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SENATE

EDUCATION AND EMPLOYMENT LEGISLATION COMMITTEE

Wednesday, 20 February 2019

JOBS AND SMALL BUSINESS PORTFOLIO

In attendance

Senator Reynolds, Assistant Minister for Home Affairs
Senator Cash, Minister for Small and Family Business, Skills and Vocational Education
Senator Canavan, Minister for Industry, Science and Technology
Senator Payne, Minister for Foreign Affairs

Department of Jobs and Small Business Executive
Ms Kerri Hartland, Secretary, Department of Jobs and Small Business
Dr Jill Charker, Deputy Secretary, Corporate
Mr Martin Hehir, Deputy Secretary, Workplaces and Small Business
Mr Nathan Smyth, Deputy Secretary, Employment
Ms Nadine Groney, Acting Branch Manager, Labour Market Strategy Group

Cross Portfolio
Mr Glen Casson, Group Manager and Chief Financial Officer, Finance, Legal and Governance Group
Mr Luke de Jong, Branch Manager, Finance, Legal and Governance Group
Mr Shayne Howard, Branch Manager, Finance, Legal and Governance Group
Ms Moya Drayton, Group Manager, People, Communication and Assurance Group
Ms Meredith Fairweather, Branch Manager, People, Communication and Assurance Group
Ms Heike Phillips, Director, People, Communication and Assurance Group
Mr Shane Wilson, Director, People, Communication and Assurance Group
Mr Kraig Lowes, Branch Manager, People, Communication and Assurance Group
Mr Tim Matthews, Branch Manager, People, Communication and Assurance Group
Mr Scott Wallace, Group Manager and Chief Technology Officer, Technology and Services Group

Outcome 1 – Employment
Ms Janine Pitt, Group Manager, Activation and Work for the Dole Group
Mr Ty Emerson, Branch Manager, Activation and Work for the Dole Group
Mr Stuart Watson, Branch Manager, Activation and Work for the Dole Group
Mr Daniel Clement, Director, Activation and Work for the Dole Group
Mr Alex Harvey, Director, Activation and Work for the Dole Group
Ms Benedikte Jensen, Group Manager, Employment Services 2020
Ms Kellie Hippit, Branch Manager, Employment Services 2020
Ms Kerryn Kovacevic, Group Manager, Employment Systems Group
Ms Melissa Ryan, Group Manager, Delivery and Engagement Group
Mr Malcolm Greening, Acting Group Manager, Labour Market Strategy Group
Mr Ivan Neville, Branch Manager, Labour Market Strategy Group
Ms Carmel O'Regan, Acting Branch Manager, Labour Market Strategy Group
Ms Marsha Milliken, Group Manager, Quality, Integrity and Evidence Group
Ms Jodie Chamberlain, Branch Manager, Quality, Integrity and Evidence Group
Mr Malcolm Cook, Acting Branch Manager, Quality, Integrity and Evidence Group
Ms Fiona MacDonald, Branch Manager, Quality, Integrity and Evidence Group
Ms Robyn Shannon, Branch Manager, Quality, Integrity and Evidence Group
Mr Greg Manning, Group Manager, Youth and Programmes Group
Ms Angela Hope, Branch Manager, Youth and Programmes Group
Mr Ali Jalayer, Branch Manager, Youth and Programmes Group
Mr Derek Stiller, Branch Manager, Youth and Programmes Group
Ms Jodie Wearne, Branch Manager, Youth and Programmes Group

Outcome 2 – Workplaces and Small Business

Mr Peter Cully, Group Manager, Small Business and Economic Strategy Group
Mr Alistair Beasley, Acting Branch Manager, Small Business and Economic Strategy Group
Mr Bruce Cunningham, Branch Manager, Small Business and Economic Strategy Group
Ms Rose Verspaandonk, Branch Manager, Small Business and Economic Strategy Group
Ms Jody Anderson, Group Manager, Work Health and Safety Policy Group
Mr Adrian Breen, Branch Manager, Work Health and Safety Policy Group
Mr David Cains, Branch Manager, Work Health and Safety Policy Group
Mr Grant Lovelock, Branch Manager and Federal Safety Commissioner, Work Health and Safety Policy Group

Ms Janey Kuzma, Group Manager and Chief Counsel, Workplace Relations Legal Group
Mr Ben Mason, Acting Senior Executive Lawyer, Workplace Relations Legal Group
Mr David Rushton, Acting Senior Executive Lawyer, Workplace Relations Legal Group
Ms Rachel Volzke, Senior Executive Lawyer, Workplace Relations Legal Group
Ms Alison Durbin, Group Manager, Workplace Relations Policy Group
Mr David Denney, Branch Manager, Workplace Relations Policy Group
Ms Sharon Huender, Branch Manager, Workplace Relations Policy Group
Ms Lace Wang, Branch Manager, Workplace Relations Policy Group
Ms Debbie Mitchell, Group Manager, Workplace Relations Programs Group
Mr Henry Carr, Branch Manager, Workplace Relations Programs Group
Ms Helen McCormack, Branch Manager, Workplace Relations Programs Group
Ms Sue Saunders, Branch Manager, Workplace Relations Programs Group

Australian Building and Construction Commission

Mr Stephen McBurney, Commissioner
Mr Cliff Pettit, Deputy Commissioner, Operations
Ms Janine Drennan, National Manager, Building Code
Ms Jill Jepson, Deputy Commissioner, Corporate and Code
Mr Matt Kelleher, Deputy Commissioner, Legal

Australian Small Business and Family Enterprise Ombudsman

Ms Kate Carnell, Ombudsman
Dr Craig Latham, Deputy Ombudsman
Ms Anne Scott, Principal Adviser

Comcare

Ms Lynette MacLean, Acting Chief Executive Officer
Mr Aaron Hughes, General Manager, Scheme Management
Mr Justin Napier, General Manager, Regulatory Operations

Fair Work Commission

Ms Bernadette O’Neill, General Manager
CHAIR (Senator Brockman): I declare open this meeting of the Education and Employment Legislation Committee on Wednesday, 20 February 2019. The Senate has referred to the committee the particulars of proposed expenditure for 2018-19 and certain other documents for the Education and Training portfolio, and the Jobs and Small Business portfolio. The committee may also examine the annual reports of departments and agencies appearing before it. The committee has decided that answers to questions on notice will be required by close of business on Friday, 29 March. The committee has resolved that written questions on notice should be received from senators by close of business on Friday, 1 March.

Under standing order 26, the committee must take all evidence in public session. This includes answers to questions on notice. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee.

The Senate by resolution in 1999 endorsed the following test for questions at estimates hearings: any question going to the operation or financial position of the departments and agencies which are seeking funds in the estimates are relevant questions for the purpose of estimates hearings. I remind officers that the Senate has resolved that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the parliament or its committees unless the parliament has expressly provided otherwise. The Senate has resolved also that an officer of a department of the Commonwealth shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and
does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted.

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 will be incorporated in 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).

(d) requires the Procedure Committee to review the operation of this order and report to the Senate by 20 August 2009.

(13 May 2009 J.1941)

(Extract, Senate Standing Orders)

CHAIR: Witnesses are specifically reminded that a statement that information or a document is confidential or consists of advice to government is not a statement that meets the requirements of the 2009 order. Instead, witnesses are required to provide some specific indication of the harm to the public interest that could result from the disclosure of the information or document. Witnesses are asked to keep opening statements brief or incorporate longer statements into the Hansard. I welcome Senator the Hon. Linda Reynolds, the Minister representing the Minister for Jobs and Industrial Relations; and officers from the Department of Jobs and Small Business. Minister Reynolds, did you have an opening statement?

Senator Reynolds: Chair, good morning, and I do not, thank you.

CHAIR: Thank you very much.

Welcome, Ms Hartland. Do you have an opening statement?

Ms Hartland: No, Chair, thank you; I don’t.

CHAIR: Excellent. Before we begin, we have had a request for media to be present, which we have approved. I would just point out the prohibition on filming material on desks, and so I would ask you to bear that in mind.

Senator MARSHALL: And the backs of our heads.

CHAIR: And the backs of our heads, yes. The backs of our heads are very ugly!

Department of Jobs and Small Business

[09:04]

CHAIR: We’ll get underway with cross-portfolio matters. Senator Cameron.

Senator CAMERON: Could I just get some clarification first-up. The small business portfolio is Senator Cash. Is Senator Cash going to appear this morning?

Senator Reynolds: Senator Cameron, you have asked this the last two days and the answer is exactly the same; that is, I will be here for some of the day and Senator Cash, and Senator Payne, in fact, will be here for some of the day as well—exactly as we did the last estimates.

Senator CAMERON: Do you have a timetable as to when each minister will be appearing?

Senator Reynolds: I do not, but, as I said, we will have all three ministers at the table—exactly as we did, I believe, at the last estimates.

Senator CAMERON: I’ve got questions for Senator Cash. When can we expect Senator Cash to be here?
**Senator Reynolds:** I will take that on notice, Senator Cameron, and I will check for you.

**Senator CAMERON:** Why is Senator Cash hiding from estimates? These are her areas of responsibility, and I think it's totally unacceptable that a junior—

**Senator Reynolds:** Well—

**Senator CAMERON:** Let me finish—that a junior minister is here when a cabinet minister has the responsibility for this area of questioning, and she just hides. Why are you allowing that to happen?

**Senator Reynolds:** Senator Cameron, I have repeated this over the last two days of estimates in other portfolios. This portfolio is predominantly Minister O'Dwyer's, and, as per the last estimates, we have ministers covering this portfolio for Minister O'Dwyer. As I said, Senator Cash will be here later today, as will Minister Payne. It's exactly within standing orders. It's exactly as we've done at previous estimates, in fact.

**Senator CAMERON:** I've been doing this for a number of years now. What areas will Minister Payne be covering?

**Senator Reynolds:** As I said, I'll take that on notice, Senator Cameron, and get back to you.

**Senator CAMERON:** Don't you know?

**Senator Reynolds:** Senator Cameron, she will be here this evening—

**Senator CAMERON:** Why can't you—you must know when you are going to be here and when the other ministers are going to be here.

**Senator Reynolds:** As I said, I'm here first; then Senator Cash will be here; and then Senator Payne later on this evening.

**Senator CAMERON:** What portfolio areas will Senator Cash be here for?

**Senator Reynolds:** Senator Cash will be covering her own portfolio areas. As you well know, most of these portfolio areas are actually Minister O'Dwyer's. As is quite appropriate, and as I have done previously, I am perfectly competent and across this brief of issues. Senator Cameron, it might not suit your rather harsh political tactics, but I am here, as appropriate, as I have been before. You will just have to wait until Senator Cash appears for her own portfolio issues later today.

**Senator CAMERON:** I don't know what you mean by 'harsh political tactics'. You shouldn't start flailing around so early with your opinions.

**Senator Reynolds:** Senator Cameron, we've had two days of this in two other estimates, and I can foresee, obviously, you will be doing the same thing here today.

**Senator CAMERON:** So just let me clarify—

**Senator Reynolds:** Senator Cameron, that's all I can say. I'm here, and I'm here appropriately. If you want to keep asking these questions over and over again, please feel free. But you are wasting the time of the officials here at the desk.

**Senator CAMERON:** So you're saying Minister Cash will be here for her area of portfolio?

**Senator Reynolds:** Yes.
Senator CAMERON: Well, she should be here now because we are doing cross-portfolio issues. Minister Cash should be here for cross-portfolio issues.

CHAIR: Senator Cameron, as you are well aware, we don't even need a minister at the table to proceed with estimates. Senator Reynolds is the repping minister. I suggest we move on.

Senator CAMERON: You might suggest that, Chair, but I want to get clarity as to what we're doing.

CHAIR: Everyone else knows what we're doing.

Senator CAMERON: Minister Cash can run, but she can't hide. She has to be here.

CHAIR: My understanding is that Senator Cash worked for another committee for two hours yesterday evening—

Senator CAMERON: We're doing cross-portfolio.

CHAIR: and Senator Cash will be in front of this committee later today.


Senator Reynolds: Senator Cameron, as you well know, and as the chair has just said, Senator Cash will be here later on. You had half of yesterday with Senator Cash to prosecute the same issues that I'm sure you will be prosecuting today. Senator Cameron, you are talking about hiding. The only thing being hidden in this issue is the Labor Party doing everything it can, including you again here today, to avoid having those AWU documents see the light of day. If you really want to finish this, Senator Cameron, instead of going through the same issues over and over again and getting the same answers, why don't you contact your mates, contact the Leader of the Opposition, and say: 'We have nothing to hide. Let's get these AWU documents out in public.'

Senator CAMERON: I know who's hiding. Chair, can I ask for some clarification. We are now in cross-portfolio—

CHAIR: That is correct, Senator Cameron.

Senator CAMERON: on Jobs and Small Business. Minister Cash has got—

CHAIR: No; we're in cross-portfolio for the entire portfolio, which involves both Minister O'Dwyer and Minister Cash, and Minister Reynolds is the repping minister.

Senator CAMERON: Maybe if you take a breath, you'll understand what I'm going to ask.

CHAIR: I know what you're going to ask.

Senator CAMERON: I have got cross-portfolio questions for Minister Cash. Can we return to cross-portfolio questions when Minister Cash finally comes out of hiding and appears?

Senator PATERSON: Chair, just on that: I might need a refresher in the standing orders, but I don't think it's up to senators at the table to dictate which minister is repping—

Senator Reynolds: As Senator Cameron well knows.
**Senator CAMERON:** I'm just asking: can I return to cross-portfolio issues when Senator Cash finally comes out of hiding?

**CHAIR:** All committees offer an extraordinary amount of latitude in the questions you can ask.

**Senator CAMERON:** I'll take that as a yes.

**Senator Reynolds:** Senator Cameron, anybody who was watching estimates yesterday would know that you had an extraordinary amount of time with Senator Cash yesterday to prosecute these same issues. In terms of your characterisation of hiding, Senator Cash did anything but hide. As I said, she'll be here today. You might have very little confidence—

**Senator CAMERON:** I'm happy to talk about Senator Cash all day. I think there are some really important issues. So the more you talk about it, the happier I am.

**Senator Reynolds:** Senator Cameron, like it or not, I am the responsible minister at the table and you've got the pleasure of my company here all morning.

**Senator CAMERON:** Let me just go through where we are. We've got cross-portfolio now. Small business is set down for 2.30. What about outcome 2: facilitate jobs growth? Is that Senator Cash? Is that your understanding that facilitating jobs growth is the responsibility of Senator Cash, under her portfolio areas?

**CHAIR:** Part of outcome 2 is under Minister Cash, yes.

**Senator CAMERON:** So will Minister Cash be here for outcome 2?

**CHAIR:** I cannot control ministers' movements, Senator Cameron, as you well know.

**Senator CAMERON:** Minister Reynolds, will Senator Cash be here for outcome 2?

**Senator Reynolds:** Senator Cameron, as I think I've confirmed three times to you now, Senator Cash will be here for her portfolio responsibilities, which, as you clearly know, do include elements of outcome 2. I don't think I could have been much clearer, Senator Cameron. Senator Cash will be here, as she was yesterday, when we get to her portfolio responsibilities.

**Senator CAMERON:** She should be here now, because we're doing small business.

**Senator Reynolds:** Senator Cameron, you have a responsible—

**Senator CAMERON:** Minister Cash should be here for her cross-portfolio questions.

**Senator Reynolds:** Senator Cameron, the requirement is for a responsible government minister. I'm a responsible government minister, happy to take any and all questions, as I did yesterday and the day before. You might not want me here at the table, but I am here and ready to answer your questions.

**CHAIR:** And doing an outstanding job.

**Senator CAMERON:** Really? I would really prefer to be asking a cabinet minister, not a junior minister, about these issues.

**Senator Reynolds:** Senator Cameron, you can insult me all you like.

**Senator CAMERON:** I'm not.
Senator Reynolds: We well recall what you called myself and Senator Cash, but you have here a responsible government minister who is across this portfolio, the secretary of the department and the officials. So ask your questions, please.

Senator CAMERON: Well, I can't ask questions on Senator Cash and her ministerial portfolio of you, because you are not the minister.

Senator Reynolds: Senator Cameron, that did not preclude you or your colleagues asking me questions about those issues yesterday.

Senator CAMERON: That's because Senator Cash was in hiding. She should stop being in hiding. She could come out.

Senator Reynolds: Senator Cameron, she was there for four hours answering questions. Please do not rewrite history from yesterday.

Senator CAMERON: Can I go to the issue of the ministerial code of conduct. This is a code of conduct that your government has put in place, and that means that ministers have to give honest—

Senator Reynolds: Chair, is this an issue for this estimates—

Senator CAMERON: Yes, it is.

Senator Reynolds: or for the Clerk?

CHAIR: I will allow the question to be asked, but it sounds more like PM&C to me. Continue, Senator Cameron.

Senator Reynolds: You've got me intrigued now, Senator Cameron.

Senator CAMERON: No, it's not PM&C. It's about the responsibility of Minister Cash to be truthful and honest. And it's about coming to correct the record at the earliest opportunity. This is the earliest opportunity for Senator Cash. She should be here to answer questions and do that honestly and forthrightly, and the government should stop sending junior ministers in to try to cover up and hide Senator Cash.

Senator PATERSON: Senator Reynolds, you might be a junior minister, but I'm very happy to have you here with us today.

Senator Reynolds: Senator Cameron, you've got plenty of opportunities outside of this estimates hearing to be making those political points over and over again, as you did in the media this morning. We are here this morning. You have a responsible minister to answer portfolio questions for Minister O'Dwyer. And, as I've said, Senator Cash will be here for her portfolio responsibilities later today, and—

Senator CAMERON: But this is not the earliest opportunity that Senator Cash could, according to the Ministerial Code of Conduct, correct the record. She should be here, face up to what she's been up to and answer questions.

Senator Reynolds: I'm here ready to answer questions. The secretary is here ready to answer questions. You've had plenty of opportunities. You were out in the media this morning to make these political points. As I said, if you want to finish this issue altogether, talk to your AWU mates and get them to release the documents, because that is the only cover-up I can see here. I'd almost applaud if it wasn't so vicious—your continual covering up of and supporting not releasing these AWU documents. But we are here today for the Employment
portfolio to have a responsible minister at the desk, and you've got the secretary and the officials here—

Senator CAMERON: Given that you've raised the issue of AWU documents: that goes directly to the conduct of Minister Cash. It goes directly to the conduct that is basically criminal breaches of the law by at least two ministerial staffers. Every time—

Senator PATERSON: Chair, a point of order: that's an extraordinary and unverified claim by Senator Cameron in my view—

Senator Reynolds: And it's not true.

Senator PATERSON: and an abuse of the Senate estimates process to throw around accusations of criminal conduct that have not been proven, let alone even proceedings being done in a criminal court. That's just an outrageous slur.

Senator CAMERON: On the point of order, I don't know what Senator Paterson's been doing for the past period of time, but there are admissions of criminal conduct by two of Senator Cash's ministerial advisers: her chief of staff and her media officer. They have conceded and admitted to breaches of law that are criminal breaches of law, which the AFP actually said put their officers in danger. These are extremely important issues, and to simply say that this is not an issue that should be dealt with urgently—now—is a nonsense. It's partly to cover up—Senator Paterson, you should not engage in the cover-up; there are enough of you up to your neck in this cover-up, and you should not engage in it.

Senator PATERSON: On the point of order: no-one's suggesting that this issue shouldn't and can't be pursued through estimates, and indeed it has been pursued ad nauseam, for a number of days now and no doubt will continue to be. Comments made from the witness box in a civil trial do not amount to admissions of breaches of criminal law. That's a matter for police to decide, not a matter for Senator Cameron to decide.

Senator CAMERON: On the point of order: we now have admissions of the destruction of documents by Senator Cash's staff. It beggars belief that Senator Cash cannot be here to answer questions on these issues. She should front up and she should be honest.

CHAIR: Senator Cameron, estimates hearings are an opportunity for you to ask questions of the department and the minister at the table. You are free to ask those questions. The commentary is excessive. Senator Paterson is absolutely correct in his statement. Let's try to get back to questions. If we need to have further discussion on this matter I'll go into private session.

Senator CAMERON: Well, I want clarification—

Senator Reynolds: Chair, on a point of order: could I just make the following statement in relation to this point of order. Over the last two days we have had significant prosecutions of this issue by Senator Cameron and his Labor colleagues. I reiterated yesterday, several times, and these are the facts—strip all the rhetoric and allegations of cover-up, because we know where the cover-up actually sits, and it is not with our two ministers. So, the facts are these: both ministers—Ministers Keenan and Cash—provided statements to the AFP at the request of the AFP. They voluntarily cooperated and provided these statements. The AFP did not chase them up for further information, and Senator Cash provided information under oath in the court on Friday. So, no matter how much bluff and bluster those opposite continually do—and, again, they're obviously trying to hijack this estimates hearing today for
Employment—it does not change those facts. And the Labor Party had, as I said, at least four hours with Senator Cash last night on this, and Senator Cash will be here again today. So, I just wanted to put that on the record. And I would rather if we could now move to questions of the department.

CHAIR: I thank you for that, Minister, but we are straying—and you are straying as well, Senator Cameron—from the purpose of these estimates hearings. If this discussion is going to continue, I'm going to take it into private session.

Senator CAMERON: Before you do that, I just want to ask, for clarification: Minister Reynolds said, unequivocally, that Senator Cash would be here to answer questions on her ministerial portfolio. There are questions now. Her ministerial portfolio is before the committee right now, and I believe she should be here.

CHAIR: As we have already gone over, there is no requirement for a particular minister to be at the table, under the standing orders. Minister Reynolds is here. Minister Reynolds is fully capable of answering questions on behalf of the government. I suggest we proceed with the hearings.

Senator CAMERON: I'd like Minister Cash to be here.

CHAIR: If we want to continue this discussion, we'll go into private session.

Senator CAMERON: Then let's go into private session, because we need to get Minister Cash here.

Senator Reynolds: Before we do that, just to make it perfectly clear to Senator Cameron: Minister Cash will be here for her own portfolio responsibilities later today. Very clearly: she will be here. And he will have the opportunity to ask questions, as he did yesterday.

Senator CAMERON: Her portfolio's on now. Her portfolio starts now. She should stop hiding and she should come here and front up. That's what she should do.

Senator Reynolds: Senator Cameron, for heaven's sake!

Proceedings suspended from 09:22 to 09:24

CHAIR: We will resume these estimates hearings in cross-portfolio. Senator Cameron, you still have the call, but I will offer the call around in a few minutes.

Senator CAMERON: Okay. Minister, there has been a recent advertising campaign for apprenticeships. Are you aware of that campaign?

Ms Hartland: Um—

Senator CAMERON: I'm asking the minister. The minister says she is fully briefed and she knows the issues, so I'm asking her on the issues.

Senator Reynolds: And I'm just asking the secretary, who was about to answer, so I will hand over to the secretary.

Senator CAMERON: So you don't know, do you?

Senator Reynolds: Secretary.

Ms Hartland: Apprenticeships are actually an education and training portfolio issue, not an issue for us.
Senator Reynolds: That's tomorrow, Senator Cameron, just in case you hadn't looked at the program.

Senator CAMERON: It's cross-portfolio, so I'm asking —

Ms Hartland: No, it's the Department of Education and Training that looks after apprenticeships, not the Department of Jobs and Small Business.

Senator CAMERON: Okay. Let's try and get some answers somewhere.

Senator Reynolds: It would help, Senator Cameron, if you actually asked the right department the questions.

Senator CAMERON: I know what I can ask and what I can't ask. I don't need your help.

Senator Reynolds: Well, it's been 25 minutes and we haven't had a question yet from you, Senator Cameron.

Senator CAMERON: Given that we're going to come back to cross-portfolio, I'm happy to move to outcome 1.

CHAIR: Any other questions for cross-portfolio? If not, we will move to outcome 1, please. I'm assuming we can't release anyone from cross-portfolio?

Senator CAMERON: Just before we go to that: Ms Hartland, did your department fund the ads on the Australian apprenticeships?

Ms Hartland: I will just bring the officials to the table. What ads are you talking about?

Can I just get some clarity?

Senator CAMERON: Ads about the availability of government support to employ apprentices.

Ms Hartland: So there was mention in some broad jobs ads that we certainly funded, if that's what you're talking about. I'm just not sure of the specificity of it. But there was short mention, as I understand, in some of the broader jobs ads. They went to broader issues around jobs. Are they the ones that you are talking about?

Senator CAMERON: It is your department?

Ms Hartland: If that's what you're talking about, they are not broad ads about apprenticeships; they're ads that —

Senator CAMERON: It's an ad headed up 'I want to hire an apprentice.'

Ms Hartland: I will bring the media people to the table so they can answer your question.

CHAIR: So are we aware of the ads that Senator Cameron is talking about?

Senator CAMERON: I'm happy to table this if you like.

CHAIR: It might help. We may as well all be on the same page.

Ms Hartland: I will bring the communications people. If you're referring to the ads that talk about employment services, as part of that, it was one of the things that employment services can provide. So, if they are those ads, we can answer questions around that broad campaign, yes.

Senator CAMERON: I thought I was with the right department.
CHAIR: Just to be very clear: that ad that is currently before you was funded from this department or Education?

Ms Fairweather: This department.

CHAIR: Okay. Senator Cameron.

Senator CAMERON: Are you with me now, Senator Reynolds? Good.

Senator Reynolds: Now that you're in the right portfolio, yes, Senator Cameron.

Senator CAMERON: On this issue, the ad says that there are government incentives of up to $20,500 to help hire an eligible apprentice. Is that correct?

Ms Drayton: In the jobs campaign, we raised a range of issues where employers get assistance. One of the ones that we were asked to include in the ads was the apprentices and the information about what assistance—

Senator CAMERON: So the answer is yes.

Ms Drayton: Well, what assistance is available to them.

Senator CAMERON: Is the answer yes?

Ms Drayton: The answer is yes.

Senator CAMERON: Good. So, Ms Hartland, was this part of the campaign that received chief executive certification?

Ms Hartland: Yes.

Senator CAMERON: Right. Good. What's the budget for the apprentice component of the campaign?

Ms Fairweather: There's not a budget allocated to an apprenticeship component. The budget is for a campaign promoting employment services generally

Senator CAMERON: So how much is that budget?

Dr Charker: A total of $27.81 million of administered funding over three years was repurposed, and there is another $1 million in administered funding specifically for the campaign, so the total funding over the years is $28.81 million.

Senator CAMERON: When you said there was funding re-administered, where was it re-administered from?

Dr Charker: It was repurposed from—

Senator CAMERON: Did you say re-administered or repurposed?

Dr Charker: No, repurposed. I said $27.1 million was repurposed from a range of other campaigns, which were jobactive, Youth Jobs PaTH, Restart, ParentsNext, New Enterprise Incentive Scheme and small business campaigns over the forward estimates to 2019-20. An additional $1 million in administered funding was also made available for this particular campaign in the 2018-19 MYEFO, which brings the total over three years to $28.81 million.

Senator CAMERON: Okay. How much has been spent to date?

Dr Charker: The expenditure to 31 December is $14.42 million.

Senator CAMERON: Is there any allocation of expenditure between now and the end of May?
Dr Charker: I would expect so.

Senator CAMERON: How much is going to be expended?

Dr Charker: There's a total allocation of $15 million budgeted to the end of 18-19, so that would be to 30 June this year. And, as we've said, we've spent to date in this financial year $14.42 million so there's a small amount remaining budgeted.

Senator CAMERON: About $4 million remaining?

Dr Charker: No. We've expended just over $14 million and we've got about $15 million budgeted, so there's about 500K or 600K remaining this financial year.

Senator CAMERON: Has that been allocated? And where will it be spent?

Ms Fairweather: The majority of that will be media buy-in for the remainder of the ads.

Senator CAMERON: So advertising in a combination of television, radio, print and digital.

Ms Fairweather: That's television, radio, print and digital channels—so online video on digital channels and social media channels.

Senator CAMERON: Can you provide an itemised breakdown of the budget expenditure with details of what it was spent on and who payments were made to?

Dr Charker: We can certainly provide top-line financial details of expenditure by channel. We'd have to take on notice the details of whom it was paid to, but I can provide the numbers on the actual dollars by channel—by TV, digital et cetera—now if that's of any assistance.

Senator CAMERON: Sure.

Dr Charker: Media expenditure to date—that is, at 31 December 2018—has seen expenditure of $3.17 million on TV, $1.86 million on digital, $1.05 million on radio, and $1.14 million on press advertising.

Senator CAMERON: What was the estimated reach of the apprenticeship campaign?

Dr Charker: I think we'd have to take that on notice.

Senator CAMERON: Can you also then take on notice how many employers were estimated to be reached by the apprenticeship campaign?

Dr Charker: Yes. We'll take that on notice.

Senator CAMERON: Was the content similar or the same across all the media outlets?

Dr Charker: There are certainly similarities in messaging and branding. I might ask Ms Fairweather to comment a bit further on that.

Ms Fairweather: There are 30-second TV ads. In the current phase that's out now, they're actually based on testimonials from real employers and jobseekers who've obtained jobs through government employment services. So there are the TV ads, and then the radio ad reflects the TV ad, and the print ads also have similar images and messages.

Senator CAMERON: In the document I tabled it says, 'There are government incentives of up to $20,500 to help you hire an eligible apprentice'—correct?

Ms Fairweather: Yes, that's right.
Senator CAMERON: Did that statement get used across the campaign?
Ms Fairweather: Yes, it did.
Senator CAMERON: Could you provide copies of the ads that used that statement?
Ms Fairweather: Yes.
Senator CAMERON: Do you have any with you?
Ms Fairweather: Not the complete set, no.
Dr Charker: We'll take that on notice.
Senator CAMERON: So where did you get the information and evidence that allowed you to make the statement that there was up to $20,500 available?
Ms Fairweather: That is a combination of wage subsidies—that is through the Department of Jobs and Small Business; the providers are the medium for that—and also incentives from the Department of Education and Training specifically for taking on apprentices. So it's a combination. That's a maximum of a combination of incentives that could be obtained by an employer for taking on an apprentice.
Senator CAMERON: Who did the work to verify that the statement was correct?
Ms Fairweather: Certainly they were from within my branch. We ensure that we’ve checked with the business areas.
Senator Reynolds: Perhaps I can help. On this great ad 'I want to hire an apprentice' that you've distributed, it breaks down where the funding is coming from, in this material you've handed out, as to both the $10,500 and also the $10,000, which makes up the $20,500. So that's the detail of that, and the links to that are on the handout you've given us.
Senator CAMERON: Ms Fairweather, can you outline the characteristics of an apprentice that would lead to the incentive payment of $20,500 to an employer?
Ms Fairweather: I'm not entirely sure what you're after. For instance, in terms of the $10,000 that's available with the wage subsidy, it could be that they're a mature-age jobseeker, who attracts—
Senator CAMERON: So that goes to mature age. Not all apprentices are of mature age, are they?
Ms Fairweather: No, but it's also to young jobseekers as well. There are other eligibilities, like that they need to have been on income support for six months. It's particularly trying to help jobseekers who are having difficulties finding a job.
Senator CAMERON: Does any one of those qualify for the $10,000?
Ms Fairweather: Yes. I'm going to have to take on notice the finer detail, because I know there's another category that also attracts the maximum.
Senator CAMERON: There's a category you can't remember. So there are four categories—
Ms Fairweather: That attracts the full $10,000 wage subsidy. Then there are other ones that attract up to a $6½ thousand wage subsidy. So that's why we have 'up to $10,000'.
Ms Hartland: I might be able to help. In terms of wage subsidies, as Ms Fairweather has said, there are Restart wage subsidies, which are for those 50 years of age or over. That's up to...
$10,000. For youth, there's up to $10,000 and also, for Indigenous Australians, up to $10,000—noting that these are to employers.

Senator CAMERON: Okay.

Senator Reynolds: Senator Cameron, just on that, I think the critical point in answer to your question is you are asking the officials about what would attract apprentices, but as you can see—

Senator CAMERON: No, I'm not asking that at all.

Senator Reynolds: I'm just saying that these ads are designed for employers who might be thinking about apprentices. They're not aimed at potential apprentices. They're aimed at employers.

Senator CAMERON: I thought you said you were across this portfolio.

Senator Reynolds: Oh, we're back to that again.

Senator CAMERON: So, Ms Fairweather, if you are not a mature worker, if you're not a young jobseeker, if you have not been on income support for six months and if you're not Indigenous, then you will not achieve $20,500. Is that correct?

Ms Fairweather: For the employer, the full amount of $20,500 would require the full wage subsidy plus incentives from the apprenticeship—so yes. That's why we say 'up to'.

Senator CAMERON: How many employers are likely to receive this level of incentive?

Senator Reynolds: Chair, I think that's a hypothetical because the question is how many might apply for it. The officials are very competent but they're not mind-readers. Perhaps you could rephrase the question.

CHAIR: If there is a projection, or if you've got some analysis of that, I'm happy for the question to be answered.

Ms Hartland: It sort of goes to the senator's question before about what the expected reach was of this campaign, as well. I think we've had to take the detail of that on notice. But we would have figures about reach, expected reach, which we can take on notice.

Senator CAMERON: This is for those employers who would have access to the maximum subsidy. Are you with me?

Ms Hartland: I don't know—

Senator Reynolds: I think that's probably going to be impossible. Hence why it's a hypothetical—because you cannot know exactly. While the department can provide how many employers and what they expect the reach is, Senator Cameron, it's impossible for the officials to say who these people will employ, because, as you've just pointed out, there are different subsidies for different types of apprenticeships, and different people in different circumstances, so it's completely hypothetical—beyond reach.

Senator CAMERON: Did the department make any assessment—is there any assessment of how many might achieve the $20,500? That would be important for budgetary considerations.

Ms Hartland: I think we've taken that on notice, Senator. Obviously, we know numbers of people in those brackets—
Senator CAMERON: I'm sorry to interrupt, Ms Hartland. Dr Charker, you said that you'll come back to us on this. Did you not know what the approximation of the funding available at that level would be, to do your budgetary calculations?

Dr Charker: I expect that we would be able to provide an estimate. I just don't have it on me at this point in time.

Senator CAMERON: Sorry, Ms Hartland. Do you want to add anything?

Ms Hartland: I was just going to say that, obviously, in terms of the numbers of people that are eligible from an employee point of view—we would have also some numbers on that, as you were recommending.

Senator CAMERON: There were 161,700 apprentice and trainee commencements in the 2017-18 financial year, according to the NCVER. How many apprentices attracted the $20,500 level of incentive in this period?

Ms Hartland: We'd have to take that on notice. It is a cross-portfolio issue: as we said, there's two aspects of this. I understand your point, but we'll have to take that on notice and work with our colleagues.

Senator CAMERON: So you've got an ad out there saying you can get up to $20,500. You don't know how many employers it would apply to. You don't know how many apprentices it would apply to. And you can't even tell me how many apprentices, or employers of apprentices, have achieved this amount of subsidy. You can't tell me any of that.

Ms Hartland: No, Senator. We just said we'd take it on notice. We just said we didn't have that level of detail with us.

Senator CAMERON: Is there anyone here that could tell me? Ms Fairweather, you're in charge of it, it looks to me. Have you done that analysis?

Ms Fairweather: No, I haven't done that analysis.

Senator CAMERON: So you don't know?

Ms Fairweather: No.

Senator CAMERON: So I was correct: you don't know. It's not that you're going to have to go away and take it on notice; Ms Fairweather has conceded you don't know.

