frankly, that is what the process was designed to do—to actually have people respond to the draft and provide feedback. That process has gone through now. I think there are settlements emerging in a whole range of areas, but clearly it is a big piece of work. You are quite right to raise them, but all Mr Hoy has indicated to you is that, yes, they have had that on a whole range of issues from both sides or multiple sides of the debate, and it is about working through it all now to try to make sure we get it right.

Senator ABETZ: Yes, but it is a bit concerning that the draft has so many issues in it just in the construction chapter, and I am sure that if I had picked another chapter we would have found similar concerns. That that was the starting point is a matter of great concern, especially for the cost of housing in Australia, where it would mean, I think, that every single residential dwelling that is built would need to have a safety fence erected around it.

Senator Chris Evans: Senator, whether we are at the start of another scare campaign or not, the answer is that the process was agreed by COAG and the draft was put out, as we tried to bring all of those different regulatory frameworks together. There is a healthy debate now occurring about that, and the feedback is going to Mr Hoy and his officers and we are working through that process. But, as I said, some of the issues you raise are ones I have been approached about by unions concerned about the downgrading of asbestos management protections—which I do not think will be the outcome. A range of concerns have been expressed.

Senator ABETZ: Yes, but before you get away with that assertion about a scare campaign, Mr Hoy, can you confirm that, if the draft regulation were adopted, that would be a requirement—a safety fence would need to go around every residential dwelling?

Mr Hoy: I would have to get some advice on that, Senator.

Senator ABETZ: All right; take that on notice. That is unless it is a residential dwelling that costs less than \$200,000 and will not be taller than two metres. Here we go. Regulation 6.4.8, paragraph (3) states:

The principal contractor for a construction project—

which we agreed before has to be over \$200,000—

must ensure, so far as is reasonably practicable, that the workplace at which the construction project is undertaken is secured so as to prevent unauthorised access.

That will put a huge cost on domestic housing, and that is just one example. And how it ever found its way in is a matter of concern. But, Chair, given the hour of the night, I will leave it there, but I would encourage the people who administer these regulations to be very mindful

of the consequences and the flow-on effects to every Australian, not just the workers and the contractors but also the purchasers of these houses, units and commercial buildings, because it will have a substantial impact on price as well.

Senator FISHER: I understand the New South Wales Parliament was today considering the now state government's bill on occupational health and safety, and that the government failed in its bid to take away from unions their current right to prosecute under New South Wales laws. Are you up with that development?

Mr Hoy: Senator, I am aware that the New South Wales bill to give effect to the model bill was debated and passed in the New South Wales legislative council on Friday. There were some amendments made to that which did relate to a limited union right to prosecute for category 1 and 2 offences. I am yet to actually see precisely what the amendments are and what the impact of those amendments will be; but it is true that, if the legislative assembly actually agrees to the amendments, there will be some variations to the model bill in New South Wales.

Senator FISHER: I am referring to an article in *Workplace Express* which claims that, as you have said, firstly, it gives unions the power to prosecute for categories 1 and 2, the two most serious sorts of offences, when WorkCover declines to prosecute, and—

Mr Hoy: And, if the DPP reviews it and believes that there should be a prosecution, they will refer it back to WorkCover; and, if WorkCover then fail to prosecute, the union would have the right to prosecute. That is as I understand it, but I am only reading reports on it; I have not actually seen the amendments.

Senator FISHER: That is consistent with the report I have got in front of me.

Mr Hoy: But it is true that in the model act there is no union right to prosecute.

Senator FISHER: That is right. So my question is: what does this current state of play in New South Wales bode for the proposed federal system?

Mr Hoy: Under the intergovernmental agreement all of the Commonwealth, the states and the territories committed to enact the model legislation. That is a matter that is under auspices of COAG, so it will be a matter for COAG to consider, when all the bills are enacted, to what extent they have actually complied with the model legislation. Safe Work Australia has a role to monitor the implementation of it. We will be reviewing that. We will be raising it with the relevant ministerial council and ultimately to COAG.

Senator FISHER: Have not some states indicated that if there is a right for unions to prosecute, they will not be in the game, nationally—that is, they are not interested in a national system that gives unions the right to prosecute?

Mr Hoy: I do not know any particular states that have actually said that.

Senator FISHER: Let us ratchet it back a few. Are you aware—

Senator ABETZ: It is a fair bet Colin Barnett would not accept it and a fair bet that Victoria will not accept it.

Mr Hoy: What, Senator?

Senator FISHER: A national system that allows unions to prosecute.

Mr Hoy: I can only work on the basis that the Commonwealth and all the states and territories actually agreed to the model legislation, which was signed off by ministers in

December 2009. Now it is a matter for the various jurisdictions to enact it and of course they have to get it through their relevant parliaments.

Senator FISHER: Indeed. What then of the reported urging by the Greens in New South Wales to all states to adopt a system that allows unions to prosecute?

Mr Hoy: I read that report too, but it is still going to be a matter for the particular jurisdictions.

Senator FISHER: Of course, come 1 July, we will have Greens in control of the Senate here, as well, so it is going to depend just a little—

CHAIR: I do not think control. I think that is a little—

Senator FISHER: on what Senator Brown is able to do or not with his troops.

Senator Chris Evans: I think we are way outside of the realms of Mr Hoy's responsibilities here. In terms of advice to government on what we do, that comes from the department. Mr Hoy has told you what he knows of the New South Wales legislation. I have not yet seen exactly what passed. They did remove the reverse-onus-of-proof provision, and I understand they have maintained some limited right for non-DPP prosecutions. But I have not seen the detail of that. The question about compliance with the national uniform legislations will be a question obviously for COAG and assessments to be made. I note, however, that Western Australia already indicated, as part of that decision, it reserved its right for a couple of measures—I think three measures. But the model legislation has been passed for this one issue, as I understand it, and we will want to get some further information on that. It is also true—

Senator FISHER: That is one issue.

Senator Chris Evans: Well, it could be. I have not actually seen what has been passed. Although I notice the New South Wales minister welcomed the passage of the legislation, and while they opposed the amendment, they said they had passed the legislation in a way that would allow harmonisation. I also note that Queensland passed its legislation the other day and it is about to be introduced in most of the other parliaments. But my comment to you would be that—and it is not really for Mr Hoy—we will be taking advice on exactly what has been carried by the New South Wales parliament and what that means for the question about whether or not that is, if you like, compliant harmonious legislation.

Senator FISHER: You might find yourself—

Senator ABETZ: Those amendments in New South Wales have turned out as they have courtesy of the Labor Party voting those amendments up with the Greens and the Shooters Party, which, as I understand it, is in contradiction to what Ms Gillard's and federal Labor's policy is. So, having been hugely flogged at a state election, the state Labor members of parliament are not willing to acknowledge the mandate of the state Liberals, nor are they willing to accept the recommendation of federal Labor, as well. This situation could be resolved by you, Minister, convincing your Labor colleagues in New South Wales to do the right thing.

Senator Chris Evans: First of all the position of this government is clear. We are supporting occupational health and safety harmonisation and we are driving that reform. And until now we have enjoyed federal opposition support for that. I welcome the New South

Wales government's attempt to pass that legislation, and I note your commitment to the issue of mandate, which I will remind you of in some parliamentary debates no doubt to come.

Senator ABETZ: Like the carbon tax, no doubt!

Senator Chris Evans: I appreciate your commitment to government mandates.

Senator ABETZ: The practical outcome is that if we are going to have one set of rules, potentially, in Albury and another set in Wodonga.

CHAIR: Like there is now.

Mr Hoy: Yes, that is correct.

Senator FISHER: On that issue, if the bill passes the upper house in New South Wales, or passes the New South Wales parliament, in its current terms—

CHAIR: When you start with 'if something happens in New South Wales', it is really going to be the hypothetical, is it not? Do you not think?

Senator FISHER: I think you should give the minister the choice, Chair. If the bill passes the New South Wales parliament, in its current form, you would have different OH&S laws in New South Wales, as compared with the ACT, would you not Minister?

Senator Chris Evans: As I understand it, the legislation has passed the New South Wales parliament.

Senator ABETZ: Has it gone back to the lower house?

Senator Chris Evans: I am not sure, it was reported as being passed, I think.

Mr Hoy: As I understand it, it is back with the legislative assembly. I am not familiar with the parliamentary processes there, but I assume—

Senator ABETZ: If something gets amended in the upper house then that should go back to the lower house.

Mr Hoy: I assume that is the case but I cannot speak to that.

Senator ABETZ: I have not caught up with whether it is there—

Senator FISHER: That renders my question no longer hypothetical.

Senator Chris Evans: I will take advice on that because I accept that, and there has been some confusion in my own mind about that.

Senator FISHER: Two different sets of laws? Is that what you accept?

Senator Chris Evans: No, I am saying that having seen the press release from the New South Wales minister, I guess I assumed therefore the legislative process was completed, but your point and the point Mr Hoy has supported is that it is right that it would—I assume—have to go back to the legislative assembly. But having seen the New South Wales minister's press release I assumed it was a completed legislative process. The simple answer is I have not had a brief yet on the detail. You have now raised another question in my mind about whether it actually has formally passed the parliament, so I do not want to say anything more about that. I have not had a detail of the actual amendment, which I think was moved by the shooters party, to retain that limited prosecution right. Until we get that I would not want to say anything further. I would indicate that I think the ACT is about to introduce its legislation into its parliament—that is the last advice I saw. Mr Hoy, do you have anything on that?

Mr Hoy: Yes, that is in the near future, but I do not have a specific date. The bill that I have seen from the ACT adopts the model bill.

Senator FISHER: So I say again: that ultimately results in one set of laws for New South Wales and one set of laws for the ACT.