CHAIR: The question has been taken on notice, Senator Cameron, which the officials have every right to do.

Senator Reynolds: As the minister at the table, I'm well used to you making all these political points at me, Senator Cameron. But please: you are now, I think, bordering on inappropriate questioning. As you well know—

Senator CAMERON: It's not up to you to determine that. It's absolutely not up to you to determine that.

Senator Reynolds: I would ask just a little bit more respect, Senator Cameron.

Senator CAMERON: You hear the answered questions.

CHAIR: Senator Cameron, order!

Senator CAMERON: Don't lecture me, okay?

CHAIR: Senator, Cameron, the minister has the call.
Senator Reynolds: All I was going to say is that the officials have clearly taken these very detailed questions on notice.

CHAIR: And they are across a different portfolio.

Senator Reynolds: As I said, it depends on how many people apply for these things, as Senator Cameron well knows. So they have taken the question on notice. Impugning their competence, I think, Senator Cameron, is highly inappropriate.

Senator CAMERON: Just get real. Ms Fairweather, how many employers have applied for the $20,500 subsidy? The full subsidy?

Ms Fairweather: To my knowledge, to answer your question, is around the campaign and expenditure on the campaign and what the ad objectives are. I don't have answers on the number of employers that have applied.

Senator CAMERON: Do you know whether the phones ran hot when employers saw there might be $20,500 available?

Ms Fairweather: That's one of the ads. There is another ad that quotes the up to $10,000 figure. So there's a range of employment programs that assist employers to obtain a wage subsidy. It's not just the apprenticeship ad; there's another ad for the $10,000.

Senator CAMERON: Have you had any responses from employers when they find out that they haven't got a snowflake's chance in hell of actually achieving a $20,500 subsidy?

Ms Fairweather: We have found lately that target audiences are keener to go to the website than to make phone calls. Certainly from the first phase, we had, for instance, 285,813 visits to the campaign website to find out more information. Our tracking research indicated that the campaign reached about 50 per cent of small to medium employers, which is our main target, although all employers, of course, are relevant. About 22 per cent of the audience that saw the campaign went to the jobs.gov.au website, and 16 per cent contacted an employment service provider. So I know the reaction to the ads from that point of view. But actually tracing a particular employer through to employing someone—I don't have that.

Senator CAMERON: So how many employers rang up and said, basically, 'I'd like that $20,500?'

Ms Fairweather: That I can't supply.

Senator CAMERON: Who can supply it?

Mr Manning: I can give you overall figures on the number of subsidy agreements that have been entered into, but I can't give you the other details.

Senator CAMERON: No, I'm not interested. Can you also give me how many subsidy agreements have achieved the $20,500?

Mr Manning: Well, it wouldn't be $20,500. The maximum amount payable is $10,000.

Ms Hartland: From that aspect.

Mr Manning: There are three categories of subsidies that were outlined earlier.

Senator CAMERON: But I want to know—

CHAIR: And the other category of subsidy is through a different department—is that correct?
Ms Hartland: That's correct.

Mr Manning: I can only talk about the wage subsidies we administer.

CHAIR: All right, so how many have achieved the wage subsidy?

Mr Manning: What I have is overall agreements. For example, Ms Fairweather spoke about the Restart mature age subsidy. There's been 37,300 of those. What I don't have before me is a breakdown of since the campaign started to before that, but I could take that on notice and give it to you.

Senator CAMERON: Yes, take that on notice.

Mr Manning: I just have the figures since it started. Would you like the youth bonus one, which is the other $10,000 one for people aged up to 24?

Senator CAMERON: That's the youth jobseeker one, is it?

Mr Manning: Yes, the youth bonus wage subsidies.

Senator CAMERON: What's the name? I was told it was youth jobseeker.

Mr Manning: The one we administer is called the youth bonus wage subsidy.

Senator CAMERON: Is that the youth jobseeker? Is it the same thing?

Mr Manning: I'm not sure, Senator. I'm not sure that there's a different one. There are two categories of youth, and one is a youth subsidy and one's a youth bonus. There's been 35,979 of those youth bonus wage subsidies. This is, as I said earlier, since they commenced. I'm not aware of the other subsidy you're talking about, Senator. I can take it on notice and clarify that. Ours was always called youth bonus wage subsidy.

Senator CAMERON: All I'm interested in is a thing called truth in advertising. The government is out there and know they're in a lot of trouble and they're desperate to try to project that they're doing something in apprenticeships. But they're advertising a $20,500—

CHAIR: I think small business people understand what 'up to' means.

Senator CAMERON: At least there should be an asterisk there to tell you what the limitations are on this. This is another example of this government simply pushing this rubbish out when an infinitesimal number—

CHAIR: Is there a question coming, Senator Cameron?

Senator CAMERON: Is there any assessment as to how many would attract the full subsidy?

Ms Hartland: I think we've taken it on notice. I want to combine the figures from Education and Training, as well, because this is roughly half this subsidy—so, we've done that. As Mr Manning has said, we will have a look and see at what the uptick is across both of these areas at the conclusion of the campaign.

CHAIR: Senator Cameron, I am going to offer the call to other senators in five minutes. We'll come back to you.

Senator CAMERON: I'll finish on this point. I think you may have taken this on notice. I just want to clarify that you will provide the total number of employers who have accessed the subsidy; the total number of apprentices who have been funded through this subsidy—are you with me?
Ms Hartland: Yes.

Senator CAMERON: Also, how many of those numbers have actually achieved the $20,500 subsidy.

Ms Hartland: I understand.

Senator Reynolds: I can actually provide some of the answers for Senator Cameron now. When we started—

Senator CAMERON: It's a good job somebody's on the ball on this.

Senator Reynolds: Senator Cameron was asking questions that were actually for Education tomorrow that relate to apprenticeships themselves. However, in relation to what is rightly in this portfolio—in wage subsidies—since 1 July 2014, half a billion dollars has been spent on wage subsidies. Seventy-seven per cent of these have been spent since 1 July 2017. The take-up, you'll be delighted to know I'm sure, has been very strong. Since they started in 2014, 160,653 wage subsidy agreements have helped 141,910 people into work. And from 1 July 2018 to December last year, 30,426 wage subsidy agreements have helped just under 30,000 people into work. Those, I think, are the key figures you were looking for in terms of impact of this program.

Senator CAMERON: No, they're not the key figures. I've asked what the key figures are—

Senator Reynolds: You asked for wage subsidy figures, which rightly sit within this portfolio. In relation to the questions on apprenticeships, as you well know they sit tomorrow and you'll have Education here to answer those questions about apprenticeships.

Senator CAMERON: I hope Education are listening in and do a better job than this.

Senator MOLAN: They're certainly very, very good figures, Minister. The government certainly has a record that it should be very, very proud of in relation to job creation—by all means. Can you tell us, either Secretary or Minister, how many jobs were created in the last 12 months?

Mr Smyth: The latest ABS labour force figures show that seasonally adjusted employment has increased by 268,600. That's 2.2 per cent over the last year.

Senator MOLAN: And that's the financial year?

Mr Smyth: That's to December of 2018—to 12,714,100. So, employment is now about 1.239 million above the levels that were recorded some five years ago.

Senator MOLAN: I think the government policy was to create a million jobs—

Mr Smyth: That was the policy.

Senator MOLAN: So, we have well and truly achieved that policy, haven't we?

Mr Smyth: That's correct. The figure is now 1.24 million.

Senator MOLAN: Can you break those down into full-time and part-time jobs?

Mr Smyth: I can. In the last five years, full-time employment has increased by 675,700, or 8.4 per cent. While part-time employment has risen by 563,500, or 16.2 per cent.

Senator MOLAN: Is that trend of part-time employment increasing?

Mr Smyth: I'll hand over to my colleague Mr Neville.
Mr Neville: Part-time employment has accounted for around about 40 per cent of recent employment growth, so, 60 per cent being full-time.

Senator MOLAN: Historically, is that more or less—in growth?

Mr Neville: If we look at employment overall, full-time employment does account for a little more than the 60 per cent of the employment growth in recent times.

Senator MOLAN: Is that a significant increase in part-time work?

Mr Neville: It's not a significant amount. We shouldn't get away from the fact that many people prefer to work part-time, as well.

Senator MOLAN: Absolutely. Wish we did! If I'm looking for a comparison, if we go back to the last 12 months of the Gillard-Rudd government, back to before 2013, how many jobs were created in the last 12 months of that government?

Mr Neville: Can I come back to that question? We will have that information. If I don't have it in my folder I can certainly get it for you. I can give you an approximation but I can't give you the exact—

Senator MOLAN: That's fine. Let's go for the exact figure, if we could. We'll come back to it. I think Mr Smyth you spoke of 12.7 million people working in Australia.

Mr Smyth: That's correct.

Senator MOLAN: How does that compare historically?

Ms Hartland: I can answer that for you. The decade annual average rate is 1.7 per cent, and this increase has been 2.2 per cent. I think that's right.

Mr Smyth: That's correct.

Mr Neville: That's correct.

Senator MOLAN: Has there been a higher rate of increase historically?

Mr Neville: Obviously, if you look back over a period of time, yes, there have been higher rates, but employment is still growing well above that long-term trend.

Senator MOLAN: Of the total number of people—I think Mr Smyth you said 12,714,000.

Mr Smyth: Correct.

Senator MOLAN: On the number of people in full- and part-time work, how does that compare? I think that's a historical high?

Mr Smyth: That is an historical high, as of December 2018.

Senator MOLAN: I guess the other contentious point is women's participation in the workforce. What are some of the current results and trends that we see in relation to that—in relation to female labour market employment?

Mr Smyth: The female participation rate is 60.5 per cent.

Senator MOLAN: What does that mean, please? Does that mean the total population of women, of females?

Mr Neville: In very simple terms, the participation rate is the proportion of the population aged 15 and over who are either working or actively looking for work.

Senator MOLAN: Okay, and it was 60-something per cent?
Mr Neville: It was 60.5 per cent in December.

Senator MOLAN: And historically, how would we—

Mr Neville: If we go back, for instance, to September 2008, the female participation rate was 58.5 per cent.

Mr Smyth: And that peaked at 60.6 per cent in June of last year.

Ms Hartland: So it has been an upward trend.

Mr Smyth: So the December figure is obviously very similar to the peak figure in September 2008.

Mr Neville: If you want to go further back, I do have some information here that the female participation rate 30 years ago was 50.3 per cent and, just repeating, it is now 60.5 per cent.

Senator MOLAN: These are good figures, very good figures. But could that not be, though, that the population is getting larger?

Ms Hartland: It is a percentage, so it is proportion of the population.

Senator MOLAN: We've got good gross figures. Is that just for the population getting larger, or are we creating jobs and employing more people?

Mr Neville: One of the ways of determining an answer to that is to look at the employment-to-population ratio. I'm not sure that I have the numbers with me, but we can take it on notice or get back to you a bit later, but the employment-to-population ratio has been increasing over the last couple of years.

Senator MOLAN: By 'couple of years', do you mean since 2013?

Mr Neville: We can provide information for you.

Senator MOLAN: At the moment, what's the overall employment rate?

Mr Neville: I will have to take that on notice. I don't think I have it in my folder, but we can find out fairly easily.

Mr Smyth: The overall participation rate is 60.5 per cent.

Senator MOLAN: Can you give me that figure again, please; the overall participation rate is 60.5.

Mr Smyth: The male participation rate is 71 per cent and the overall participation rate, combining both female and male numbers, is 60.5 per cent.

Senator MOLAN: If you can get back to me on the number of jobs created in the last 12 months of the Gillard-Rudd government, please, I would appreciate it, and that employment population ratio.

Mr Neville: We will be able to get some answers for you during the course of the morning.

Senator MOLAN: Thank you, that would be good.

Senator O'NEILL: The department said that 18,000 to 20,000 businesses would be required to achieve the 30,000 intended placements per year. There is no dispute there, so I'm assuming that you accept that. My question is how many businesses have signed up to host PaTH interns since the program began?
Mr Smyth: Since 1 April 2017, we've had 3,933 businesses as at 31 December.

Mr Manning: Sorry, 31 January.

Mr Smyth: As at 31 January, yes.

Senator O'NEILL: Right. So you said you needed 18,000 to 20,000 businesses to achieve 30,000 placements and you've got—what—3,933 as of 31 January?

Mr Smyth: That's correct; that's the number of businesses.

Senator O'NEILL: So is this a policy failure? It looks like one.

Mr Smyth: The number was basically a cap that was used to determine whether or not—from a funding purpose into the program. We've been working hard with a number of businesses, as have employment service providers, to attain placements and to get more employers on board.

Senator O'NEILL: But it has got nowhere near the cap.

Mr Smyth: It's not near the cap.

Senator O'NEILL: I'm sure that when the government announced it everybody assumed they were going to hit that cap, and that's why you funded it to that level. The fact that it has not even expended to a quarter of its capacity looks like a policy failure.

CHAIR: That's your characterisation. I don't think you could ask the officers to comment on that.

Senator O'NEILL: Could you table a list of organisations that have agreed to host PaTH interns?

Mr Manning: We don't have it with us now. We could take it on notice, noting that there have been 8,913 placements. We could take that on notice. I don't have that information.

Senator O'NEILL: I appreciate you taking that on notice.

CHAIR: Can I have clarification of what was taken on notice? What are you chasing?

Senator O'NEILL: A list of organisations that have agreed to host PaTH interns.

Mr Manning: What we'll have is their ABN and the name associated with that ABN.

Mr Smyth: That might not actually be the business name that you would see walking down the street or something like that. It is the ABN with which the business is actually registered.

Senator O'NEILL: Any detail you can provide would be beneficial, and if there are any clusters of ABNs that connect under one employer, that would also be helpful, if you have that information.

Senator Reynolds: Just on that, I have some more information that might be of assistance. In relation to the 8,234 young people who have been placed into 8,913 internship placements with 3,933 businesses, the post-monitoring of that shows that 70 per cent of the young people who participated in the PaTH internship were employed when surveyed three months later. I think that is an important and very successful thing to note. Something else that might be of interest, in terms of the success of Youth Jobs PaTH, is that at 31 January this year 63,570 people have participated in one or more elements of PaTH, and of those 63,570, 40,960—64 per cent—have achieved a job placement.
CHAIR: It's clearly working. How do we get more businesses—

Senator O'NEILL: Can we avoid the commentary, Chair? Could I continue to ask questions? They weren't the questions I asked you, Senator Reynolds. If you want to put things on the record, there are other places. I want answers to the questions that I'm asking.

Senator Reynolds: You might not like good news, but that was actually directly relevant to your question.

Senator O'NEILL: It actually isn't, because I'm talking about the number of organisations that have agreed to host PaTH interns. So it wasn't relevant at all.

Senator Reynolds: Both the officials and myself addressed that directly.

Senator O'NEILL: What is the department saying about these figures in the evaluation, and what retail outlets are host organisations?

Mr Manning: Again, I would have to take that on notice because I don't have details of names of host organisations with us. As was indicated earlier, we will have their ABN and their name, and we will have statistics about the field in which they operate.

Senator O'NEILL: Retail is pretty specific. So you should be able to find for me how many retail outlets are host organisations?

Mr Manning: Yes. Twenty per cent of PaTH internships have operated in the field of retail, but as with your previous question, we will have to take on notice to be able to see what information we can provide.

Ms Hartland: Do you want more specific detail, rather than that it's 20 per cent of 3,933?

Senator O'NEILL: Yes. What supermarkets are host organisations?

Mr Manning: Certainly there are supermarkets that are host organisations.

Senator O'NEILL: Can you name a few?

Mr Manning: I'm aware that Coles and Woolies, for example, are involved in the program. Whether the other supermarkets are I don't know. Getting back to your earlier question, there are quite well known supermarket names that might operate under a franchise model. We will have the ABN and name nominated, but again we will take that on notice and see what we can do to break that down by that category as well.

Senator O'NEILL: Given the inquiry that is afoot with regard to franchising, I express serious concern about that as well. What fast food outlets are or have been host organisations?

Mr Manning: It's the same answer as to the previous question. Certainly there are fast food organisations. As you may expect with a program that's based on getting people into employment, often for the first time, there is a lot of entry-level work in it. Again, we'll have to break it down. I don't know off the top of my head, but I would imagine that some of the better, well-known fast food organisations are involved, but we won't be able to identify down to the local fish and chip shop, for example.

Senator O'NEILL: As much detail as you can provide in terms of your documentation will be helpful. I'm sure you will take this on notice: can you provide every business that has hosted a PaTH internship and, of those, how many people found employment as a result of internship for at least 26 weeks?
Mr Manning: We certainly have the conversion rates to 26-week outcomes. That is a different measure, though, than how many people worked for 26 weeks, because a 26-week outcome in employment services is a measure of being off income support for 100 per cent. We certainly also have information on the number of people that went onto a subsidy, from an internship into a position for which a wage subsidy was related, and how many of those converted to 26 weeks. We will look at those two and at the broader issue that you've raised and provide what we can on notice as well.

Senator O'NEILL: So how many people found employment as a result of that internship and for at least 26 weeks. How many people have completed the PaTH internship, as it's described?

Mr Manning: Excuse me, I will look at my notes.

Mr Smyth: 5,619 placements were successfully completed. Sixty-five per cent of the interns who completed their internship were employed with the host business or another business.

Senator O'NEILL: The projected placement that the government indicated it was set to achieve was 30,000 placements last year, wasn't it?

Mr Manning: Funding was set aside for up to 30,000 placements, getting back to Mr Smyth's earlier answer.

Senator O'NEILL: That was the government's by-line: 30,000. And the reality is how many?

Mr Manning: There have been 8,913 placements. The money was set aside for up to 30,000 placements. As Mr Smyth has indicated—

Senator O'NEILL: So it didn't quite make a third of the target. 8,000 took it up. How many completed? 5,619, was it?

Mr Manning: That's right.

Senator O'NEILL: It's looking like another policy failure.

Senator Reynolds: I can also perhaps provide clarification on this.

Senator O'NEILL: Will you really reach your 30,000 placements on this? That's what I really want to know.

Senator Reynolds: I'm answering the question. For the reasons that you discussed, when the government did some valuation, they did announce in the MYEFO that they would remove the six-month waiting period for PaTH internships to allow eligible people more immediate access, to increase the pipeline a bit further. They did a very reasonable evaluation, and they've changed the criteria. While we've had a huge response and it has been very successful—

Senator O'NEILL: A huge response? It didn't even get a third.

Senator Reynolds: You might not think it's significant for those who've had an internship and now have full-time work, but the government does.

Senator O'NEILL: It's not about the people who are looking for work; it's about—

CHAIR: The minister has the call.

Senator Reynolds: That is a political point. It is not a factual point.
Senator O'NEILL: Well, stop making a political point.

Senator Reynolds: I'm just providing you some information. You might not like it because it is good news.

Senator O'NEILL: This is questions, not commentary.

Senator Reynolds: I will provide you again with the facts. The government made changes at MYEFO to get rid of the six-month waiting period so that more young people can take advantage of the program.

Senator O'NEILL: You had a mistaken model to start with; you didn't reach the target; now you've made adjustments—

CHAIR: Senator O'Neill, do you have questions, or are you going to continue with the commentary?

Senator O'NEILL: Yes. Is the government expecting to reach the 30,000 placements this year? Yes or no?

Senator Reynolds: We've changed the criteria. As you well know, these are always targets. A good responsible government monitors the implementation of the program. It was working well. We believed it needed further modification so that more job-seekers could take advantage of this program voluntarily without having to wait six months. As the responsible minister behind the desk here, I think that that was the appropriate course of action for the government to take. It's working. As I read out those numbers you really didn't want to hear, it is working and it is a highly successful program.

Senator O'NEILL: I'm surprised you wanted to read out the figure of 5,619. It is a policy failure. Is the department on track to release their interim report on Youth Jobs PaTH in the first quarter of 2019?

Mr Manning: There are two things happening. There is an evaluation, as well as a review that is a requirement in relation to the legislation. My understanding is that both of those are on track.

Senator O'NEILL: The evaluation is due at what date?

Mr Manning: I don't have a precise date, but it is an interim evaluation, which we expect to be finished in the first quarter of 2019. The review, which is required under the Social Security Legislation Amendment (Youth Jobs PaTH: Prepare, Trial, Hire) Bill is required by 19 May 2019.

Senator O'NEILL: And you're on target for that?

Mr Manning: My understanding is that. I say 'my understanding' because, as the person running the program, I'm not reviewing myself.

Ms Hartland: We have a separate area that evaluates, separate to that. Mr Manning is correct and the dates are correct.

Senator O'NEILL: 31 March is the end of the first quarter, in my book. Is that when the first evaluation interim report will be delivered?

Mr Manning: That's what's being worked towards. That's my understanding.

Senator O'NEILL: And the day after the potential election is the delivery of the legislatively required review?
Mr Manning: Yes, although I understand the timing of that review was set down in the legislation.

Senator O'NEILL: Can the department confirm that out of the 113 reviews they've undertaken as at October 2018, 20 organisations were considered to have breached the internship agreement?

Mr Manning: You are referring there to an answer to a question on notice. I can confirm the accuracy of that information, yes.

Senator O'NEILL: So 20 out of 113 had breached the internship agreement?

Mr Manning: That's following reviews. As the answer sets out, 0.55 per cent of the businesses that had hosted internships led to a problem. What I'm trying to distinguish is that it might have been 20 per cent of the times you thought there might have been an issue to look into that have shown to be a problem, but that's different from the total number of businesses who had hosted internship.

CHAIR: So you looked at a small subset which you thought might have problems, and a relatively high proportion of those did?

Ms Hartland: That's right. It was those that there was some concern with.

CHAIR: So you targeted the ones you were concerned about.

Ms Hartland: It was not 20 per cent of the 3,900.

Senator O'NEILL: Yes, but that surely must be a red flag to the department about the design of this program and the opportunities for exploitative people to take advantage of those who approach this program, with all the hype that the government has given it hoping for a brighter future. They're very vulnerable people entering into these sorts of arrangements.

Ms Hartland: Obviously we take any issues very seriously, particularly with vulnerable people, but as Mr Manning said, we've got to be clear on the figures. I think it's 0.005 per cent of the total. If there are issues there and things need to be changed, yes, we investigate those thoroughly and take action. We have rigorous systems behind that.

Senator O'NEILL: How much have you changed your policy as a result of those inquiries?

Mr Manning: We have a range of ways we might get information. One of those, for example, is data analytics. You might look at various factors that the data is telling you as a prompt to say, 'Do we need to go and look at that in more detail?'

Senator O'NEILL: You're talking about how you find them. My question is, how many significant policy changes have you had to make as a result of what you have discerned?

Mr Manning: In terms of significant policy changes, there hasn't been evidence of systemic problems that have required significant policy changes. We will always be mindful
of the need to educate providers to ensure that they properly understand the parameters of PaTH internships. As we said earlier, there are 20 organisations considered to not have met the requirements out of 3,645. Of those, eight were correction of minor issues. We're not seeing systemic problems that require major policy changes.

Senator O'NEILL: I've got a lot of questions. Can I press on quite quickly and hopefully get through a fair bit in the next 10 minutes before we break. What is the maximum number of interns a business has hosted without providing employment at the completion of the internship?

Mr Manning: I think that issue is answered in that same question on notice. It was 17.

Senator O'NEILL: What was the answer? How many?

Mr Manning: The answer we gave to that question on notice was 17. That remains the case.

Senator O'NEILL: How many businesses have hosted 10 or more internships without offering employment?

Mr Manning: I'll have to take that on notice. I don't have that information.

Senator O'NEILL: Is it the sort of thing you might be able to get by the end of the day?

Mr Manning: I'm not sure. We'll try, but I can't guarantee that.

Senator O'NEILL: The question on notice that you referred to revealed that the business that hosted 17 interns without providing employment was suspended, pending exclusion from the program. Has this business now been excluded from the program?

Mr Manning: It has.

Senator O'NEILL: And what's the threshold for exclusion?

Mr Manning: There'd be a number of thresholds, but if it was thought that the organisation wasn't complying with the objectives and parameters of the program and that there was a breach that was serious enough, then exclusion is an option in relation to that organisation.

Senator O'NEILL: And there's no arbitrary point at which that occurs. It's by discernment?

Mr Manning: No. There's no arbitrary point.

Senator O'NEILL: So you have to see it and then you have to judge it and then you respond?

Mr Manning: That's right. Someone might make a genuine mistake involving three interns and someone might deliberately try and misuse the program involving one intern. We would conduct a review and then, if the review shows there's a problem, an investigation and try to get to the bottom of it and take action that's proportionate to it, reflecting, as Ms Hartland said, our very serious concerns to make sure that the program is used as it's intended to be.

Senator O'NEILL: Let's go to this business in particular that has taken $17,000 in taxpayer funds and achieved at least 68 weeks of unpaid labour. That's effectively more than a year of free labour for this business, plus the $17,000 in public funds. What's the department doing about this matter?
Mr Manning: We've excluded the organisation. Can I just come back to some of the assumptions around numbers of weeks?

Senator O'NEILL: Mr Manning, I've got a lot of questions, so I'm looking for an answer to what your action is now.

Ms Hartland: I think we just need to correct some of the assumptions.

Mr Manning: I'm not sure upon the basis of which those calculations were made. I don't have before me the length of time within which people participated in their internships before it was finalised, for example.

Senator O'NEILL: But Mr Manning, that's not really my question anyway. What are you doing about this problem with this particular employer of 17—

Mr Manning: We've excluded them from participation in the program.

Ms Hartland: They can't participate in the program.

Senator O'NEILL: Are you recovering the funds?

Mr Manning: We've sent a letter seeking recovery of the money.

Senator O'NEILL: And being the upstanding citizen that this company doesn't look like it is—

Mr Manning: They haven't to date.

Senator O'NEILL: They haven't returned the money yet?

Mr Manning: They haven't to date, no.

Senator O'NEILL: What a shock.

Senator STERLE: Who is the company?

Senator O'NEILL: They're not identified.

Senator STERLE: Put it up in lights when you've got grubs like that.

Senator O'NEILL: What's your next step?

Mr Manning: We have sought recovery of funds in a number of matters. In one of those matters—the first one in which we did it—the organisation has made a complaint to the Commonwealth Ombudsman about that. We are nearing the end of that procedure and we're waiting to see the outcome of that procedure before we make a decision about our next step.

Ms Hartland: We follow these through in terms of Commonwealth debt recovery in the normal sorts of ways. Of course, we're very clear that this is taxpayers' money and we're making every effort to recover it.

I know this doesn't go to the heart of your question, but just so that there's an outcome here, I think—and Mr Manning will correct me if I'm wrong—12 of the 17 people involved have gone on to find employment with another employer.

Mr Manning: That was at the time the answer to the question on notice was drafted.

Senator O'NEILL: What are you doing to ensure this doesn't happen again? This is clearly a design flaw of the government's program, which didn't meet its target of engaging 18,000 to 20,000 businesses, and it looks like it's got some pretty dodgy businesses on the hook that see it as a nice little money-spinner and free labour.
Senator Reynolds: I might just take that up, as Senator O'Neill has made comments about the government, not about the officials at the table. Senator O'Neill, what I can say is that everything I have heard from the officials today on the conduct of this program demonstrates a good, sound program that is putting a lot more people into jobs. For example, under the unpaid JSA, there were 1,400 people placed per year, and under this program, in the last 22 months alone, there have been 8,900.

CHAIR: Sorry, Minister, what was the unpaid JSA?

Senator Reynolds: It was 1,400 a year under the previous government, but everything I have heard from the officials here demonstrates it is a program that is working. No program is perfect, but, as the secretary said, this program is regularly reviewed. The government at MYEFO changed the eligibility requirements. As the secretary said, they have done proper compliance checks and, where they have found problems, they have amended the policies and they are actioning it with the relevant companies.

Senator O'Neill: Minister, thank you for—

Senator Reynolds: So it is a very successful program and I think the officials have done a great job in making it a success and amending it when required.

CHAIR: I agree. Thank you, Minister.

Senator O'Neill: I thank you for putting that on the record because, if that is your view of the Youth Jobs PaTH program, you have just banked in 100 per cent how out of touch this government is. If this is a success, I don't know what a failure looks like.

Senator Reynolds: Success is more people in jobs. Simple.

Senator Sterle: I ask the officials: if taxpayer dollars have been exploited by a rogue employer, why can't we have the name of the employer? If politicians, quite rightfully, get caught with their finger in the bucket doing the wrong thing, they should be exposed, so why not a rogue employer? I'm not trying to start a fire, but I don't get this.

Mr Manning: Could I clarify one thing in relation to the circumstances of this case, before I come to your question. This was a relatively new organisation that dealt with, I think, two providers in two different states. The plan was to put some people into a training site before getting them out to get more real-life, for want of a better term, work experience, and the internships never got to that second point.

Senator Sterle: Sorry, Mr Manning, I don't mean to be rude—through you, Chair—but I just want to know, because you've obviously—

Senator Reynolds: Senator Sterle, the official is answering.

Senator Sterle: I'm not being rude, Minister.

Senator Reynolds: You cut him off before he could finish his answer.

Senator Sterle: There's a reason—

Senator Reynolds: At least let him—

CHAIR: Minister.

Senator Reynolds: for the benefit of other senators, finish the answer.

CHAIR: Minister, let's let the official answer the question. We've only got a short while before the break.
Senator STERLE: I was going to assist.

CHAIR: If officials could answer succinctly, that would be good.

Mr Manning: Chair and Senators, I was only providing that background in response to the description of it being a rogue employer. One of the reasons why the positions didn't seem to go on was that, to go out to a workplace, they needed certain certificates and they didn't get organised. Our understanding is that it's more of a situation of someone not being able to deliver what they thought they would deliver than a situation of someone setting out to rort a program. But with that said, Senator, I've got the name and can give you the name.

Senator STERLE: The only reason I raise this—and, Minister, you don't have to get your shirt sleeves in a knot—was that the officials in the department have asked for the return of the money. I think you said you asked twice. Has this been going on for months? If I made a mistake, I'd want to correct the record. That's the reason for my line of questioning.

Mr Manning: It certainly isn't recent. I'm just checking if I've got the notes. We asked for a response by the end of December and didn't get the response by the end of December.

Senator STERLE: Thank you, Mr Manning—hence my line of questioning. I'd still like to know why we can't have the name.

CHAIR: We'll follow up next time.

Mr Smyth: Senator, we were happy to provide the name—

Senator Reynolds: But you cut him off beforehand, so he was happy to provide the information.

Mr Smyth: But I think it was more about the context of what led to that.

Senator STERLE: Thank you so much. Did I offend you when I said, 'Excuse me, Mr Manning'?

Mr Manning: Not at all, Senator. I'm fine, thanks.

Senator STERLE: Minister, play your games with Senator Cameron, not me. I'm asking genuine questions. Thank you, Chair. Thank you, Mr Manning.

Proceedings suspended from 10:30 to 10:45

CHAIR: We'll get straight back into it. Senator Siewert is going to have the call, but we are going to just finish that discussion we were having before the break.

Ms Hartland: We will provide the name. The reason that I was just a little bit reluctant and wanted to provide a bit of rationale around naming names here is that sometimes there are quite complicated reasons behind some of these cases. For example, it's not uncommon for us to have business owners with mental health problems where there have then been issues that we've had to address. I'm just very cautious of naming names of companies and businesses in those sorts of cases or cases where there might be a very small number of businesses in very small communities. Again, there might be some rogue behaviour that we've got on top of or it might be other things that are also contributing to that. So we're quite happy to name a name, but I just wanted you to be aware of why we were considering the naming of business names. I'm very aware that it's Commonwealth money they're in receipt of, but those sorts of instances that I've just listed are not uncommon in these circumstances.
Senator O'NEILL: You're pursuing the money from this person, so I'm assuming they're in reasonably robust health; otherwise, you wouldn't be chasing them.

Ms Hartland: Yes, in this case. I didn't want to then at a later date say, 'It's best if I don't provide this name,' and have you say, 'That's inconsistent with what you've provided before.'

Senator O'NEILL: I understand those riders that you've put on it.

Ms Hartland: Having said that, I'll now throw to Mr Manning and he can give you the details.

Senator O'NEILL: There's a company that's taken $17,000 in taxpayers' funds, had 68 weeks of unpaid labour and more than a year of free labour plus the $17,000. You've requested a recovery of the funds. They have not complied.

Ms Hartland: Correct.

Senator O'NEILL: Hopefully they get the communication and pay the money back to the government and to the Australian people, the taxpayers of Australia, that they owe.

Ms Hartland: Yes.

CHAIR: We will move on.

Mr Smyth: Sorry, but I can go back to Senator Molan's earlier question. I have the response to that. In terms of employment growth for the year to September 2013, total employment growth was 84,500, which was 0.7 per cent. Full-time employment fell 20,400, down by 0.3 per cent. The total employment-to-population ratio in December 2013 was 60.6 per cent. The female ratio was 54.9 per cent. In December 2018, the total was 62.4 per cent and the female ratio was 57.4 per cent.

Senator MOLAN: Thank you very much.

Senator SIEWERT: I will start with the targeted compliance framework. Thank you for the table, by the way. It helps a lot.

Mr Smyth: I'm glad you can read it—it's in six-point font and I can't!

Senator SIEWERT: I can with my glasses on! I just wanted to clarify a few things first so that I'm not misinterpreting the data. When we're talking about percentage CL of case load when, for example, we're looking at homelessness under demographics, it says, 'This is in the Amber zone,' and it says it's 52.7 per cent. Is it correct to interpret that as the case load number of participants who are homeless? Is that what that means? Can we be really clear.

Ms Pitt: On the homeless, we're looking at homeless in jobactive.

Senator SIEWERT: Yes.

Ms Pitt: Which particular figure are you looking at?

Senator SIEWERT: You're looking at 'Homelessness', you go across into the amber zone and you look at 'All'. It says, 'Percentage CL', which is case load, is it not?

Ms Pitt: Percentage of the case load of—
Mr Smyth: That are in the green zone.
Ms Pitt: That are in the warning zone for the—
Senator SIEWERT: In the warning zone, the amber zone.
Mr Smyth: Yes.
Ms Pitt: Yes.
Senator SIEWERT: That's the percentage of people—
Mr Smyth: Of the 19,944.
Senator SIEWERT: Yes, so in the green zone—
Mr Smyth: Yes, we've got 19,944.
Senator SIEWERT: That's all the numbers, but that's—
Mr Smyth: That's not the total number of people in the system.
Senator SIEWERT: No.
Mr Smyth: I think you go right across to the final column, to the total there.
Senator SIEWERT: That's all zones. Is the 52.7 per cent of case load, and this is applies to all these percentages of case loads, all the people who are in jobactive who are homeless?
Ms Pitt: No.
Senator SIEWERT: Can you explain what case load specifically we are talking about there.
Ms Pitt: If we go across that line, in terms of jobactive, in terms of the TCF, we've got 19,944 homeless jobseekers who are in the green zone. That's 45.5 per cent of homeless people who have no compliance action at all. Of the remaining 44.5 per cent of jobseekers—
Senator SIEWERT: No, of the remaining—
Mr Smyth: 54.
Ms Pitt: 54, yes.
Senator SIEWERT: 54.5.
Ms Pitt: Yes.
Mr Smyth: That's right.
Ms Pitt: There are 23,067 jobseekers who've had one or more demerit.
Senator SIEWERT: So 52 per cent of the over—
Mr Smyth: Of the overall cohort of homeless people in jobactive.
Senator SIEWERT: Which is what I thought I said. Sorry, I apologise for that.
Ms Pitt: That's fine.
Mr Smyth: No problem.
Senator SIEWERT: What that says is that 52.7 per cent of people who are homeless have had some sort of penalty—to use your language—
Mr Smyth: Demerit.
Senator SIEWERT: Demerit. I know you call red zone 'penalty', but as far as the humans on this are concerned a suspension is a penalty, because it means they don't get access to any money during that time of suspension.