Mr Hoy: It is not one set of laws. This is a minor amendment made to one of the provisions. There are many provisions in there. As I understand it, without seeing the particular amendment, it is a limited right to prosecute. Where the particular regulator in New South Wales declines to, the DPP reviews it and says there should be a prosecution, and if WorkCover NSW then declines to, that is when the union would have a right to prosecute. Without having seen it, that is my understanding of it.

Senator ABETZ: Are they there in the categories—

Mr Hoy: Categories 1 and 2.

Senator ABETZ: Which are the most serious offences.

Mr Hoy: That is correct.

Senator FISHER: With respect, Mr Hoy, a minor difference in your view but in the minds of many potentially, as I said, a die-in-the-ditch issue.

Mr Hoy: They are important amendments. I would prefer they were not made.

Senator FISHER: Prime Minister Gillard might prefer they were not made as well, Minister, given that this harmonised OH&S system was her big success.

Senator Chris Evans: Our position is perfectly clear. Senator, we continue to drive this reform. Things have been going well—I think they are still going well. This is clearly an issue we are going to have to address, but we have to get harmonised laws through each state and territory parliament, and each state and territory parliament will guard its independence and reserve its right to consider those bills before making their final decisions. No-one ever pretended this was not going to be without its challenges, but it is the case that all the states and territories have committed to try to harmonise the laws. We have had Queensland pass its legislation. We have had NSW pass the legislation with this one issue, which we have to get further clarity on. South Australia reintroduced its bill a couple of days ago and, generally, the other parliaments are on track. So yes, it is progressing. Yes, we would prefer that the NSW legislation contained the proposed model bill in its entirety, but we have also got to get through the Commonwealth parliament. No doubt I will confront issues in the Commonwealth parliament, as people will want to have a say about the Commonwealth legislation. And we will work our way through that, Senator Fisher.

Senator FISHER: On track, Minister, in terms of timing, does that mean on track to have all the states and the territories, at the very least, pass their laws before 1 July so that at least you do not have those—

Mr Hoy: It is 1 January, 2012.

Senator Chris Evans: 1 January next year, Senator.

Senator FISHER: For them to pass their laws—

Mr Hoy: To enact the legislation. That is the commitment they have made.

Senator FISHER: Is the Commonwealth seeking that the respective parliaments consider and pass the legislation, irrespective of the date of commencement, before 1 July this year, so at least you have not then got those state and territory based issues clouding the scenario when you have the Greens arrive here in the Senate come 1 July.

Senator Chris Evans: Senator, the answer to that is no.

Senator FISHER: You might regret that, Minister.

Senator Chris Evans: No, we have gone out for consultation on the bill and that will conclude, I think, on 17 June 2011, and we will bring the bill into the parliament. But I am not relying on the Greens, I am relying on you.

Senator ABETZ: Let us wait and see, but just for what it is worth—

Senator Chris Evans: Have you changed your position, Senator? I thought you were supporting harmonisation?

Senator ABETZ: Wait a minute; I thought a bill was out for draft, so we do not know what the final wording is—

Senator Chris Evans: It is the harmonised bill.

Senator ABETZ: but, for what it is worth, the state minister in NSW has indicated that what has been passed may not be consistent with the national approach. I do not want to argue the toss here, just to let you know that that seems to be the latest. If I may—

Senator Chris Evans: But he also claimed victory, I think, so—

Senator ABETZ: Yes, because it was better than the outrageous regime that the High Court indicated its displeasure about—

Senator Chris Evans: We will get through the main particulars and I will obviously have a conversation with you when the dust settles.

Senator ABETZ: Possibly on notice to Mr Hoy—on another matter because I am very conscious of the time—

Senator FISHER: Premier O'Farrell could claim victory but, Minister, you will not want to claim victory if NSW has different laws from the rest of Australia, will you?

Mr Hoy: Like it is now?

Senator Chris Evans: I will not go over the same ground. We are driving the process of seeking harmonisation. We are encouraging all states and territories to do that and we are encouraging the federal opposition to support us in that effort.

Senator ABETZ: Let us wait and see what the final version is. If I may briefly ask—and you can take this on notice, because I assume you will not have an answer—whether the draft regulations will make any asbestos issues with pulling cables through existing telecommunication ducts safer or less safe, easier or more difficult, more or less expensive for the NBN project? I assume you would not have an answer.

Mr Hoy: I will take that on notice.

Senator ABETZ: I thought you might.

Mr Hoy: Thank you.

Senator ABETZ: This is a sensitive issue but, whilst these new harmonised laws are designed to make workplaces safer, have we got the current number of fatalities and serious workplace injuries all around Australia and have we set ourselves a target as to what these new harmonised laws might mean in relation to fewer fatalities and fewer injuries in Australian workplaces?

Mr Hoy: Senator, we have information on fatalities in each of the jurisdictions. We have published that in the little booklet, which I gave you a copy of.

Senator ABETZ: Yes, that is very helpful.

Mr Hoy: There are targets that all Australian jurisdictions committed to in 2002, to reduce fatalities by 2012. That is in the national strategy. We have not yet set particular targets relating to what the new legislation might lead to.

Senator ABETZ: That was all I was asking.

Mr Hoy: But what we are in the process of doing is setting up a framework to evaluate the legislation and that will include such measures that you talked about.

Senator ABETZ: I will look forward to that. Finally, Mr Hoy, did you receive a briefing before the March SRCC meeting about the agenda item regarding the HSR training guidelines?

Mr Hoy: Did I receive a briefing? I did not receive a particular briefing from Comcare SRCC, if that is what you are talking about?

Senator ABETZ: You did not?

Mr Hoy: As far as I can recall. I cannot remember a particular briefing. I actually received the papers.

Senator ABETZ: The papers; same diff. Did you receive papers before the March SRCC meeting about the agenda item regarding the HSR training guidelines?

Mr Hoy: In March this year? Which year are you talking about?

Senator ABETZ: I have lost track. Chances are it is March 2010. When were the uniform guidelines adopted?

Mr Hoy: I would rely on Comcare to answer that question.

Senator ABETZ: All right.

Mr Hoy: But since 1 November 2009, I have been a commissioner of the SRCC. Like other commissioners, I actually receive the commission papers. I cannot recall any occasion when Comcare has specifically briefed me on SRCC agenda papers, but I do obtain briefing from within Safe Work Australia.

Senator ABETZ: Not specific briefings, but did you receive any papers or supportive papers or documentation in support of an agenda item, in either March 2010 or March 2011, regarding the HSR training guidelines? If you could take that on notice for us.

Mr Hoy: Senator, I did receive papers relating to that, yes.

Senator ABETZ: Right. Did that advice, briefing, paper, notes—however we may describe it—indicate that there would be no effect on existing training providers if the SRCC adopted the change to HSR training, being exclusively five days face-to-face?

Mr Hoy: Senator, I cannot recall any such briefing on that matter.

Senator ABETZ: Can you please take it on notice?

Mr Hoy: Yes, I can.

Senator ABETZ: And the term 'briefing' we accept has a wide definition. It is not a formal briefing face to face or a formal briefing note. They might have been supportive comments attached to an agenda. Some information has now been released on FOI on this, so the term 'briefing' may be used in a loose manner by me. But if you could take that on notice.

Mr Hoy: Yes, I will.

Senator ABETZ: I would be much obliged. Thank you, very much.

Senator WORTLEY: Mr Creaser, in the February estimates, we spoke briefly about the nanotechnology research projects and I understand that, earlier this month, Safe Work announced the release of a research report on the durability of the carbon nanotubes and the potential to cause inflammation. With regard specifically to that report, are you able to update us on what Safe Work Australia is doing?

Mr Creaser: Certainly. Yes, the paper that was produced was some further research work that we are carrying on as part of a suite of research work on carbon nanotubes. It follows on from some earlier research which indicated that there is potential for carbon nanotubes to cause mesothelioma-like nodules in the pleura of the lungs if the material is in large quantities and is injected directly into lungs. So obviously that raises some concerns from a health and safety point of view. The paper that we published this year, recently, was looking at how carbon nanotubes would react in a typical lung fluid: do they persist for long enough to be able to form the sorts of mechanisms that lead to those sorts of diseases? The next lot of work we are doing is looking at classifying carbon nanotubes based on the health information we know, which would bring it under the hazardous chemicals regulations and therefore it would be regulated like any other chemical. We also have a watching brief on other research that we are aware is happening around the world, particularly on carbon nanotubes in this sort of area.

Senator WORTLEY: How long is that research expected to take before we have a report on it?

Mr Creaser: We hope to have information on the classification from NICNAS, who are doing the work for us, later this year. There is a draft report that we have received already and we are providing some comment on that at the moment, but this is a continually evolving field of study, so as new information comes to light we will take that on board and assess it.

Senator WORTLEY: How does that impact on workplaces in Australia at the moment?

Mr Creaser: Not greatly. We are not aware of any use of carbon nanotubes in a manufacturing context outside of research environments such as universities and some specialist research agencies. There are some small quantities of products containing carbon nanotubes bound up in a matrix, usually at the high end of the sporting equipment range, and we are proposing to do some work with the CSIRO to look at, if that material is cut—through the normal manufacturing processes of assembling components of sporting gear and things like high-end bicycles—whether there are carbon nanotubes released that could create a health problem.

Senator WORTLEY: Thank you.

Senator ABETZ: For Mr Hoy's benefit: I have had it confirmed to me it was the March 2010 meeting, not March 2011, so we only have to look at the 2010 agenda.

Mr Hoy: And it is a particular briefing I received along the lines—

Senator ABETZ: About the HSR training and whether you were advised certain matters that I have already put on the *Hansard*.

Mr Hoy: Yes.

Senator ABETZ: Thank you.

CHAIR: That would appear to be all the questions for Safe Work Australia, so thank you Mr Hoy for your attendance with your officers. We will see you again.

Department of Education, Employment and Workplace Relations

[21:07]

CHAIR: We are now moving into outcome 5. I understand Senator Humphries has some questions.