Mr Smyth: During that time of suspension until they re-engage. That may not be at all over a payment point.

Senator SIEWERT: If they get a demerit point they get suspended until they re-engage.

Ms Pitt: They do. It might just help if I give an example. Because people are paid fortnightly in arrears, an example might be: A jobseeker gets their income support on a Thursday. They have an appointment on Tuesday and for whatever reason they don't attend on the Tuesday. The provider would put that in the system. The jobseeker would get a message to say that their payment has been suspended and they need to contact their provider. They might get that message either on the Tuesday or the Wednesday—

Senator SIEWERT: Or the Friday, which is what I frequently get told.

Ms Pitt: Oh—

Senator SIEWERT: They do. I've had it from participants.

Senator O'NEILL: If they have a mobile phone.

Ms Pitt: If we just work through: They get that on the Tuesday or Wednesday. They contact their provider on the Thursday. They go in to their appointment on the Friday. Then they're not—their payment isn't due till the next Thursday. So that Tuesday, Wednesday, Thursday—and then they're paid again on Friday—is all contained within that payment period. So when they get their income support the next Thursday they get their full income support.

Senator SIEWERT: But it can also happen that it happens just near a payment period, which is, of course, when we get the complaints, because they're expecting their payment and they don't get their payment. I understand what you've just said, but the flip side of that is that if it happens near a payment period people don't actually get their payment when they're expecting to get their payment. Of course, they're the ones that we hear from, and we hear from them fairly frequently. Turning to the question for all of the streams and the demographic information, are you able to tell us what the average time to reconnection is?

Ms Pitt: Yes, it's 4.1 days.

Senator SIEWERT: 4.1 days. And that's the average across all cohorts?

Ms Pitt: That's correct.

Senator SIEWERT: When I ask that, I should be clear: is it just across jobactive or across DES, ParentsNext, Work for the Dole and EST activity. I'm not trying to be pedantic here.

Ms Pitt: I believe it's across all.

Senator SIEWERT: It's across all. Are you able to then break it down to an average for each of those programs?

CHAIR: Unless there's any objection, I will just formally table the document.

Senator SIEWERT: I'm sorry; it was circulated last night so I took it for granted that everybody had it.
Senator Reynolds: It would be good if the secretary and I could get a copy as well.

Senator SIEWERT: I do appreciate that it wasn't circulated prior. So that was the average across all programs. Are you able to give us the average, if it's not going to take too much time, for each of the programs?

Ms Pitt: I think I've got that average date. I don't think I have it by program, but I can get that for you.

Senator SIEWERT: If you could take that on notice by program. And then I'm trying to look at it against the streams—A, B and C—but also against the demographics.

Ms Pitt: By program, by stream and then by demographic?

Senator SIEWERT: Yes. So for each of these—for the jobactive, in particular—and then against the programs. And the payment types, sorry.

Ms Pitt: Yes, we can certainly get that for you on notice.

Senator SIEWERT: Thank you. Are you able to tell us how many have failed to reconnect from the warning zone?

Ms Pitt: We might have to come back to you with that figure.

Senator SIEWERT: If you could give me the overall number that have failed to reconnect from a suspension, from all of the programs, that would be appreciated. If you could also break it down, so we can get an idea if there's a cohort that's—or do you know from the data that you've got if there's a particular cohort or cohorts that are failing to reconnect?

Mr Smythe: We'll certainly take that on notice and get back to you, Senator.

Senator SIEWERT: That would be appreciated. I wanted to go then to the red zone, the penalty zone. In terms of people who are reset to zero and have served preclusion, are the numbers those people who then subsequently reappeared? Does that make sense?

Mr Emerson: Just to clarify, Senator: is your question whether those in zero are those people who have failed to reapply?

Senator SIEWERT: No, the reset. So those in zero, as I understand it, they're under—

Mr Emerson: They're not actually having a penalty applied. That's right.

Senator SIEWERT: Exactly. It's really 0.6 per cent in the program, isn't it?

Mr Emerson: Yes, that's right. So reset to zero are those who have served the preclusion and come back to the penalty zone.

Senator SIEWERT: Yes, so where they've served preclusion, does that mean that those numbers have reapplied—because they were cut off?

Ms Pitt: Yes. In this instance, for jobactive, we can see the total figure of 162. Those would be people who'd moved through the TCF and then reconnected, because, after they have served their preclusion and if they reapply, they actually come back into the red zone. They don't go back into the green.

Senator SIEWERT: Oh, okay—I thought they restarted back in the green zone once they start fresh.
Ms Pitt: No. If they've served the preclusion period, they start back in the red zone and then they've got the six, but with that option of—

Senator SIEWERT: How many have served two red zones?

Mr Emerson: How many have served two—

Senator SIEWERT: How many have gone through the red zone?

Mr Emerson: And served two—

Senator SIEWERT: or more, because we're probably at the stage now where they could have. It is likely that some have, isn't it?

Ms Pitt: Potentially.

Senator SIEWERT: Are you able to tell me how many have not re-engaged after they were kicked off?

Mr Emerson: That is a question that we provided on notice. I can go back to it.

Senator SIEWERT: In terms of the most latest figures—which isn't very good English.

Ms Pitt: I think so.

Senator SIEWERT: In terms of demographics, the highest number of people by far that have been excluded, or have served their preclusion period, are Aboriginal and Torres Strait Islanders peoples.

Ms Pitt: Uh-huh.

Senator SIEWERT: Has the department picked that up? Obviously, you just said uh-huh.

Ms Pitt: Yes.

Senator SIEWERT: What actions have you taken? Fifty Aboriginal people have been excluded, not to mention the ones who potentially could have dropped out completely. We know that's happening, because we now know from the CDP data that it has been acknowledged that people are dropping out of the system. Have you taken any action to address this issue?

Ms Pitt: There are a couple of things in terms of the Indigenous numbers—the Indigenous jobseekers in jobactive. We are certainly really looking at those figures and, as we've talked about, we are kind of six, seven months in now. We are really working through that, and we have an evaluation at the end of 12 months. But I guess there are a few things to talk about in terms of the Indigenous figures, and one is that there has been a huge decrease in financial penalties for Indigenous people under the TCF compared to the previous arrangements. So the penalties have dropped by almost 95 per cent. From 1 July to 31 December, the proportion of the Indigenous case load with a financial penalty is actually 1.3 per cent.

Senator SIEWERT: That's if you just count the penalty zone, but if you look at the number of Aboriginal people in the amber zone who have been missing payments—

Ms Pitt: I guess the other thing with Indigenous people that we have been looking at—because we're obviously concerned that the system works as effectively as possible—is the two safety nets that we have in the system: the capability interview and the capability assessment. When we look at those two safety nets and how they operate in terms of Indigenous people, we can see that at the capability interview—where people have an opportunity to disclose further information and providers can look at their job plan and decide...
if the activities are appropriate or if somebody needs some kind of re-assessment—those safety nets are working really effectively for Indigenous people. In fact, over half of the Indigenous people who have had three applied demerits and get to a capability assessment interview that is conducted by their employment service provider are then being sent back to the green zone.

CHAIR: Senator Siewert, I am going to have to share the call around soon, so a couple more questions.

Senator SIEWERT: Okay. Thank you. I've got lots of questions, so now I've got to prioritise them. Can I get another turn later?

CHAIR: I assume outcome 1 will be here for a little bit longer.

Senator SIEWERT: Thank you. That would be great. In terms of those programs, they are just those in the metro area and outer regional areas?

Ms Pitt: That's right. We don't include remote areas.

Senator SIEWERT: We are not in CDP.

Mr Smyth: No, not CDP.

Senator SIEWERT: I will deal with that on Friday in terms of CDP. Are you able to break down the figures further to look over the Christmas-New Year period and the number of suspensions that occurred during that period—over the Christmas period and then to the end of January?

Mr Smyth: There was a blockout period that we put in over the Christmas-New Year period where suspensions weren't—

Senator SIEWERT: That applied to penalties as well?

Ms Pitt: Yes.

CHAIR: Senator Siewert, sorry—

Senator SIEWERT: Can I ask just one more then, following that up?

CHAIR: Quickly.

Senator SIEWERT: Can you give us between Christmas and the end of January?

Ms Pitt: Then end of January—sure.

Senator LEYONHJELM: I won't be very long, Rachel, so you will be able to get back to it.

CHAIR: We have more.

Senator LEYONHJELM: You've got more over there. Okay. I asked a question on notice at the last estimates about the employment impact of the Fair Work Commission's penalty rate decision, and the department advised that it's unable to specifically disaggregate the employment impact of their decision applying from 1 July 2017.

Mr Smyth: I think that's an outcome 2 question, Senator.

Senator LEYONHJELM: Is it? Yes. Have I been mizzled again?

CHAIR: You should have asked me.

Senator LEYONHJELM: Outcome 2?
Mr Smyth: This is employment services, jobactive, ParentsNext.

CHAIR: That was the quickest five minutes ever. Well done!

Senator LEYONHJELM: That was the quickest five minutes you've ever seen. That's right.

CHAIR: Senator O'Neill. Sorry. Senator Molan, did you want the call or not?

Senator MOLAN: No, I don't at the moment.

Senator O'NEILL: Can I just ask how the department monitors and investigates claims that internships are displacing workers?

Mr Manning: Senator, we touched on this earlier. There will be a number of mechanisms by which we might obtain information and they will be everything from data analytics processes, which I spoke about earlier, targeted assurance activities and then information that comes to us from incident reporting or complaints. The department has a tip-off line. We also get feedback from providers, participants and host businesses. So we will take information from all of those sources. If we become aware of a potential problem then we will conduct a review to determine whether it does actually appear to be a problem. If that review shows an issue requiring further inquiries then we'll conduct an investigation into it.

Senator O'NEILL: Could you take on notice an explanation of what 'targeted assurance activities' are and how they've been implemented and the impact that they've had?

Mr Manning: Certainly, Senator.

Senator O'NEILL: What checks and balances are in place to prevent the displacement of jobs?

Mr Manning: There are a range of mechanisms in place. Certainly, when signing the internship agreement, the host organisation has to declare that they are not replacing or displacing jobs.

Senator O'NEILL: So that's filling in a form and telling you something that—

Mr Manning: It's signing an agreement, Senator, so it is more than a mere assertion in the sense that it is signing an agreement. Then we have all those other mechanisms I ran through. For example, if somebody felt that they had been displaced, they could call and make a complaint and we would investigate it.

Senator O'NEILL: I suppose it relies on people, when you say signing an agreement, acting ethically, but there is no guarantee that people who don't act ethically can be kept outside this system.

Mr Manning: There are other mechanisms there as well in the sense that there is information available on our IT system, so a provider in establishing an internship can see if there have been previous placements and the success or otherwise of those placements. Again, that's an important guard against a host organisation perhaps churning.

Senator O'NEILL: Can I ask a specific question? That might help us get to the bottom of this. In December last year, Hungry Jack's advertised PaTH internship placements, and they did that instead of Christmas recruits. The advertisement, titled 'Internships with Hungry Jacks', read:
Hungry Jacks stores are ramping up recruitment for Christmas—and are looking to help out young people with their first job! If this sounds like you—ask your MAX Consultant who will confirm if you are eligible to apply.

This is, clearly, evidence from a very significant employer in the community that PaTH internships are displacing Christmas casual work.

Mr Manning: I just want to correct a misunderstanding in relation to the media around that. Hungry Jack's didn't advertise for PaTH internships. The clue is in 'MAX Consultant'. MAX Employment, which is an employment services provider with a national footprint—I think it has over 15 per cent of the national case load—ran an internship advertisement, simply trying to generate interest in PaTH. And they have all their usual procedures in place. One thing I hadn't had the opportunity to get to earlier was the role of providers. It was Hungry Jack's's employment service provider trying to generate interest amongst their case load, as well as others, to enable them to place people into internships with Hungry Jack's. But Hungry Jack's wasn't out advertising for internships.

Senator O'NEILL: That's pretty confusing for a young unemployed person. They see Hungry Jack's; that's who they think it is.

Mr Manning: So MAX Employment clearly had, as part of their employer liaison, dealt with Hungry Jack's, and Hungry Jack's—as you can imagine, with a relatively large organisation—had a regular recruitment pattern. I don't have the background to the details of MAX Employment's dealings with Hungry Jack's, but it's not true that Hungry Jack's advertised for internships instead of advertising for staff, in my understanding.

Senator O'NEILL: But it's a pretty clear indication—in the lead-up to Christmas, which is often when people do get their first real job—that internships are there to displace that.

Mr Manning: An internship is a supervised work experience placement. The host business has to have, as what I just said indicates, a supervisor of appropriate qualifications and experience to oversee the internship placement. So I don't think it is the case that you can just put in someone where otherwise you would have put in somebody to do work.

Senator O'NEILL: So is Hungry Jack's still a PaTH internship host?

Mr Manning: As to whether they are still, I'll have to take that on notice. I understand they have used it. But I also understand that the business is a franchise model. So it brings us back to those issues we were discussing earlier. It won't necessarily be one number for Hungry Jack's. There might be a variety of Hungry Jack's stores who use it. But I—

Senator O'NEILL: So there's another problem, in terms of the capacity to have careful oversight.

CHAIR: I think that's a statement, not a question.

Mr Manning: We do have a lot of protections in place and oversight that applies equally to all users of the program. I'm not aware of any reason that the Hungry Jack's corporate structure would cause any particular issues.

Senator O'NEILL: How many internship placements has Hungry Jack's hosted?

Mr Manning: I'll have to take that on notice, with the qualification that I made in relation to those previous questions on notice: if, for example, the name is AB&X trading as Hungry Jack's Canberra, then we'll be able to presume that it's a Hungry Jack's store, but if, for
example, the name is AB&X trading as the Greg Manning Trust, for example, and it just happens that that runs a Hungry Jack's store, we won't know that straightaway. We will look at all of our data and give you our best estimate of the number of Hungry Jack's hosting internships—

Senator O'NEILL: But when you were designing the program, surely you could have anticipated that—that you'd be able to get better discernment if you asked for those sorts of details.

Mr Manning: I'm unable to comment on that, in the sense that I didn't design the program. But, in my experience, you can get lots of data if you're prepared to pay for the IT system that does it. Clearly, decisions and compromises are made, in designing things, about what data you want to collect. But we have data; as I say, there'll be some where it's obvious from the name, and, as I said in my answer earlier, data on the industry in which it operates, and we'll have a look at that and give you our best—

Senator O'NEILL: I understand pretty clearly the limitations of your capacity to give us a clear view of what's going on. You've taken on notice, 'How many internship placements has Hungry Jack's hosted?' Could you also indicate how many have resulted in employment for 26 weeks.

Mr Manning: Yes, certainly we will do that.

Senator O'NEILL: Great.

Mr Manning: But I just want to clarify my comment earlier. Do you want to know how many led to a 26-week outcome, which is when someone who is on income support is then 100 per cent off income support? There will be a category of people whose employment doesn't enable them to get off income support, but they may be declaring earnings. I'm not sure off the top of my head, but I will check within the department whether we can tell which employer they're with at the time.

Senator O'NEILL: If you want to give me the two figures for the two cohorts, clearly indicated, as you described, that would give me a clearer picture. That's what I'm after: a clear picture in the midst of all this uncertainty.

Mr Manning: I understand.

Senator O'NEILL: Because it is about young people who desperately want to get a real job. According to previous estimates, the top job categories for PaTH internships are cafe workers, sales assistants general and kitchen hands. Can the department outline what tasks an intern cafe worker, sales assistant or kitchen hand would be performing that is different from an employed cafe worker, sales assistant or kitchen hand?

Mr Manning: The PaTH internship is designed to be a real-life, for want of a better term, supervised work experience placement. People are able to do tasks that fit their skills and experience. In some cases, that will be closely aligned with work you would be doing should you be an employee; in other cases, there'll be limitations on that. For example, it may be that you require certain qualifications or certificates to do a certain tasks, and if the intern doesn't have it, then they can't do it. When the providers establish the internship placement, they look at that and they consider the personal circumstances, capabilities and interests of the intern, they look at the business and then they will arrive at what tasks are suitable.
**Senator O'NEILL:** Mr Manning, that's what would happen when you are actually going to get a job—a real job. People would discern those things. There've been 119 shelf-filling internships. I find putting those two words together is just ridiculous. How can that be an internship—to fill a shelf? If a person shows up and is capable of following a direction and is in physically good shape and able to do that job, how could you possibly call it an internship? Nonetheless it is.

**Senator Reynolds:** Senator, I think it's more of a policy issue and the answer to that is very simple. This program is designed to get people into work and getting into regular work—

**Senator O'NEILL:** It's designed to get them filling shelves for less pay than they could get if they got the real job from some big company like Coles.

**CHAIR:** Senator O'Neill, allow the minister to speak.

**Senator Reynolds:** The point is that these are people who are not in work. What this does is get them into a workplace, into regular routine and a job experience. As I have read out the numbers before, and I'm happy to read them out again, this program has been entirely successful. So you might denigrate those who stock shelves and work in supermarkets—

**Senator O'NEILL:** That is not correct.

**CHAIR:** Senator O'Neill, allow the minister to finish.

**Senator Reynolds:** It is, it is.

**Senator O'NEILL:** That's an opinion.

**Senator Reynolds:** No, you just said. You just denigrated people who fill shelves.

**Senator O'NEILL:** Absolutely, that's not the case.

**Senator Reynolds:** Well, I have got to say that the people on this program—

**Senator O'NEILL:** I want people who want to fill shelves to get the full pay, not some dodgy program cooked up by a government that's out of touch.

**CHAIR:** Order! I have a point of order.

**Senator Reynolds:** It is highly successful and this is to get people into—

**CHAIR:** Minister.

**Senator Reynolds:** My apologies, Chair. I couldn’t hear you over Senator O’Neill.

**Senator O'NEILL:** No, your own talk.

**Senator PATERSON:** I'm struggling to hear the minister's answers because immediately after Senator O'Neill asked a question and Minister Reynolds attempted to answer the question, Senator O'Neill then continued to talk over the minister. It would be helpful for everyone if we could just have the answer without cross-talk.

**Senator O'NEILL:** On a point of order, Chair. On a point of order. We have had a serial performance here from the minister answering the questions that she determines that she'd like to answer and not answering the questions that I have asked. She continues to give an opinion—which doesn't have any connection with the facts—that this is a successful program, but it has not met anywhere near the targets that the government's allocated.
CHAIR: That sounds a lot like commentary, not a point of order. Let's try and be respectful, listen to the minister in silence and then ask another question. Minister, you have the call if you wish.

Senator Reynolds: I do, just to again remind Senator O'Neill of the purpose of this program, which is directly relevant to her questions. The whole purpose of Youth Jobs PaTH is to help young, inexperienced jobseekers who are struggling to enter the labour market. Again, the numbers have been very successful. As I said before, but perhaps just to remind Senator O'Neill, 63,570 people have participated—these are young, inexperienced jobseekers—in the program, and 65 per cent have achieved a job placement, which is nearly 41,000. Again, Senator O'Neill might denigrate people who have jobs in supermarkets filling shelves, but we do not. We consider that all of those jobs are important jobs, and they have given those young, inexperienced people who are having trouble getting into the labour market a job and an experience of work. This government is very proud of the program, and, as I've said, we have made changes to the program to get rid of the six-month waiting period so that we can encourage more young people to take the opportunities that over 40,000 have already taken.

CHAIR: I'll just inform the committee that I have to step out for a moment. Senator Paterson will have the chair, but you have the call, Senator O'Neill.

Senator O'NEILL: Thank you very much, Chair. I think that, if the minister had actually read some of the evidence that we've received in inquiries into jobactive and heard about some of the experiences of people being forced into internships that were completely mismatched with their skill sets, she'd have a much clearer view of reality. It's just continuing this out-of-touch government's perceptions. They're just not in touch with reality.

Senator Reynolds: The facts are the facts.

Senator O'NEILL: To the department—Mr Manning: what businesses usually host shelf-filling internships?

Mr Manning: I'll have to take that on notice.

Senator O'NEILL: Where are shelves filled? It's not really that difficult.

Mr Manning: In any retail outlet, I imagine, as well as warehouses—a range of businesses.

Senator O'NEILL: Would Coles and Woolworths be a couple of those groups that have interns who are shelf-fillers?

Mr Manning: It's quite possible, but I'll have to take that on notice. Perhaps I can add it to your previous question about those employers. Whether it has been their role as host in here, they have filled those types of position. I don't have that information with me.

Senator O'NEILL: They're two of the biggest retailers in the country. Are you telling me that Coles and Woolworths don't feature anywhere in contracts that you've signed?

Mr Manning: No, not at all.

Ms Hartland: Just as before, we don't have that level of detail here and we're just not sure what level of detail we can get to you.

Mr Manning: I think I said earlier in evidence that my understanding is that Coles and Woolworths are users of the PaTH internship program, and they're in retail. But I don't have
the level of knowledge or the data with me to know exactly what positions they fill. They're large organisations; I imagine it would be a range.

Senator O'NEILL: So Coles and Woolworths are involved in the internship program; you just can't tell me if they have shelf-filling interns.

Mr Manning: That's right.

Senator O'NEILL: But if they do, which is extremely likely, have Coles and Woolworths been paid $119,000 by the department in taxpayer funds and been given a workforce for 470 weeks labour in their big stores?

Mr Manning: I don't have the information about how much money they've received, but if you like, I can take that on notice and answer that question.

Senator O'NEILL: I'm not pulling this number out of the air. It is $119,000 in taxpayer funds provided to Coles and Woolworths, which equates to 476 weeks of labour—when they could have actually just employed the people.

Mr Manning: I don't have the information.

Mr Smyth: We will take that on notice, but I don't have that information to hand at the moment.

Mr Manning: It's worth noting that internships can be negotiated for different periods of time. I don't know the source of your information, but, if you like, I can take that on notice and answer that question. But internship agreements can be of varying lengths, so you can't just take one number and extrapolate it out over every internship and arrive at a number of weeks, necessarily.

Senator O'NEILL: I'm quite distressed about this, because I see so many people who have hope when they approach these programs, and that's being pumped up by government advertising, and then they face the reality and they are devastated by their experiences, where what they've been told was available to them by the government isn't achieved. I want to understand: is there any restriction—any restriction at all—on what's considered an internship, in terms of job category?

Mr Manning: There are general restrictions about the types of activities that can be undertaken in employment services that would apply here as well. Otherwise, generally, in relation to this program, the internship will be open for a work experience placement that meets the person's interests, skills and abilities, as judged by their provider. There are other restrictions around breaks and it not happening on public holidays et cetera, but I don't think that goes to the question you're asking.

Senator O'NEILL: I'd be very keen to receive any further detail that you have a sense I might be interested in there.

Mr Manning: Certainly, Senator.

Senator O'NEILL: I will just go to a couple of questions around the youth bonus wage subsidies. Can you table a breakdown of youth wage subsidies for job category?

Mr Manning: We can't table it; we can take it on notice and provide that.

Senator O'NEILL: Shelf fillers, housekeepers, sales assistants—all the other categories.

Mr Manning: We'll take it on notice and provide what we can.
Senator O'NEILL: Can you tell us how many youth wage subsidies have been provided by Hungry Jack's and fast food restaurants?

Mr Manning: We will take it on notice.

Senator O'NEILL: How many people who have been employed through youth wage subsidy have re-entered the jobactive system?

Mr Manning: I don't necessarily have that. I can give you the conversion rates for youth bonus wage subsidies.

Senator O'NEILL: Do you want to give me the full answer on notice?

Mr Manning: We will take it on notice.

Senator O'NEILL: How many people employed with a youth wage subsidy have found permanent employment after the subsidised period?

Mr Manning: I think we've looked at the that issue before. I will take that on notice and give you what we can. We will track people who go off income support fully at 100 per cent. But then we won't, for example, know if they're no longer in the jobactive system what the status of their employment is. But, as I said, we will take it on notice and provide you with the information we can.

Senator O'NEILL: So my last little line of questioning refers to a question on notice, EMSQ 18-540, which indicates alarmingly that $2.5 million was spent on advertising the Youth Jobs PaTH Program in 2017-18—$2.5 million advertising a program with the degree of failures, I think, we've documented this morning. Is it correct that it is $2.5 million spent?

Dr Charker: Can I just check your question was about what the expenditure to date has been on that campaign?

Senator O'NEILL: Yes. At the last estimates, you answered a question which indicated the advertising on Youth Jobs PaTH Program 2017-18 was $2.5 million. How much has been spent on advertising now?

Dr Charker: Total expenditure on the campaign to the end of last calendar year—clearly that is halfway into 2018-19 as well—so 31 December 2018 is $4.2 million.

Senator O'NEILL: That's nearly another million dollars. Give me it again, please. The date was?

Dr Charker: In relation to total expenditure on the campaign, across financial years up to 31 December 2018, the total expenditure was $4.2 million.

Senator O'NEILL: Did you say $4.2 million?

Dr Charker: Correct, that's right.

Senator O'NEILL: That's an awful lot of money spent telling people about the programs we've been discussing, isn't it?

Senator BROCKMAN: Is that a part of a question?

Senator O'NEILL: Well, it is a lot of money. I am sure the department would think it is a lot of money. It is a waste of a lot of money, but they don't have to say that. A part of the department's advertising strategies involve the employer mobilisation branch. There have been meetings, I understand, with more than 3,100 organisations, a delivery of 245
presentations and, I understand, there have been more than 120 events. So for that spend, what's the rate of return on advertising per business?

**Dr Charker:** My colleagues might have other info. I can only provide you some of the research that has been done specifically in relation to the advertising campaign part, not the other engagement activities you touched on. But we certainly have got a range of key points about tracking and evaluation which have found significant increases in awareness of the program, people who express positive sentiment towards young jobseekers, the receptivity of people who saw the campaign to the testimonial approach, et cetera. So we do tracking research and evaluation, and I can go into that in more detail if you're looking for that.

**Senator O'NEILL:** So we've got a lot of news about people feeling better as a result of the advertising, but my questions go to the rate of return of a $4.2 million spend on the securing of businesses to run this program, to provide the PaTH training that the government keeps pumping up. What is the rate of return on advertising per participant that has achieved a 26-week outcome after completing the program?

**Mr Smyth:** The employee mobilisation strategy that we utilise across the department is for a variety of programs, not just obviously for youth PaTH. It's Launch into Work, jobactive, Transition to Work and the like, where we're actively out in the market engaging with employers across all of our programs to look at opportunities for placements for participants in the variety of programs that are run throughout the department. So, it's not just a specific Youth Jobs PaTH initiative or anything like that; it's across all of the different programs that the department has responsibility for.

**Senator O'NEILL:** You might want to take on notice the allocation to each of those programs that you've talked about so I can get some clarity about exactly what's been spent where.

**Mr Smyth:** It's going to be hard to disaggregate that in some respects, because this is an ongoing program. We're talking to a lot of employers across the country, obviously.

**Senator O'NEILL:** But you pay the bills. Look, that's all I've got, but I am very concerned about the level of expenditure on advertising and the failure of the government to get people into the programs that they keep telling the Australian people are great programs for those who seek work when clearly people are not finding that's the case.

**CHAIR:** Thank you, Senator O'Neill.

**Senator O'NEILL:** Senator Cameron has questions.

**CHAIR:** You've still got outcome 1 questions, Senator Cameron? Senator Siewert has outcome 1 questions.

**Senator CAMERON:** I've got questions, but I'm happy for Senator Siewert—

**CHAIR:** Senator Siewert, you have the call.

**Senator SIEWERT:** Thank you. Can I go back to where we left off. I might just ask the questions in terms of data—

**Mr Smyth:** Back on the TCF, Senator?

**Senator SIEWERT:** Yes, back on the TCF; sorry—well, I'm not sorry that I'm asking questions but I'm sorry that I didn't make that clear. I was just trying to get some refinement of some of the data, and that is: are you able to provide data on the reasons for the payment
suspensions across the amber zone—in other words, was it failure to report, self-report, non-attendance? Is data available for that?

**Ms Pitt:** We'll be able to get that.

**Senator SIEWERT:** Could you take that on notice.

**Ms Pitt:** So, it's essentially for all the demerits and what the failure—

**Mr Smyth:** You're talking about the penalty zone, aren't you?

**Senator SIEWERT:** Sorry, I was in the amber zone—I beg your pardon. I'm trying to get a better understanding of why people are getting demerit points, but I'd like the same for the penalty zone.

**Ms Pitt:** So, demerits and penalties by type?

**Senator SIEWERT:** Yes, please. If I could have that by stream and demographic, that would be appreciated.

**Ms Pitt:** Okay.

**Senator SIEWERT:** How many complaints have there been to the customer service line regarding the TCF or, if they don't actually name the TCF, the demerit-point process that obviously relates to the compliance program?

**Mr Emerson:** Can I clarify: so, we're talking about TCF complaints that have mentioned TCF as the primary source of the complaint?

**Senator SIEWERT:** Jobseekers aren't necessarily going to go, 'Oh, this TCF.' They're going to go 'demerit points'. Same thing—it's about the program.

**Mr Emerson:** From the period 1 July 2018 to 31 December 2018, there were 2,317 complaints to the national customer service line—

**Senator SIEWERT:** About—

**Mr Emerson:** and the primary complaint topic—because it can go into other areas, as you would imagine—was the targeted compliance framework.

**Senator SIEWERT:** And around jobactive?

**Mr Emerson:** I don't actually have the breakdown.

**Senator SIEWERT:** Okay. I know I'm asking you to compare apples and oranges because we had a different compliance system previously, but how does that compare to complaints received in the comparable period in the previous year?

**Ms Pitt:** So that comparison between—

**Senator SIEWERT:** Yes.

**Ms Pitt:** We'd have to take that on notice.

**Senator SIEWERT:** Can you take that on notice and give me (a) the number of complaints received about jobactive and (b) the overall number of complaints?

**Mr Emerson:** Yes, we can take that on notice.

**Senator SIEWERT:** Okay. You can't provide it now?

**Ms Pitt:** Our colleague may be able to.

**Mr Emerson:** Ms Milliken will come to the table and provide you with an answer.
Ms Milliken: In relation to jobactive, I may not have that figure, sorry.
Senator SIEWERT: Will you have to take it on notice, when you say you don't have it?
Ms Milliken: I may be able to get it for you in just a moment.
Senator SIEWERT: And can you provide the total number?
Ms Milliken: That's the total number. My colleague has the TCF related figure.
Senator SIEWERT: Are the overall complaints to the customer service line solely broken down into those about compliance and those about jobactive?
Ms Milliken: No. We break it down by program and, within programs, by categories, so we can give, for example, total complaints for that period, which is what I'm looking for for jobactive, and then how many of those total complaints were TCF related.
Senator SIEWERT: I understood that was 2,317.
Ms Milliken: That's the TCF jobactive rather than the total jobactive.
Senator SIEWERT: But now you're looking for last year, to compare it to last year, and then also the current jobactive and the overall number currently and the overall for the previous period.
Ms Milliken: As I understand it, it you're looking for a comparison of total complaints in respect of jobactive from July to December 2018 and the TCF component of that and the comparator six months in 2017.
Senator SIEWERT: Yes. While you're looking for that, I want to quickly go back to the TCF and look at the table in terms of the case load. According to my reading of this—and I want to make sure I'm correct—56 per cent of the Aboriginal and Torres Strait Islander case load had some form of suspension. That's correct, isn't it?
Mr Smyth: A demerit within jobactive.
Senator SIEWERT: Then, when you go across to the 'all', in the penalty zone, 1,134 had some form of financial penalty, which is basically a quarter of all streams. That's correct too, isn't it?
Mr Smyth: A quarter? Sorry?
Senator SIEWERT: So 1,134 people in the penalty zone—
Mr Smyth: Indigenous participants in jobactive in the penalty zone.
Senator SIEWERT: If you look then at all streams, there were 4,101.
Mr Smyth: I've got where you are now.
Senator SIEWERT: So a quarter of those who received penalties are Aboriginal. That is correct, isn't it?
Mr Smyth: Yes.
Senator SIEWERT: Is that not a disproportional impact on Aboriginal people? In fact, the points that were made during the inquiry hearing and that we articulated in the jobactive report showed a 25 per cent increase in the number of Aboriginal people who were copping penalties. This actually bears that out, does it not?
Mr Smyth: I'd have to go back and look at historic figures to see where that got to, but it's certainly a concern. There is no doubt of that—as is the ex-offenders number as well.
Senator SIEWERT: Exactly. It's actually lower or around the same.

Mr Smyth: The ex-offenders number is pretty similar to—

Senator SIEWERT: And it's the same in terms of ex-offenders for the percentage of case load.

Mr Smyth: And obviously there could be a number of those ex-offenders who are Indigenous participants.

Senator SIEWERT: Would they be counted twice?

Mr Smyth: It's a double count therefore.

Senator SIEWERT: So for all of these vulnerable demographics—homeless and disability—where there are a lot of barriers to employment the number of penalties they have in terms of the demerit count, the warning zone, is high.

Mr Smyth: Yes.

Senator SIEWERT: So is the number of those that have received a financial penalty. They're all high?

Mr Smyth: They are. I'd like to look at the previous compliance arrangements as well to see how that has changed, obviously, since the introduction of the TCF.

Senator SIEWERT: One of the ideas was this was supposed to—and I take your point about looking at that, and if you could take that on notice to provide the information—

Mr Smyth: Sure.

Senator SIEWERT: But it seems to me from this data that we're having a significant impact on those vulnerable demographics.

Ms Pitt: We certainly will look at that. That's certainly an issue for us in what we're looking at and in the evaluation. I guess I would just say that the way the TCF works is that people don't get into the penalty zone and certainly would not incur a financial penalty unless they've been assessed on two different occasions, once by the provider and then once separately by DHS, as being capable of meeting the requirements. As we were saying on how those safety nets, the capability interview and the capability assessment, are working, at that point nearly half the people are being sent back to the green zone. So the people who do actually move through the system and have a penalty applied have been assessed on two different occasions by both their provider and DHS as being capable of meeting their requirements.

Senator SIEWERT: I understand what you've just said. You'll be aware that, during the Senate inquiry into jobactive, we heard a lot of evidence about the failure of your classification process. I understand some people have been sent back into the green zone, but if you're still using basically the same classification process would we not expect similar outcomes from the same process even though they are being re-assessed?

Ms Pitt: I'll discuss that with you in terms of the classification. But if you're referring to the assessments that are being undertaken, the capability interview and the capability assessment are actually quite different. So the capability interview conducted by providers is an opportunity to really look at what's in somebody's job plan and what their personal
circumstances are. It's an opportunity where people can disclose further information that is impacting on their ability to meet their obligations. They are substantive conversations.