Senator HUMPHRIES: As I foreshadowed this morning, I want to ask something about the Clean Start award, which I understand is an award which has been negotiated in the cleaning industry and which provides, for cleaners to whom the award applies, what might be called improved conditions compared to what is available from other awards that might be applicable. Is someone able to describe briefly to the committee how that award works?

Mr Kovacic: It is not actually an award; it is an agreement which the relevant union, United Voice, seeks to negotiate with employers in the cleaning industry.

Senator HUMPHRIES: Can you describe what conditions attach to this agreement which are different to the award that might apply to workers in that particular field?

Mr Kovacic: My understanding is that it includes provisions relating to training arrangements and issues in respect of workload management, as well as the usual sorts of issues such as wages and conditions.

Senator HUMPHRIES: I am advised that the wages payable under the Clean Start agreement are significantly higher than the other sorts of awards that would normally apply to people on cleaning contracts or in cleaning employment.

Mr Kovacic: Certainly the rates of pay are higher than those in the relevant modern awards.

Senator HUMPHRIES: I am advised they are about 18 per cent higher than the most recent national award applying to cleaners. Would that be right?

Mr Kovacic: I am not entirely sure, but I can take that on notice to confirm the degree of differentiation.

Senator HUMPHRIES: Thanks. Can you tell me what the role of the department is with this agreement?

I see it has been involved in the negotiations for the agreement. Has it tried to promote the agreement as a fairer arrangement for people working in the cleaning industry?

Mr Kovacic: There is a set of principles, the Fair Work Principles, which the government announced in July 2009 and which indicate the government's support for the Clean Start agreement. That is against the background of its recognition of a history of underpayment,

exploitation and unsafe work practices in the industry. Under those Fair Work Principles there are specific requirements in terms of government agencies contracting for cleaning services, but the Fair Work Principles themselves do not require that a successful tenderer has a Clean Start agreement.

Senator HUMPHRIES: So it would be fair to say that, broadly speaking, the government would encourage government agencies to prefer companies which put their workers on Clean Start arrangements?

Mr Kovacic: Certainly the Australian government supports the Clean Start agreement. It is a matter for agencies in terms of managing the tender process for cleaning contracts and to make the decision as to which contractor that they provide. But, as I have said, there is not any requirement under the principles that a successful tenderer needs to have a Clean Start agreement.

Just a point of clarification in terms of previous questions: the department has not been involved in the negotiation of the Clean Start agreement. That is a matter that is being developed solely by United Voice, which is the relevant union, and it would then need to negotiate that with agreement with the relevant employer.

Senator HUMPHRIES: So the terms of the agreement have not been negotiated with the assistance of this department?

Mr Kovacic: Not at all.

Senator HUMPHRIES: Nonetheless the department and the government support the principles at work in the agreement and are supportive of government departments signing up to that agreement in terms of cleaning contracts.

Mr Kovacic: As I have mentioned on a couple of occasions, the government is very supportive of the Clean Start agreement but there is no requirement in the Fair Work Principles that a contractor has to have a Clean Start agreement to secure Commonwealth work.

Senator HUMPHRIES: I understand that. My concern, more specifically, is that I understand that all five of the principal cleaning companies that tender for government work in the ACT have in fact signed up to the Clean Start agreement. I am led to believe—although I have not had any of the companies say so in as many words to me—that they have done so because they believe that this represents the kind of environment in which Commonwealth government agencies would like to be working. What I also understand, however, is that in recent months those five companies have been in the position of having lost a number of existing contracts with Australian government departments and agencies, and they have lost those, I am informed, almost invariably to companies based outside the ACT which do not sign up to the Clean Start agreement. Their concern is that at the end of the day, because Clean Start involves a significantly higher pay rate for cleaners—I am informed about 18 per cent higher than the relevant national award—these companies are losing out on account of their using the Clean Start agreement. I have not gone to any of the agencies to interrogate them about the particular individual decisions that they have made as to why they prefer a Sydney-based company over a Canberra-based company, because I know that they would tell me that that is not a matter that they can ventilate in an estimates committee. I would appreciate it if the department—and I assume this is the most relevant department to do so—

were to go back and make enquiries of those government agencies which have in fact changed their cleaning contractors to see whether cost has been a factor and therefore whether the Clean Start agreements have in fact cost workers in those companies access to employment. If that was the case, there is clearly a major problem. If the cleaning companies themselves embraced Clean Start because they believed it was a reflection of what the Commonwealth government's preferred policy was but in fact have lost contracts on account of the fact that they are not competitive in price terms with other non-Clean Start companies, then the policy would appear to be counterproductive.

Senator Chris Evans: Senator, I think it is a good question you raise. It has also been raised with me from the union side that they are concerned that those contracts have not been won by Clean Start employers and also the ACT perspective in terms of the competition. I do not think anyone suggested to me that it is an ACT-Sydney thing but it is the case that the government has very publicly said it supports the Clean Start principles. The Prime Minister did that at the time the campaign was launched. We think workers involved in the cleaning industry are entitled to decent wages and conditions and some stability in their employment. As you know, the cleaning contract industry has not necessarily been a very stable one in terms of the way contracts turn over and some of the employment issues have not done some of the companies great credit in the past—and that is not an attack on good employers. I have actually asked for some work to be done on those procurement policy issues as a result of the issues you raise, and there is some work going on in government to understand better what has occurred in this regard because, as I say, the government made it clear we wanted to support that campaign. But as you rightly point out, and as the union has pointed out to me—and we have had feedback from contractors—that does not seem to have been reflected in the outcomes under the current procurement policy. It is an important issue. It is one we are pursuing inside government and the department is working with some of the other departments on procurement policies just to see what the issue is. I, like you, was a bit surprised by a couple of the outcomes, without going any further. I guess my answer to you is: yes, I think it is an issue; yes, I am taking it seriously and the government wants to give effect to its support for the Clean Start principles.

Senator HUMPHRIES: Okay, so could you take on notice some advice to the committee about what the outcome of that work that you described might be?

Senator Chris Evans: Yes. Happy to, Senator.

Ms Paul: We will give you a progress report, as it were, yes. Actually, do you want us to take it on notice, or should we offer a progress report when we are here next time? We will do either way, whatever comes first perhaps.

Senator HUMPHRIES: I am just aware that there are no estimates until October or whatever it is.

Ms Paul: No, that is probably true.

Senator Chris Evans: Senator, I am happy to offer you a briefing when I get to a landing point.

Senator HUMPHRIES: That is great, thank you very much.

Senator ABETZ: If I might start with the safe rates, where is the department is at with that issue?

Mr Kovacic: The issue is still under consideration in terms of the various submissions and the economic analysis that has been commissioned by the department.

Senator ABETZ: Has any economic impact analysis been commissioned?

Mr Kovacic: It is an economic analysis at this stage, but it is still a work in progress.

Senator ABETZ: What is the difference between an economic analysis and an economic impact analysis, if there is any?

Mr Kovacic: I suppose the sense is in terms of an economic impact analysis, I tend to see it more in the context of a regulatory impact statement if ultimately government decides to pursue some legislative reform in this area, but economic analysis is really to consider what the economic impact might be of the various options canvassed in the directions paper on which submissions were invited.

Senator ABETZ: What about a cost-benefit analysis?

Mr Kovacic: That is in essence a subset of the economic analysis that is currently a work in progress.

Senator ABETZ: Are we going to make that publicly available?

Mr Kovacic: That is ultimately a matter for government.

Senator Chris Evans: I do not think we have received it yet.

Ms Paul: No, we have not received it yet. I think it is too early to know.

Senator ABETZ: Is the intention to release it?

Senator Chris Evans: I will take it on notice. I have not given it any consideration. These matters have been mainly dealt with by Senator Collins, so it has not come to me yet.

Senator ABETZ: Sorry?

Senator Chris Evans: Senator Collins has been doing the day-to-day handling of matters, as my parliamentary secretary, so I have not—

Senator ABETZ: Undoubtedly she will provide an answer to that on notice through you.

Senator Chris Evans: Yes.

Senator ABETZ: At this stage we do not have an assessment on the transportation costs. Is that correct?

Mr Kovacic: The economic analysis is still a work in progress.

Senator ABETZ: That is part of it. Also, for example, what it would cost for a litre of milk and products per se—that is what the analysis is going to look into, albeit, I assume, not down to the specificity of a litre of milk.

Ms Paul: I would be surprised if it were down to the specificity of a litre of milk. Nonetheless I think it will be a broad economic analysis, as Mr Kovacic said.

Senator ABETZ: Are you satisfied that the current regulations are being satisfactorily enforced?

Mr Kovacic: I am not sure I understand.

Ms Paul: What sort of area are you interested in?

Senator ABETZ: In relation to what safe rates are supposed to be overcoming: the social evil or whatever we might call it of unsafe contracts or working arrangements. That is what safe rates are supposed to overcome. I am just wondering whether the regulations that are currently in existence to hopefully protect against that are being enforced to the extent the department would like? The suggestion has been made that if the existing regime were to be appropriately enforced then some of the issues that have arisen would not be arising.

Mr Kovacic: It would be true to say that, based on the submissions, there are a variety of views around those sorts of issues. That perhaps would not be very surprising. Having said that, there are areas where there is potential scope for some enhancement of existing arrangements. I think they were all issues, and possible approaches were canvassed in the directions paper. But ultimately whether they are implemented is a matter for government, and, as I have said, that is still a work in progress.

Senator ABETZ: We were told there would be a response to the discussion paper in due course, or submissions to the directions paper in due course, in answer EW0892_11 from the February estimates. Three months have elapsed. Is it still 'in due course' or less than due course now?

Mr Kovacic: It is still a work in progress. I certainly hope we will see some progress in the not too distant future in terms of providing our advice to government.

Senator ABETZ: In the not too distant future. Does that equal 'in due course'?

Ms Paul: Those are both very precise time measures!

Senator ABETZ: Yes; that is what I was thinking. But, without holding you to anything, do we have a date—by the middle of the year, roughly, or by September?

Mr Kovacic: I would be hopeful of providing some advice to government, as I said, in the not too distant future. I would say hopefully in the next six to eight weeks, but where it goes from there is a matter for government.

Senator ABETZ: I understand and accept that. Thank you. As to flexible work arrangements, is the department able to advise us what the original intention of the act was in relation to this potential scenario? As I understand it, under the National Employment Standards, there is a right for eligible employees to request flexible working arrangements. The employer can reject on reasonable business grounds, and that is not subject to appeal or review. It has been suggested to me that adverse action claims, however, can be taken in the event that these flexible work arrangements are not acceded to by the employer. One, is that the case? And, two, was that the original intent of the legislation?

Mr O'Sullivan: The general protections would only apply if the right to request amounted to a workplace right, and that would only occur if, I think, it had been included in a workplace agreement. So the NES would not give it the status of a workplace right; it would give it the status of something that must be considered by the employer.

Mr Kovacic: In answer to the first part of your question, we are not aware of employees actually pursuing adverse action claims or applications in circumstances where they may not have been granted the right to flexible working arrangements.

Senator ABETZ: Just so I understand it, Mr O'Sullivan: the statutory right for an eligible employee to, let's say, have flexible working arrangements to assist with child arrangements or family arrangements, they are not acceded to by the employer, and, as I understand it, there

is no way that the employer's decision can be appealed or reviewed. Is that correct? So the employee can make the request and the employer can reject the request?

Mr O'Sullivan: After giving reasons.

Senator ABETZ: Yes, on reasonable grounds, but, even if the grounds are not deemed to be reasonable, that is not appealable or able to be taken somewhere to have a determination made?

Mr O'Sullivan: The only circumstance where it might be able to be taken somewhere is if in the context of an enterprise agreement the parties have agreed to that right of review, but, other than that, no.

Senator ABETZ: Then, in those circumstances—not the enterprise agreement circumstance—the adverse action scenario cannot arise?

Mr O'Sullivan: I think the very first thing that would be asked of the applicant would be: what is the workplace right that you alleged to have been breached? In the absence of a right, as distinct from a request, that is able to be considered, then it would probably fall at the first hurdle.

Senator ABETZ: Thank you for that. We will see if it ever happens.

Mr O'Sullivan: Just to clarify: it is a workplace right to make the request; it is just not a workplace right to have the request acceded to.

Senator ABETZ: Thank you for that. In relation to right of entry provisions, as I understand it Fair Work Australia provides the permit to the permit holder. We heard evidence this morning that, basically, Fair Work Australia undertakes no vetting; they simply accept that the applicant—usually a trade union, I would assume—has checked police records et cetera, because I think there is a declaration attached to the request. Is that correct, in summary form, as to how you get a permit?

Mr Kovacic: In terms of the requirements—and I will find the relevant provision of the act—as was indicated in evidence, Fair Work Australia would only issue permits to a fit and proper person. In terms of determining that, section 513 of the act sets out the various matters that Fair Work Australia must take into account, in terms of permit qualification—

Senator ABETZ: And they are?

Mr Kovacic: They are:

- (a) whether the official has received appropriate training about the rights and responsibilities of a permit holder;
- (b) whether the official has ever been convicted of an offence against an industrial law;
- (c) whether the official has ever been convicted of an offence against a law of the Commonwealth, a State, a Territory or a foreign country, involving:
 - (i) entry onto premises; or
 - (ii) fraud or dishonesty; or
 - (iii) intentional use of violence against another person or intentional damage or destruction of property;
- (d) whether the official, or any other person, has ever been ordered to pay a penalty under this Act or any other industrial law in relation to action taken by the official;

(e) whether a permit issued to the official under this Part, or under a similar law of the Commonwealth (no matter when in force), has been revoked or suspended or made subject to conditions;

(f) whether a court, or other person or body, under a State or Territory industrial law—

Senator ABETZ: Thank you. What does Fair Work Australia actually do, or what did the legislation intend that Fair Work Australia do, to inform itself as to all these matters—that a person does not have these convictions, has trained themselves appropriately et cetera?

Mr Kovacic: Certainly Fair Work Australia will need to satisfy itself that on those qualification matters—I am not sure that 'met' is the right word—the applicant does not breach or have a problem meeting those.

Senator ABETZ: As I understand it, the training is done in house by trade unions; they provide a list of questions on the computer screen, and the answers are provided next to them and the applicant can just answer them as is and—surprise, surprise—get them all right and then pass the test. All this information is simply forwarded by the union—albeit in the form of a declaration, as I understand it—to Fair Work Australia, but Fair Work Australia undertakes no independent analysis and does not require for its files a copy of anybody's prior convictions or a statement from federal, state or territory police that there are no relevant convictions; Fair Work Australia just accepts that which is provided to it by the applicant or the applicants' organisation. I am just wondering if that was the original intent of the legislation with all these alleged safeguards, but it has now been outsourced to the trade union that wants the permit holder in the first place.

Mr Kovacic: The intent of the legislation is to ensure that an official is a fit and proper person to hold a right-of-entry permit. The matters that Fair Work Australia is required to take into account are set out in section 513 of the act. I think the question of how Fair Work Australia does that is best directed to Fair Work Australia. I acknowledge that you asked it about those issues earlier today when it was before the committee.

Senator ABETZ: I do not want to embarrass the minister. In the absence of the minister, I ask the department: is that the way it was intended that it would work, or was it completely left up to Fair Work Australia to determine how it should administer this right of entry provision? If you heard Fair Work Australia's answers to my questioning—and you would have, Mr Kovacic, because you were sitting in the room if I recall correctly—I might be so bold as to say that it does not sound very robust to me. I would have thought you would want an independent authority like Fair Work Australia at least ticking a few of the boxes rather than saying, 'That's what the unions have said to us, and we're going to take that on face value.'

Mr Kovacic: I note the point you make. Certainly one of the recollections I have of the evidence that Fair Work Australia made today is that it kept referring to a declaration. If that is a statutory declaration, there are potential penalties attached to making a false declaration. But to reiterate: the act sets out the factors that Fair Work Australia must take into account. It is not specific about how Fair Work Australia does that.

Senator ABETZ: Who checks up on the training that is delivered, for example?

Mr Kovacic: Fair Work Australia needs to take that into account.

Senator ABETZ: I have heard from a former union official how he got his right of entry permit and training. He sat at the computer and had a training module on it. He had the answers next to him, typed in the appropriate answers and got a pass. That was the training. It seems to me not to be as robust as the legislation may have anticipated. If the training is being provided by the organisation seeking the application, one wonders whether it might be helpful to have an independent body at least go through some of the documentation or test the robustness of the teaching materials. Has the department ever checked up on this to see what training materials are provided by the union?

Mr Kovacic: I am not aware of any concerns in the area. Equally, as I have said, this is a matter for Fair Work Australia in terms of administering the relevant provisions of the act.

Ms Paul: If we had heard a broad range of concerns and so on, I am sure we would be interested and Fair Work Australia would be interested as well, but there is probably not much further we can take it, given that it is actually their responsibility to ensure the robustness of it, as we have been saying.

Senator ABETZ: I will leave that aspect and turn to adverse action. What is the time limit?

CHAIR: It is probably a good time to have a break. We are over time again.

Senator Chris Evans: In the absence of Senator Back, the industrial conditions have slipped, I am afraid!

Proceedings suspended from 21:38 to 21:50

Senator ABETZ: Backtracking, I would seek to table—and this will be for the benefit of Mr Hoy—a document entitled 'Safe Work Australia Brief—Safety Rehabilitation and Compensation Commission Meeting 117' which details what was actually before that particular meeting. Interestingly enough, it talks about the suggestion that the new guidelines be endorsed. Part of it says:

These do not impose any new requirements on the providers of HSR accredited training or for training courses.

That is the interesting document—

CHAIR: The meeting, in due course, will agree or not to table it.

Senator ABETZ: that a decision was clearly made on but which did not represent that in fact. That is the document to which I was referring previously. My friend Senator Humphries asked you about the Clean Start agreement. The department has a role in that?

Mr Kovacic: We do not have a role in negotiating the agreement itself, as I indicated to Senator Humphries, but we do have a role in administering the Fair Work Principles through which the government has enunciated its support for the Clean Start agreement. The department administers the Fair Work Principles.

Senator ABETZ: As I understand it, if government departments want people who are involved, for example, in cleaning to be part and parcel of the Fair Work Principles and the Clean Start agreement, there are numerous things that they need to sign up to, which makes it very difficult, I would suggest, for relatively small businesses to obtain contracts.

Mr Kovacic: there are some additional requirements set out in relation to the Fair Work Principles for Australian government cleaning services contracts. They include that:

In addition to the Fair Work Principles, Australian Government agencies must take the following requirements into account when awarding contracts:

- The key parameters that will define relevant performance levels and provide adequate staffing to achieve these performance levels,
- Information about how the supplier will provide their employees with the appropriate training, supervision, equipment and materials to enable them to perform their job safely and efficiently, and
- Provision of information by the supplier that will allow Australian Government agencies to verify that the terms and conditions of a contract are being met.