**Senator SIEWERT:** Ms Pitt, the other element of that is that the evidence we received very strongly from providers, not just jobseekers—so from both sides of the equation here—is that, because of the TCF, the trust is breaking down between the employment consultant and the participant, that people are not declaring their vulnerabilities and that people are distrustful now of their employment consultant. I appreciate that some people may have made extra declarations and so they've gone back through the process, but given the evidence—and I'd say it's pretty substantial evidence—around the issues around trust now, because providers are the people that are applying the demerit points, how can we have faith? How can we have faith that that process is actually delivering given what we've heard about the undermining of the trust between jobseekers and consultants?

**Senator Reynolds:** I've got some information here on that. Noting your comments—and I think they are very valid observations about the program—I'll just try to contextualise what you're saying. I take on board—and I know the department takes on board—what you're saying in a policy sense but, from the government's perspective on the TCF program, the numbers on the table here show that the policy is actually working as intended. With regard to the numbers of Indigenous Australians that you were just talking about: of those Indigenous Australians in jobactive, only two per cent go to penalties. That's not to say it's perfect, but I think the fact that it's only two per cent now shows it is actually a good outcome. With regard to complaints to the NCSSL, this year only four per cent of the complaints to the line related to TCF. That's down from five per cent last year.

But I think the key information here that demonstrates that it is working as intended in the policy sense is that from 1 July to 21 December last year there were 5,396 penalties for failing to meet the mutual obligation requirements, which affected just under 4,000 jobseekers, but—to demonstrate the success of the program in the government's mind—in the same period in 2017, under the old framework, 98,091 financial penalties were applied to 52,486 jobseekers, or about six per cent of the total case load. So in 12 months we've gone from over 98,000 financial penalties to 5,396 penalties.

**Senator SIEWERT:** Minister, you've got 168,635 people who have had their payment suspended. This is the myth that's perpetrated. For many people—not all of them; I've heard what you've said—that's a financial penalty as well. It's a myth that's being perpetrated that there are only 5,000—although those figures are slightly different to these figures; I accept you've probably got the absolutely latest figures.

**Senator Reynolds:** I understand your point but, in terms of the program itself, I think we do see it as successful. It's not perfect but, given the nature of the people that we're dealing with, there will always be problems in individual circumstances. The committee you chaired has identified some of these issues, but I'll just give you those numbers again—

**Senator SIEWERT:** Forty-two per cent.

**Senator Reynolds:** I'll just give you the numbers again. Under the old compliance framework, 98,091 financial penalties were applied to 52,486 jobseekers, which was about six per cent of the case load at the time. When you're comparing apples with apples, the 98,091 has now reduced to 5,396 penalties for failing to meet mutual obligation requirements. That is
not to say, as I said, that there are not still problems, which clearly there will always be, but the fact is that less people are being penalised in that way, by a significant factor.

Senator SIEWERT: But minister—

CHAIR: Senator, I do need to share the call. How long do you think you have to go? Perhaps you could give other senators an indication.

Senator SIEWERT: I'll put some more questions on notice. I've got some more data questions that I'll put on notice because I don't think they'll be able to answer them.

CHAIR: I'm happy to come back to you, or I'm sure Senator Cameron would be happy for you to finish if you could give an indication—

Senator CAMERON: I'm happy to yield to Senator Siewert if this allows her to finish and move on to another committee.

Senator SIEWERT: I'll go back just one more time—because I realise this is a significant difference of policy—to the point that 42.5 per cent of the case load have had some form of demerit point, which incurs a penalty of suspension of payment. It's very convenient to say that less than five per cent have received a financial penalty. In fact, suspension in many cases equates to a financial penalty at the time. I've had people ring my office to say: 'Where can I go for food relief? My payment has been suspended right at the point that I was supposed to get the next one.' That's a financial penalty for that person.

Ms Pitt: When we talk about the difference between a suspension and a financial penalty, the difference is that a suspension, once the person re-engages, is back paid. I absolutely appreciate your point.

Senator SIEWERT: It still hurts people. I understand your point, but it hurts people.

Ms Pitt: Just to say it is back paid. But yes, I hear what you're saying.

Senator SIEWERT: It is also really clear from these figures that those with vulnerabilities are getting significantly impacted—more broadly than the average. For example, 56 per cent of Aboriginal and Torres Strait Islander peoples are coping a warning. Vulnerable groups are still being disproportionately impacted by the system.

Mr Emerson: Noting that, as Ms Pitt said earlier, they had been deemed capable before they got into the penalty zone, or into the warning zone.

Senator SIEWERT: This is actually in the warning zone as well, that they are disproportionately impacted.

Mr Emerson: After their third demerit, when they have their capability interview with their provider, before they go any further, the provider will work with them to check whether or not they're capable, and if they are capable they'll continue in the warning zone.

Senator SIEWERT: My other questions are drilling down into detail—for example, trying to find out the breakdown of age groups for older people as well. Would you be able to give me the figures on the 30- to 49-year-olds and the 55-year-olds to pension age—whatever retirement age we're at at the moment?

Mr Emerson: We can do that.

Ms Pitt: We can do that for you.
Senator SIEWERT: That would be appreciated. The other questions about the detail of data I'll put on notice. I want to go to the media report on the background information that was collected on Ella Buckland. Were you specifically monitoring comments that Ms Buckland has made on the ParentsNext program?

Mr Smythe: We don't specifically monitor individuals. We monitor taglines in media posts and the like. That's across jobactive, across ParentsNext, across Transition to Work and the like. Our media coverage doesn't go to individuals; it goes to programs that we're responsible for running.

Senator SIEWERT: Why is that?

Mr Smythe: Because we are interested in the feedback. We're interested in the commentary that is out there. We need to, at times, correct misinformation and, obviously, brief ministers' offices around misinformation that may be out there around programs. There is often misinformation that is put forward out there in the media, so correcting media organisations in terms of facts and figures is a critical component. I think that, in terms of understanding the way that programs are rolling out, it's important for us to receive information that is appearing in the press or in social media and the like so that we can take that on board as potential feedback or whatever it might be.

Senator SIEWERT: So what did you do with the information that you collected on Ms Buckland?

Mr Manning: As Mr Smyth said, the information wasn't collected from monitoring Ms Buckland personally, or any individual personally, but rather came up in those keyword searches. The only information relevant to Ms Buckland's participation in ParentsNext that would be looked at when it came up would have been what was relevant to it. So for example, in tweeting about the program and using the program's name, you might think Ms Buckland was being critical of an activity she was doing and so, as a result of becoming aware of that from social media, when it picked up the name we would go to the provider and say, 'Is this right?' And I'll speak generally now: if, for example, a social media tweet gave us information that something wasn't operating as it should, we'd use it as an opportunity to make sure the provider, or whoever it was in that case, understood what should be occurring.

Mr Smyth: But, again, that might be an instance of somebody saying something that might not actually be correct. We would then need to look into that issue, contact the provider and look at whether the person had actually contacted the national customer service line—or whatever it might be—to investigate that further. If there is something that is inappropriate, or whatever, then we would take corrective action.

Senator SIEWERT: So you contacted her provider?

Mr Manning: Are we talking about it now in relation to the swimming lessons?

Senator SIEWERT: How many times have you contacted a provider for Ms Buckland?

Mr Manning: Off the top of my head, I'm only aware of this one instance. In response to a tweet in relation to the activity we thought was strange, in the sense that ParentsNext activities are meant to reflect people's educational and employment goals—they're not meant to be child-specific activities—we got our relevant account manager to contact a provider to investigate in relation to it, because, getting back to Mr Smyth's point, we're interested in how our programs are going generally. Particularly, when you're rolling out a national expansion...
of a program, you want to make sure it's being implemented as it should. There's perhaps more opportunity, when a program is new for things that need to be implemented or for even better improvements to be made. That was what occurred in that case. I understood that, as a result of that, they got in touch with Ms Buckland to further discuss her activities, but I don't have any of the details about that.

Senator SIEWERT: How many times have you contacted her provider?

Mr Manning: Ms Buckland's provider?

Senator SIEWERT: Yes.

Mr Manning: I'm only aware of it occurring in that case, but I'll take that on notice and see if there are any others.

Senator SIEWERT: Could you take that on notice?

Mr Manning: Yes.

Mr Jalayer: Ms Buckland also put in a complaint to the services line. That was investigated, which involved passing the complaint back to the provider for them to investigate. Subsequently, because she was still unsatisfied by the result, it came back to the department, which then investigated it as well.

Senator SIEWERT: So that was a second contact?

Mr Jalayer: That's correct.

Senator SIEWERT: That was a second contact as a result of the complaint?

Mr Jalayer: That was as a result of a direct contact through the national service line.

Senator SIEWERT: If you don't have it and can't tell me now, could you take on notice how many times Ms Buckland's provider has been contacted and where that contact emanated from—a tweet, social media or a complaint?

Mr Manning: Yes.

Senator SIEWERT: Are you able to tell me now how many times the provider has been contacted?

Mr Manning: No. We'll take that on notice.

Mr Jalayer: We'll take that on notice.

Mr Manning: We'll say if it has been in relation to a complaint or complaints on the social media comment alleging inappropriate activity.

Senator SIEWERT: Was that the one?

Mr Manning: They're separate occasions.

Senator SIEWERT: Yes. The social media response was one time.

Mr Manning: We'll take it on notice so we can be precise in our answer.

Ms Hartland: Senator Siewert, I think you're checking whether it was initiated by us or whether it was initiated by her. Is that right? So that mechanism by which—

Senator SIEWERT: I'm trying to find out how many were in response to the department doing social media monitoring or whatever other monitoring and what was initiated as a result of complaints.
Ms Hartland: Yes.

Senator SIEWERT: Could you tell me how many times overall you've contacted a provider because of your monitoring? I'll just ask for ParentsNext, and then I'll go to other programs. On ParentsNext, how many times have you contacted a provider because of media monitoring—not just social media? I've got another question about what you monitor. How many times have you contacted a provider?

Ms Hartland: I'm not sure we would keep that granularity of detail. Would we?

Senator SIEWERT: It's a pretty significant issue that people are pretty worked up about. People see it as an invasion of privacy and, quite frankly, as the department being Big Brother. That's why I want to know.

Mr Manning: I think we'll need to take it on notice to see what information we can provide to you in relation to that.

Ms Hartland: What I was saying is that, if it's through all media over time and something has been picked up, it might not have that direct correlation—if there was a media article. I would be hopeful that we had followed up, but we may not actually have all that. We'll provide what we can. In this case, as officers have said at the table already, the person in question had put on a hashtag with the program's name and the department's name, so that becomes a very specific thing that we would see as distinct from something broader.

Senator SIEWERT: That's why I want to know the extent of the monitoring that's going on.

Mr Manning: Getting back to Mr Smyth's earlier evidence and what the secretary just said, it is only where the programs, for example, are identified. It's a small number, Senator. I would think there are fewer than half a dozen, but we will take it on notice to give you the exact number.

Senator SIEWERT: What I'm concerned about is that people see that, if they make a comment in the media or in social media, they're in the department's sights.

Mr Smyth: That's not the case at all, Senator.

Mr Manning: That doesn't happen, Senator. In this case, where someone has—

Senator SIEWERT: It certainly seems like it.

Mr Manning: In this case, someone has tagged ParentsNext and has been critical of the operation of a program and provided information, which seemed to us on the surface, if true, worth questioning—because it isn't what the program does—and we've gone to the provider and said, 'Is this true?' If true, we're reminded of the guideline requirements in relation to activities. It's about the operation of the program in the way that it's meant to operate, not about anything else.

Senator SIEWERT: How many times have you done it specifically? I appreciate what you've just articulated, but how many times has this occurred for ParentsNext?

Mr Manning: As I said, I understand it's a small number, but we'll take it on notice.

Senator SIEWERT: Could you take it on notice?
CHAIR: Can I ask a follow-up question there, Senator Siewert? There must be some threshold at which a complaint crystallises. A lot of stuff is put out on social media, on Twitter—

Senator SIEWERT: Exactly.

CHAIR: and I assume it would be very difficult, if not an extraordinary waste of resources, to follow-up, so there must be a threshold test. Was it the fact that the complaint here had been particularised?

Ms Hartland: Because this was one that had a hashtag of the department's name—

Mr Manning: And the program name.

Ms Hartland: and the program name—that's my recollection—it got picked up.

Mr Manning: And, because you could identify the provider and the person and enough information was given to make you question, as I said earlier, whether it was true; is that doing what the program seemed to be doing? I go back to my earlier comments about the context of rolling out a national program and being particularly keen to make sure it's operating as it's meant to.

CHAIR: Fair enough.

Mr Manning: There are other tweets, Senator. Often they are tweeted by someone and they'll contain an allegation, but you can't identify the person from the allegation, so, from that, you can't identify the provider and you're unable to do anything about it, unless the person, for example, makes a complaint.

Ms Hartland: The basis of the question is, as Mr Smyth has already said, that we're not trawling through hosts of Twitter feeds or anything, but, if they are actually tagged to the department, then they're going to be seen by us.

Senator SIEWERT: Could I go back to the number of people you've identified this way and the number of providers that you've contacted? Do you let the person involved know that you're contacting their provider?

Mr Manning: Not normally, Senator. We'll follow up with the provider and then if, as a result of that follow-up, it appears that action is required to be taken, as in this case, we'll ask the provider to go back and let it happen. There may be other circumstances where, in that follow-up, you might want to contact the person to get information from them or to encourage them to provide information. I'm not aware of it happening in this, but, if you like, we can add that to the consideration and take the question on notice.

Senator SIEWERT: Could you add that to the consideration, please?

Mr Manning: Yes, sure.

Senator SIEWERT: In terms of the media that you monitor—we just heard that there is the hashtag for ParentsNext—do you also monitor for the name 'ParentsNext' or other programs in the broader media?

Ms Hartland: Yes, we do.

Mr Manning: Yes.
Ms Hartland: Like with any media monitoring, as you're probably aware, there's a whole list of topics and they get changed over time and as programs come on. So, yes absolutely, we'd be—

Senator SIEWERT: So you'll have been monitoring ParentsNext in the media?

Ms Hartland: Yes.

Senator SIEWERT: Can I add to the list then, or can you tell me now, how many times you have contacted a provider because of information not just in social media but in the media—

Ms Hartland: Yes. We'll take that on notice.

Mr Manning: I must admit I considered that that would be captured by your earlier question, but we'll take that on notice, yes.

Senator SIEWERT: Can we break it down to social media and the broader media—

Mr Manning: Press, yes.

Senator SIEWERT: Press, yes.

Mr Manning: Certainly. We'll rake that in. We'll cover all of it.

Ms Hartland: And—I'm just looking at my experts here as well—we're only ever going to be looking at public social media, so it's not about—

Senator SIEWERT: Not into Facebook groups, in other words?

Ms Hartland: No.

Senator SIEWERT: Okay. You don't contact the person involved, so how do people know? Can you not see that people get really nervous when the first time they find out about it is maybe their provider mentions it to them? Don't you see that that could be quite alarming, particularly for those that are having a bad experience?

Mr Manning: In the majority of cases in which the department will get feedback, the person will come through our national customer service line. As I said earlier, the number of times our media monitoring has detected an issue that requires follow-up—which we've taken on notice—is very small, but exactly what we do will depend upon the nature of it. I've got the details of this one, which we've spoken about already. I don't have those details about the others. We don't have a process for following it up that excludes your following it up with the participant. It may be that you would in certain circumstances. I'm not talking about ParentsNext; I'm talking generally. You might want to follow up to get further information because the bit of information they've included makes you think there's an issue worth looking into further.

Senator SIEWERT: Okay. I have one last question in this area. Could you take on notice how many times you've followed up overall in terms of all the programs that you've been monitoring—how many occasions? And I'm not going to break it down; I want an idea of the scale.

Mr Smyth: That's going to be really difficult too, because all of our account managers that are out in state and territory offices and the like might have something, even on their own social media feed, that they look at—because they might have tagged programs that they're responsible for, or whatever, or a provider's name—and they see something pop up. They
might then have a meeting the following week with the provider and discuss that: 'So-and-so made a claim about X. Is that accurate or not?' So it's going to be very difficult for us to do that. That's just the ubiquitous nature, I think, of social media these days and the fact that everything gets tagged. But people are using social media, obviously, to look at program performance and look at whether or not programs are working as appropriate and as per our guidelines and our expectations.

Senator SIEWERT: So there is no overall list, even from—

Mr Smyth: There probably is not a list that we would have.

Ms Hartland: We'll get you what we can. But, also, providers are using social media to be able to review their own practices too. I think Mr Smyth is right that it's a new mechanism that everyone is using in some way. We'll see what we can get for you, but I guess I'm just cautioning that I'm not sure that we're going to have a sort of definitive answer. We certainly don't have a centralised mechanism that gathers all of this information, which is probably a good thing.

Senator SIEWERT: I've got one more set of questions and then I'll get—

Senator CAMERON: Set!

Senator SIEWERT: Well, there are only a few in them.

CHAIR: You agreed, Senator Cameron!

Senator CAMERON: I made a big blunder, didn't I!

Senator SIEWERT: Can I just go to this issue around jobactive fraud complaints and following up a tip-off. Could you tell me how many tip-offs you get about jobactive providers?

CHAIR: By 'tip-off' do you mean complaint?

Senator SIEWERT: No. This is around fraud, so tip-offs are different to complaints.

Mr Smyth: It relates to potential fraudulent activity and the like.

Ms Milliken: The tip-off line that we've established is for provider staff or former provider staff to raise complaints. I don't have it broken down by program, but I can say that from July to December last year we had 31 tip-offs.

Senator SIEWERT: Is that overall and not just about jobactive?

Ms Milliken: Not necessarily about jobactive.

Senator SIEWERT: Who else would be included?

Ms Milliken: Any employee of an employment services provider, so it's not specific to jobactive. That's what I meant.

Senator SIEWERT: I beg your pardon. So it could be about a specific employment consultant or something. Is that what you mean?

Ms Milliken: No, it could be a non-jobactive employment services provider. I think the majority of them are jobactive.

Senator SIEWERT: Do you know the percentage?

Ms Milliken: The vast majority. I don't have a breakdown for the jobactive program with me.
Senator SIEWERT: That was in the last six months?
Ms Milliken: Yes, in the last six months.
Senator SIEWERT: Do you have the first half?
Ms Milliken: I can give you 2017-18, so the previous financial year.
Senator SIEWERT: I'm trying to get an idea of whether that is a normal number.
Ms Milliken: We had 49 in the period 2017-18.
Mr Smyth: It's relatively consistent.
Senator SIEWERT: Have all those 31 been followed up?
Ms Milliken: They're always followed up. Of those 31, 11 are closed and 20 are still under investigation.
Senator SIEWERT: What resulted from the 11 that are closed?
Ms Milliken: The majority of the complaints to the tip-off line are unsubstantiated, with no follow-up. I don't have a breakdown of what happened to the 11.
Senator SIEWERT: If they are unsubstantiated, does that mean it has been found that, in fact, it didn't happen or there wasn't enough information, or is it a combination?
Mr Smyth: It could be a combination of both. It could be a vexatious claim made by somebody who was laid off by the employment services provider or whatever and has a beef with someone. It could be that we were just not able to find enough information to get to the point of an investigation where we felt that there was merit.
Senator SIEWERT: Are 20 still ongoing because there are issues you have identified that need further investigation?
Mr Smyth: It can take time for us to gather that information. It may well be that some of those 20 recently came in and we're investigating them. Others might be a bit more ongoing and we're seeking further information.
Senator SIEWERT: In terms of the number of complaints overall since the beginning of the program, how many complaints have you had about jobactive?
Ms Milliken: Again, I don't have that broken down specifically about jobactive. I can tell you that since July 2015 we have received 186 tip-offs.
Senator SIEWERT: And that's about overall employment programs?
Ms Milliken: That's employment programs, so that will include employment service providers and might include host organisations, employers and training providers. The majority are jobactive providers.
Senator SIEWERT: And how many have been found to be unsubstantiated?
Ms Milliken: I can tell you that 160 of them are closed. I don't have the number substantiated or otherwise. I'd need to take that on notice.
Senator SIEWERT: If that many are closed, I presume, therefore, that 26 are still ongoing?
Ms Milliken: Yes.
Senator SIEWERT: Has any action been taken around the 160 and what was it?
Ms Milliken: I'll take that on notice because I don't have the detail on the 160.

Senator SIEWERT: Are you able to tell me how many jobactive providers—or providers—have had their contracts taken off them as a result or have been penalised or prosecuted?

Ms Milliken: There are no jobactive providers whose contracts have been removed as a result of that action, but I will need to provide on notice the other analysis.

Senator SIEWERT: Of those prosecuted or sanctioned?

Ms Milliken: Yes.

Senator SIEWERT: If you could take that on notice, that'd be appreciated.

CHAIR: We are still in outcome 1. Senator Cameron.

Senator CAMERON: Secretary, what's the maximum number of Work for the Dole placements that one person has participated in?

Ms Hartland: We're just checking. I'm not sure that we've got that number.

Senator CAMERON: While you're looking for that, I might move to another question and come back to it.

Ms Hartland: We've got lots of other stats, but I'm not sure that we've got that one.

Senator CAMERON: Except the stats I want!

Ms Hartland: It's not intentional, Senator.

Senator CAMERON: No, I'm sure.

Ms Hartland: We'll search for that, but if you—

Senator CAMERON: Yes. While you're doing that, I also want to know what the average number of Work for the Dole placements is—so I'd like to know the maximum and the average number.

Ms Hartland: The average number per individual?

Senator CAMERON: Yes. Can the minister confirm that you will release the report into the death of Mr Josh Park-Fing once court proceedings are over?

Senator Reynolds: In short, yes.

Senator CAMERON: What steps have been taken since the death of Mr Park-Fing to improve the safety of the program?

Ms Pitt: Work health and safety is a fundamental requirement in the Work for the Dole program—

Senator CAMERON: That's not what I'm asking.

Ms Pitt: There's a whole range of—

Senator CAMERON: I totally understand that. I'm asking about the specific steps that have been taken. If you haven't taken any, just tell me that. If you have, tell me what they are.

Ms Pitt: We've taken a whole range of steps. Some of those steps include communication with CEOs and with providers about their obligations under the contract in terms of work health and safety.

Senator CAMERON: Can I have copies of that correspondence?
Mr Smyth: I don't see why not.
Ms Pitt: We can provide—
Mr Smyth: We'll definitely look into that for you, Senator.
Ms Pitt: We've developed a host organisation handbook, which also identifies the work health and safety obligations of Work for the Dole host organisations.
Senator CAMERON: Is that handbook available?
Ms Pitt: Yes.
Senator CAMERON: Can you provide a copy to the committee?
Mr Smyth: We can do that.
Ms Pitt: We've put up advice on our provider portal about specific work health and safety issues. We've liaised with other safety organisations, like Safe Work Australia and the Federal Safety Commissioner, in terms of contemporary work health and safety approaches. We're constantly looking to improve the program in that respect, so we're doing a whole range of things.
Senator CAMERON: Can you provide a list of the 'whole range of things' that you're doing? Did you outline the whole range of things?
Ms Pitt: No, Senator.
Senator CAMERON: On notice, can you provide us details of what has been done?
Ms Hartland: It's probably useful—
Senator Reynolds: We can provide you with a whole list of actions.
Ms Hartland: It's also probably useful to know—getting to the specifics of your question—that there was a specific task force established by the department to investigate the management of Work for the Dole by the specific provider and the department's management and monitoring of the deed. That just goes back a step before what Ms Pitt was talking about. As I understand it, we've previously provided those terms of reference to an estimates committee. I think that was in May 2016. There were a number of activities that were suspended as a result of that. I'm happy to step through those. I think they've been provided before, but if it's more specific—
Senator CAMERON: We've got a new shadow minister, so can you provide those details once more?
Ms Hartland: Yes, sure.
Senator CAMERON: And update them, if they require updating?
Ms Hartland: Yes.
Senator CAMERON: Thanks.
Mr Smyth: Senator, can I just confirm: are you after the specific actions that were taken against that provider or the program in general or both?
Senator CAMERON: Both.
Mr Smyth: Okay.
Mr Watson: I've got some data about the people multiply participating in Work for the Dole, your initial question.
Senator CAMERON: We'll just finish this one and then come to that. The providers are to engage in workplace health and safety assessments of Work for the Dole. Have they been provided with increased capacity or funding from the government to undertake this?

Ms Pitt: Not funding. However, we've provided a range of support material. Work for the Dole is managed by providers. Providers undertake and organise their Work for the Dole activities with community and not-for-profit providers. As part of that relationship, they're required to meet all their work health and safety legislation. In addition to those requirements, we require a whole range of things. The things that we require on top of their normal obligations include a risk assessment to be undertaken for every Work for the Dole activity before it begins, a risk assessment to be undertaken of every individual jobseeker before they begin—

Senator CAMERON: I'm looking at the clock; I've got five minutes left. How about you provide all the detail about those activities to me in writing, including copies of any correspondence you have engaged in with providers in relation to health and safety—okay?

Ms Pitt: Certainly.

Senator CAMERON: Do providers undertake training in health and safety?

Ms Pitt: Providers may, as part of their own obligations and their management of the program, undertake training.

Senator CAMERON: So there's no obligation for a recipient of government funding to help undertake safety training?

Mr Smyth: The supervisors are obligated to be fit and proper and qualified persons in relation to—

Senator CAMERON: That's a different thing. You can be fit and properly qualified. It doesn't mean to say you've undertaken any training, does it?

Mr Smyth: Well, it's their qualification around some of these activities, and work health and safety training at all times for the duration of the activity. Again, they are obligated to comply with federal and state legislation in this area.

Senator CAMERON: Yes, but that's fine. People are obliged to comply, but people get killed nearly every day on the job. So I just think it's quite flippant to be saying—and this is about the third time—that we've got to comply. We know that. But that's not what happens. This is your program; this is a program where we've had a death and lots of injuries, and we need to get it under control.

Ms Pitt: Can I just make a point on that. The rate of incidence involving injury in Work for the Dole activities is actually very low. It's around one per cent, compared to 4.2 per cent in paid work, and that's according to a survey of workplace injuries.

Senator CAMERON: Big deal. If you happen to be one of the one per cent or one of the 4.2 per cent, you're still injured; it still destroys lives. So comparing statistics with implications to individuals and their families is, I think, an outrageous position. We shouldn't have any problems with this. As soon as this was announced, I raised issues about health and safety—as soon as it was announced some years ago. So I don't want to hear any more of what they're supposed to do; I want to know what they are doing, and I want to know what the problems are—
**Senator Reynolds:** Senator Cameron, maybe if you ask the question and answer your own question rather than getting the advice that you're asking the officials for, because they're answering your questions. It might not be how you'd like them to answer, but they're answering your questions.

**Senator CAMERON:** Okay, I'll just ignore that. What consultations have you done across government to make sure that measures used by providers are compliant? You said they're supposed to be compliant. How do you determine if they're compliant?

**Ms Pitt:** We have a whole range of program assurance activities that we undertake to ensure that the program is managed in accordance with the contract, which includes the work health and safety obligations.

**Senator CAMERON:** I will move on. Can we go to Stronger Transitions. I should be able to get these done—I've got a couple of minutes. Can you tell me how much has been spent on this program and on what the funding has been spent?

**Mr Greening:** Total expenditure to date was $285,000 in financial year 2017-18 and $787,000 to date in 2018-19.

**Senator CAMERON:** What has it been spent on?

**Mr Greening:** It's been spent on two particular fields of activity. One is in relation to packages of support with three businesses that we've entered into a collaboration agreement with—one in South Australia and two in Victoria—and our contribution to those packages is $252,965. The remainder is in relation to jobs fairs which we've held. I think it is six jobs fairs: three in Victoria, one in Tasmania and one in Mareeba in North Queensland.

**Senator CAMERON:** On notice, can you provide me with what happened at these jobs fairs, what the outcomes were, how much the jobs fairs specifically cost—

**Mr Greening:** Certainly.

**Senator CAMERON:** and details of all the expenditure receipts et cetera for the jobs fairs? Who is the South Australian business?

**Mr Smyth:** That's not publicly released as yet. I think we're still having discussions with that business.

**Senator CAMERON:** Big deal! You're handing public money to three businesses. I want to know who they are, and unless you claim public interest immunity I want to know the details.

**Mr Greening:** The company is called New Castalloy.

**Senator CAMERON:** What do they do? What's their business?

**Mr Greening:** I understand that they supply parts for Harley-Davidson motorcycles.

**Senator CAMERON:** For Harley-Davidson.

**Mr Greening:** Yes.

**Senator CAMERON:** What about the two Victorian businesses?

**Mr Smyth:** Dunlop Flooring and Bitzer Australia.

**Senator CAMERON:** Bitzer? What do they do?

**Mr Greening:** I understand Bitzer manufacture equipment for air conditioning.
Senator CAMERON: Has there been due diligence on these companies to see whether they've got any connections with any Liberal ministers?

Mr Greening: I'm sorry, Senator—

Senator CAMERON: Has there been any due diligence done to see whether any of these companies have got engagement with Liberal ministers?

CHAIR: I don't see how the official could answer that question. Feel free to, Minister. Did you want to say anything?

Senator Reynolds: There really is no comment. It's a political statement that's probably best for the cameras waiting outside for Senator Cameron, not for the officials here.

Senator CAMERON: What line of the budget does this spending relate to?

Ms Hartland: It sits in outcome 1. Did you want something further than that?

Senator CAMERON: It sits in outcome 1, but where exactly is it allocated in the budget?

Ms Hartland: It's a MYEFO measure. I'm just getting the CFO to direct us here. It sits under jobactive.

Senator CAMERON: In relation to New Castalloy, Dunlop Flooring and Bitzer, was there a tender process for them to access the funding?

Mr Greening: No. It's companies who are laying off or retrenching or restructuring staff as a result of closure or restructuring.

Senator CAMERON: There are thousands of them across the country, aren't there?

Mr Greening: Certainly it's—

Senator CAMERON: So how come these were chosen?

Mr Greening: At the commencement of the program, we identified five regions across Australia, and we're happy to tell you those regions, Senator.

Senator CAMERON: No. I'm asking how these specific companies were chosen.

Mr Greening: We have on-the-ground presence in the form of employment facilitators, and it's part of their role to be in touch with companies in their local region and to have intelligence as to who may be willing to take up the program.

Senator CAMERON: So it's the facilitators who determine who gets the money. Is that correct?

Mr Greening: The facilitators are responsible for identifying those companies who may like to participate in the program.

Senator CAMERON: Are these departmental facilitators?

Mr Greening: They're under contract.

Senator CAMERON: How many do you have?

Mr Greening: For this program we have five.

Senator CAMERON: Who are they?

Mr Greening: I don't have their names in front of me, I'm afraid, but we're happy to provide that.
Senator CAMERON: Can you get that before the end of the day? You shouldn't have to take that on notice.

Ms Hartland: We can find that. There's one per region.

Senator CAMERON: Can I just indicate, before we close, that outcome 2 is specifically Minister Cash. Are we expecting Minister Cash?

Ms Hartland: I was just going to say that there is part of Outcome 2 that is Senator Cash's responsibility, which is the small-business part. The workplace relations part of that falls under Minister O'Dwyer.

Senator CAMERON: Who is going to handle that, Minister?

Senator REYNOLDS: As I clearly said this morning, you will have the pleasure of both my company and Senator Cash's company this afternoon for outcome 2. As I confirmed with you this morning, you will have plenty of opportunity, as you've had the last two days, to address any questions you have for Senator Cash.

CHAIR: Can I just confirm that no senators have further questions for Outcome 1.

Ms Hartland: We have those names here, Senator, if that closes the outcome for you.

CHAIR: Do you need it publicly or are you happy to just take the information?

Senator CAMERON: Publicly.

Ms Groney: The five facilitators are: Adelaide, Ms Leanne Hill; Mandurah, Mrs Maryanne Baker; Melbourne West and North West, Mr Terry Kennedy; North-West Tasmania, Mr James McCormack; and in North Queensland there's a job-share arrangement, Ms Tamilyn Brennan in Cairns and Mr John Hall in Townsville.

Senator CAMERON: That's fine. Do they have registered companies or are they just people off the street?

CHAIR: Can we get Senator Cameron's further information on notice—or today, if possible.

Proceedings suspended from 12:37 to 13:35

CHAIR: We will resume this hearing, looking at the Department of Jobs and Small Business. We are moving to outcome 2: facilitate jobs growth. Just before we begin, I remind the media that we have agreed cameras can be in the room; however, no filming of documents on desks or the backs of people's heads. I welcome the Minister for Small and Family Business, Skills and Vocational Education, Senator the Hon. Michaelia Cash. Do you have an opening statement, Minister Cash?

Senator Cash: I don't, thank you, Chair.

CHAIR: In that case, we will get going. Senator Cameron, you have the call.

Senator CAMERON: Minister, we're now rapidly heading towards taxpayer expenditure of about a million dollars to deal with the cover-up in relation to your staff leaking details of the AWU raid by the Federal Police. Don't you think it's about time you came clean, were honest about this and saved the taxpayer any more unnecessary expenditure?

Senator Cash: Chair, can I respond?

CHAIR: Insofar as that is a question you wish to respond to, Minister.
Senator Cash: There are a number of allegations that Senator Cameron has put in that long question to me. In the first instance, what I would say is: I gave evidence under oath in the Federal Court last Friday. All questions were put to me and were answered. I have given evidence under oath in relation to my knowledge of the raids. That evidence under oath is consistent with the evidence that I have given for the last 15 months. What I would say, though, is that Mr Bill Shorten could potentially go under oath and tell the Australian people whether or not he had the appropriate authorisations to donate $100,000 to GetUp! AWU members’ funds, and, on top of that, $25,000 to his own election campaign. One has to wonder: what is in the documents that the AFP have seized from the AWU, and why is the AWU fighting tooth and nail to ensure that the commission and the Australian public never ever see them? I wonder if the documents, potentially, show Mr Shorten did not have the appropriate authorisations?

Senator Cameron also raised questions in relation to legal assistance. Senator Cameron would have to explain the figure of $1 million; I don't have the background to that. The point I would make is this: legal assistance, regardless of who is in office—so whether it is a Liberal-National government or a Labor-Greens government—is provided to ministers when the proceeding involves their ministerial duties. Applications themselves are actually approved by the Attorney-General. Again, this is consistent whether it is a Labor government—the former Rudd-Gillard-Rudd government—or, alternatively, a coalition government. For example, Senator Wong, Wayne Swan, former Prime Minister Mr Rudd, former Prime Minister Julia Gillard, Peter Garrett, Nicola Roxon, David Bradbury, Lindsay Tanner, Mark Arbib and Joe Ludwig are all former Labor ministers who have received assistance under the same rules that I was approved assistance for legal fees. This was explored last night in detail in the Attorney-General's portfolio. It was pointed out that former minister Joe Ludwig, in one financial year alone, cost the Commonwealth almost $800,000.

There is a process that must be gone through in relation to approval for legal assistance. On the costs for myself, let's face it: the AWU brought the proceedings. If it had had the documents and had handed them over to the Registered Organisations Commission or, alternatively, had produced back in August 2017 the relevant authorisations, none of these fees would have been incurred. Proper process has been followed, as it is for Labor ministers or as it is for Liberal-National ministers.

CHAIR: Thank you, Minister. Senator Cameron, you still have the call.

Senator CAMERON: Minister, you've been demoted, you've been humiliated and your credibility has been shredded. Why don't you just come clean and actually correct the record?

CHAIR: Senator—

Senator Cash: I would like to respond to this.

Senator CAMERON: I'm not finished. The record clearly shows that, on almost 20 occasions now, you have denied involvement of your staff in relation to the leaking of the raid. Why won't you correct the record?

CHAIR: Minister, you can answer that insofar as you wish to.

Senator Cash: I will respond to that. Again, I gave evidence under oath on Friday. Senator Cameron has consistently said I had prior knowledge of the raids. That has been proven to be wrong. The evidence I have given to date has been consistent. I had no prior
knowledge of the execution of the warrants by the Australian Federal Police on the AWU's premises. Again, I personally would like to know what is in the documents that have been seized by the AFP and why the AWU are fighting tooth and nail—

Senator PATERSON: We're all curious.

Senator Cash: and you do have to start to wonder: do they show that Mr Shorten, when he was the relevant secretary, didn't have the appropriate authorisations to donate moneys to GetUp! and to his own campaign? They are fighting tooth and nail.

I do have to respond to the fact that I was demoted. I am a cabinet minister. I don't think Senator Cameron—and he will leave here in a matter of weeks—has ever had that privilege. He will actually never have that privilege.

Senator CAMERON: This is not about me. This is all about you.

CHAIR: Senator Cameron!

Senator Cash: To be the Minister for Small and Family Business, Skills and Vocational Education—and I have said this publicly—is probably one of the greatest privileges you can ever have. Small and family business is the backbone of the Australian economy. It is the job-creating machine of the Australian economy. It gives millions and millions and millions of Australians the opportunity of work. That is without a doubt one of the greatest privileges you can have: to offer someone else employment and the opportunity of work. I am delighted to be the Minister for Small and Family Business, Skills and Vocational Education, and, I have to say, I look forward to the next few weeks on the road. I've met hundreds of small and family businesses to date in this portfolio. I look forward to meeting hundreds and hundreds more to let them know: 'Guess what; the Morrison government backs you every single step of the way. We will only ever put in place policies that will assist you to prosper, to grow if you want to, and to create more jobs for Australians.' That is in stark contrast to what the alternative Bill Shorten Labor government has to offer.

Senator Molan interjecting—

CHAIR: Order, Senator Molan!

Senator Cash: Senator Molan, I look forward to visiting small and family businesses with you.

CHAIR: Senator Cameron has the call.

Senator CAMERON: Maybe we can come back to some relevancy to the questions. When did your two staff members leave; the two staff members who have basically confessed to criminal activity by leaking the Federal Police raid on the AWU?

Senator Cash: Again—

CHAIR: Feel free to ignore the commentary.

Senator Cash: there has been so much placed into that question. I do note that the CDPP has not proceeded with the case and has closed the file. That is, I understand, the evidence that it gave. So I'll put aside Senator Cameron's political commentary. As I stated at Senate estimates back in, I believe, October or November 2017—some time ago now—my former media adviser provided his resignation to me on or about—I'd have to go and check the records—24 or 25 October, and my former chief of staff left, I believe, at the end of January 2018. I'd have to go and confirm that.
Senator CAMERON: So they left after it became public knowledge that they had committed an offence by leaking the Federal Police raid on the AWU; is that correct?

Senator Cash: Again, there is so much in that statement that is just political rhetoric by Senator Cameron. I think my evidence was very clear back in October 2017. My former media adviser provided his resignation to me that night. My former chief of staff actually left as a result of me getting a new portfolio which encompassed two departments, not one, those being the jobs portfolio and the innovation, industry and science portfolio, which was Senator Sinodinos' former portfolio. So there was a change in responsibilities.

Senator CAMERON: So are you denying, then, that your former chief of staff—the person closest to a minister—was involved in the leaking of the details of the raid? Is that your position?

Senator Cash: Senator Cameron, I'm assuming you're referring to media reports of evidence that has been given in the court proceedings. As you would be aware, Chair, the court proceedings are actually still on foot.

CHAIR: Absolutely.

Senator Cash: I have no knowledge of whether or not my former chief of staff has finished giving evidence. On that basis, I'm not going to provide a running commentary on the case. I also have not seen a certified transcript of the evidence. Until I see that, again, I will not be providing a running commentary on the case.

CHAIR: And certainly not on news reports, Minister.

Senator Cash: And not on news reports.

Senator CAMERON: The cover-up continues! When did your chief of staff leave the office? Are you taking that on notice or do you have details of that? And why did he leave? Are you saying he left simply because of your demotion?

Senator Cash: Senator Cameron, I believe I have taken that question on notice for you.

Senator CAMERON: Did your former chief of staff confess to you that he'd been the source of the leak before he left?

Senator Cash: Senator Cameron, I think my evidence to date has been very, very clear. Chair, again, I do need to be careful because evidence is still being given in the court proceedings. I have given evidence on this, I believe, in the court. The answer to the question, Senator Cameron, is no.

Senator CAMERON: Did you seek the resignations of your staff or did you just throw them under the bus?

Senator Cash: Senator Cameron, again, that is political rhetoric on your behalf. The relevant media adviser resigned his employment—again, I will correct the record—on either 24 or 25 October 2017, prior to me coming back to Senate estimates.

Senator CAMERON: That was Mr De Garis—

Senator Cash: That is correct.

Senator CAMERON: who was your media officer?

Senator Cash: He was actually in the position in an acting capacity. But he was my former media adviser.
Senator CAMERON: What was the acting capacity he was in?

Senator Cash: As a media adviser.

Senator CAMERON: On a number of occasions, you have maintained that it was a media source who advised your office. Do you want to correct the record now and be up-front with the Senate as to who actually provided that information?

CHAIR: Again, let's keep the commentary to a minimum, Senator Cameron.

Senator Cash: Again, Chair—and I believe I was asked questions on this during question time—my advice to the Senate was based on what my media adviser told me.

Senator CAMERON: You're aware that that's not the position now, aren't you?

Senator Cash: Senator Cameron, you are referring to, I believe, media reports of evidence that has been given. Until I see a certified transcript of the actual evidence that has been given, I am not going to provide a running commentary on an ongoing case.

Senator CAMERON: So you're saying the media has got it completely wrong, that they cannot accurately report on evidence under oath in court? Is that your excuse for continuing to cover up?

Senator Cash: I have said that, until I see a certified transcript of the evidence, I'm not going to provide a running commentary on the case.

Senator CAMERON: You know, don't you, that it was not a media source.

CHAIR: In fact, the minister has answered the question on so many occasions.

Senator Cash: Several occasions.

Senator CAMERON: There were reports that Mr De Garis destroyed documents and evidence. That was before the AFP evidence in estimates on Monday. You assured the Senate on a number of occasions that you had secured devices. Would you now like to correct the record?

Senator Cash: Again, Chair, I have no way of verifying whether or not those reports are indeed true. I have no way of verifying if this conduct actually did occur. And the evidence I gave back at Senate estimates in October 2017 stands.

Senator CAMERON: Again, Chair, I have no way of verifying whether or not those reports are indeed true. I have no way of verifying if this conduct actually did occur. And the evidence I gave back at Senate estimates in October 2017 stands.

Senator Cash: Again, Chair, I have no way of verifying whether or not those reports are indeed true. I have no way of verifying if this conduct actually did occur. And the evidence I gave back at Senate estimates in October 2017 stands.

Senator CAMERON: So you're in direct conflict with your evidence both to the Senate and to court as to the evidence provided by the Australian Federal Police, the deputy commissioner. Is that still the position that you maintain—

Senator Cash: Senator Cameron, the evidence that I gave—

Senator CAMERON: If you'd just let me finish asking the question. You can roll your eyes all you like. The situation is that your evidence is in conflict with the deputy commissioner of the AFP. Do you want to correct the record?

Senator Cash: I don't believe my evidence is in conflict. The evidence I gave in October 2017 was the evidence I gave. If evidence has been presented in court, I have not yet seen a certified transcript of that evidence, and I cannot provide a running commentary on the case.
Senator CAMERON: In relation to the AFP's evidence to estimates about the destruction of documents and evidence, are you saying that that evidence from the AFP is wrong?

Senator Cash: That's the evidence of the AFP. Any questions in relation to that would need to be put to the AFP.

Senator CAMERON: I'm putting it to you because it's about your senior advisers, your chief of staff, your media officer and a prospective employee of your office—that's what it's about—all who have engaged in criminal activity.

CHAIR: Senator Cameron!

Senator Cash: Chair!

CHAIR: Senator Cameron, it's an absolutely baseless statement.

Senator Cash: It's political rhetoric from Senator Cameron, and we are used to it.

Senator CAMERON: I'll give you another opportunity.

CHAIR: There was no question that needed to be answered. The minister has clearly answered your question previously.

Senator CAMERON: Secretary, what did the department do to secure the records?

Ms Hartland: I think we've answered this on a couple of occasions, but we certainly provided advice to the minister's office at the time—I think to the chief of staff—that the assets would need to be secured. The department's responsibility was around devices that were departmentally issued, assets of the department—so phones, laptops. From memory, there might have been an iPad. I'll just need to go back and check the record as to what was there. From memory, we spoke about it that day and advised the office that we would come and collect them and that they would need to be bagged up to evidence based requirements. We did that on that following morning. I think they were collected by one of our internal investigators that following morning. I can get you the exact details. I know that we've given evidence a couple of times at estimates around the timing of that.

Senator CAMERON: Secretary, are you aware that the AFP did indicate there was not a secured position adopted in relation to the phones and documentation?

Ms Hartland: I've only seen the media speculation on it.

Senator CAMERON: Do you have any reason to disbelieve what the AFP said?

Ms Hartland: I can only talk about what we did. We collected the departmental property that next morning and properly secured it. It was bagged and placed in our evidence room in the department. Then, as I understand it, the AFP collected it from us. I can't talk about any other aspect of that.

Senator CAMERON: Senator Cash, you don't accept that the documents were not secured effectively, even after, on 13 occasions, you had indicated to the Senate that steps would be taken to secure them?
Senator Cash: Chair, I'm not sure I quite understand Senator Cameron's question. There seemed to be some double negatives in there.

Senator Cameron: You gave assurances, I think about on 13 occasions, that the documents would be secured, not only the documents but phones.

Senator Cash: Yes, and my evidence stands and does not change.

Senator Cameron: Do you accept now that that didn't occur?

Senator Cash: No, I do not, because I have no context in relation to what the AFP's evidence was.

Senator Cameron: So why are you the only person in the country that doesn't accept these things you—

Chair: Again, that is commentary.

Senator Cameron: You accept them too? The more people getting involved in this, the better, I suppose. Minister, you met with Mr Turnbull, the then Prime Minister. He was the Prime Minister until you engaged in a coup to knife him. Have you had any meetings with the Prime Minister or his office in relation to your appearance in court last week?

Senator Cash: Sorry, you referred to Mr Turnbull.

Senator Cameron: Yes. You met with him at the time to discuss these leaks.

Senator Cash: I don't recall saying that.

Senator Cameron: Yes. You gave evidence that you met with Mr Turnbull.

Senator Cash: I would need to review the evidence. It was in 2017.

Senator Cameron: It was 2017. So you can't remember a meeting with Mr Turnbull in relation to the disaster that was appearing all around you? You can't remember that meeting— are you serious? Minister, are you serious?

Senator Cash: I think I've given my evidence. We are talking 2017.

Chair: You've answered the question, Minister.

Senator Cameron: 2017. You are a lawyer, aren't you? You're legally trained, aren't you?

Senator Cash: I have a legal degree. I do not have a practising certificate anymore.

Senator Cameron: You're legally trained. It is not unusual for witnesses to be asked to provide evidence about issues longer than two years ago, is it?

Senator Cash: You can ask a witness anything. Whether or not they can recall an event is a completely separate answer.

Senator Cameron: You can't recall the meeting with Prime Minister?

Senator Cash: You would need to put to me—you're clearly referring to something I've said in Hansard. To be able to properly respond to you, it would assist if I had the Hansard evidence.

Senator Cameron: Why won't you be honest and up-front and tell us about the meeting with the Prime Minister?

Chair: Senator Cameron, let's back to questions. The Minister has answered your question.
Senator CAMERON: It's on the public record.
CHAIR: The minister has answered your question. If you want to provide more detail so the minister can be of more assistance—
Senator Cash: I can take it on notice.
Senator CAMERON: I'll put it to you again. Have you had any meetings with the current Prime Minister or his office in relation to the evidence by the AFP and the Commonwealth Director of Public Prosecutions, about your failure to provide a statement to the police?
Senator Cash: No, I have not.
Senator CAMERON: Have you had any meetings with the Prime Minister or his office in relation to this issue?
Senator Cash: No.
Senator CAMERON: I might come back to that. Has the department paid for the legal fees of any of Senator Cash's staff or any staff of the Fair Work Ombudsman?
Ms Hartland: No. I think that would all be covered through Attorney-General's or maybe the Department of Finance, but it is not ours.
Senator CAMERON: Senator Cash, could you produce the letter that you sent to the AFP?
Senator Cash: I'd need to take that on notice to see whether or not it's part of a police investigation, but I'm happy to take it on notice.
Senator Cash: I said I'll take that on notice.
CHAIR: The minister has taken the question on notice.
Senator CAMERON: Secretary, do you have a copy of the letter?
Ms Hartland: No, I don't.
Senator CAMERON: So this was done entirely within the Minister's office? The letter that went to the AFP?
Ms Hartland: No, I don't have a copy of that letter. I've never seen it.
Senator CAMERON: Did the minister consult the department about the letter at all?
Ms Hartland: I don't believe so, no.
Senator CAMERON: Minister, when did you become aware that Mr Davies was involved in the leaking?
Senator Cash: Again, other than the very clear evidence I gave under oath on Friday that I had no prior knowledge of the raids or the execution of the warrants by the AFP on the premises of the AWU—other than what I've seen in media reports, I have no way of verifying whether or not what's been reported is true. But that would be the first time, reading media reports.
Senator CAMERON: Secretary, would you be aware of the Registered Organisations Commission's expenditure on legal fees?
Ms Hartland: No.
Senator CAMERON: They are entirely independent?

Ms Hartland: They don't report to me in any way. I think I've mentioned here before that I have some very minor administrative role in terms of leave provisions, minor leave provisions, and some travel with the ROC.

Senator CAMERON: Minister, now we know that it wasn't just your office that was involved in the leaking of the police raid, which is a criminal offence, we now know that Mr Keenan's office was involved as well—a conspiracy of ministers in this situation. What discussions have you had with Mr Keenan in relation to this issue?

Senator Cash: Chair, in the first instance Senator Cameron has put forward an allegation there was a conspiracy between ministers. I think I've been very clear, including in evidence under oath in the Federal Court on Friday, that I had no prior knowledge of the execution of the warrants by the AFP on the AWU's premises. So there could not have been a conspiracy, because I had no knowledge. In answer to your question, Senator Cameron, none.

Senator CAMERON: You've had no discussions with Mr Keenan?

Senator Cash: That's the evidence I've just given.

Senator CAMERON: Have your staff had any discussions with Mr Keenan's staff in relation to the criminal leaking?

Senator Cash: Chair, Senator Cameron is being rather loose in his rhetoric here. He keeps referring to criminal proceedings. There are no proceedings. There is no case.

Senator CAMERON: I haven't mentioned criminal proceedings. You are a trained lawyer. You should try and be accurate. This is not about criminal proceedings. There have been criminal activities.

Senator Cash: I don't believe that's what the evidence of the CDPP was. They have closed the file on the case.

CHAIR: That's a good point to offer the call to other senators. We'll go to Senator Hinch.

Senator HINCH: Minister, I know you've covered this ground a lot of times in estimates we've sat through over the last couple of years and also on the floor of the Senate last week. I'll try not to go over that old ground. I'm intrigued, though, about how $280,000 of taxpayers' money can be spent on your legal fees when you're not a defendant in any action and you've declined to be a witness with the AFP. Where has the money gone?

Senator Cash: Again, Senator Hinch, you've made a number of assertions. You are correct that I was not a party to the proceedings. I was merely a subpoenaed witness. There have been two subpoenas I have responded to. You weren't here before when Senator Cameron raised the issue of legal assistance. I'm not sure if you know the background on how that is actually provided. An application is made by the relevant minister, whether it's a Labor minister or a Liberal-National minister—this happens regardless of who's in government. If the legal proceedings relate to their ministerial duties, you have to make an application to the Attorney-General. I am now summarising the process—you'd be better off putting the process to the Attorney-General's Department. It is actually the Attorney-General that makes the decision as to whether or not legal assistance will be provided. The Attorney-General, by way of the due process, has to table—I don't know how often—but literally has to actually table in parliament the legal assistance. In terms of the certifying of the invoices, that is actually
done—I believe the evidence was given last night—by the Attorney-General's Department. They certify the invoices as to whether or not they are—and I don't have the exact words here—but they certify the invoices for payment.

**Senator HINCH:** This will be open ended, I presume?

**Senator Cash:** When you say 'open ended' I'm not quite sure what you mean.

**Senator HINCH:** $280,000 has gone out so far. Is another $280,000 going to go out the door?

**Senator Cash:** No. I've been discharged as a witness, so my legal representation has now finished.

**Senator HINCH:** We know that in Victoria 16 politicians declined to speak over the red shirts issue, declined to talk to police, where normal people, if they're asked to give a statement, have to give a statement. Does that apply to federal ministers—that you can refuse to give a statement to the AFP?

**Senator Cash:** I'm assuming you are asking questions in relation to media reports from yesterday?

**Senator HINCH:** No. The AFP said earlier this week in estimates that you and Mr Keenan declined to give witness statements. You then said—this is what confuses me—that you did give a statement.

**Senator Cash:** Correct.

**Senator HINCH:** But that was a letter you wrote to them.

**Senator Cash:** I did look at the *Hansard* evidence last night. Ms Close did state that Mr Keenan and myself did provide statements. Her evidence actually is that we provided statements.

**Senator WATT:** She said a letter. Don't misrepresent her.

**Senator HINCH:** You actually did provide a letter.

**Senator Cash:** Senator Watt: 'Did that occur?' Ms Close: 'They both provided a statement in writing to the AFP.' That is Ms Close's evidence.

**Senator CAMERON:** A letter.

**Senator HINCH:** That was a letter explaining what? Explaining why you would not be giving witness statements?

**Senator Cash:** What occurred was that approximately five months—I'm giving evidence I gave last night, but Senator Hinch, you weren't there at the Attorney-General's estimates—approximately five months after the execution of the warrant—it was March last year, I think—the AFP asked if I wanted to provide a voluntary statement. I responded to them and said I was happy to assist in a voluntary capacity. I said to them that basically my best recollection of events—five months after the incident had occurred—was set out in the estimates *Hansard*, which was contemporary, if you recall, to the actual execution of the raids. The AFP did not follow up. They did not ask for further information. They did not have any further questions. They could have done that if they had had further questions or wanted further information. But they did not do that.

**Senator HINCH:** You would have cooperated if they had?
Senator Cash: The AFP had no further questions.

Senator HINCH: But if they had asked for more?

Senator Cash: It's a hypothetical now, but yes, if they'd asked for further information I could have considered and provided it. But they didn't have anything they came back with.

Senator HINCH: Minister, I'm trying to be as fair as I can here. I've heard you at estimates and I've heard you in the chamber in question time and again last week. Am I being fair if I summarise it like this: you wrote to the AFP and told the AFP that you had answered any questions they have at estimates and they could go back and find out what the answers were?

Senator Cash: I said the best contemporary recollection was set out in the estimates Hansard.

Senator HINCH: But at those estimates hearings, which we were all at, you said, 'I can't really comment because it's an ongoing AFP investigation.'

Senator Cash: No, I actually answered copious questions, Senator Hinch, if you go back and have a look at the estimates hearings. Again, what I'd say to you is—

Senator PATERSON: Just to assist, Senator, I was at the hearing too, and from my recollection, it was before any involvement of the AFP—

Senator Cash: Correct.

Senator PATERSON: it was just as the story was emerging and the minister was giving live updates to the committee.

Senator Cash: I don't know when the AFP commenced their investigation.

Senator HINCH: It just sounds like a round robin. You're telling the estimates it's before the courts, and you're telling the AFP it's at estimates and you said the same thing. It's a round robin.

Senator Cash: Can I just say again, Senator Hinch, the AFP did not come back to me and say, 'We need further information' or 'We have further questions.' They had every opportunity to do that, given it was some months, I understand, before they actually provided their brief of evidence to the CDPP. They had every opportunity to come back to me, and they didn't.

Senator HINCH: I have one more question. Crossbenchers only get about five minutes.

CHAIR: Last call, Senator Hinch!

Senator HINCH: Just following on Senator Cameron's question, on that day, after you've been on radio in Adelaide you went to the Prime Minister before question time and assured him you had not leaked. This is my recollection; correct me if I'm wrong.

Senator Cash: I would need to review.

Senator HINCH: Can I give you the version that I remember? I'll be quick. You were on Adelaide radio, then you went to the Prime Minister before question time. You told him and assured him you did not leak. Your two staffers were with you in the Prime Minister's office. Did they speak?

Senator Cash: Senator Cameron, I'd have to go back—

Senator HINCH: You've called me Senator Cameron; my accent's not that Scottish!
Senator Cash: I do apologise, Senator Hinch. I have done that before as well. I'd need to go back and review the estimates transcripts, but I'll take it on notice.

Senator HINCH: All I need to know is: did either of those people speak at the time when you were in the PM's office?

Senator Cash: I will take it on notice and review, just so I'm not responding directly to what you said your summation was.

Senator PATRICK: Minister, you'll recall the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017.

Senator Cash: Yes, I do.

Senator PATRICK: I'm switching tack.

Senator Cash: You are!

Senator PATRICK: I'll just read something Senator Nick Xenophon said in the chamber:

For that issue and for all the issues that have been fairly raised in the bill, can the minister indicate that there will be an independent review once this bill has been in operation for 12 months so that we can then have a thorough, comprehensive independent review? Will she undertake to consult with the opposition and the crossbenches as to the scope of that review so that we can have some idea that it will be something that is robust and well-regarded?

You responded:

Yes, the government had always intended to undertake a review. I'm more than happy to commit to you that we will undertake a review within 12 months in relation to this. Consultation is always an important part of any review process.

As far as I'm aware, nothing's happened with regard to that.

Senator Cash: I think we raised this at the last—

Senator PATRICK: Senator Cameron, I think, did.

Senator Cash: I will get Ms Durbin, who can respond to you in relation to the issue and where they're actually at.

Senator PATRICK: Thank you very much, Minister.

Ms Durbin: As the minister said, we did talk about this at last estimates. One of the challenges we face is it was quite a comprehensive package of legislative reform. It came into place in two phases. The first tranche around vulnerable workers came in reasonably closely after the bill went through, and another range of measures to increase the responsibilities of franchises under certain circumstances came in a bit later.

Senator PATRICK: 27 October 2017?

Ms Durbin: That's right, yes. There was quite a significant package of amendments that went through. In consultations with the Fair Work Ombudsman, they've obviously had to go through quite a significant reform process, to look at their own operations. One of the challenges, of course, that we face as the policy agency is that it's taken some time for those to be operationalised. At the moment, the Fair Work Ombudsman has two main cases that are facing the courts to test those provisions. In the absence of having a substantive body of case law or information about how those provisions have been put in place, we've been really challenged about how we could take a review forward.
Senator PATRICK: When do you think that you'll be able to commence the review as committed to by the minister? What's a reasonable time frame?

Ms Hartland: We want to see the outcome of those cases. I think that's probably the best answer we can give. I'm not sure that we would know—

Ms Durbin: The latest case was only put forward on 25 January, I think it was. So it is early days.

Ms Hartland: The intention is still there, Senator, to do the review. If there's nothing to review, if there haven't been cases going through—I think our intention is, once these two cases have been resolved, then we would at least have some material to work with.

Senator PATRICK: This is my last question, Chair. When is the next time that it would be reasonable for me to bother you about this again?

Mr Hehir: That's actually quite difficult for us to answer. It does depend on the timing of the court cases. Until we actually see—

Senator PATRICK: I'm not going to hold you to it.

Mr Hehir: It's certainly worthwhile asking us at the next estimates.

Ms Hartland: Probably not the next one because that's in six weeks.

CHAIR: I think you've guaranteed it then.

Ms Hartland: Maybe the one after that would make sense. We could work via the minister's office and let you know—

Senator Cash: Correct—and ensure that you are briefed, if that assists you.

Ms Hartland: That might be a better way to do it.

Senator PATRICK: I'm hoping that Senator Cameron will honour this review process if there is a change of government.

CHAIR: Senator Leyonhjelm.

Senator LEYONHJELM: I'm assuming we have the right people for outcome 2?

Ms Hartland: Yes, it is outcome 2, Senator.

Senator LEYONHJELM: I submitted a question on notice after the last estimates in response to which the department advised that it's unable to specifically disaggregate the employment impact of the Fair Work Commission's penalty rate decision that applied from 1 July 2017, so I'll ask a more general question. Hopefully you can help. What happened to economy-wide hours of employment, seasonally adjusted, from the month or the quarter or the year prior to 1 July 2017, to the month, quarter or year after 1 July 2017?

Ms Durbin: Senator, I'd have to take the specifics around looking at a historical comparison on notice. In terms of the particular question, even at that aggregate level, it's going to be really difficult to unpack the particular issues around the impact of the penalty rate reductions. Part of the challenge there is any aggregate data that we're able to get around hours worked, which would be from the Australian Bureau of Statistics, does not go into the specifics about working on particular days, for example. So, even if there were aggregate changes in hours, they could not be attributed to particular days of the week and, similarly, they couldn't be attributed to particular industries.
Senator LEYONHJELM: Yes, I accept that, although that wasn't my question. It was just economy-wide hours of employment, seasonally adjusted. That's where I left it.

Ms Durbin: Yes—

Senator LEYONHJELM: The other thing is, if you're going to take this on notice, can you also add to that what happened in the industry categories containing workers affected by the Fair Work Commission decision on penalty rates? I think the ABS will be able to provide industry categorisation.

Ms Durbin: Senator, my recollection is certainly that most recently there's been an increase in the hours worked but I would have to take the detail on notice.

Senator LEYONHJELM: All right. I'm happy if it's on notice. Thank you. That's me. I told you I would be quick.

Senator Cash: That was quick.

CHAIR: You're always very prompt, Senator Leyonhjelm, and we're going to miss you.

Senator MOLAN: You are indeed quick. Chair, I have some questions on outcome 2—casual employment, labour hire, independent contractor levels, wage growth and minimum wage increases. I'll start with casual employment, labour hire and independent contractor levels. Should I address those to the secretary?

Ms Hartland: Senator Cash: That was quick.

CHAIR: You're always very prompt, Senator Leyonhjelm, and we're going to miss you.

Senator MOLAN: You are indeed quick. Chair, I have some questions on outcome 2—casual employment, labour hire, independent contractor levels, wage growth and minimum wage increases. I'll start with casual employment, labour hire and independent contractor levels. Should I address those to the secretary?

Ms Hartland: Yes. We'll have the right people at the table.

Senator MOLAN: Thank you. My understanding is from the figures that I was given this morning that levels of casual employment have remained steady at approximately 25 per cent for quite some considerable period of time. Can you outline, please, how the level of casual employment has changed over the last two decades. We were speaking maybe not as long as that this morning. It seems to have been, from what we were talking about this morning, relatively stable. Could you outline how the level of casual employment has changed over the last two decades, please.

Ms Hartland: Maybe I can start and then go to Ms Durbin. So, the figures I've got here are that casual employees as a proportion of total employees have remained steady over the past two decades, as you've said, at around 25 per cent. The figures I've got for November 2018—Alison, have you got more up-to-date figures on that?

Ms Durbin: No. November 2018 is the most up to date from the Australian Bureau of Statistics, and that's at 25.3 per cent.

Ms Hartland: I can tell you that over the past three decades—this is 1988 to 2018—the proportion of casuals was lowest in August 1988, which was at 18.2 per cent, and highest in August 2004 at 25.5 per cent. Proportion of all workers who were casual has been steady at around 25 per cent since 1998, and 21.1 per cent in November 2018.

Senator MOLAN: Certainly, over the last couple of years, we've had a lot of claims that it's been rapidly increasing.

Ms Hartland: The ABS stats—

Senator MOLAN: That's not substantiated by the figures

Ms Hartland: would certainly suggest that it's fairly stable.

Senator MOLAN: The headline is roughly 25 per cent over two decades.
Ms Hartland: Correct.

Senator MOLAN: Let me address labour hire workers. What proportion of the workforce do labour hire workers make up—and can you separate them out from, say, a casual proportion?

Mr Hehir: Over the last decade labour hire workers as a proportion of all employees have been stable at just under two per cent. I'm not sure that we've got a breakdown—in fact I don't think we do have a breakdown of casual and permanent, but both are possible within a labour hire organisation.

Senator MOLAN: So, both are possible within a labour hire organisation. So, you're saying that there has not been a significant change to the level of workers employed through labour hire companies? Can you say that? You said two per cent.

Mr Hehir: So, it's been stable for approximately the last decade.

CHAIR: How long have we been tracking the percentage of the workforce?

Ms Durbin: The latest information I have is from the Australian Bureau of Stats, which started in 2008, which reinforces the trend.

Senator MOLAN: When we talk about safety net protections in relation to labour, what do we mean?

Ms Durbin: So, that's in the context of employees. Whether they are a casual, engaged through a labour hire company or on a full-time basis, they would be subject to the safeguards outlined in the Fair Work Act. Obviously, that does differ, depending on someone's status. If they are a permanent employee, the most usual definition is that they would be eligible for paid leave. If they're casual, then the Australian Bureau of Stats classifies those workers as not eligible for paid leave and, again, the Fair Work Act outlines some different entitlements for those people who are casual.

Senator MOLAN: Is it the most common issue in the safety net protections—the leave loadings?

Ms Durbin: It's probably one of the ones that is used around casual versus full-time or part-time employees, but there certainly are others around things like redundancy provisions and things like that.

Senator MOLAN: Is it the case a casual worker is paid more to compensate for that?

Ms Durbin: That's correct. All casual employees are entitled to a casual loading, which is specified, for example, in the award that's applicable to them. That's usually 25 per cent on top of their base rate.

Senator MOLAN: I'm reading, at the moment, about double-dipping in relation to this. Are you aware of the media reports? I've just seen in the media that there is a move to try and put pressure on the system to provide both a casual loading and paid leave? Is this an issue at the moment?

Mr Hehir: We're aware of media reports that actually relate to a Fair Work Commission decision about whether someone was a casual employee or not. We're certainly aware that industry have raised concerns about, if there was a casual loading paid and if that person was subsequently identified as a non-casual employee, would they be entitled to claim an offset for that? That's a slightly different issue than the one you're raising. I'm not aware of any
reports—but I might see whether Ms Kuzma is—in relation to casual workers seeking both a casual loading and leave entitlements.

Senator MOLAN: Okay. I may have misunderstood that significantly.

Senator Cash: Senator Molan, are you talking about the recent announcement by Minister O'Dwyer in this regard that the Fair Work regulations would be amended to provide greater clarity of an employer's existing general rights to offset payments of casual loading amounts against the national employment standards entitlements?

Senator MOLAN: Yes, I think that is it.

Senator Cash: I think that's where you were going. I think that's the information you are seeking.

Senator MOLAN: Could I go back to either Ms Kuzma or Mr Hehir to clarify that point? Where was I getting it wrong, if we go back to Minister O'Dwyer's issue?

Ms Kuzma: There's currently a regulation regarding offsetting of casual loadings. That's in relation to where somebody is paid as a casual but are not a casual and they are seeking other payments. It's about making clear that, if there's a separately identifiable loading, the person is not paid twice for effectively the same thing.

Senator MOLAN: Has that been decided on or—

Senator Cash: The minister has introduced the regulation to that effect. I understand that was introduced on Tuesday, 11 December 2018.

Senator MOLAN: Okay.

Senator Cash: What the new regulation does—and this is obviously as a result of a particular full Federal Court decision which created some confusion in particular for small and medium businesses—is provide clear guidance of existing general law rights concerning offsetting. It provides that, where an employer, a small business, has paid an identifiable casual loading to an employee engaged as a casual, it may potentially be offset against any subsequent claim for annual leave, sick leave et cetera which is otherwise taken care of in the casual loading. It will remain a matter for a court to decide whether to apply an offset in a particular case, but I think the point the minister made at the time was the clarity is particularly important for small and medium businesses who may lack the dedicated legal expertise within their organisation to determine whether a right to offset is available to them in a particular case. But I would also note that I understand that Senator Cameron has given notice that he will move a motion to disallow these regulations on 2 April 2019. That's obviously causing concern for small and medium businesses.

Senator MOLAN: That disallowance would then have people receiving both?

Senator Cash: You'd be able to double-dip.

Senator MOLAN: Gotcha. Thank you. That's a significant part of the safety net protections. What are other parts of the safety net protection?

Ms Kuzma: When you say 'safety net', do you mean the National Employment Standards?

Senator MOLAN: Right, thank you. Can I ask for at least a summary of those to be sent to me, please, on notice.

Ms Kuzma: Certainly, yes. They're in the Fair Work Act.
Senator MOLAN: The next question I have is on independent contracts. They have changed over the last period of time, haven't they?

Mr Hehir: In terms of independent contractors, my recollection is that that's been relatively stable. Our latest available data is August 2018. There were approximately one million independent contractors, which represents about eight per cent of the workforce. That, I think, is one of the lowest points we have for independent contractors, if not the lowest point. It was highest in November 2010, at 9.8 per cent. Allowing that these figures do fluctuate over time, we're close to our lowest point in terms of the percentage of the workforce that identifies themselves as independent contractors.

Senator MOLAN: I think that's enough on casual employment, labour hire and independent contractors. I've got a few questions now to confirm some other figures that I got this morning on wage growth. Can you confirm for me, please—the interesting comparison we make so often is that wage growth is flat. Surely that's a relative measure in relation to the cost of living. Can you give me a comparison for that.

Ms Durbin: We actually got new wage price index information released by the Australian Bureau of Statistics this morning. We use the wage price index as the preferred measure of wage growth. It basically holds factors in the labour market constant, so it is a truer measure of wage growth. For the year ending 20 December 2018 it was at 2.3 per cent, which was constant from the September quarter.

Senator MOLAN: We would have preferred 2.4, I'm sure.

Ms Durbin: It's still the highest growth we've seen, pretty much, for the last four years. That's very consistent with statements from people such as the Reserve Bank governor that it is expected that wages growth will continue to gradually tick up.

Senator MOLAN: How do we make a comparison—we all make it each and every day, I'm sure, as we spend our money—at a governmental level with the cost of living?

Ms Durbin: The consumer price index is the measure that we primarily use for that. For that comparable period—the year to December 2018—it was at 1.8 per cent.

Senator MOLAN: So 1.8 per cent versus 2.3 per cent. At a personal level, we'll all get impressions on that, but that's certainly the official level, isn't it?

Ms Durbin: Correct.

Senator MOLAN: The RBA governor spoke some time ago, saying that we've turned the corner. I think those were his exact words, 'We've turned the corner on wage growth', weren't they? It might be a very, very shallow corner.

Ms Durbin: The latest monetary statement indicated that the Reserve Bank was saying that they thought a turning point had been reached and they were getting intelligence from a range of their business liaison officers, for example, indicating that employers were reconsidering their positions.

CHAIR: This will need to be your last question.

Senator MOLAN: Okay. That was some time ago. I can only assume he was looking at the wage price index at that stage when making that statement?