The principles also commit the government to developing some best practice measures that can be embraced by cleaning contractors to fully realise the principles and fair and cooperative productive workplace relations as described in the principles. We are at the moment, together with the procurement coordinators, consulting with the industry about the development of those best practice—

Senator ABETZ: Or things such as 'Acknowledge and support freedom of association and representation of employees.' The requirement set out is:

Please detail how you inform employees on their right to choose to join a union and how you might facilitate this, e.g. do you invite union representatives to speak at an induction training session; how you inform your employees of their right to be represented in the workplace;

If you are a small cleaning contractor, you are not going to have these induction training sessions, because the chances are that you employ people one at a time. You might sit down with the employee and say, 'It is up to you whether you belong to a union or not,' but you are not going to have these sort of big induction sessions to which you would invite a trade union official. Let us say Coles supermarkets do that when they induct a new group of young trainees. They usually invite the shoppies along to give a little speech on why they ought to join the union. That is all fine for the big enterprises, but the small businesses, if they hope to get a government contract, will simply not have the wherewithal to engage in this sort of activity. What it shows is a huge bias towards big business and big contractors and not to small businesses.

Senator Chris Evans: That is certainly not intended. That example was just by way of example, and you rightly indicate it was for a larger operation. I think Senator Humphries's complaint was that the big ACT businesses had missed out under the procurement guidelines, so it is a bit of a contrary piece of advice. Maybe Mr Kovacic can respond.

Mr Kovacic: Certainly. It is there by way of an example, but it depends on the nature of the business in terms of what they do to support freedom of association. I can imagine that there would be a range of ways that different businesses might do it. Certainly each amount of detail that is provided is taken on its merits.

Senator ABETZ: It says 'acknowledge and support freedom of association' in the fourth item, but you have to provide evidence that 'should include details of meetings with relevant unions'. So an employee says, 'I'm sorry—not interested at all in joining a union,' but you should provide evidence of meeting for the relevant union. Sounds like a wonderful example of promoting freedom of association.

Mr Kovacic: I think the second part of that dot point is about representation of the employee. I think that sentence that you have quoted goes to the issue of representation of

employees: 'Acknowledge and support freedom of association and representation of employees.'

Senator ABETZ: And the very last sentence—that is the bold heading; the devil is always in the detail—says:

Evidence should include details of meetings with relevant unions (Your agreement is also sought to DEEWR validating these details with the relevant union).

That is the full sentence.

Mr Kovacic: I know the sentence.

Ms Paul: So we are saying evidence should include, not must include, and I think Mr Kovacic makes the point that you have to be commonsense about this. These are examples, as you say, and obviously the examples will differ according to workplace size and according to situation, exactly as you say.

Mr Kovacic: To put into context the information that is sought and the reasons why it is sought: it is to assist agencies who make the decision to award contracts with assuring themselves that tenderers are complying with the requirements of the fair work principles. These are an interim measure pending the finalisation of those best-practice guidelines that I alluded to a moment ago and that are foreshadowed in the fair work principles, which we are currently developing in consultation with the industry.

Senator ABETZ: I would have thought any prospective contractor confronted with that when reading through it would come to one conclusion: if they do not have a union around, do not know who to ring, the union is not necessarily interested or the workers themselves say, 'We're not interested in attending a union meeting', but—

Evidence should include details of meetings—

not just one but plural—

with relevant unions—

plural—

(Your agreement is also sought to DEEWR validating these details with the relevant union).

It does not even say 'if applicable' or 'if appropriate'. It says your agreement sought for DEEWR to validate these details. It is pretty pro-union, and I would have thought any employer reading this would come to that conclusion.

Ms Paul: If we were to receive representations along those lines, we would be interested in them, but actually the representations so far seem to be more down the line that Senator Humphries was raising, and that is that contractors who wish to sign on to the Clean Start approach are concerned that they may be missing out. The minister spoke to that, and we are having a look at it. So we are always open to a hearing of representations.

Senator ABETZ: That is the other aspect. If you do cleaning for government and the private sector, you might win the government contracts but then you would not be with the same workforce winning, necessarily, the private sector contracts if the private sector is not signing up to these—

Senator Chris Evans: The argument that has been put to me as a criticism more recently is that many major private companies have signed up to employing Clean Start companies and

that the government's policy has not been effective. I am just saying that you get both sides of the argument. Some of the major companies have signed up to it.

Senator ABETZ: I would have thought that the union bias in the document, especially the section I read out, is plain and clear for anybody to see.

Ms Paul: We have not particularly had representations along those lines. They have more been along the lines the minister just spelt out. We are always happy to hear if there are some.

Senator ABETZ: Then the first contractor to complain will undoubtedly have those circumstances reported and wait for the industrial strife. We know how it all works.

CHAIR: Are cleaners amongst the poorest paid people in the country?

Mr Kovacic: Yes, they are. They are generally recognised as a vulnerable group and, as I alluded to before, probably in the sector it is recognised that there is a history of underpayment and sort of noncompliance with awards and other conditions.

Ms Paul: Unsafe practices and so on.

Senator ABETZ: So that was part of the low-pay case, was it?

Mr Kovacic: No.

Senator ABETZ: No, I wasn't, was it?

Ms Paul: That was a pay equity case.

Senator ABETZ: Yes, of aged-care workers, childcare workers and a few others.

Mr Kovacic: That was pay equity. That is a very different situation.

Senator Chris Evans: I think we are confusing things. There is a pay equity case that the ASU and other unions have taken in relation to the SACS awards and there is the low-paid stream that United Voice took a case in relation to aged care. There has been one case under each of the provisions of the Fair Work Act. We do not want to confuse the two. That did not apply to childcare workers nor to the cleaning industry per se.

Mr Kovacic: No, but that is not to say that there may not be—

Senator Chris Evans: No.

Senator ABETZ: I want to move to adverse action. The time limit is 60 days, as I understand it, to bring an application.

Mr Kovacic: In terms of a dismissal, yes.

Senator ABETZ: What about in terms of a non-appointment? Can you bring an adverse action claim if you have not been appointed to a particular job because of, let us say, your previous union activities?

Mr O'Sullivan: A person can apply to FWA to deal with the dispute under section 372 and FWA could then conciliate that matter. There is no time limit for an application of that kind. Alternatively the person could apply under section 539 of the act regarding a contravention of the general protections. In that case the standard time frames would apply under section 544, which is the six-year time frame that you mentioned earlier this morning. That is six years after the date the contravention occurred.

Senator ABETZ: So when the contravention occurred not when the contravention became known to the applicant?

Mr O'Sullivan: I think that would be read as when the contravention occurred.

Senator ABETZ: So you could have the situation where—and you would have heard the example I provided—a prospective employee did not get a job because a reference made a comment about, let us say, union activities and the prospective employer said, 'He looks good on paper but, given that, I will not employ him.'

Mr O'Sullivan: That is the nature of the statute of limitations. They attempt to strike a balance between basically giving someone a reasonable opportunity to bring their case and certainty for, if you like, respondents or defendants as to how long they must keep records for. Pretty much like tort law six years seems to be the figure that governments traditionally have struck as—

Senator ABETZ: Have you provided any advice to employers that they should, therefore, keep all job applications and notes of any interviews for a period of six years even for the non-successful applicants?

Mr Kovacic: I am not aware that we have. I will take it on notice as to whether we have. I might suggest that I would not mind also taking that question on notice for the scenario that you are outlining, just to affirm the advice that Mr O'Sullivan has provided and to ensure that we are providing accurate advice to the committee.

Senator ABETZ: Thank you. The scenario could well be that the person responsible for employing people may have made such a decision on a prohibited basis, but then moved on. The employer is then asked to look at the situation five years after the event without the application and no record of whether the person applied for a job or not five years previously—no documentation whatsoever. They have the reverse onus of proof, whereas with the other statute of limitations, as I understand it, it is usually three plus three years and you have to be able to prove that you have a case. The employer will be at a substantial disadvantage because, I confess, as with most of the people who have applied to positions that I have been able to advertise in the past, if they have not been successful they get a letter and then that is it. You shred the documentation; you do not bother archiving it.

From what I can gather under this law now—under the new adverse action provisions—it might be worthwhile for employers to keep all applications and any notes of any interview for a period of six years. Could you take all that on notice to see if that concern which has been raised with me is a valid concern? If it is I would have thought it will mean a lot of archiving and work for all employers. I will leave that with you.

Senator Chris Evans: I think you have raised this on a number of occasions, and the officers have done their best to respond, but because it is hypothetical it may be better, as you say, to take it on notice and get some more—not better, but careful—consideration of the scenario you paint and provide the advice about whether that is a real risk or not.

Senator ABETZ: Absolutely, and it has been taken on notice particularly for that purpose—to make sure of that assertion of Mr O'Sullivan's about the normal six-year statutory time limit applying. It seems to suggest that there is, at least on the face of it, some merit in the concern that has been expressed to me.

Can I move to enterprise migration agreements? I understand that you are not the lead department in relation to these; I understand that the Department of Immigration and

Citizenship is. But can I ask what involvement and discussions the department has had? Is there an interdepartmental committee trying to work these things out?

Ms Paul: The responsibility within the department does not rest with outcome 5, with the people here. It rests with outcome 4, which is on tomorrow.

Senator ABETZ: Outcome 4—thank you very much. Whoever is in outcome 4, expect a question.

Senator Chris Evans: It is basically labour market advice?

Senator ABETZ: Yes.

Ms Paul: In short, we do sit on a cross-departmental governance arrangement, and we offer particular labour market advice to the agreements in some detail. We are happy to go through that tomorrow in more detail if you wish. As you say—you are absolutely right—we are not the department responsible for them, but we do, of course, offer our labour market expertise.

Senator ABETZ: In relation to the impact of minimum wage decisions on employment and labour demand: do you provide any information to the government on that, or do you leave that to Treasury?

Mr Kovacic: It is an area where we collaborate with Treasury in providing advice to government about its submissions to Fair Work Australia's annual wage review.

Senator ABETZ: In the budget we were told that there is a forecast decline in the unemployment rate to 4.75 per cent by mid-2012 and 4.5 per cent by mid-2013. Is that predicated on what the anticipated wage increases might be in those years?

Mr Kovacic: That is probably a question that you should direct to Treasury.

Ms Paul: Yes, it is—absolutely.