Ms Durbin: That was a very recent comment to make, but you're correct.
Senator MOLAN: When was that?
Ms Durbin: February.
Ms Hartland: That was earlier this month.
Ms Durbin: But you're correct. The information we have in the wage price index is retrospective—it's looking back at what's happened.
Senator MOLAN: Is it annual or quarterly?
Ms Durbin: It's released every quarter.
Senator MOLAN: Chair, could I return to this at some stage, thank you.
CHAIR: I'm sure we'll be here for a while.
Senator CAMERON: Senator Cash, you wrote two letters to the Registered Organisations Commission drawing their attention to articles by Brad Norrington. Is it correct that those letters were drafted by you and/or your office?
Senator Cash: I think the evidence that I gave in the Federal Court on Friday in relation to the letters was that I'm not aware of who actually drafted the letters.
Senator CAMERON: You're not aware?
Senator Cash: They were done in conjunction with the department of employment, but I'm not aware who drafted them.
Senator CAMERON: So those letters were then sent to the department, to the former counsel, Mr O'Sullivan?
Senator Cash: Again, I'm not aware of the process that was actually followed.
Senator CAMERON: Secretary, are you aware of that?
Ms Hartland: I'm certainly aware of the evidence that's been provided. I have to be a bit careful with any information on this. I was served and the department was served with a subpoena by the AWU yesterday afternoon. I just have to be very careful about any of the information. I might have to take it on notice just to be really clear and search back through the departmental records. This goes back some time. It goes back before my time. It goes back before Mr Hehir's time and the now chief counsel's time.
Senator PATTERSON: Is there anyone that AWU hasn't subpoenaed in order to protect themselves?
Senator Cash: No. You can always call it like clockwork. At every Senate estimates, they pull a stunt. It is quite interesting. It's always during Senate estimates when something comes up so Senator Cameron can get his headline. A headline for me would be 'Bill Shorten comes clean'.
CHAIR: Minister, Senator Cameron has the call.
Senator CAMERON: Minister, you really don't need anymore headlines. Secretary, in relation to the correspondence you've been subpoenaed on, could you provide any file notes associated with the receipt of the email in conversation between Mr O'Sullivan and Senator Cash's then chief of staff?
Ms Hartland: As per the previous answer, I'll take it on notice.
Senator CAMERON: Secretary, what are the protocols in place for correspondence between ministers and independent statutory authorities?

Senator Cash: I think you need to put forward what independent statutory authority you are referring to.

Ms Hartland: Could you also just repeat the question. So what protocols are in place between the department—

Senator CAMERON: Are there any protocols in place in relation to correspondence between a minister and an independent statutory authority? It's a pretty simple question.

Ms Hartland: They would all enter through the departmental correspondence system.

Senator CAMERON: So they all go through the system?

Ms Hartland: Once signed, they go through the Parliamentary Document Management System. So I don't see them. They go through that process. It is like a workflow process.

Senator CAMERON: Who's in charge of that workflow process?

Ms Hartland: The ministerial area in the department would be. Is that what you're asking?

Senator CAMERON: Who in the department handles that?

Ms Hartland: It comes under the corporate area in the department. That would be under the deputy secretary who looks after corporate.

Senator CAMERON: Is she or he here?

Ms Hartland: Yes, she is.

CHAIR: To be clear, when you say 'handled it', do you mean in a process sense?

Ms Hartland: Yes, it is a process.

Senator Cash: Every department has this process set up.

Ms Hartland: It's for handling correspondence and ministerials as they go through the system.

Senator Cash: It's just a departmental process.

Senator CAMERON: Senator Cash says, 'It's just a departmental process,' but there are issues in relation to relationships between ministers and independent statutory authorities, aren't there?

Senator Cash: There are issues?

Senator CAMERON: Yes, they are independent.

Senator Cash: I think you would need to be more specific.

Senator CAMERON: In what circumstances would it be desirable or lawful for a minister to write a letter to an independent statutory authority?

Senator Cash: Chair, I think I know where Senator Cameron is going here. Because I was questioned extensively on this—and Senator Cameron obviously has a live feed from the AWU on the court proceedings—but I was questioned extensively on this under oath on Friday in relation to the letters—

Senator CAMERON: Chair—
CHAIR: The Minister is responding—

Senator Cash: And I'm happy to provide—

Senator CAMERON: There are standing orders: the minister should not try and equate some ulterior motive to legitimate questions.

CHAIR: Well, maybe you should stop your questions, Senator Cameron! But let's try and be more specific as to what you're trying to get to.

Senator CAMERON: I know she doesn't want to answer these questions, but—

Senator Cash: The poor department has been asked very general questions—

CHAIR: It was extraordinarily general, which means that you can answer it in an extraordinarily general way. Senator Cameron, you have the call. If you could try and be more specific, perhaps.

Senator CAMERON: Is it normal for a minister to write directly to an independent statutory authority?

Ms Hartland: Yes, Senator, that would be normal, and using the system in that way would be normal.

Senator CAMERON: But then does it come through the process that you just described?

Ms Hartland: Yes, it would go through that system. But that doesn't mean that it's a system that then can be generated directly through to that agency.

Senator CAMERON: Do ministers normally write directly to independent authorities?

Ms Hartland: In my experience, yes. Because of the nature of the arrangement, and as you indicated before in other questions, they're independent authorities, and so really the only way of communicating between the minister and the independent authorities is directly. But these workflow systems are in place so that all the correspondence can be recorded and coordinated by the minister's office as needed.

Senator CAMERON: How does a minister avoid giving a direction when writing to an independent authority? Is there a specific form—

Senator Cash: Again, Chair, I think you'd need—it would depend on the particular act of parliament—

Senator CAMERON: Minister, if you could just let me finish.

CHAIR: Let Senator Cameron finish his question, Minister. It does beg the question a bit, Senator Cameron, but continue.

Senator CAMERON: Secretary, how does a minister avoid giving a direction when writing to an independent authority? Is there a specific form of words that is used?

Senator Cash: Chair, with all respect to the poor department, Senator Cameron is referring to the Registered Organisations Commission. I am more than happy to answer that question, because the act specifically states—there is a section in the act that refers to directions by the minister. I believe I was questioned on this in court on Friday. The minister is unable to provide a direction. The minister may provide a general direction but that must be done by legislative instrument, which is disallowable. In other words, you cannot direct the Registered Organisations Commission, and, if you do so, it must be done by way of a legislative instrument.
CHAIR: So, by definition, nothing you could write except in a legislative instrument could direct—

Senator Cash: Correct. According to the legislation, yes.

Senator CAMERON: So—

Senator Cash: Which is the evidence I gave in court on Friday.

Senator CAMERON: Can I just go back briefly to this issue: have you managed to refresh your memory, Minister, about a meeting with former Prime Minister Turnbull on this issue?

Senator Cash: Senator Cameron, with all due respect, I have been sitting here and I have not had the opportunity to do that.

Senator CAMERON: You haven't? So you can't remember a meeting with the Prime Minister on—

Senator Cash: I had many meetings with the former Prime Minister on policy issues. You would need to be more specific.

Senator CAMERON: Can't you remember providing evidence to estimates hearings in relation to that meeting?

Senator Cash: Chair, I believe my response to both Senator Hinch—and if Senator Cameron has raised this—is that I will take that on notice and provide a response to whatever questions there are. But I will need to have a look at the Hansard from 2017.

CHAIR: Certainly, Minister.

Senator CAMERON: You gave evidence on Wednesday, 25 October 2017 that you met with the Prime Minister at a pre-question-time meeting. Do you remember that?

Senator Cash: I have a vague recollection of that, Senator Cameron. But, again, I would need to read the full transcript before I can respond to you.

Senator CAMERON: So you only vaguely remember it, given that you were under pressure in estimates over this leak and the Prime Minister had sought a meeting with you. You only vaguely remember that? How can people take you—

CHAIR: Senator Cameron, let's try to keep the commentary to a minimum.

Senator Cash: You are paraphrasing Senate estimates Hansard. As I said, I'm more than happy for you to put questions on notice. I'll review the Hansard and I will provide you with a response.


Senator Cash: Thank you.

Senator CAMERON: And this is not that long ago. You should really stop trying to cover up. You should try and be honest with people.

CHAIR: Senator Cameron!

Senator Cash: I shouldn't respond; however, I will just remind the committee that I did give evidence under oath on Friday in relation to these issues and I think my evidence was pretty clear. But the person who hasn't given evidence under oath is Mr Shorten, and he has
that opportunity to come clean on whether or not the AWU, Mr Shorten, received the appropriate authorisations.

Senator CAMERON: Before your former chief of staff left, did he confess, as he has recently, that he was the source of the leak?

Senator Cash: Again, Chair, this question has been asked a number of times.

CHAIR: It has.

Senator Cash: Yes, and I again gave evidence on Friday under oath that I was not aware of the raids before they occurred. Again, Senator Cameron is putting to me evidence in an ongoing court proceedings that he's either getting directly from the AWU, which I assume he is, or alternatively from media reports—

CHAIR: Probably both—

Senator CAMERON: You shouldn't make assumptions. That's part of your problem—

Senator Cash: But I have not seen a transcript of the evidence. Again, I don't want to run a running commentary, but I believe I have already responded to that question today, and the answer was no.

Senator CAMERON: Did your former chief of staff receive a redundancy payment?

Senator Cash: I'm not aware of the financial—I am assuming that's the Department of Finance?

Ms Hartland: Yes.

Senator Cash: You would need to put that to the Department of Finance.

Senator CAMERON: Secretary, did the Minister's former chief of staff receive a redundancy payment?

Ms Hartland: Not that I'm aware of, but, as the Minister said, it would come via the Department of Finance—through those arrangements—through MAPS.

Senator CAMERON: Given the AFP's evidence on Monday that you did not provide a witness statement, even though they had asked—

CHAIR: The minister has clearly indicated what she provided—

Senator CAMERON: Chair, let me finish. You are here to chair. You're not here to interrupt—

CHAIR: And I am here to chair.

Senator CAMERON: Given the evidence on Monday from the AFP that you had not provided a witness statement—there's a difference between a statement and a witness statement—even though they asked on at least two occasions, have you met at any time with the Prime Minister before question time yesterday, and has Mr Morrison sought any assurances from you about this issue?

Senator Cash: Again, I think the evidence from the AFP—and I read it out today, and I'm happy to read it out again—stated that they both provided a statement in writing to the AFP. Again, I gave extensive evidence on this last night. I'm happy to restate the evidence again in this committee. Approximately five months after the event, the AFP requested that I provide a voluntary statement—on a voluntary basis—to assist the AFP in its investigation. I provided a
statement to the AFP. My best recollection of events, five months after they occurred, was my extensive questioning and my answers to the questioning in Senate estimates. But, again, as I think I've made very clear, at no time after the statement was provided did the AFP request further information about the statement or advise that the statement was in any way insufficient. It was open to the AFP, should they have wished to, to come to me, or to Minister Keenan, and to say, 'We require further information.' They did not do that.

**Senator CAMERON:** That's in direct contradiction to the AFP's evidence yesterday. They indicated—

**CHAIR:** Senator Cameron, that is clearly commentary. Please, let's ask a question.

**Senator CAMERON:** I'm asking a question. Again, I just wish you would stop interrupting. You should not be so nervous about this. It's just questions. They indicated that they had asked on two occasions for witness statements and they had not been forthcoming?

**Senator Cash:** Chair, I believe I have given my evidence.

**Senator CAMERON:** Senator Cash, again, as I said last night—and I was questioned extensively last night, and again I've responded, I believe, to both Senator Hinch and Senator Cameron now on a number of occasions—my evidence is my evidence. Again, I believe Ms Close clearly stated, 'They both provided a statement in writing to the AFP.' But, again, had the AFP—perhaps these are questions more properly asked of the AFP by Senator Cameron; I'm sure he can put them on notice to the AFP in that regard. But they certainly did not come back and ask for further information or say that the statement was in any way insufficient.

**Senator CAMERON:** Let me go to the evidence yesterday. It was only yesterday—you may be able to remember some of this. I'm sure it was being reviewed in your office. Senator Watt asked the AFP:

How did you describe the information that Minister Cash and Minister Keenan provided you? They sent you a letter?

The AFP responded:

They did. They sent the AFP a letter in relation to this inquiry.

Senator Watt then asked:

And would you say that that amounts to a witness statement?

The AFP said:

No. I would not classify it as a witness statement.

Are you continuing to argue that you have provided a witness statement?

**Senator Cash:** Again, I think Ms Close's evidence prior to that was clear—again, I'm not going to misquote her—but she says:

They both provided a statement in writing to the AFP.
I also made the point last night, but I'm happy to make it again, obviously, in this committee, that the request from the Australian Federal Police was a voluntary statement—a voluntary statement. I was happy to assist them in a voluntary capacity. My best recollection of events—given they did not approach my office until approximately five months after the event—was the extensive questioning and my answers to that that I had been asked in Senate question time. Again, I gave evidence under oath on Friday in relation to these matters—that did not change. But, after my statement was provided to the AFP, again, they did not request further information and they did not advise that the statement that I had provided was insufficient. It was open to the AFP at any time to come back and request that further information. They did not. I can only assume, therefore, that what I provided was sufficient.

Senator CAMERON: Well, let's go to that. Senator Watt, yesterday, then asked:
So, neither Minister Keenan nor Minister Cash provided a witness statement to the AFP?
The AFP responded:
That's correct.
Senator Watt then asked:
But they were asked to do so?
The AFP responded:
Yes, we wanted to have the opportunity to speak to them both and see if they could provide information to support our unauthorised disclosure investigation.
Senator Watt then put to them:
But they declined your request and just sent you a letter?
The AFP said:
They sent us a letter.
Senator Watt then said:
How many times did you ask each of Minister Keenan and Minister Cash to provide you with a statement?
The AFP said:
At least two occasions—each office.
Senator Watt asked:
In writing?
The AFP said:
In writing, as well as verbally through their staff.
So, either the AFP are lying or you are. Who is it?
CHAIR: Minister Cash, I believe you already answered the question.

Senator Cash: No, no—I'm happy; this was put to me almost word to word by Senator Watt last night, so I'm assuming we've got a tag-team approach here, as we've had. Again, if the AFP had thought that the statement that I provided was insufficient or they had further questions, they had every opportunity to come back to me and request further information. They did not. Given that they did not, on that basis, the conclusion would appear to be they had no further questions and they did not believe the statement was insufficient. But, again, my evidence is my evidence, and I will just remind the committee again: everything was
requested on a voluntary basis and was provided on a voluntary basis. And there was no follow-up after I had provided my statement to the AFP.

CHAIR: Five more minutes, Senator Cameron, then I'll share the call again.

Senator CAMERON: Thank you. So, Minister Cash, have you ever referred any other matters referring to other unions to the Registered Organisations Commission?

Senator Cash: Again, Chair, I was extensively questioned on this Friday; it's very interesting that I'm being asked the exact same questions now in Senate estimates that the AWU asked me on Friday in court. The answer to the question was: the Registered Organisations Commission had only been in operation for a very short period of time. My understanding was that it had taken over some investigations that I believe—Secretary, if I get this slightly incorrect, please tell me—the Fair Work Ombudsman—commissioner or ombudsman?

Ms Hartland: Ombudsman.

Senator Cash: Ombudsman had previously had. But this was the first time—and, Chair, I did explain this in court on Friday, and I'm happy to do it again. On around I think it was 12 or 13 August, there was a massive expose by Brad Norington in The Australian newspaper. It raised serious questions in relation to whether or not a registered organisation—the registered organisation happened to be the Australian Workers' Union—had sought the appropriate authorisations when they had utilised their members' money, and the secretary at the time was Mr Bill Shorten. They had utilised a hundred thousand dollars to GetUp! And later on it was revealed they'd also had $25,000 to Mr Shorten's own campaign. In that same article—and if I recall it, it was quite a large expose—the journalist stated that he had sought a response from both Mr Shorten and the AWU at the time. He had put directly to them what the allegations were and sought their response to: had the appropriate authorisations been sought under rule 57 of the registered organisation's, being the AWU's, rules? Mr Shorten was unable to provide a response that they had and referred it to the AWU. The AWU was unable to provide the journalist Mr Brad Norington with a simple statement: 'Yes, we obtained the appropriate authorisations and here are the documents.' On that basis, I thought it was in the public interest to raise this with the Registered Organisations Commission. I then left the portfolio, I think, in December. So I gave extensive evidence in relation to this in court on Friday.

Ms Hartland: The Fair Work Commission.

Senator Cash: It was the Fair Work Commission.

Senator CAMERON: At the time you wrote to the Registered Organisations Commission about the AWU donations, you were asked a series of questions, normally known as dorothy dixers, by your parliamentary colleagues during question time. In each answer, you took the opportunity to attack Mr Shorten. The ABC has reported:

Mr Davies agreed with the AWU's lawyer Herman Borenstein QC that the presence of TV crews at the union's offices as the AFP seized documents relating to the donations was "to the political detriment of Mr Shorten".

"The political implication was that the investigation related to donations made during the period Mr Shorten was responsible for the AWU ... and questions about whether they had been authorised," Mr Davies told the court.
Mr Davies told the court the investigation had obvious political implications. This is your chief of staff. I'll quote that again:

"The political implication was that the investigation related to donations made during the period Mr Shorten was responsible for the AWU … Mr Davies told the court.

Your evidence last Friday was that there was no political strategy involved in referring the AWU to the Registered Organisations Commission. Is your chief of staff correct and did you perjure yourself?

Senator Cash: Senator Cameron, the answer to your question is no. Again, I'm happy for the political rhetoric. You have conflated a number of issues. You've obviously also managed to either get a transcript of my evidence via the AWU or, alternatively, you're merely quoting from media reports. I think I made my position very clear in court on Friday. Serious issues in relation to the expenditure of union members' funds had been raised. As a minister, whose responsibility involved the registered organisations act, you would be aware, chair, that our registered organisations need to account for the expenditure of their members' funds appropriately. That is actually the law. It is a breach of the law to not do that. So, as a minister—and I made this very clear on Friday—I had concerns in relation to—

 Senator CAMERON: Did you perjure yourself?

CHAIR: The question was asking—

Senator CAMERON: A point of order! This is on relevance, and you must take a point of order.

CHAIR: You're making a point of order.

Senator CAMERON: You understand that?

CHAIR: Senator Cameron.

Senator CAMERON: The point of order is on relevance. The same standing orders apply here as they apply in the Senate. The minister must be relevant to the question.

CHAIR: I'm happy to rule—

Senator CAMERON: You should draw her attention to the question.

Senator PATERSON: On the point of order, chair, I'm not sure if Senator Cameron's hard of hearing but I heard the minister's answer to his question.

CHAIR: And there has been an extraordinary amount of commentary in the questions and the minister certainly has some latitude in answering these extraordinarily long questions that are extraordinarily political, Senator Cameron.

Senator CAMERON: Latitude with the truth; that's what's going on.

CHAIR: Senator Molan, did you want the call?

Senator MOLAN: Thank you, chair. I think I've got enough from the previous questions that I was asking and I'd like to go to the Fair Entitlements Guarantee. With the Fair Entitlements Guarantee, I certainly understand the general basis of what is trying to be achieved here, but we've seen some fairly sharp corporate practices emerge over time. That's correct, isn't it?

Ms Mitchell: Yes.
Senator MOLAN: Can you give us an example of the sharp practices that have caused this to be reviewed?

Ms Mitchell: I might just ask my colleague Ms Saunders to talk to that.

Ms Saunders: Sharp corporate practices are a range of methods and approaches adopted by company representatives, company owners or other parties involved in corporate restructures and insolvencies which seek to prevent, avoid or reduce the payment of obligations to creditors, including employees for their employee entitlements. For example, that can be things like using a company structure or corporate group structures in ways that employees and their liabilities are held in one entity, while assets of the group are held in another entity. Using illegal phoenix company arrangements to re-establish a business under a new company, transfer assets for little or no value to the new company, and liquidate the old business with no remaining assets to pay employee entitlements, or otherwise just using practices which seek to unfairly manage an insolvency to the detriment of creditors—for example, friendly liquidators.

Senator MOLAN: How common is this? Is there some way of expressing how common it is?

Ms Saunders: There's no scientific data that will back up a precise figure. We determined it from having a look at a range of cases that had been received under the Fair Entitlements Guarantee. We commissioned some research and analysis into those cases, and from our research it was apparent that potentially one in seven of the FEG cases presented indications of sharp practice.

Senator MOLAN: Can you total the FEG cases, please? Give me an idea in any one year perhaps?

Mr Hehir: Ms Saunders just referred to the analysis undertaken. But while she's looking for the other answer, we had a look at about 650 FEG cases to come to that figure. Ms Saunders will give you the annual figure.

Senator MOLAN: That's since 2016?

Mr Hehir: That was over three years—so, 2013 to 2015.

Senator MOLAN: Did it come into being in 2016 or before that?

Mr Hehir: The FEG program and its predecessors have been in place for a number of years—but I might pass to Ms Saunders.

Ms Saunders: The Fair Entitlements Guarantee commenced as a legislative scheme on 5 December 2012. It replaced predecessor administrative scheme called the General Employee Entitlements Redundancy Scheme that had been in place since September 2001.

Senator MOLAN: What did we call the bill that we took in recently to amend this?

Ms Saunders: It was called the Corporations Amendment (Strengthening Protections for Employee Entitlements) Bill 2018.

Senator MOLAN: Protections for employee entitlements. Okay. Could you outline the key aims of what people commonly refer to as the FEG bill?
rely on the Fair Entitlements Guarantee to fund their unpaid employee entitlements. The amendment bill comes in three main parts. The first part is about strengthening the enforcement and recovery options to determine—

Senator MOLAN: Could you say the first part again, please. What was the first part again?

Ms Saunders: Part 1 of the bill is about amending the Corporations Act to strengthen enforcement and recovery options to deter and penalise directors and other people who have engaged in or facilitate transactions that prevent, avoid or significantly reduce employee entitlements. And so there are a range of measures that are being taken under part 1, including extending the fault element necessary to contravene the existing criminal offence, increasing penalties that are available for contraventions, introducing a new civil penalty and expanding the parties who can bring action.

Part 2 of the bill amends the Corporations Act to enable a court to make a contribution order against an entity in a corporate group or a closely connected economic relationship, which would require them to contribute to the employee entitlements of an insolvent entity where they have benefited from the labour of those employees.

Part 3 of the act seeks to strengthen the ability of the Australian Securities and Investments Commission to disqualify company directors who repeatedly rely on FEG to meet their employee entitlement obligations. They've got a history of liquidating companies, having the entitlements met by FEG, reconstituting another business and then failing again—that kind of thing.

Senator MOLAN: Is disqualification the punishment under this bill?

Ms Saunders: No. There are criminal offences and civil offences and the penalties for the offences have been increased. For example, in relation to criminal offences, the penalty has been increased for individuals from 1,000 penalty units to 4,500 penalty units and for corporations from 5,000 penalty units to 45,000 penalty units. Each penalty unit is worth $210. The disqualification provision is a provision that the Australian Securities and Investments Commission would exercise.

Senator MOLAN: When did this bill go through? How long has it been in operation for now?

Ms Saunders: It hasn't passed through parliament yet. It was introduced into the House of Representatives in September. It passed the House of Representatives on 24 October and was introduced into the Senate on 12 November, or some other time in November. It is awaiting further debate and passage.

Senator MOLAN: Thank you. That's all I've got at this stage.

Senator CAMERON: Senator Cash, you can't remember meetings with the Prime Minister prior to question time—that is the previous Prime Minister; the one that you helped stab in the back. You can't remember that meeting and you can't remember a range of issues within the last 18 months, and yet, on the basis of a newspaper report from Brad Norington, going back to an issue over a decade ago, you write twice to the Registered Organisations Commission, clearly in a political attack on the Leader of the Opposition. How do you justify demanding that the Leader of the Opposition answer questions on an issue over a decade ago when you can't remember so many things that have happened to you recently? It's an absolute
humiliation that you are undergoing. I accept that. I accept that you've been demoted. I accept that you're not prepared to be truthful to the estimates committee, but why are you setting different standards?

CHAIR: Come on, Senator Cameron.

Senator PATERSON: A point of order, Chair. That is clearly a reflection on the minister and should be withdrawn.

CHAIR: Absolutely.

Senator CAMERON: I withdraw. Why are you setting a different standard for the Leader of the Opposition than the standard that you set for yourself? Why won't you just admit that this is a political attack, as has been demonstrated by your former chief of staff and your former media officer, and that you're up to your neck in it?

CHAIR: There's an extraordinary amount of content in there, minister. If you wish to answer it, you can.

Senator Cash: I have to say, I will work on the basis that that was potentially Senator Cameron's valedictory speech, because it was wide-ranging and encompassed a lot of time in this place. They were just all statements. I can't respond to statements that Senator Cameron just puts on the table, as he does in every estimates. Senator Cameron, as a minister, there were issues raised in relation to whether or not a registered organisation—and it just happened to be—was—the Australian Workers' Union—had sought—

Senator CAMERON: It just happened to be!

Senator Cash: the authorisations for the expenditure of members' funds. I would have thought, Senator Cameron, because you stand up every day and you say that you are a spokesperson for the workers, that if Mr Shorten—who was, I assume, a trustee for the members' money and owes them a special duty—has misappropriated these funds and given them away to GetUp! or alternatively utilised them for his own purposes in his own election campaign, you of all people would actually want to know whether or not that is true. But, also, what is in the documents that the AFP have taken from the AWU? Does it show there was a misappropriation of funds? I don't know. I don't know what's in the documents. But what I do know is that the AWU are fighting tooth and nail to ensure the Registered Organisations Commission never sees these documents.

Senator CAMERON: To show exactly your motives and to indicate that you could have prejudiced yourself and you could have perjured yourself. You know that.

CHAIR: Senator Cameron—

Senator Cash: Perhaps you would like to step outside and say that without the benefit of parliamentary privilege.

CHAIR: Order! Senator Molan indicated he had a follow-up question.

Senator MOLAN: It's only a point of clarification, Chair. I just wondered, Minister, what you mean. You have used the term 'misappropriation' a number of times. What do you mean by misappropriation of funds in the context of the AWU donation to GetUp!, Minister?

Senator Cash: A registered organisation needs to get authorisation under their relevant rules to expend their members' money. One could say that it is a misappropriation of funds if
this has not occurred. But, ultimately, you need the appropriate authorisations. That, to date, has not yet been provided by the AWU—evidence of that.

Senator MOLAN: Thank you.

Senator CAMERON: I now have some questions for the department on cross-portfolio issues. It's obvious the minister is going to continue the cover-up, so there's no point in continuing this. I think the public have made their minds up about this disgraced, discredited minister.

CHAIR: Senator Cameron, let's move to questions.

Senator CAMERON: I want to now go to the issue that I think Senator Molan raised. There have been some questions about the regulation of the Fair Work Amendment (Casual Loading Offset) Regulations 2018. Have we got the appropriate officers here from that?

Ms Hartland: Yes, we have.

Senator CAMERON: The minister has made some claims here about double dipping. I think, again, it just shows how this minister is prepared to twist the truth—

CHAIR: Senator Cameron, let's ask questions, please

Senator CAMERON: and not be up-front. My question is to the department. The explanatory statement to a regulation is the advice of the government as to what the regulation does. Is that correct?

Ms Kuzma: Yes.

Senator CAMERON: It's tabled in the parliament, and it's to be taken at law as a document which can be referred to by the courts in interpreting the regulations. Is that correct?

Ms Kuzma: Generally, yes.

Senator CAMERON: I want to take you through what the explanatory statement for the Fair Work Amendment (Casual Loading Offset) Regulations 2018 says. You are counsel. You are aware of these issues?

Ms Kuzma: Yes. We're aware of it.

Senator CAMERON: You're the right person to be asking?

Ms Kuzma: I don't have it before me at the moment, but, yes, I'm aware of it.

Senator CAMERON: The amending regulation described the existing general law circumstances in which payments may be taken into account—correct?

Ms Kuzma: Well, I don't have it before me.

Senator CAMERON: Could somebody get it before you?

CHAIR: Could someone in the back of the room perhaps rustle up a copy?

Senator CAMERON: You are the chief counsel, aren't you?

Ms Kuzma: Yes, Senator, but I don't carry every regulation and legislation with me. We can look at it online, if that's helpful.

Senator CAMERON: Yes, of course. Okay. So—

CHAIR: Let's just hold on a few moments.
Ms Kuzma: Sorry, Senator; I won't be long. Yes, I have it now.

Senator CAMERON: The explanatory statement says:
The Amending Regulations describe the existing general law circumstances in which payments may be
taken into account and are intended to facilitate clarity and certainty for employers and employees of
their existing rights.
Is that correct?

Ms Kuzma: That's correct. That's the intention.

Senator CAMERON: It's clear from this, isn't it, that the government's advice is that the
regulation does not change the existing law?

Ms Kuzma: That's correct.

Senator CAMERON: So the existing law doesn't change?

Ms Kuzma: Yes. It's intended to be declaratory.

Senator CAMERON: So that's why the regulation's described as a 'declaratory'
regulation—correct?

Ms Kuzma: That's correct.

Senator CAMERON: The explanatory statement goes on to say:
… the retrospective application of the Amending Regulations does not disadvantage any party to the
employment relationship as it is merely declaratory of the existing law in relation to the circumstances
for which a claim to have the payment taken into account may be made.

Ms Kuzma: Yes.

Senator CAMERON: It goes on:
The amendments do not change the existing rights of an employer to make a claim, nor do they change
the factors that a court must have regard to in determining whether a payment made may be taken into
account in any particular factual circumstances.
Correct?

Ms Kuzma: Yes.

Senator CAMERON: It goes on further:
The Amending Regulations are declaratory in nature and do not change the existing law. For this
reason, consultation was not undertaken.
Correct?

Ms Kuzma: Yes, that's correct.

Senator CAMERON: So nothing has changed?

Ms Kuzma: No; it's intended to declare the existing law.

Senator CAMERON: Yes. So let's make it clear. The government's advice as set out in
the explanatory statement is that the regulation does not give employers any new right to
make a claim to have a casual loading offset against entitlements owed—correct?

Ms Kuzma: Yes; that's the intention of the regulation.

Senator CAMERON: So it does not stop employees from making a claim that they are
owed National Employment Standards entitlements because they have been wrongly
classified as a casual—is that correct?
Ms Kuzma: I'm sorry—I missed that. Would you mind repeating that aspect?

Senator CAMERON: So it doesn't stop employees from making a claim that they are owed NES entitlements because they've been wrongly classified as a casual—correct?

Ms Kuzma: That's right. The regulation doesn't prevent people from making—

Senator CAMERON: So claims can still be made.

Ms Kuzma: That's right.

Senator CAMERON: So it doesn't change the factors that a court will take into account in determining whether there should be any set-off—correct?

Ms Kuzma: Yes. It makes it clear what it is, so that people understand clearly what the situation is.

Senator CAMERON: So Piper Alderman lawyers partner Tim Lange published, in February 2019, advice that the regulation:

Ms Kuzma: That's quite a big chunk of information that I don't have directly before me. If you're happy to share that, I can follow that along.

CHAIR: Would it be possible to get a copy, Senator Cameron?

Senator CAMERON: I don't have a copy of it. I'll take it bit by bit. Piper Alderman partner Tim Lange said:

That new regulation simply declares that an employer affected by a NES underpayment allegation *may claim* that any NES entitlements owing, including to leave entitlements, have been offset by the earlier payment of a casual loading (where the earlier loading is clearly identified).

Ms Kuzma: That's a correct statement?

Senator CAMERON: Simple, isn't it. That's a correct statement?

Ms Kuzma: Yes, I'm just conferring with my colleague that that's correct.

Senator CAMERON: It says there is nothing new in this, is that correct?

Ms Kuzma: What's new is it makes it clear for people on the face of something what the situation is. The regulation is declaratory. What's new about it is that it sets it out in quite a concise form what the law is.

Senator CAMERON: But it doesn't make any difference to the existing law. There's no change.

Ms Kuzma: It's declaratory. That's right.

Senator CAMERON: An employer could always make an offset claim of this kind, correct?

Ms Kuzma: Depending on the circumstances, yes.

Senator CAMERON: But with limited prospects of success. That's where we are at the moment.

Ms Kuzma: Not necessarily; it depends on the circumstances.

Senator CAMERON: This is what a senior partner in this area is saying:
An employer could always make an offset claim of this kind, but with limited prospects of success. The new regulation explicitly does not change the existing law to make such an offset claim more or less likely to succeed, something confirmed in even more stark terms in the explanatory statement.

Is Mr Lange correct?

Ms Kuzma: In relation to the simple statement that that doesn't change the law, yes, that's correct.

Senator CAMERON: And it's no more or less likely to succeed?

Ms Kuzma: We couldn't comment on the prospects of a hypothetical litigation. We can say that the objective of this is to set out very clearly what the current state of the law is so it's easier for people to understand.

Senator CAMERON: But there's no change.

Ms Kuzma: No, there's no change to the substance of the law.

Senator CAMERON: That's right. To the extent that the existing law raises any possibility of what the government likes to call double-dipping, this regulation does absolutely nothing to address it, does it?

Ms Kuzma: The double-dipping goes to the issue of offsetting. This regulation is declaratory of the existing law in relation to offsetting, or double-dipping, as it can be described.

Senator CAMERON: But it doesn't do anything to address how the law applies, does it?

Ms Kuzma: No, it doesn't change the law. That's correct.

Senator CAMERON: This makes no difference to the legal precedents starting to appear, does it?

Ms Kuzma: No, it doesn't. It's declaratory, as you said.

Senator CAMERON: Why are people saying that this would stop double-dipping?

Ms Kuzma: It doesn't stop double-dipping any more than the existing status of the law. It does set out the current status of the law so people understand what the parameters currently are. It makes it clearer for people.

Senator CAMERON: The recent judgement in relation to this—

Ms Kuzma: Which judgement?

Senator CAMERON: There was a recent judgement that led to the declaratory statement.

Ms Kuzma: You are referring to WorkPac v Skene?

Senator CAMERON: Yes. This does nothing to address double-dipping, does it?

Ms Kuzma: It sets out the circumstances in which the law would apply, so it makes it clearer for people.

Senator CAMERON: A judge has made a decision in relation to the existing law, correct?

Ms Kuzma: I think I need to take it back a step. The offsetting issue wasn't ventilated fully in the WorkPac v Skene case. When we talk about the status of the law in relation to offsetting, it's not coming from that case.
Senator CAMERON: There could be decisions similar to what the WorkPac case delivered and this declaratory statement would make no difference to them, would it?

Ms Kuzma: This is pooling together a range of principles from different cases in one place to declare the current status of the law.

Senator Cash: The actual regulation was in response to the 16 August 2018 full Federal Court decision in WorkPac v Skene. The full court decided in that case—this is what caused concerns for stakeholders and why this particular declaratory regulation was needed—that engaging an employee and paying a casual loading does not necessarily mean that an employee will be a casual employee for the purposes of the National Employment Standards. This then created a lot of concern and the potential for employees to claim the same entitlements twice. As a result of the law not being clear enough, the declaratory regulation was made, to provide clear guidance, in particular, to small businesses who don't have an HR team or who don't have a legal team to seek advice from.

CHAIR: We need to leave it there. We'll come back to this topic, Senator Cameron.

Senator CAMERON: Yes, I'm still on outcome 2.

CHAIR: This particular topic, though?

Senator CAMERON: Maybe.

CHAIR: Thank you for your help.

Proceedings suspended from 15:30 to 15:46

CHAIR: We will resume. We are still in outcome 2. I'll just give Senator Cameron a moment. Whenever you are ready, Senator Cameron, you have the call.

Senator CAMERON: Secretary, are you aware of how many small businesses have taken the instant asset write-off since it first started in 2015?

Ms Hartland: I think that's a question for Treasury in terms of those numbers.

Senator CAMERON: Do you have statistics on the contribution of small business to employment growth in the last five years?

Ms Hartland: I'll just get the relevant people to the table.

Mr Cully: I believe we may have answered a question along these lines on notice at the last estimates.

Senator CAMERON: Give me an update.

Mr Cully: What was your precise question again?

Senator CAMERON: Do you have the statistics for the contribution of small business to the total employment growth experienced in Australia over the last five years?

Mr Cully: I don't think we have that on hand. We can take that on notice.

Senator CAMERON: Of the 1.25 million job target floated by the government, how much of that will be due to small business?

Mr Hehir: I'm not aware of that target having been broken down by size of business.

Senator CAMERON: Does the minister know?

Senator Cash: Again, Senator Cameron, it would depend on the types of policies you put in place. For example, if you raise taxes for small business, they'll have less to invest, which
is what Labor Party proposes to do. We will put in place policies to stimulate growth, as we have done to date.

Senator CAMERON: No, this is not about Labor. Point of order, Chair. This is not about Labor; this is about government's policies. It's about your policies. I'm asking about your policies and how much of the jobs target will be met by small business.

Senator Cash: And the department is having a look for you, Senator Cameron.

Senator CAMERON: Good. We might get some sense then.

Senator Cash: It may not be through this department. It may be through another department.

Mr Hehir: We don't have information on how the target announced by the government was broken up. I'd need to take it on notice in terms of what the growth has been in terms of the actual number of people employed by small business.

Senator CAMERON: You are the Department of Jobs and Small Business. I'm in the right hearing, aren't I?

Mr Hehir: That's correct.

Senator CAMERON: So you can't tell me the contribution of small business to total employment? You can't tell me—

Mr Hehir: Sorry; I said we could tell you that one.

Senator CAMERON: All right; tell me.

Mr Cully: For 2015-16, small business accounted for slightly less than 5.7 million employees and around 50 per cent of Australia's employment.

Senator CAMERON: So they don't contribute to the most jobs. They're even with the rest of the economy.

Mr Cully: That was the figure for 2015-16, yes.

Senator CAMERON: Okay. You don't have any trend figures from then? That's, what, four years ago?

Mr Hehir: I think these are based on ABS figures. I will need to check and see when the next data will be released.

Senator CAMERON: Doesn't the department monitor this stuff?

Ms Hartland: We get our figures from the ABS for this because they're doing the broad survey work. We're taking their statistics.

Senator CAMERON: We hear ministers arguing that small business is the driver of the economy and creates more jobs. That's not correct according to these figures. Is that right? It's 50 per cent.

Mr Hehir: Certainly I think that my reading of 50 per cent of the total employment is a substantial driver. You don't have to be a majority to be a substantial driver of employment.

Senator CAMERON: No, but what's been said is they are the largest driver. It's not true, is it—not in this statistic.

Mr Hehir: I'd need to take on notice what the growth factor is, because the driver will actually be a percentage of growth. I will need to take it on notice.
Senator CAMERON: And a lot of that small business growth would be dependent on the success of big business, wouldn't it?

Mr Hehir: There's no doubt that small business does also provide services to big business, but I'd need to check and see whether we have data on the rate of growth between small business compared to later growth of big business.

Senator CAMERON: That'd be good. That'd be handy. Do you have any sense of the impact on economic growth caused by small business?

Ms Verspaandonk: Yes. According to ABS statistics from 2016-17, economic output produced by small businesses increased by more than $19 billion to $393 billion, and that was over a third of the $1.1 trillion economic output produced by the private sector that year.

Senator CAMERON: So, in terms of economic growth, they're only a third of the economy?

Ms Verspaandonk: They're about a third—just over.

Senator CAMERON: So, when we hear arguments that they are the driving force and the economic engine room, these figures don't align with that, do they? Two-thirds of economic growth is elsewhere. Is that correct?

Mr Cully: It's two-thirds of economic output, I think.

Senator CAMERON: The rest of the economy?

Mr Cully: Yes.

Senator CAMERON: Okay. Do you have any stats on whether there have been more jobs created in small businesses since the penalty rates were cut?

Ms Hartland: I think we took that earlier on, so we don't have that breakdown. We might take it on notice, but I'll just check. No, we don't have that information. I think Senator Leyonhjelm asked us.

Senator CAMERON: So, even after all this argument that cutting penalty rates would increase employment opportunities—when was the first round of penalty rate cuts?

Ms Durbin: As you may recall, the changes to penalty rates for Sunday were phased in. The first round commenced on 1 July 2017.

Senator CAMERON: So there's been almost two years of reduced penalty rates and the department still can't tell us what that contribution is to job creation. Even though the argument put by some employers and the government was that it would increase employment, you can't tell me that after two years?

Ms Durbin: Of the awards that were affected, they were phased in over three or four years. For two of the awards, we're only just halfway through the phase-in arrangements. As you will recall, the changes only applied to certain workers under those awards, for example, in the hospitality—

Senator CAMERON: That's not what I'm asking you. I don't want you to take me on this little trip. I want you to answer the questions that I'm asking. Based on what you've told me, what I'm saying to you is that you can't say whether there's been any increase in employment as a result of penalty rate cuts?
Ms Durbin: What I was trying to give you an indication of is that there are lots of different drivers. The Fair Work Commission acknowledged this up-front. Both the Fair Work Commission and the Productivity Commission took a range of evidence around expected benefits, but disaggregating the specific impact is not something that we are able to do. The employment rates for people who are affected by the changes, who are covered by an award and who work on a Sunday—we just don't have access to information to enable us to categorically say—

Senator CAMERON: All of the submissions that were made to the Fair Work Commission and all the academic analyses that have been done by the Productivity Commission—after two years, you can't provide evidence that the economic analysis and submissions were correct, can you?

Ms Durbin: Again, I don't mean to be difficult but it's complicated by the fact that, of course, that change didn't happen in isolation. For example, each time there has been a penalty rate change, it's been accompanied by a change to the minimum wage. They basically happen at the same time—1 July every year. There are so many drivers it's just not possible for us to disaggregate it.

Senator CAMERON: If you didn't disaggregate it, how can submissions to the Fair Work Commission and how can the econometric analysis by the Productivity Commission take into account these other issues and then say, 'There'll be more jobs'? They can't do it, can they?

Ms Durbin: That's a matter for the commission in terms of the decision it makes. As you're aware, it took a very comprehensive analysis. It took evidence from a range of stakeholders. It went on for multiple years—

Senator CAMERON: But how can the stakeholder provide evidence if you can't even tell us if, after two years, there's been any job increases?

Ms Durbin: The commission indicated that it was likely that it would flow through—

Senator CAMERON: Oh, it was 'likely'!

Ms Durbin: to a range of benefits in terms of increased services, increased outcomes for consumers, increased hours of employment. But, because nothing happens in isolation, we're just not able to pinpoint one particular change.

Senator CAMERON: After all the nonsense we heard about, if we cut penalty rates, there'll be more jobs, you can't provide evidence that that's happened—correct?

Ms Durbin: I cannot clearly give you evidence that—

Senator CAMERON: Okay.

Ms Durbin: specifically identifies what flow-on impact from the penalty rate cuts for those particular awards would be because it's driven by so many micro and—

Senator CAMERON: Wasn't this the argument that ACTU raised? Wasn't this the argument of the people who were opposing the penalty rate cuts? That is, you can't simply argue that cutting penalty rates means there'll be more jobs. It doesn't work, does it?

Ms Durbin: Again, that wasn't the basis of the Fair Work Commission's decision. It was look at a whole range of factors. The principle for its decision was around the disutility of a Sunday. In the end, it concluded that Sundays were still special. They were still more special than Saturdays—
Senator CAMERON: That's not what I'm asking you. I'm not asking you whether Sunday is special or not. I'm simply asking—what's your position in the department? What's your title?

Ms Durbin: I'm the Group Manager of the Workplace Relations Policy Group.
Senator CAMERON: So you're responsible for a lot of this. So you can't tell us—
Senator Cash: Chair, that is a direct reflection on Ms Durbin.
CHAIR: Senator Cameron—
Senator CAMERON: Why is the reflection? That she's responsible for workplace relations? Why is that a reflection?
CHAIR: Senator Cameron, this was a—
Senator CAMERON: I know you're all a bit jittery but, come on, give us a break.
CHAIR: This was a Fair Work Commission decision, Senator Cameron. Let's get back to it.
Senator CAMERON: I'm happy to get the evidence that's before us. You can't tell us that all the rhetoric, all the speeches that were made in the Senate about jobs being increased, weren't a load of codswallop.
CHAIR: Senator Cameron, are you going to ask a question?
Senator CAMERON: A load of codswallop.
CHAIR: Are you going to ask a question?
Senator Cash: In relation to employment, there has been employment growth in Australia since we came into government.
CHAIR: Absolutely.
Senator CAMERON: Yes, at the trend level.
CHAIR: Are we moving on, Senator Cameron?
Senator CAMERON: I've finished with that one. Who's handling the Migrant Workers' Taskforce?
Ms Hartland: Mr Cully.
Senator CAMERON: Has the task force reported?
Mr Cully: The task force has provided its report to the—
Senator CAMERON: When did it provide the report?
Mr Cully: Earlier this month.
Senator CAMERON: When are we likely to see the outcome of the task force report?
Mr Cully: That's a matter for government.
Senator CAMERON: Minister?
Senator Cash: Sorry, I did not hear the question.
Senator CAMERON: You weren't listening?
CHAIR: Senator Cameron.
Senator Cash: I was in a discussion with the secretary on another topic.
Senator CAMERON: I'll repeat the question. When are we likely to get the report from the Migrant Workers' Taskforce?

Senator Cash: I would need to take that on notice and give it to the relevant minister. My understanding is though, the government is considering the report, and it will be released as soon as possible.

Senator CAMERON: Before the election?

Senator Cash: Again, I would need to take that on notice for the relevant minister.

Senator CAMERON: In MYEFO last year, it was announced that Growcom will receive $1.5 million over four years from 2018-19. What's the money being used for? Minister, do you know?

Senator Cash: I'm not aware of what the money is being utilised for, but, again, I could take it on notice for the relevant minister.

CHAIR: Have we got the correct officer in the room or not?

Ms Hartland: Could you repeat the question, because it might be in the agriculture—

Senator CAMERON: Is the Fair Farms Initiative—

Ms Hartland: Yes, sorry. That's Department of Agriculture and Water Resources.

Senator Cash: We'll refer it to the relevant minister.

Senator CAMERON: The MYEFO explained that it would mitigate risks of worker exploitation by providing increased access to information on fair employment practices for the horticultural industry. That's your involvement, isn't it?

Ms Hartland: Yes, it might be something with—

Senator CAMERON: So you can't just dismiss it.

Ms Hartland: No. I would never dismiss it.

Senator CAMERON: I never said you were dismissing it. The minister was.

Ms Hartland: I'll just check whether—

Senator Cash: Chair—

CHAIR: Well, if the program is being managed by another department—

Senator Cash: Correct. It's a little difficult—

Senator CAMERON: It's not just managed by another department.

Ms Hartland: It might also have been working with the FWO. I'll just check what we know.

CHAIR: Just check what you know and—

Ms Hartland: Apparently we don't know anything about it, so I won't waste your time.

Senator CAMERON: You know nothing. Minister Cash is infecting the lot of you.

CHAIR: Senator Cameron.

Senator CAMERON: Nobody knows what's going on, not even Minister Cash.

Senator Cash: As I said, it's a program with in another department.

CHAIR: The program is in another department. Let's move on.
Senator CAMERON: Seeing as nobody knows anything, I'll just have to move on.

Ms Hartland: It seems like I am correct that. Funded by the Australian government through the Fair Work Ombudsman's Community Engagement Grants Program in January 2017, the Australian government, through the Department of Agriculture and Water Resources, provided an additional $1.5 million at MYEFO to expand the delivery of the Fair Farms Initiative. It has been allocated funding to assist employees in the horticultural sector. The Fair Work Ombudsman and Department of Agriculture and Water Resources are probably the right places. You might want to ask of the FWO later on.

Senator CAMERON: But there was also a worker exploitation which is partly your—

Ms Hartland: Yes, but I think that aspect of it has been dealt with through the FWO. That's what I'm saying.

Senator CAMERON: So they don't advise you?

Ms Hartland: No, not necessarily. As I said, they're independent. They won't necessarily advise us.

Senator CAMERON: Are they as independent as the ROC?

Senator Cash: Take that as a comment.

Senator CAMERON: I'm finished with outcome 2.

CHAIR: Just to be clear, Senator Cameron: we can release outcome 2, insofar as they're not required for later outcomes?

Senator CAMERON: Yes, chair.

CHAIR: Outcome 2 can go with our thanks.

Senator Cash: Thank you.

Australian Small Business and Family Enterprise Ombudsman

[16:06]

CHAIR: I welcome, Ms Carnell, and representatives from the Australian Small Business and Family Enterprise Ombudsman. Do you wish to make an opening statement?

Ms Carnell: Yes, thank you. I have a brief opening statement. Since last estimates—that is, the fourth quarter of last year—ASBFEO increased in activity, in both our advocacy and our assistance space. We were particularly pleased to see a number of the recommendations from inquiries we've conducted over the past 2½ years reflected in government and, for that matter, opposition announcements during the final quarter. Recommendations from our payment times and practices inquiry, conducted in April 2017 and updated, due to the requests of the minister, late last year saw the commitment of the federal government to pay SMEs within 20 days for contracts up to a million dollars from July 2019—that's this year. A new contract clause is included in the Commonwealth contracting suite which requires all subcontractors working on government projects to have the same terms and conditions as the prime contractor on the project. And there was a commitment from the federal government to have a target of 35 per cent for all government contracts up to $20 million going to SMEs. We were particularly pleased to see the Labor Party make the same commitment: small businesses would pick up more government contracts if there were a change of government.
Following the payment times review late last year, the federal government committed to ensuring that large businesses pay SMEs within 20 days as a condition of future government contracts, and there's a requirement for large businesses with $100 million turnover to publish their payment times annually, which we think will be a step in the right direction. Transparency in this space hopefully will shame the bad performers to do the right thing. In the Mid-Year Economic and Fiscal Outlook, the government committed to introducing five-day payment times between government agencies and small businesses where invoicing is in place.

Recommendations from our inquiry report Affordable capital for SME growth, which was released in June last year, saw the announcement of the Australian Business Securitisation Fund—that's $2 billion—to help access to capital for second-tier banks and non-bank lenders; the facilitation of the development of the Australian Business Growth Fund; and the review of the Personal Property Securities Register, the PPSR, to make it more accessible for SMEs generally.

We also, jointly with the Bank Doctor, the Australian Finance Industry Association and FinTech Australia, released a guide called Borrowing from fintech lenders, because, as you'd be aware, there's a huge problem with access to capital for small businesses, so they are going to look for it in the fintech sector and others, and many of them really don't understand the terminology—what it means. So we produced a document to help them navigate that space. We've also been working with those people I've just spoken about with regard to the code of lending practice for fintech balance sheet lenders which we developed in the middle of last year. Towards the end of last year, we announced that the seven major fintech lenders were now compliant with the code, there was an independent code compliance committee set up and those major fintech lenders had joined AFCA. Now, they don't have to do that, so the fact they have joined is a really big step in the right direction. It means small businesses have some capacity to get their complaints heard and also, hopefully, get compensation if they have been wrongly treated.

Our workload also increased with our taking over disputes falling under the franchising, oil, and horticulture codes. We can provide information on that data if anyone is interested. And, from 1 March this year, we'll be offering a Small Business Concierge Service, funded by the federal government, to assist small businesses who have disputes with the ATO to get their case in front of a new part of the AAT which will deal with ATO disputes and small business.

We've dealt with a couple of really big assistance claims. We have over 1,100 complaints about a company called Viewble Media, and the Shoppers Network, and we've been working really hard to ensure that the small businesses who have been caught in this space are getting some level of justice, because there are some very real issues in that space.
Senator CAMERON: This is a long opening statement. Can we get to the end, then we can all ask questions.

Ms Carnell: Okay. We released the Access to justice inquiry report, part 1, with 1,600 small businesses across Australia giving us feedback which showed that the average cost of going to court for a small business is $130,000, and a very large percentage of them don't do it because it costs too much. I think that's actually a really important issue—and I'm sure Senator Cameron would perceive that to be a very real issue as well.

We released a paper on deemed statutory trusts in the construction industry to show that the benefits of implementing that system outweigh the costs, and the reason I'm sure everybody would think that that is important is the issues surrounding phoenixing and insolvencies generally in the construction industry, and the fact that small businesses are right at the bottom of the pile and the ones that are affected most dramatically. That's my opening statement.

CHAIR: Thank you very much, and sorry for interrupting.

Ms Carnell: That's all right.

Senator PATERSON: Through you, Chair, could Ms Carnell table a copy of the opening statement?

Ms Carnell: Yes, absolutely. In fact, I sent around our quarterly report to all members, and it is right at the front of the quarterly report.

CHAIR: Okay.

Ms Carnell: But I can table it again, no dramas.

Senator PATERSON: Thank you.

CHAIR: No worries.

Senator CAMERON: I must say I haven't seen it, so I'd like to have a copy.

Ms Carnell: That's fine. Happy to—

CHAIR: Could we get some copies circulated then, please.

Ms Carnell: Certainly. I can get one copy circulated, wherever it is—I'll find it and I'll give it to you.

CHAIR: Perhaps, Dr Latham, if you would care to go to that particular topic that was raised in the opening statement.

Dr Latham: This particular matter, what happened—I'll tell you the story of it. You'd be a small business operating during the day and you'd be cold-called. Somebody would turn up to your business and say, 'Have I got a deal for you?' or words to that effect. 'If you sign up here, we'll have a television put into your shop. It will show your advertisement, plus some other people's advertisements, and the same televisions in other shops would do the same thing. Your advertisement would be playing elsewhere, alongside others. If you agree to do this, it's at effectively a no-cost basis because we would pay you $400 for this advertising that's going up. You would be on the hook for $400 in a financing contract as well'. There's a question about how clear that whole arrangement was made, but basically it was the idea of at no cost: 'At no cost you'll have a television, you'll have your own advertisement here and it would be showing elsewhere.' But the problem has been that the $400 or so coming in has stopped so
the firms—there are a couple of them involved here—have gone into liquidation, or are going into liquidation, so the $400 is turned off but the $400 outlay continues to the finance companies.

**Ms Carnell:** I think it's really important because this really shows the problem here. The TV involved is probably worth about $800, $900—even installed, maybe $1,200—and the commitment is $15,500 to the finance companies. So, there's the gap: $1,200 to $15,500. And that's what these guys are up for.

**CHAIR:** Just one other question from me before I hand over to my colleagues. Obviously, with government contracts, the shortening of the payment term times was welcomed by small business, and that's relatively easy to monitor. How do we know how the private sector is going? I know some large entities have agreed to go to quicker payment terms. Is there any way of tracking how much of the economy is now on those shorter payment terms?

**Ms Carnell:** We are reasonably close to releasing a new paper off the back of the work that the minister asked us to do where we went to 250 major companies and asked for their terms and conditions, which we've got, so that we can compare that to some extent with what we saw last time. But what's happened over the last few months is the Business Council of Australia have done a review of their supplier code, which is a voluntary code that requires particularly bigger businesses, if they signed a pay in 30 days or less. The outcome of that review has not been tabled yet, although I was involved with it and we have certainly recommended some quite significant changes. The decision of the federal government to require the top 3,000 companies turning over over $100 million to annually report payment times—the consultation process of what that reporting framework looks like is underway right now. We believe that it's really important that the requirements are quite transparent and allow small businesses to compare different companies but also to see how companies are tracking in that space. It'll be really important to get that right.

**CHAIR:** Senator Cameron, did you want to take the call? Senator Patrick?

**Senator Patrick:** Thank you. I acknowledge Senator Cameron. People say he doesn't have a heart, but he clearly does!

**Senator Cameron:** What?

**CHAIR:** Don't start rumours!

**Senator Patrick:** Okay. Ms Carnell, I'll declare we have been working together—

**Ms Carnell:** We have.

**Senator Patrick:** on an issue in Whyalla where we've got a very large company, GFG Alliance, that has payment terms that are end of month plus 62 days. Firstly, thank you very much for your help. It has had some effect on some late payments. I'm just wondering if you could give me an update on what may have happened in that space. I know that you were talking to GFG, and I know you mentioned it in your opening statement. But could you also give some indication of when we'll be in a position where the 20-day-payment terms will come into effect and whether that's via the Commonwealth Procurement Rules or how that will be instrumented in some way?

**Ms Carnell:** Fairly obviously, the implementation of the 20 days off the back of government contracts is a matter for the government. That said, Senator Patrick, what was
really interesting in terms of our interface with GFG was that, when we said that they were going to have to change their payment times because if they didn't then their capacity to get federal government contracts would be significantly impacted upon and gave them an extract of the announcement that the government had made, we seemed to get lots more traction really quickly, which shows that it actually does make a difference.

**Senator PATRICK:** ARTC confirmed that they have significant rail contracts with the Australian government.

**Ms Carnell:** Absolutely. Look, the issue here has been—as you rightly say—that they took over the Arrium business and, they say, just took on board the Arrium payment times. I accept that that might have been the case, but let's be fair—Arrium weren't the bastion of success, really. So you would rather hope that they were putting in place new payment approaches—and, I think, off the back of them understanding that the federal government will be requiring better behaviour from the people who pick up major contracts. That helps.

They've given us an undertaking and, I understand, you an undertaking, and the Small Business Commissioner from South Australia, who's also been working with us, an undertaking that they are in the process of reviewing their payment times and will be implementing a 30-day invoice period for businesses going forward. They've also given us an undertaking that those companies that are even outside current payment times, more than 60 days end of month—and there were a number of those—will be paid as a matter of urgency. We'll be keeping a very close eye on that.

I'm a little concerned that we've also got reports that there are some other issues in terms of putting pressure on small businesses to reduce price and also some issues surrounding them suggesting invoice financing as a method of improving cash flow. That has a place, but it's not instead of paying people on time. So right at the moment the answer is: we'll be keeping a close eye on it. It is an important investment and an important company for Australia, and nobody wants them to fail. In fact, we want them to be huge successes, but—

**Senator PATRICK:** And I'm on the record. I feel the same as well.

**Ms Carnell:** Yes, I think we all do—but not by using small businesses as cheap banks.

**Senator PATRICK:** In response—I've been keeping people in Whyalla informed via Facebook and media—some have come back and said: 'Oh, that's normal. BHP do it all the time, and other larger companies.' I don't actually know whether BHP do or don't.

**Senator Cash:** They made an announcement after that. The ombudsman can take you through it.

**Ms Carnell:** After the minister asked us to do an inquiry last year—you're absolutely right—BHP and, I'd have to say, Rio and some others were right at the top of the bad list. I think there is a parliamentary inquiry too which was looking at the impact of mining companies in regional Australia, which found the same stuff. It is good to see that BHP have made some announcements that they have changed their approach and are paying small businesses more quickly. I must admit that I hope that's true, but we'll be keeping an eye on it.

**Senator PATRICK:** I'll just track sideways slightly. As part of the stuff that I was doing with GFG—and GFG have come out and said they've had a bit of a cash flow issue, and they have foreshadowed that that will go away—one of the other things that ASIC revealed to me when we were working in background was that GFG to date haven't met their financial
reporting obligations, their ASIC reporting obligations. There are probably a whole range of
companies that don't do that. I'm just wondering whether that's a signal to smaller businesses
about who they deal with and whether or not that's something that could be worked into the
total solution space.

Ms Carnell: I think the issue is that GFG are a fairly complex company, as you know, and
they've got lots of bits. I think it's probably a fair statement that maybe some of those bits
have not met their statutory requirements. But that's the reason, certainly from my office's
perspective, for the importance of ASIC really stepping up on these issues and making it a
whole lot more public. From a small-business perspective, you need to be able to determine
who you can rely on and who you can't. Things like transparency of payment times and
whether particular companies have met their requirements are pretty important if you're
putting your house on the line, and that's what small businesses do.

Senator PATRICK: Just finally—you didn't quite answer my question—will these 30-
day payment terms be implemented through a change to the Procurement Rules, or what
mechanism do you see that makes it legally binding upon the Commonwealth?

Ms Carnell: We have said to the Commonwealth for procurement—and this is to Finance,
who manage procurement, but also to Defence and others who have major procurement
budgets—that it just has to be written into the contract with the prime and, most importantly,
monitored. If you just put it in and then don't actually have reporting on it, our experience is
that it doesn't happen.

Senator PATRICK: But surely, if you put it into the Commonwealth Procurement Rules,
then that flows down and every agency must have a—

Ms Carnell: Yes.

Senator PATRICK: The Commonwealth Procurement Rules are a legislative instrument
under the PGPA Act, and it then becomes in effect law, as opposed to just, 'Hey, departments,
would you do this?'

Ms Carnell: And it needs to do that. It needs to be law, but then, for the prime contractors
that are subject to these things, whether they're complying needs to be actually monitored and
reported on. You can tell that we may have had experiences where that didn't happen!

Senator PATRICK: Thank you very much.

Senator PATTERSON: I have just a very quick question. Ms Carnell, was your opening
statement verbatim from this, or were you ad-libbing a bit?

Ms Carnell: I was ad-libbing a bit.

Senator PATTERSON: Yes, because there was something in there that I thought I heard
you say but I don't see in there. You made reference to a possible change of government or
speculating about the impact of a change of government. What was that?

Senator CAMERON: Lots of people are doing that!

Ms Carnell: I said that the Labor Party had announced that they also would give an
undertaking that small to medium businesses would pick up an increased percentage of
government procurement if they were to come to government, which they put out statements
about, which we have welcomed.

Senator PATTERSON: Okay, thank you.
Senator CAMERON: I don't have much, but I just want to go to page 2 of this, which is basically your statement. You say that you have recommended that a new contract clause be included in the Commonwealth Contracting Suite that requires all subcontractors working on a government project to have the same terms and conditions as the prime contractor of that project.

Ms Carnell: That's right.

Senator CAMERON: Why did you come to that conclusion?

Ms Carnell: That is because the federal government had announced they would pay their bills in 20 days, from 1 July this year, and they have said that they're paying in 30 days to the primes, but, down the supply chain, that's not happening. It is our experience that the smaller guys are not being paid in the same time lines or, in some cases, on the same terms—for example, is it from invoice or is it from end of month?

We believed it was really important that if a prime was paid in 30 days from invoice or 30 days from end of month then that should be reflected to the smaller people in the supply chain. This particular contract clause is now there in the Contracting Suite at the Department of Finance. The problem that comes is that departments don't have to pick it up. So it's there as one of the recommended clauses, but it's a matter for individual departments whether they add it to their contracts with primes or with large entities.

Senator CAMERON: One of the issues on some government projects is that the contractor, or the first- or second-tier contractor, has certain terms and conditions for their workers. Small contractors come on and undercut that. Shouldn't that apply in the same context—that you want equal treatment for small contractors? But workers are not allowed to have that. What's the difference?

Ms Carnell: Sorry; we believe in a level playing field here, absolutely.

Senator CAMERON: Minister Cash has just fainted!

Ms Carnell: Sorry?

Senator CAMERON: Minister Cash has just fainted.

Senator Cash: Could the Hansard show that I actually haven't?

CHAIR: That's pretty clear to all of us here.

Ms Carnell: Fair outcomes for small businesses are about level playing fields. The people who are doing the wrong things cause more trouble for other small businesses than for anybody. We're absolutely on board with level playing fields.

Senator CAMERON: That's good. That's interesting. Are you aware of the inquiry that I was involved in, the insolvency inquiry?

Ms Carnell: I'm aware it happened.

Senator CAMERON: You're not aware of any of the recommendations in that inquiry about establishing a trust account in each project—

Ms Carnell: Yes, absolutely.

Senator CAMERON: so that small business can be assured that, if one of the bigger players goes bust, they are still getting paid?
Ms Carnell: Absolutely. In my opening statement I made the point that we'd done a working paper on deemed statutory trusts in the construction industry, and the work we did was to show that they are not too expensive—because some players in the construction industry said you couldn't have cascading deemed statutory trusts because they were too expensive. What our paper shows is that the benefits outweigh the costs, and the costs are not that dramatic. So there's a paper on the public record showing that's the case.

Senator CAMERON: Yes. When we conducted this inquiry—it's going back a few years now, but I think the principles are the same—$2.64 billion was the estimated amount of money lost by creditors in construction insolvencies alone, many of them small businesses. This is a huge amount of money—

Ms Carnell: We agree. And I think that's one of the figures we use at the front of our paper, which we're more than happy to send you a copy of. And not to underestimate the impact upon employees, but at least they have access to FEG. The small contractors just go down the gurgler in these scenarios and that shouldn't be—

Senator CAMERON: Yes. That's why the Senate inquiry that I led said this has to be fixed. But we're now nearly into the sixth year of a coalition government and nothing has changed.

Ms Carnell: The Murray inquiry that was commissioned by the current government, John Murray's inquiry, did recommend that deemed statutory trusts be implemented, and that's a major piece of work, I think, a piece of work that—

Senator CAMERON: So was mine a major piece of work!

CHAIR: I'd want to be careful with the phrase 'a piece of work'.

Senator CAMERON: I think Mr Palethorpe was working around the clock on it.

Senator PATERSON: Ms Carnell, you really do need to follow Senator Cameron's work more closely.

Ms Carnell: I will do my best!

Senator PATERSON: It's remiss of you to miss anything that he's done!

Ms Carnell: I'll do better next time.

Senator CAMERON: You see, Senator Paterson, if you actually care about these issues, as Ms Carnell does—she actually knows about it.

She's not flippant about it, like you lot—you rabble of a government!

CHAIR: I haven't heard that word for a week!

Ms Carnell: Just to finish that, Senator Cameron: we certainly suggested to the government that the way to lead in this space—because, let's be fair, a chunk of this stuff is at state level—is to require deemed statutory trusts on government projects as a start.

Senator CAMERON: And how did you get on with Minister Cash on that one?

Ms Carnell: We get on really well!

Senator Cash: We get on fabulously, actually!
Senator CAMERON: I'm not asking how you get on it in terms of your personal friendship. Your politics are close, but I want to know about how she's dealing with these issues that you are raising. That's what I'm asking.

Ms Carnell: Very positively, I think.

Senator CAMERON: So we're going to get trusts?

Senator Cash: A number of the actions that the ombudsman has outlined in her opening statement have been implemented by the government. In particular, I've noted your concerns in relation to the 20-day payment time, and that will commence, obviously, on 1 July this year for contracts up to $1 million. That's something you've been very vocal on. The commitment is a requirement for large businesses tendering for government contracts to match the 20-day payment terms. Certainly, we're in discussions on a regular basis as to how we can benefit small business.

Senator CAMERON: So when is the government going to implement trusts, as Ms Carnell is recommending, and my—

Senator Cash: We consider the ombudsman's recommendations, and I have to say that we've made a number of major structural announcements in relation to small business. And I look forward to—

Senator CAMERON: Small businesses are still going bust on construction sites.

Senator Cash: continuing to work with the ombudsman.

Senator CAMERON: But small businesses are still going bust on construction sites because there are no trusts to help them get paid. Is that correct, Ms Carnell?

Ms Carnell: Absolutely. It's a statement of fact that that's the case. The Queensland government has made some efforts in this space—

Senator Cash: It was mainly a state issue.

Ms Carnell: The dilemma here is—

Senator Cash: It is a state issue.

Ms Carnell: trying to get the states together—

Senator Cash: If you could talk to the Labor states, Senator Cameron, that'd be fantastic.

Ms Carnell: There has been an effort to get them together—

Senator CAMERON: Are you saying, Minister—sorry, Ms Carnell—that if we can get Labor states to agree to implement trusts that you will facilitate them?

Senator Cash: Senator Cameron, if you can get the Labor states to come and talk to us, obviously, we are always prepared to talk.

Senator CAMERON: No, that's not what I'm asking you. You see, you're not being very concise. I'm asking you—

CHAIR: I thought that was pretty concise.

Senator Cash: Given the valedictory that you came through initially—

Senator CAMERON: You said, 'Get the Labor states to deal with it.' I'm simply asking you that if the Labor states agree to implement trusts will you then facilitate that federally?
Senator Cash: Well, I don't believe, actually, that this is relevant to my portfolio, unfortunately. It's actually relevant to another portfolio—

Senator CAMERON: Oh, we're back into that mode now, are we?

Senator Cash: But, certainly, I will keep on speaking with the ombudsman about what more we can do to ensure small and family businesses are able to prosper and grow, should they choose, and create more jobs.

Senator CAMERON: Good luck, Ms Carnell! I hope you've got more luck than the Federal Court has!

CHAIR: Let's get back to this portfolio, Senator Cameron.

Senator CAMERON: Thanks, Ms Carnell, you've been helpful.

CHAIR: There are no more questions for the Australian Small Business and Family Enterprise Ombudsman, so in that case you go with our thanks.

Ms Carnell: Thank you very much. I appreciate it.

Senator CAMERON: Can I just clarify something? We're going to have the Registered Organisations Commission on soon. Minister, are you going to be here for the rest of the program that deals with your areas?

Senator Cash: They're not my areas, they're—

Senator CAMERON: What about the Registered Organisations Commission?

Senator Cash: That is for Minister O'Dwyer.

Senator CAMERON: So you're running away again?

CHAIR: Senator Cameron! It was made very clear—

Senator CAMERON: You're hiding! You're not prepared to stay here—

CHAIR: Senator Cameron!

Senator CAMERON: and answer questions about the Registered Organisations Commission—

CHAIR: Senator Cameron!

Senator CAMERON: Minister, why are you running away?

CHAIR: The minister's replying arrangements were very clear. Thank you, Minister Cash.

Senator CAMERON: Minister, you should be here for the Registered Organisations Commission! You shouldn't run away!

CHAIR: Would the Fair Work Commission please come forward.

Senator CAMERON: Minister, you should be honest with the Australian public. Chair, this is disgusting. This minister—

CHAIR: Yes, there is something disgusting in the room.

Senator CAMERON: This minister is up to her neck in this and she's running away.

Senator PATERSON: Senator Cameron, the Oscars have finished for the year.

Senator CAMERON: Dear, oh dear!
Fair Work Commission

[16:39]

CHAIR: Representatives of the Fair Work Commission are at the desk. Do you wish to make an opening statement?

Ms O'Neill: No, thank you, Chair.

CHAIR: In that case, we can go to questions.

Senator CAMERON: The Fair Work Commission recently had six deputy presidents and one commissioner appointed by Minister O'Dwyer. What is the total cost for the salaries?

Ms O'Neill: The total remuneration for a deputy president is presently $461,850 each.

Senator CAMERON: They won't have any trouble paying their electricity bills, will they?

Ms O'Neill: And the current remuneration for a commissioner is $385,350. I can do the maths, if you like.

Senator CAMERON: Yes, maybe one of your other people there can do that and we can move on.

Ms O'Neill: The direct costs of the additional appointments for the balance of this financial year is in the order of $1.3 million and in the order of $3.3 million in a full year. One of the things to note is that, when a member is appointed, there's also a need to appoint an associate, a staff member for the member, as well.