Senator ABETZ: You do not provide—

Ms Paul: No, we do not. It is their advice.

Senator Chris Evans: Your question is about adjustments to the minimum wage?

Ms Paul: 'The unemployment rate' was how you were phrasing it. As I understood you, you were saying—

Senator ABETZ: Economists tell me that the unemployment rate—

Ms Paul: Is going down.

Senator ABETZ: According even to Frank Crean at one stage, one man's wage rise means another man's job. So if wages go up exponentially one would assume that the unemployment rate might go up as well unless you are living in a golden era, and in those circumstances wage increases must impact on the unemployment levels. So, if that has been determined by Treasury, then one would imagine they would have factored in certain wage increases.

Ms Paul: As I understand it, Treasury considers a basket of issues in coming up with those projections, and really we cannot take it any further.

Senator ABETZ: All right. Is the department able to make any comment in relation to minimum wages and is it correct to say that those who earn near minimum wages are

disproportionately female, unmarried and young, without postschool qualifications and overseas born? Do you have any statistics or data to confirm that?

Mr Kovacic: I would like to take that on notice.

Ms Paul: I do not think we could confirm that now. I am not sure we have done that analysis, but we are more than happy to take it on notice.

Senator ABETZ: Thank you for that. Minister, how do you think the Fair Work Act in general is playing out?

Senator Chris Evans: On most of the key indicators things seem to be progressing very well. I am very pleased that the award simplification process seems to have gone very well. The massive reduction in the number of awards to 122 modern awards has gone exceptionally well, and I think Fair Work Australia did a fantastic job in that regard. So we have a much less complex system with a lot less—

Senator ABETZ: Can you tell me how many wage rates and transitional provisions there are?

Senator Chris Evans: I can certainly get that answer for you, Senator. But, as you know, the policy option was to move to the new rates immediately or provide some support for employers by phasing in those rates, and it was generally supported by the community and the employers that we ought to phase those rates in. So, yes, there are transitional rates, but we have also supported the industry associations to work with their members to have a proper understanding of that. If you look at the normal indicators regarding industrial disputes and the number of agreements being registered, all those factors seem to provide a very positive picture of how the legislation is working out in practice.

Senator ABETZ: I think from questions on notice last time—and unfortunately I do not have the question and answer reference with me—one Tasmanian company has gone from having a coverage under the one Tasmanian wholesale trades award to being covered by four modern awards. Whilst the number of awards may have been reduced for some businesses, the number of awards they now have to contend with has in fact multiplied by a factor of four. Just the raw number itself is not necessarily an indication, albeit I think we can all be agreed that restricting the number of awards in general terms was a good move.

Senator Chris Evans: That is right. I do not think you would make a judgment based on one Tasmanian company's alleged experience; I think you would make it on broader factors than that. As you know, both sides of politics have been talking about simplification in industrial relations for many years. This government has achieved a national system and has also seen a massive reduction in the number of awards that employers have to deal, and I think that is a very good thing.

Senator ABETZ: The disability sector in Tasmania, for example, used to be covered under one award; it now has to deal with two modern awards. So it is not just one small business in Tasmania—there are sectors. The one I was referring to before was the manufacturer's agents award and there is the disability sector, so there are a number of these examples. Are there any proposed amendments in the pipeline? Has any thought been given to that?

Senator Chris Evans: I made it clear that our general approach is to suggest that the parties work through the provisions of the new legislation and try to make the legislation

work. We are not anticipating any major amendment to the legislation. There are obviously, from time to time, amendments that need to be made. For instance, there are the amendments we had to make related to the parental leave arrangements and some officer would be able to help you with the detail. We also have the amendment relating to the ABCC coming before the parliament in the second half of the year.

Every time I turn around someone is saying to me, 'Amend the act; it is not working.' I then check and find that they have not appealed the decision that they are unhappy about, or have not had the experience of more than one decision. Invariably, the call is matched by a call on the other side to change the act in exactly the opposite direction. So I urge the parties to not revert to calling for the act to be amended every time they are unhappy with a decision, but to work constructively to see if they can use the provisions of the act. If, after more experience, there are serious difficulties or issues that need to be addressed, obviously they would be addressed. My general position has been to say that parties ought to focus on using the provisions of the act and gaining some experience with the act before immediately calling for amendments to provisions that, in many cases, have not even been fully tested.

Senator ABETZ: So you are not considering any major aspects at this stage for review or consideration?

Senator Chris Evans: If you are asking me if the government is planning major amendments to the legislation at the moment then the answer is no. Are there are a number of smaller matters, in addition to those that I have mentioned? Yes. I have laid out my general attitude, but obviously we will respond to any concerns that are raised and engage with the parties if there are things that come up. Certainly, our intention is to work with the current legislation.

Senator ABETZ: Basically, if a particular issue comes to the government's attention which you believe needs amendment, it will be dealt with on a one-by-one basis rather than through a general review about how it is all travelling?

Senator Chris Evans: I think there has been some suggestion of a review, but maybe the officers could remind me about where we are with a formal review process.

Mr Kovacic: There is a commitment in the explanatory memorandum to the Fair Work Bill for the department to undertake a post-implementation review two years after the commencement of the Fair Work Act. So that is due to commence on 1 January and our department is currently undertaking preparatory work in relation to that review.

Senator ABETZ: On 1 January next year?

Mr Kovacic: 2012.

Senator ABETZ: Although some of the legislation came into effect prior to 1 January 2010.

Mr Kovacic: Certainly, two key elements of the new framework, the modern awards and the National Employment Standards, did not commence until 1 January 2010. So the act was fully implemented from that date.

Senator ABETZ: So it was on the basis of the full implementation. Was that made clear in the explanatory memorandum?

Mr Kovacic: I do not have the precise words that were included in the explanatory memorandum.

Senator ABETZ: You may well be right. Was that in the explanatory memorandum at the—

Mr Kovacic: At the time of the Fair Work Bill being introduced into the parliament, Senator?

Senator ABETZ: Yes.

Mr Kovacic: Yes.

Senator ABETZ: So it was those aspects that came into force as of 1 January 2010?

Mr Kovacic: The act itself in terms of its entirety—

Senator ABETZ: Yes? In its entirety?

Mr Kovacic: That is right.

Senator ABETZ: But in which explanatory memorandum was that commitment to the review?

Mr Kovacic: For the Fair Work Bill, which would have been introduced in, I think, the second half of 2008, from memory. Perhaps earlier, but it was around that time.

Senator ABETZ: Correct me; I did read it, but I do not have it with me. Was it that it would be from its full implementation, or—

Ms Paul: A post-implementation review is quite a common thing—

Senator ABETZ: Of course it is.

Ms Paul: not just for legislation but for big service delivery implementations and so on, and I have never seen one that was not dated after full implementation. It is an implementation review, and it is simply the case that the act was not implemented until 1 January 2010 in those major areas, so I think it is just sensible, really—no particular mystery to it.

Senator ABETZ: Are we only talking the act, or regulations as well, or does the explanatory memorandum give us the date?

Mr Kovacic: I was just about to quote from it. It is paragraph r.2. It says:

Consistent with best practice regulation requirements, the Australian Government ... commits to undertaking a post-implementation review within two years of the full implementation of these proposals on 1 January 2010.

Ms Paul: Yes. I have never seen a PIR that followed part implementation.

Senator ABETZ: Thank you. So that will only commence as of 1 January next year?

Ms Paul: Yes.

Mr Kovacic: 2012. But, as I indicated, we are in the process of undertaking preparatory work—

Senator ABETZ: All right, good.

Mr Kovacic: in preparation for the review.

Senator ABETZ: Thank you for that. What agency, if any, deals with workplace bullying?

Mr Kovacic: It is more likely than not to be Comcare.

Senator ABETZ: Right.

Mr Kovacic: I think primarily Comcare. It could be Fair Work Ombudsman as well.

Senator ABETZ: And the department does not have any educative programs in relation to workplace bullying? That would be with the Fair Work Ombudsman?

Mr Kovacic: Other than in respect of the department's own employees.

Ms Paul: Just in respect of the department itself, but not in a policy sense.

Mr Kovacic: Not more broadly, no.

Ms Paul: No, we do not have a policy responsibility.

Senator ABETZ: Not for the great unwashed!

Ms Paul: We do not.

Senator ABETZ: Those that rejoice in working in the department. Have the department, or you, Minister, received any concerns about the costs of employing labour, especially over the recent Easter break?

Senator Chris Evans: Senator, I will refer that to Mr Kovacic in specific terms, but you will recall we had the debates about public holidays. That was more to do with Anzac Day—and Easter as well. We have had this debate where, as you know, the states set the days for which public holidays are recognised, and we had a concern raised about the differential impact in various states as a result of their gazettal of public holidays and what that might mean. That was certainly an issue raised with me by employers on a number of occasions but, as it was effectively a matter for state parliaments to specify the days which were considered to be public holidays, it was not something which we were able to deal with formally. But Mr Kovacic might have a better recall of that than me.

Mr Kovacic: I am certainly not aware of any specific representations other than the comments or views that might have been expressed to the Minister in meetings with industry stakeholders. The issue, as the minister put it, went to the issue of public holidays, which is really a matter that state and territories must have responsibility for and I suppose the resolution is within their control.

Senator ABETZ: Has the impact of the penalty rates been raised with you, especially in the restaurant-catering sector and the tourism sector?

Senator Chris Evans: That was the issue—that by virtue of public holidays falling on weekends there was the question of whether there was a double dip, if you like, and the weekend day was the public holiday or the following Monday or Tuesday, et cetera. That is what the debate was about. The employer organisations who spoke to me about it acknowledged that the power to gazette public holidays and deal with those issues is held by state governments. I think a couple of them actually made adjustments—

Mr Kovacic: They did, although I cannot recall which ones they were. The issue itself was the fact, and I think it may have related to both Christmas and Boxing Day last year, and also Easter and Anzac Day, that the actual day and the holiday in lieu, if I can describe it that way, were all declared public holidays. In essence those holiday rates of pay applied to all of those days. I do not think it was by virtue of the state government or territory government declaring those days public holidays, and as the minister has indicated I think it might have

been Victoria and possibly one other jurisdiction, but I cannot recall which, which may have only declared the substitute days as public holidays.

Senator ABETZ: It led, as I understand it, to some restaurants and other organisations closing their doors on those public holidays, which disrupted the enjoyment of tourism experiences by people who were travelling during the holiday periods at Christmas and Easter. It is one of those examples of where if you bump up the rates a bit too high, then decisions are made that it is not worthwhile opening the local bakery or coffee shop and then the travelling tourist has nowhere to eat and that township or wherever gets a reputation in relation to that.

Senator Chris Evans: It is a matter for concern but I think it is fair to say from our earlier conversation that I am up for harmonisation in these areas, but I do not think I will bite that one off just yet—I am chewing on a few things.

Senator FISHER: What has changed in the transition from the Workplace Relations Act to the Fair Work Act in respect of governance of the Industrial Relations Commission, now Fair Work Australia?

Mr Kovacic: The general manager of Fair Work Australia, for want of a better description, is subject to direction by the President of Fair Work Australia—

Senator FISHER: There is a general manager?

Mr Kovacic: Yes, and that is except in respect of the general managers responsibilities under the Financial Management and Accountability Act and also the Public Service Act.

Senator FISHER: The position of general manager itself is you—what about the position of president in terms of governance of the Industrial Relations Commission, now Fair Work Australia, in the transition from the Workplace Relations Act to the Fair Work Act

Mr Lis: Under the previous arrangements, there was the Australian Industrial Relations Commission and the Registry. They were two separate bodies; they each had separate functions. They have now been brought together within the one body, called Fair Work Australia, and the president is the indisputed head of that particular body. Most of the functions are conferred on Fair Work Australia rather than, as was previously the case, on the tribunal or the industrial registrar, and then the president has the ability to delegate some of those functions down, be it to commissioners, to the general manager or to the staff of Fair Work Australia.

Senator FISHER: And, ultimately, in respect of the answerability of senior staff, what would you say of that in general terms?

Mr Lis: Staff are accountable to the general manager as public servants under the Public Service Act. The general manager is the agency head for the Public Service Act and the general manager is still the agency head for financial purposes. So in that sense the general manager—

Senator FISHER: But the president is required to table the annual report.

Mr Lis: Indeed, yes.

Senator FISHER: Please continue, Mr Lis.

Mr Lis: As I said, the general manager of Fair Work Australia is the agency head for Public Service Act and financial management act purposes, so in that sense the president is one step removed, I guess, from those day-to-day statutory responsibilities.

Mr Kovacic: Senator, if I can just add to Mr Lis's answer, section 581 of the act sets out the functions of the president and they are, briefly, to ensure that it 'performs its functions and exercises its powers in a manner that is efficient, and adequately serves the needs of employers and employees'.

Senator FISHER: 'The President is responsible for', I recall that says, Mr Kovacic.

Mr Kovacic: And the general manager is 'to assist the president in ensuring that Fair Work Australia performs its functions and exercises its powers'.

Senator FISHER: Yes, but you have referred to section 581 and that says, 'the President is responsible for ensuring'.

Mr Kovacic: I do not think you can actually look at 581 other than in isolation in terms of section 657 and also section 658, which go to the functions and powers of the general manager and also the issue of directions which the president can issue to the general manager of Fair Work Australia. Section 658 in particular deals with issues of directions, and what it says is:

Despite the President's power of direction under section 582, the General Manager is not required to comply with a direction by the President to the extent that:

- (a) compliance with the direction would be inconsistent with the General Manager's performance of functions or exercise of powers under the *Financial Management and Accountability Act 1997* in relation to FWA; or
- (b) the direction relates to the General Manager's performance of the functions or exercise of powers under the *Public Service Act 1999* in relation to FWA; or
- (c) the direction relates to the conduct by the General Manager of the review and research, and the preparation of the report, under section 653.

Senator FISHER: Okay, thank you, Mr Kovacic. What powers can't the president delegate?

Mr Lis: Principally his own power to direct the members of Fair Work Australia. I am pretty sure that is not delegable.

Senator FISHER: No. Perhaps you might take that on notice and let me know if there is anything else.

Mr Lis: Yes.

Senator FISHER: Can you comment on the report I referred to earlier in an article by Steven Andrew published in Thomson Reuters, citation 2010 1WR16, quoting then Minister Gillard in her 30 May 2007 National Press Club address confirming the president's appointment to Fair Work Australia:

"Labor will also end the conflict of interest that has the Industrial Registrar serving two masters", Gillard said. Senior FWA staff would be answerable to Giudice, not the WR Minister.

Do you have a comment on that?

Mr Kovacic: I am not aware of the comments, but my sense would be that previously the Industrial Registrar was a statute appointee and reported to the then Minister for Employment and Workplace Relations.

Senator FISHER: Yes.

Mr Kovacic: That is the only guess that I can allude to, but I am happy to take the question on notice to firstly have a look at the article that you have cited and perhaps also to have a look at the then shadow minister's address and see if there is anything we can add to it.

Senator FISHER: Thank you. Mr Kovacic, you might have heard me earlier today referring to excerpts from the 2002-03 and 2003-04 annual reports, in which the introductions signed off by the President referred, in the 2003-04 one, to the fact that the commission is not self-administering et cetera, and he used the same turn of phrase in the 2002-03 annual report. In the world of the Industrial Relations Commission as it then was, how would you have defined 'self-administering'.

Mr Kovacic: I certainly heard the President's responses and I recall that he was unable to clarify what he meant by those remarks.

Senator FISHER: Funny, because he signed off on the report twice that I could find.

Mr Kovacic: I could not even hazard a guess, and I really could not comment.

Ms Paul: We could not take it any further.

Senator FISHER: Mr Lis?

Mr Lis: Well—

Senator FISHER: Okay. I do not want to overstate it, but in referring to that turn of phrase the President indicated that he had had discussions not unrelated to that sort of issue and had, more particularly, written on that issue `to ministers Reith, Abbott and Andrews but not, he thought, Hockey. Is the department able to dig out and provide the committee with copies of that correspondence and any responses thereto?

Mr Kovacic: I would have to take that on notice. I am not even sure whether we still have it on record.

Ms Paul: At any rate, it is not practice to provide documents from former governments. We do not provide documents from former government to the current government, for example.

Senator FISHER: I am not the current government.

Ms Paul: I am happy to take it on notice and have a look at it. But there may be nowhere we can go.

Senator ABETZ: Does the government accept and the department accept that under award modernisation some workers are worse off?

Ms Paul: We have had this discussion before—

Senator ABETZ: Yes, we have, and we have always been confronted with obfuscation, with respect, and no admissions that any particular worker might be worse off.

Ms Paul: and there is probably nothing we can add to where we have been before. Certainly we have been consistent in our advice here and we will continue to be so, Senator.

Senator ABETZ: And that consistent advice is?

Mr Kovacic: The intention of the award modernisation process was not to see employees disadvantaged. Certainly the act includes mechanisms in the way of take-home pay orders designed to ensure that that does not occur.

Senator ABETZ: I know that that was the intention. Sure, the coalition first raised this, but we now have people like the ACTU national secretary admitting there was a failure in Labor's plan to overhaul industry based awards. Senior union leaders have revealed that child care workers, aged care workers, nurses and bar staff in licensed clubs have lost entitlements because of sweeping workplace reforms. Aiden Nye, Secretary of the Funeral and Allied Industries Union, said that entitlements had been swept away, that some funeral workers would now be \$50-\$60 a week worse off and that modern awards have not done anything. This is not the coalition saying this, these are elements of the trade union movement saying it. So is the official line that they are wrong, and that if they looked a little bit harder the funeral workers would in fact find an extra \$50 or \$60 a week in their pockets?

Mr Kovacic: All I can do is to reiterate what I have said already in the sense that there is certainly capacity to seek take-home pay orders in circumstances where an employee may potentially be disadvantaged as a direct result of award modernisation. The experience to date is that as at 30 April, there have been 75 applications for a take-home pay order; three have been granted, 60 have been withdrawn, seven have been formally refused and I think that five are yet to be determined. Those numbers, and they were provided to me by Fair Work Australia, do not suggest that there is a major issue there.

Senator ABETZ: So, we should talk to Louise Tarrant, head of the former Liquor, Hospitality and Miscellaneous Workers Union, who said that 'small pockets' of the 120,000-strong union remain worse off. And we need to talk to Aiden Nye, secretary of the Funeral and Allied Industries Union—they just get it wrong and the workers really do have that extra \$50 or \$60 in their pockets. They should just move their handkerchiefs a bit and find it.

Senator Chris Evans: If you are genuinely interested, we can help you with the specifics. For instance, the aged care example that was used is actually largely related to a Western Australian issue about leave in lieu of public holidays and shift rosters. It was the subject of a case before Fair Work Australia, which the government intervened in, as I recall, in support of the union argument. That case was lost. But, as I say, these go to quite specific areas and some difficult issues. I did ask the question about the funeral directors at the time. I cannot remember what the answer was but the act provided, as Mr Kovacic said, an outlet for any concerns in that regard, and it is interesting that it has not been a widely-used provision.

Ms Paul: That is right. So our evidence remains the same.

Senator ABETZ: Yes, but until such time as you access that you will be worse off.

Mr Kovacic: As we have discussed previously, there is certainly an opportunity for a prospective application for a take-home pay order. I cannot give you a sense of how many of those applications are prospective, as opposed to post event, but certainly the numbers of orders granted do not suggest that there is a significant issue there. Notwithstanding the points that the minister made, in that there are areas where there have been increased concerns, government certainly involved itself in a number of proceedings relating to award modernisation at the time in response to those concerns.

Senator ABETZ: So this is about as good as the no carbon tax promise, isn't it? No worker will be worse off. You do not have to rely on me: rely on Louise Tarrant from the former Liquor, Hospitality and Miscellaneous Workers Union and Aiden Nye from the Funeral and Allied Industries Union. They are the ones who are on the public record asserting that their workers are worse off. And there are senior officials, according to Steve Lewis in the *Herald Sun*, who are not named but who are willing to confirm that their thousands of workers are worse off. The government just says, 'If they are, they can take a take-home pay order'.

Ms Paul: I think that the statistics speak for themselves, and there is probably not much further that we can take it.

Senator ABETZ: So these union officials are misinformed, then, about these take-home pay orders?

Senator Chris Evans: I read the press coverage at time, which was some months ago, and have had a conversation with one or two officials about issues that were canvassed in those media reports. But the experience of the department and of Fair Work Australia with these take-home pay orders leads you to the conclusion that this has not proven to be an issue of widespread concern. As I say, there was a particular issue in relation to aged care, and the government intervened in a hearing to support the union. I think Ms Tarrant was referring to that particular case. I have not discussed it with her but I think that was the reference. Under any assessment, the process has gone well and we stand by that assessment. As I say, the evidence supports that assessment.

Senator ABETZ: Broadbrush—the chances are it has gone relatively well. You say it has gone well but the promise was not broadbrush; it was: no worker would be worse off. Is the government still seriously contending that as a result of the award modernisation there is not a single worker in Australia that is worse off?

Senator Chris Evans: I have given you my answer and I think the answer very much takes you to the take-home pay orders and the evidence of their use would seem to indicate that there has been no major issue in terms of people having their conditions protected.

Senator ABETZ: I might even agree with you on the terminology 'no major issue'. That is not the question I am asking. The promise was made by Ms Gillard that no worker would be worse off, so this is not whether the majority of workers are going to just as well off or a bit better off; this is an issue as to whether there is one single Australian worker or a number in the thousands—or, I suggest, thousands of them; albeit, a minority I accept that—that is in fact worse off as a result of this award modernisation process. That is in direct conflict with what Ms Gillard promised.

Senator Chris Evans: Senator, I have given you my answer. We can have a political argument at quarter to 11 if you want but—

Senator ABETZ: It is a not a political argument—

Senator Chris Evans: I am not going to waste your last 15 minutes. Tonight we have canvassed the 2002 annual report of the former Industrial Commission. We have canvassed a speech Ms Gillard gave when opposition spokesperson. I am not sure this is maximising the accountability mechanisms of government. You choose to use your time as you want, but if

you want to have a political argument about the success or otherwise of the IR legislation I am happy to accommodate you. We have given you the answer—

Senator ABETZ: I am not asking for a political argument—

Senator Chris Evans: The last time we had estimates we—

Senator ABETZ: I am asking whether or not it is a fact that some workers are worse off as a result of the award modernisation: yes or no?

Senator Chris Evans: Senator, my answer is that our experience has been that the avenue that was open to anyone who felt they were in that position was the take-home pay order avenue, and the experience has been that we have had three successful applications. I suggest to you that the evidence is pretty strong.

Senator ABETZ: Is the government aware of any worker that is worse off as a result of award modernisation?

Senator Chris Evans: I have given you my answer, Senator. We can go around and around.

Senator ABETZ: Those workers that are worse off will be very, very thankful for the obfuscating answers and I am sure the Funeral and Allied Industries Union will also be very thankful for the answer. That will make the members a lot happier to know that the minister does not believe that they are \$50 to \$60 a week worse off.

Senator Chris Evans: I am sure they will not be coming to you for succour, Senator.

Senator ABETZ: You see it was the promise that was made out of opposition—

Senator Chris Evans: As one of the champions of Work Choices, Senator, I do not think I would be looking to you. As I say, you have got 10 minutes; you have got heaps of time.

Senator ABETZ: that was broken. Even if what you assert is right, Minister, how does it justify saying to the Australian workforce that under your government no worker would be worse off when the trade union movement that actually bankrolls you is willing to say that there are workers that are worse off? You live in splendid denial of that which the trade union movement is informing you. And if that is what they are saying publically, I imagine that, privately, they would be saying these things to you in a lot stronger fashion, encouraging you to deal with the situation and to get appropriate wage justice for these people. But if you are in denial, so be it. How are we going with the appointment of new Fair Work commissioners?

Mr Kovacic: The selection panel, for want of a better description, has provided a short list to the minister for his consideration and the minister is currently considering that shortlist.

Senator ABETZ: Good. And I am sure I will be given 12 hours to consider the recommended applicants. Did the department have any involvement in the signing of the Maritime Labour Convention that I think Minister Albanese signed in Cairns, was it?

Mr Kovacic: The department has been involved with the development of the Maritime Labour Convention, which from memory dates back to about 2005 with a special Maritime Labour Conference convened by the International Labour Organisation. It is consistently worked with through the ILO offices and with the social partners—both employer and employee representatives—in positioning Australia so that it can consider ratification of the Maritime Labour Convention. That process is now well advanced and, hopefully, ratification can occur in the not-too-distant future.

Senator ABETZ: Moving on to the national consultative group that has been appointed to manage the implications of the equal pay case: how were the people selected to serve on that? Undoubtedly it was merits based—the failed Greens Senate candidate for the ACT happened to get a guernsey. But could you possibly take that on notice for us?

Mr Kovacic: If you are asking if we discriminate against people because they have been candidates for parliament, the answer is no—be they Liberal, Green, Labor or what have you. So I do not know what comment is supposed to indicate.

Senator ABETZ: Look, the number of appointees to Fair Work Australia—

Senator Chris Evans: Just another low swipe at someone. I do not see that—

Senator ABETZ: is just a momentous—

Ms Paul: The person you are referring to is, of course, a person of great experience in the relevant sector, particularly by being president of the Australian Council of Social Services in the past.

Senator ABETZ: That she is, but I am sure there are others as well; so if you could advise me as to how these people were selected? I can understand why Senator Collins was, and why you have got a member of the department; but how were the SACS providers and the unions chosen?

Senator Evans: I think it was a decision of government, but I will get you an answer. Just on your point about a particular person: I understand she is now very senior with Uniting Care, and her selection would have been based on them being, I think, the largest provider in the area.

Ms Paul: Yes. As well as her former presidency of ACOSS, no doubt.

Senator ABETZ: Minister, have you intervened in any action under section 431(1)? And you might like to take that on notice if you cannot recall exactly what—

Mr Kovacic: That is not a power that has been exercised by any minister or any government since it was first introduced under the Work Choices legislation in 2006.

Senator ABETZ: So the minister has not? Thank you.

Senator Evans: I did not think I had, but I am glad he confirmed that. Sometimes I wake up in the morning and I am not sure!

Senator ABETZ: It is a bit spooky that something of Work Choices actually remains in the current legislation. I am sure you did not say that. The minister gave a speech on 13 April 2011 talking about 4,000 complex, outdated awards being contracted down to our 122. How many of those 4,000 were actually operational?

Mr Kovacic: I would have to take that on notice.

Senator ABETZ: All right. Thank you.

Mr Kovacic: And it would be a combination of both federal and state awards.

Senator ABETZ: Yes, that would have been outdated. In relation to GEERS, has the government given any consideration to the law where a matter might be under appeal? I understand that the member for Curtin has written directly to you about that, Minister.

Senator Chris Evans: This is GEERS, Senator?

Senator ABETZ: Yes, GEERS, general employee entitlements. It was in November last year, but I might say the correspondence has been flowing backwards and forwards. I understand that a person has had his case under review and they are not being provided a time frame for a response. The matter has still not been resolved 10 months after he made his initial claim. So I am just wondering how we are going. If you know that particular case, all well and good; if not, I do not want to trawl the name through the *Hansard*.

Senator Chris Evans: I remember some of the correspondence but I would not want to try to provide a detailed answer tonight. I am happy to take it on notice.

Mr Kovacic: Senator, if there are any details you could provide privately that would certainly assist us in answering.

Senator ABETZ: Right, but do we have situations of cases going unresolved for 10 months? It is the immediate situation that hurts the employee that is losing entitlements. Usually within 10 months, hopefully, they have got alternative employment.

Ms Paul: We will look at the correspondence and if we need more perhaps come back to you.

Mr Kovacic: Senator, it would be very unusual to have a case of that sort of length, but it is not beyond the realms of possibility in very complex employment arrangements. We will certainly have a look at it and see what we can provide.

Senator ABETZ: I understand the GEERS system relies on the advice of the accountant and liquidator. In one particular case it was BDO Kendalls that misclassified somebody and it took some time for that person to get their entitlements. While all these things are process driven, I am very conscious of the facts for certain people—I think in this case it was a sum of \$9,000. Most of us sitting around these tables, chances are, say, 'Yes, you can take a hit of that nature,' but if you are an employee working week to week or fortnight to fortnight for your salary, having that amount of money outstanding can really put the family under a huge amount of pressure.

Senator Chris Evans: I certainly accept that, Senator. In fact I was absolutely shocked when I got a submission the other day from the department regarding former Ansett employees who have had most of their entitlements but there is still a group with outstanding entitlements. I was quite shocked to think that that was still being managed. But, having read the brief, I now know why.

Senator FISHER: A lot of people, a lot of money.

Senator Chris Evans: Not so many people and not quite as much money, but still substantial.

Senator FISHER: In the beginning.

Senator Chris Evans: Yes.

CHAIR: We are going to have to wrap it up. Thank you, Ms Paul and other officers. We will see you in the morning for outcome 4.

Committee adjourned at 23:00