Senator CAMERON: So did the Fair Work Commission receive any additional funding in MYEFO to cover this increase in salaries of deputy presidents and commissioners?

Ms O'Neill: We did. Last week, as part of the portfolio additional estimates statement, additional funding of $4.3 million over the forward years was provided, which is very welcome additional resourcing for the appointment of additional members. It relates to funding for an additional two members and two associates of, essentially, $599,000 for 2018-19 and approximately $1.2 million per annum in the forward years.

Senator CAMERON: So this is sufficient to cover the costs, and you don't need to reduce any programs or resources. Is that right?

Ms O'Neill: Not quite. The funding is very welcome and it goes a long way. We are in the position where there is still pressure to deliver a balanced budget in 2018-19, notwithstanding the additional funding. There's a shortfall of around $760,000 in the current financial year. That's largely as a result of our established staffing profile and a range of other factors. It becomes quite a complex picture in some ways but one way to think about it is if you take all of the factors related to the costs of member remuneration and appointments. We looked at the proportion of the revenue received from government that's spent on direct member remuneration. In 2009-10, that was around 17 per cent of revenue from government and it's now, for 2018-19, approximately 25 per cent. So there is a number of factors. Some of the shortfall this year, is largely, as I said, due to our established staffing profile. There are other factors. For example, we didn't have to fund superannuation for pre-Fair Work Act presidential members because those members were entitled to a judicial pension which is funded by the Department of Finance. So our cost base has increased as pre-FW Act, presidential members have retired and new post-FW Act presidential members have been
appointed. There's another point around the profile, the composition, of the member base. By this, what I'm talking about, is we're funded for 23 commissioner-level members and 21 presidential-level members whereas the situation with the recent appointments is that we'll have 19 commissioners and 25 presidential members. As I said, there are a number of factors. The additional funding is very welcome and goes a long way to assisting, but doesn't alleviate the entire pressure and need to find offsets and savings both for the current financial year and to put us in a sustainable position for the forward years. We've introduced a number of measures already to find savings and we'll continue to do that. We're also considering whether, in all the circumstances, we'll need to apply for a loss for the current financial year, partly to put ourselves in a sustainable position for the forward years.

**Senator CAMERON:** What's the background of these new deputy presidents and commissioners?

**Ms O'Neill:** Appointments are a matter for the government of the day and the commission isn't involved in that process.

**Senator CAMERON:** I'm not saying you're involved; I just need to know where they came from.

**Ms O'Neill:** I'm not even sure that I have that information at hand. I recall that the minister's press release announcing the appointments attached a background to them but I'm not even sure that I have the full text of it.

**Senator CAMERON:** Would it be correct to say, as I've seen in some of the reports, that none of them have a background in the trade union movement?

**Ms O'Neill:** I believe that's the case.

**Senator CAMERON:** When was the last appointment to the commission from someone with a background in workers' representation?

**Ms O'Neill:** I'll take that on notice, but those questions are better directed to the department. The process, the identity of the selection of appointments is—

**Senator CAMERON:** This is not really a department issue; this is simply asking you about the profile of your commissioners and deputy presidents.

**Ms O'Neill:** As I said, I'll take that on notice. I'm just making the point that it's not a process that we—

**Senator CAMERON:** Have there been any appointments from workers' representatives to the commission since this government came to power?

**Ms O'Neill:** I'm not sure that I have that information with me.

**Senator CAMERON:** I don't work in the commission. It's generally reported that there hasn't been any.

**Senator PATERSON:** I don't think that's correct. I'm not sure if you're aware, Ms O'Neill, but I understand that Mr Bryce Cross was an industrial officer at the New South Wales Nurses' Association and represented unions.

**Senator CAMERON:** So one?

**CHAIR:** It is fairly difficult for the officers to know the work backgrounds of every commissioner.
Senator CAMERON: There's not many of them.

CHAIR: I'm not sure it's their job to have analysed the work backgrounds of every commissioner.

Ms O'Neill: The only information I would have at hand is that provided, in this case, with the press release of the minister concerned. You're right, Senator; now you've mentioned that, it does—

Senator CAMERON: I'm happy to move on. I think everybody knows that there's no balance in the commission under this government and that's okay.

CHAIR: Senator Cameron, that's commentary.

Ms O'Neill: The other point I do need to make, though, is that all members, once they're appointed, swear an oath to impartially discharge their duties.

Senator CAMERON: Isn't that good! Isn't that terrific!

CHAIR: Very good actually.

Senator CAMERON: What work have the new commissioners been allocated?

Senator MOLAN: The majority have legal training.

Ms O'Neill: Again, I'd be relying on the information from the minister's press release.

Senator MOLAN: Lawyers represent everyone, don't they: they represent workers, they represent bosses, they represent this organisation and that organisation.

CHAIR: Senator Molan, Senator Cameron has the call.

Senator CAMERON: Some don't. Senator Cash never did that. She just represented the bosses. Senator Molan, did you know that? Ms O'Neill, what work have the new commissioners been allocated?

Ms O'Neill: We've taken a longstanding approach not to provide detailed information on the work allocated to individual members, on the basis that it could compromise the essential independence of the commission.

Senator CAMERON: What!

Ms O'Neill: This is a legitimate point that we take very seriously. At its heart, what's at issue is that the provision of the kind of information, at that level of granularity about work allocated to individual members, may create a perception—and I'm not suggesting for one second that that's what's actually intended here—that the committee was seeking to influence the allocation of matters to individual members.

Senator CAMERON: What committee was seeking to—

Ms O'Neill: In this case the Senate committee.

Senator CAMERON: What a ridiculous proposition!

Ms O'Neill: Well, Senator, there was a—

Senator CAMERON: What a ridiculous—

CHAIR: Senator Cameron.

Senator CAMERON: Are you actually saying that I'm trying to interfere in the work of the Fair Work Commissioner?
Ms O'Neill: No, and I tried to make that clear.

Senator Canavan: That wasn't what I took at all, Senator, but I think the official should be able to provide evidence.

Ms O'Neill: I tried to make it very clear that I was not suggesting that there was anything in fact happening. But there's a longstanding authority around the provision of this kind of information, and—

Senator CAMERON: What's the authority?

Ms O'Neill: I was going to just refer you. We've gone through this on a number of occasions. There was a question on notice—and I don't have copies, but I can provide them to enable you to have them today—EMSQ15000488. It was a question where Senator McKenzie sought a breakdown on each individual member over a period of time about what matters they had and how long matters take—

Senator CAMERON: I'm not asking that. I don't want to go to that granularity. But there are—

CHAIR: The official has the right to answer the question.

Senator CAMERON: Yes, but I don't want to waste the official's time and I don't want to waste the estimates hearing's time or my time. I'm not looking for that granularity. There are allocations, which are on the public record, aren't there, as to what commissioners are allocated to what industry sector?

Ms O'Neill: Yes, allocations to industry panels.

Senator CAMERON: Yes, so have any of these new commissioners been allocated to industry panels?

Ms O'Neill: No. That was correct as of Friday. There may have been a change—

Senator CAMERON: So, up until Friday if they're not allocated to a panel, what are they doing?

Ms O'Neill: They're doing work allocated in accordance with directions of the president. But I do just want to make the reference. You asked what the authority was around my reluctance to provide this kind of information. Part of the problem is that we're talking about a small number of members, who could obviously be identified by providing information of this nature. So, there was the relevant matter that was a High Court decision of Fingleton v The Queen. That dealt with questions about the allocation of magistrates to particular locations and to particular work.

Senator CAMERON: These are not magistrates.

Ms O'Neill: No, but the point that's made is that, where it's the function of a jurisdiction to assign members to deal with particular cases, the capacity to exercise that function free from interference and scrutiny by other branches of government was said by Chief Justice Gleeson, I think it was, at the time, to be an essential aspect of judicial independence.

Senator CAMERON: Okay; I won't pursue it. But it's on the public record, where some of these people have been allocated. So, that's fine. I want to move to the Workplace Advice Service. The government's announced the Workplace Advice Service, and they've announced that it would receive a $1.4 million funding increase. As this is an expansion of the current
service, could you provide a breakdown of the types of individuals, businesses and employees that have used it in the past and whether they've been from urban, regional, or remote areas?

Ms O’Neill: I'm certainly happy to take that on notice. I don't have that level of information with me.

Senator CAMERON: Okay. Thanks. How are law firms suggested to users of the service?

Ms O’Neill: Mr Furlong might be able to answer that.

Mr Furlong: There are currently over 60 partner law firms and community based legal services that support the Workplace Advice Service. Initially they were contacted to see if they wanted to participate in a trial or a pilot of the service. Since that time it has seen significant growth in popularity, so it's a regular occurrence for law firms to contact us now to see if they can participate in the program.

Senator CAMERON: So has the advice service been overprescribed in recent years?

Mr Furlong: In terms of the supply?

Senator CAMERON: Yes.

Mr Furlong: I certainly wouldn't say that that's the case. What I can say is that we are in the process of rolling out the Workplace Advice Service. It's available in most locations, but there are three layers or three tiers of the service that we're providing. At the moment I would say we're probably 50 per cent of our way through the implementation. In terms of the oversubscription, I think it's certainly premature to pass comment in relation to that.

Senator CAMERON: All I was asking was if it was overprescribed and you said no.

Mr Furlong: No.

Senator CAMERON: Were there any reasons given as to why there was a $1.4 million increase?

Ms O’Neill: It's about enabling the iteration and development of the program and the expansion of it to new locations and new parts of the country.

Senator CAMERON: Has there been a public statement from government about that?

Ms O’Neill: Yes, I recall seeing a media release by the minister announcing the additional—

Senator CAMERON: Has any of the $1.4 million been received by the Fair Work Commission?

Ms O’Neill: Similarly, we've been provided with $194,000 of the additional funds for the 2018-19 financial year.

Senator CAMERON: And what's the commission doing with that?

Ms O’Neill: This is all very new news. Only on 11 February the funding was announced, so we're still working through the detail of that, but it is in broad terms about enabling us to more quickly and more effectively develop and roll out the program nationally.

Senator CAMERON: Did the minister consult with the commission prior to making this announcement?
Senator Canavan: My advice is that the Fair Work Commission requested this funding from the minister.

Senator CAMERON: Is that the case?

Ms O'Neill: That's right.

Senator CAMERON: What's the breakdown of the funding over the forward years?

Ms O'Neill: As I indicated, $194,000 for 2018-19; $389,000 for 2019-20; $392,000 for 2020-21; and $395,000 for 2021-22.

Senator CAMERON: Thanks.

Senator PATERSON: Ms O'Neill, I'll probably direct these questions primarily to you, but if any other officer at the table can assist that would be helpful. I'll start with some criticism of the Fair Work Commission, particularly in relation to its performance of enterprise agreement approvals. Are you familiar with the criticisms by business on the time it takes for enterprise agreements to be approved?

Ms O'Neill: Yes, very aware of it.

Senator PATERSON: In 2017-18 is it right that the Fair Work Commission's timeliness for approving enterprise agreements was the worst on record?

Ms O'Neill: I don't know about the worst on record, but certainly in recent years.

Senator PATERSON: Which other year was worse?

Ms O'Neill: I simply don't know. I'm very familiar, off the top of my head, with the performance in recent years, but it's a broad statement to say—

Senator PATERSON: Since your time at the Fair Work Commission has there been a worse year?

Ms O'Neill: No.

Senator PATERSON: Let's say it's the worst in recent years. Is it true that the Fair Work Commission didn't even go close to meeting its own timeliness benchmarks?

Ms O'Neill: If you are referring to meeting the portfolio budget statement KPI, in 2017-18 that is the case.

Senator PATERSON: What was the KPI?

Ms O'Neill: A median of 32 days.

Senator PATERSON: And what was the result?

Ms O'Neill: It was 76 days.

Senator PATERSON: So double. I understand that there is significant overtime being undertaken by staff employed in that unit; is that correct?

Ms O'Neill: No, I don't believe it is.

Mr Furlong: Certainly not at present. Over this reporting cycle, there has been a significant amount of overtime worked, certainly in the first half of the cycle.

Senator PATERSON: So which is it? Ms O'Neill says no and Mr Furlong is saying yes.

Ms O'Neill: I was answering in relation to now, which is how I understood your question. It depends on the period of time we're talking about.
Senator PATERSON: We're looking at the 2017-18 year, where there were poor results. In the 2017-18 year, was there significant overtime by staff in that unit?

Ms O'Neill: Again it depends on what you mean by significant. Were there periods where overtime was worked by staff in the agreements triage team? Yes, definitely.

Senator PATERSON: Do you have a budget for overtime?

Ms O'Neill: I don't have that at hand.

Senator PATERSON: No, I'm not asking what it was. Does the Fair Work Commission have a budget for overtime?

Ms O'Neill: Yes.

Senator PATERSON: Was the amount expended on overtime in 2017-18 greater than or less than the budget?

Ms O'Neill: I don't have that information.

Senator PATERSON: You could take it on notice.

Ms O'Neill: I'm happy to take that on notice.

Senator PATERSON: Do you have a recollection, without the specific numbers?

Ms O'Neill: To be frank, I don't. That's partly because, whilst there's a line item in our internal budget, we operate very much as a whole of organisation on the administration side and we constantly adjust the budget, as the year progresses, as expenditure occurs. So, if expenditure is higher in one area, then we may well adjust the budget over the course of the year and reallocate resources.

Senator PATERSON: I'm happy for you to go back to your finance department or HR department to answer that on notice. Is it correct that staff were given the option of working overtime on Saturdays and Sundays in the unit?

Ms O'Neill: I'm sure that from time to time that would have been the case.

Senator PATERSON: Is there a standard policy on when overtime can be worked?

Ms O'Neill: The provisions relating to overtime for staff are dealt with in our enterprise agreement and require approval by line managers in advance.

Senator PATERSON: That doesn't answer my question directly, though. Does the Fair Work Commission have a policy about when overtime can be worked or should be worked?

Ms O'Neill: Not in a formal policy sense, no.

Senator PATERSON: So it's up to staff to decide?

Ms O'Neill: No, it's up to senior managers and, generally, directors.

Senator PATERSON: When senior managers are deciding whether to approve overtime, do they have any criteria for doing so? For example, do they have a preference for whether it's done on a Saturday or on a Sunday?

Ms O'Neill: Unless Mr Furlong can assist with that, we might have to take that on notice.

Senator PATERSON: You can't assist now, Mr Furlong?

Mr Furlong: I'd like to take that on notice.
Senator PATERSON: Okay. Given that staff can choose, as you said, to work overtime on a Saturday or Sunday, do you know—

Ms O'Neill: No, that's not what I said.

Senator PATERSON: Please correct me if that's wrong.

Ms O'Neill: I said there's no doubt that overtime is sometimes worked on Saturdays or Sundays. I'm not suggesting that that's at the employee's election. It would be approved by relevant directors and senior managers.

Senator PATERSON: Let me rephrase then: it's an option for them sometimes to work overtime on a Saturday and a Sunday—correct?

Ms O'Neill: Where there's a business need, yes.

Senator PATERSON: When there is an option available to them to work overtime on a Saturday or a Sunday, do you know proportionally how many choose Saturday and how many choose Sunday?

Ms O'Neill: No, I don't, and I'm not sure that that's precisely how it works. We've taken essentially that question on notice and we'll provide that answer.

Senator PATERSON: So you'll provide on notice what proportion of employees worked overtime on a Saturdays compared to a Sunday. Is there a different rate of pay for overtime for Saturday compared to Sunday?

Ms Carruthers: My recollection is that, yes, Sundays are a slightly higher rate of pay at double time. For Saturdays, I stand to be corrected, but I think it's time and a half for the first three hours and double time thereafter.

Senator PATERSON: It will be interesting, then, to see whether the different rate of pay on Saturdays and Sundays for overtime is borne out in the figures about when employees work, when they have the option of working on Saturday or Sunday.

Senator CAMERON: The Libs are after your penalty rates!

Ms Carruthers: If I can add to that, I think one of the relevant considerations is balancing the family responsibilities and so on of employees when they're working on weekends. It's not just about the rate of pay.

Senator PATERSON: Of course. Everyone will have different responsibilities, I guess. Some would have responsibilities on Saturdays and some would have them on Sundays. I don't imagine there'd be a particularly different proportion between Saturday and Sunday.

Senator CAMERON: Why don't you just be up-front about what you're trying to do?

CHAIR: Senator Cameron, order!

Senator PATERSON: Is my understanding correct that, during 2018, the Fair Work Commission held a series of meetings with stakeholders—business, for example—in relation to the agreement approval process?

Ms O'Neill: I think that what you're probably referring to is part of an exercise in user experience, to engage with a number of participants to get their experience and insights and feedback into the commission's process dealing with agreements.

Senator PATERSON: Mr Furlong, you're nodding. Are you more familiar with this than Ms O'Neill is?
Ms O'Neill: Part of the reason is there was a separate kind of exercise that was undertaken—we've spoken about this at previous estimates—where, for example, we engaged Mr Billson to conduct some consultation with small-business respondents, in particular. We undertook a similar exercise with applicants and other participants, focused more on unfair dismissals and more ranging feedback on the commission's processes. I was just trying to anticipate which—

Senator PATERSON: But feedback sessions were held with stakeholders about their concerns about the enterprise agreement approval process in 2018—yes or no?

Ms O'Neill: The purpose wasn't to hear their concerns.

Senator PATERSON: What was the purpose?

Ms O'Neill: It wasn't an airing in that sense. It was to gain insights and feedback, good and bad, about the commission's processes.

Senator PATERSON: In what way, if any, was their feedback documented?

Ms O'Neill: There's a report being compiled. We haven't got the final version at this stage.

Senator PATERSON: It hasn't been finished?

Mr Furlong: No.

Ms O'Neill: That's right.

Senator PATERSON: When is it due to be completed?

Mr Furlong: We're in the process of settling the final document at the moment. I envisage it will be anytime in the next month.

Senator PATERSON: When it is completed, what do you plan to do with it?

Ms O'Neill: I'm not sure that we've made a decision in this particular instance, but our general approach when we undertake these exercises, like the ones I mentioned a moment ago, is to make them publicly available on the commission's website. You've clearly got an interest in relation to the timeliness with which agreements are being dealt with by the commission.

Senator PATERSON: I do.

Ms O'Neill: It is a matter that is of significant concern to the commission. The fundamental driver, if you like, of the decline in performance in recent years—and we've spoken about this before—is the very high proportion of applications that either don't comply fully with the legislation at the time they're lodged or at the very least require additional information and inquiries to be made. As a result, those applications take longer to deal with and be processed by the commission. So our efforts are very much focused on making it easier for parties to make and lodge compliant agreement applications.

We've taken a number of steps. We've introduced a number of tools. We have—I think it might have even been earlier today—released some new guidance on our website. I'm happy to table that for the committee today. We do have copies. One of the significant things about this guidance is that we've undertaken a significant amount of analysis, looking at all of the finalised agreement applications over the course of 2018 and the common issues or defects that are commonly made. We include information about what those common issues are and some information and assistance as to how to avoid those in future applications.
One of the other initiatives that we have just introduced—and we had the first meeting of this yesterday, I think—was the establishment of a new user group. It picks up your point about obtaining and speaking to participants in the process to have an ongoing conversation about our processes. That group met for the first time yesterday. The participants were the organisations that made the most applications through the course of 2018 and associated organisations. I understand that the parties thought that was a useful and valuable initiative and exercise. As part of that, those organisations—

**Senator PATERSON:** This is quite a long answer. I appreciate the information you're providing and the point you're making, which is that the length of time it takes to approve an agreement in part is a reflection on the Fair Work Commission's efficiency, but it's also a reflection on other things, including the law and the complexity of some agreements. That brings me to the next point. Obviously the government has changed the Fair Work Act, in part in response to concerns about the length of time it's taking to approve agreements and technical issues, as we've discussed in these estimates before, about staples not being on the right document and paper clips instead of staples and other profound, important things like that holding up agreements. Do you anticipate that the changes the government has made will speed up the process of approving enterprise agreements?

**Ms O'Neill:** I'm not sure. I think it's too early to tell. The commission could deal with applications really quickly by, once an issue is identified, dismissing them on the basis that it doesn't comply.

**Senator PATERSON:** Indeed. That would be efficient but not very effective.

**Ms O'Neill:** Exactly. It's not in the parties' interests and it's not the approach that we generally take. Members try to assist and resolve the issues. In instances prior to the introduction of the discretion to overlook minor technical and procedural areas in the process in some respects, like a deficient notice of employee representational rights that you've mentioned, there was no discretion, there was no capacity, and the commission had to dismiss the application. But what happened in practice was a number of applicants faced with that information made the decision to withdraw their application and go back to the bargaining—well, withdraw their application.

With the passage of the bill, it confers that discretion to overlook certain defects. That of course requires the defect to be identified and then a consideration as to whether the defect is minor, procedural and technical and the discretion can be exercised. You can understand that the impact on timeliness is not immediately apparent. We'll have to see.

**Senator PATERSON:** So it could be that a higher proportion of agreements are successful, but the length of time it takes to approve those agreements might not change?

**Ms O'Neill:** That's possible.

**Senator PATERSON:** I will follow that with interest and I look forward to asking more questions at the next round of estimates or subsequent round of estimates about that. I do have other questions but I think I can put them on notice.

**CHAIR:** There being no more questions, please go with our thanks.

**Comcare**

[17:14]
CHAIR: We will now move on to Comcare. You were asked to appear. I will ask you a few general questions. I wasn't planning to, but it seems that the senator that wanted you here has decided not to appear. I understand that you don't have any questions, Senator Cameron? Did you wish to make an opening statement, seeing that you've come all this way?

Ms MacLean: No, I don't.

CHAIR: Can you give us a quick run-down on the financial performance of Comcare over the past few years and how you are tracking against your targets?

Ms MacLean: Broadly, Comcare is performing well, particularly over the last three to four years. Prior to that we had issues with our funding ratio and our premium rate. The organisation has worked hard, in partnership with our premium payers particularly, to improve our performance in that regard. Our budget has remained fairly consistent across the last four years. We're a revenue-raising organisation. We receive a very small amount of appropriation from government.

CHAIR: In terms of work flow, is your workload increasing? What's the general profile of the organisation?

Ms MacLean: Claims that are coming into the organisation are decreasing, but we are finding that work in the prevention space and earlier intervention and focusing on recovery and return to work is stepping up as a commensurate balancing act, in terms of the claims reducing over the past four years.

CHAIR: What's the scale of the claims reduction? Can you quantify that?

Ms MacLean: I can give you approximate claim numbers for a last year of around 2½ thousand. Prior to that I don't have like year on year past that with me today. I'm happy to take it on notice.

CHAIR: What are the drivers in the claims reductions?

Ms MacLean: It's a combination of things. We're receiving fewer claims and fewer claims are being accepted. But we're working more thoroughly with premium payers to ensure that we have greater capacity around early intervention and recovery and return to work. That's offsetting it.

CHAIR: In terms of what that means to people who are within the Comcare system, what does that deliver on the ground in terms of better outcomes?

Ms MacLean: We've seen a reduction in premiums for premium-paying agencies. That's a real flow-on effect there. Premiums have reduced, which is a cost out of agencies' budgets. And we're seeing staff return to work earlier, so more productive workplaces, things like that.

CHAIR: I asked you about the drivers, but in terms of Comcare's internal management system structures, have there been changes that have helped with this process, this reduction in premiums and better financial performance?

Ms MacLean: It's a combination of things. Particularly over the last four years we've been very committed to continuous improvement and how we can handle claims in a more efficient manner. We have certainly been working through a process with the ATO and DHS and delegated claims arrangements, which has helped us in terms of some efficiencies. We've had service providers assist us in claims determination. It's a combination of things that we're seeing that are helping us to improve.
CHAIR: It seems that no other senators are going to appear, in particular the senator who asked for you to appear. So we'll leave it there. I apologise. Thank you very much for being here today.

Registered Organisations Commission

[17:19]

CHAIR: We will move on to the Registered Organisations Commission. Welcome. Do you wish to make an opening statement?

Mr Bielecki: Yes, just a very brief one. As the committee will be aware, there's been a proceeding brought by the AWU against the Registered Organisations Commission. That's currently being heard by the Hon. Justice Bromberg of the Federal Court. At issue in the proceeding is whether there was a proper basis for the investigation commenced by the ROC into certain donations made by the AWU. The union has alleged that the decision to commence the investigation was made for an improper political purpose. This allegation and the other allegations by the AWU, which seek to impugn the conduct of the ROC, are strongly denied. As the matter is part-heard, it would be inappropriate for me to comment on the matters before the court in those proceedings. Similarly, as Mr Enright will give evidence as a witness in the proceeding, it would be inappropriate for him to make any comments or answer any questions on the matters before the court. For that reason we're not in a position to answer questions relating to the subject matter of the proceeding or the proceeding itself.

CHAIR: Thank you. Senator Cameron, you have the call.

Senator CAMERON: So the cover-up's still on.

Mr Bielecki: I reject that accusation.

Senator CAMERON: I repeat it. The cover-up is still on.

CHAIR: Senator Cameron, let's move to questions rather than impugning officials.

Senator Canavan: That's right, Chair. This is the time for questions. We're happy to take questions but accusations like that are not appropriate.

Senator CAMERON: This is an organisation that has completely lost any credibility. Mr Enright, why did you sit in on the AFP being questioned at estimates on Monday about their investigations into the leak of the ROC raid on the AWU?

Mr Enright: On Monday I called into Parliament House to make arrangements for a new identity pass; my other one had expired. Last week I made arrangements to meet with, or agreed to meet, a member of the AFP. I went into the committee room looking for that member of the AFP, who wasn't there. I spent 10 or so minutes there and left.

Senator CAMERON: You left after Senator Watt made note of you sitting up the back. That was when you left, wasn't it?

Mr Enright: That's the chronology. That had nothing to do with why I left. The reason I left is the person I was looking for wasn't there.

Senator CAMERON: Who were you looking for?

Mr Enright: A member of the AFP. I'm not sure whether I can name him. I'll take it on notice.

Senator CAMERON: So it was just a coincidence that there happened to be questions—
CHAIR: Senator Cameron, the official has answered the question.

Senator CAMERON: The official hasn't answered the question, not to my satisfaction—maybe to your level of satisfaction but not mine. So it just happened to be pure coincidence that the Federal Police were being questioned in relation to the raid on the AWU offices? It was just pure coincidence, was it, Mr Enright?

Mr Enright: It was no coincidence that the AFP were appearing at estimates. It was no coincidence that I went there looking for the person I was looking for. I was at Parliament House that day trying to make arrangements to get a new pass. None of those were coincidences; that's just what happened.

Senator CAMERON: What were you seeking to meet the AFP in relation to?

Mr Enright: We had a committee meeting last week in relation to whistleblowers and protected disclosures. The AFP officer and I had been engaging for some weeks about when to catch up. During the course of the meeting, I said: 'I'm at estimates next week. Let's use that opportunity.' I didn't know whether he was going to be there; I assumed he would be. I went there and he wasn't there.

Senator CAMERON: Why didn't you just ring him? Do you have his number?

Mr Enright: Yes.

Senator CAMERON: Why didn't you just ring him to see if he was available?

Mr Enright: I was in the building. I called in. I was there for 10 minutes and left. He wasn't there. That's what happened.

Senator CAMERON: You didn't consider texting him?

Mr Enright: No.

Senator CAMERON: You didn't consider ringing him? You just happened to wander in and sit up the back while the AFP were being questioned on a matter that you have been subpoenaed to appear in? It was just pure coincidence?

Mr Enright: There was no coincidence. This was a public hearing, open to the public. It was televised around the country. There was no coincidence. I knew the AFP were on. I went there. The member wasn't there, so I left.

Senator CAMERON: Did the AFP ask you to provide a witness statement?

Mr Enright: Yes.

Senator CAMERON: Have you provided a witness statement?

Mr Enright: Yes.

Senator CAMERON: Could you table that statement?

Mr Enright: I'd have to take that on notice.

Senator CAMERON: Why?

Mr Enright: Well, I'm not sure whether the AFP would want—the AFP took the statement. It's a matter for the AFP to determine what they do with those statements. I would have to consult with the AFP and see what they say.

Senator CAMERON: It's not the property of the AFP. It's your statement. You can provide it.
Senator Canavan: Be that as it may, the witness and myself as the minister are free to take matters on notice as per the rules of Senate committee procedures. The witness has taken that on notice, and I'm happy for him to do so. We'll take that on notice and come back to the committee.

Senator CAMERON: I'm entitled to keep asking questions.

Senator Canavan: You absolutely are. I am just reiterating that that question has been taken on notice.

Senator CAMERON: So it's your own statement, is it?

Mr Enright: I made a statement at the request of the Australian Federal Police.

Senator CAMERON: Have you been interviewed by the Australian Federal Police?

Mr Enright: No.

Senator CAMERON: Did you write a letter enclosing your estimates evidence?

Mr Enright: Did I write a—

Senator Canavan: Chair, could I reiterate: the official has taken the question on notice, and now Senator Cameron is going into asking about what's in the statement.

Senator CAMERON: I'm entitled to ask whatever I want to ask.

Senator Canavan: The official has said that he will take on notice whether to provide the statement. So asking what are the contents of the statement is, I think, repeating the question.

Senator CAMERON: Senator Canavan, why are you engaging in the cover-up now?

Senator Canavan: I reiterate that the official has taken the question on notice.

Senator CAMERON: Why are you engaging in the cover-up now?

Senator Canavan: Senator Cameron, these are the normal rules of the committee, which I'm sure you're well familiar with.

Senator CAMERON: I'm entitled to ask whatever I want to ask.

CHAIR: And officials are allowed to take questions on notice.

Senator CAMERON: I'm asking again: did you write a letter enclosing your estimates evidence?

Senator Canavan: We've taken that question on notice.

CHAIR: He's taken the question on notice.

Senator Canavan: As minister, I'm free to do so.

Senator CAMERON: Did you provide a letter enclosing your estimates transcript in addition to the statement?

Senator Canavan: Another question we'll take on notice.

Senator CAMERON: Mr Enright?

Senator Canavan: The question's been taken on notice.

Senator CAMERON: I'm not asking you, Senator Canavan.

Senator Canavan: Sorry, Senator Cameron—
Senator CAMERON: Point of order, Chair: Senator Canavan is a minister. He has got no responsibility for this organisation; it's an independent organisation. The minister has got no right to intervene and stop questioning of an independent statutory organisation—absolutely none.

Senator PATERSON: On the point of order: as I suspect Senator Cameron knows, Senator Canavan is the minister at the table and any official has the right to refer a question to the minister or a superior officer—we read that out at the beginning of every estimates. It's perfectly in order for the minister to take any questions—

Senator CAMERON: It's not.

Senator PATERSON: whether a senator would like it directed somewhere else or not.

Senator CAMERON: This is an independent statutory organisation—

Senator Canavan: Chair, on the point of order—

Senator CAMERON: and it's clear that the standing orders provide that the minister cannot intervene.

CHAIR: Senator Cameron, we acknowledge your position. Minister?

Senator Canavan: On the point of order: I question the point that Senator Cameron has just made. My understanding of the standing orders relating to committees is that all questions come through the minister, in this committee and in other standing committees, and it is always the right and privilege of the minister to take questions on notice if required. That has been done. The reason I am taking this question on notice has been—

Senator CAMERON: You've got no right to take it on notice.

Senator Canavan: Senator Cameron, hang on—I listened to your points. The reason this question has been taken on notice is because, as I outlined earlier, the official had already taken this matter on notice. Senator Cameron is continuing to be repetitive in his questions. He's free to do that, as long as you let him, Chair, but they'll continue to be taken on notice as per the original request.

Senator CAMERON: Chair, could I seek a short adjournment so we can get advice on this?

CHAIR: We will suspend briefly.

Proceedings suspended from 17:29 to 17:47

CHAIR: We'll resume the hearing. We've taken some advice from the Clerk. Basically, the situation is that, as an independent statutory authority, you have the perfect right to take questions on notice from any senator—Senator Cameron in this case. That is your right as an independent authority. The minister can assist you, as he did, in suggesting that the question you had taken on notice covered Senator Cameron's additional questions, but the minister cannot take the question on notice for you.

Senator Canavan: Just to clarify, Chair, that ruling is because these officials are from an independent statutory agency—is that right?

CHAIR: Yes.

Senator Canavan: So, for normal departmental staff I could take questions, but, because it's an independent statutory office, I can't. Fair enough. I accept that.
Senator CAMERON: I've got a win.

Senator Canavan: You've had one, Senator Cameron.

Senator CAMERON: In addition, what the Clerk indicated was that the independent statutory officer is different to a public servant. There are different degrees of independence, but the statutory officer should assert their independence. It's up to Mr Bielecki to do this, not the minister. The minister should not intervene. That's what was said. There is no hard-and-fast rule, but it's normal for the independent statutory officers to demonstrate their absolute independence. I can understand why Mr Bielecki can't do that, because of the lack of independence in the organisation.

CHAIR: That was commentary.

Senator CAMERON: That's why we get the situation we're in, where the government think they run—

CHAIR: Senator Cameron, do you wish to ask questions or do you want me to hand the call to somebody else?

Senator PATTERSON: On a point of order, Chair: I really am reluctant to extend this conversation, but I should say for the record that I have a different recollection to Senator Cameron of the Clerk's advice.

Senator CAMERON: I've written it down.

Senator PATTERSON: Certainly the interpretation he's put on the Clerk's advice is his political interpretation, not a fair reading of the Clerk's advice. Probably the best thing Senator Cameron said in his contribution is that there is no hard and fast rule when it comes to independent statutory officers.

Senator CAMERON: No hard and fast rule in terms of their degree of independence—

CHAIR: If you want to continue this discussion—

Senator CAMERON: Just a second—

CHAIR: Are we going back to questions, Senator Cameron?

Senator CAMERON: Okay. The Registered Organisations Commission, Mr Bielecki, is supposed to be an independent commission?

Mr Bielecki: It is an independent commission.

Senator CAMERON: I said 'supposed to be'.

Mr Bielecki: I know what you said, but I'm giving you my answer. It is.

Senator CAMERON: Then why did you not assert your independence and why did you then allow the Minister to intervene when it is your responsibility, not the minister's?

CHAIR: Senator Cameron, as the Clerk made it very clear, the minister's intervention was appropriate. He was clarifying that the two questions that the official had taken on notice were covered by that answer to your subsequent two questions.

Senator CAMERON: I have a point of order on what you have just said. I would ask you then to go back and have a look at the Hansard in relation to the intervention from the minister. The minister, I think, has indicated a position. I am happy with the position he has indicated following the advice. I'm not criticising Senator Canavan, the minister, in relation to
that. My criticism is of Mr Bielecki failing to assert his independence and allowing the minister—I don't think the minister did it for any ulterior motive, but Mr Bielecki again demonstrates the lack of independence of this mob that call themselves the Registered Organisations Commission.

CHAIR: Senator Cameron, do you have any questions?

Senator Canavan: Chair, on the point of order: like Senator Patterson, I do not want to delay this any further. As I said earlier, I accept the chair's ruling here. But I just want to clarify this. The advice here does not seem all that clear-cut. Odgers itself says that the Senate has, by resolution, asserted the principle that statutory authorities may not be subject to directional control. Presumably, there is no resolution in this case. But, because of those certain resolutions, the general principle has been that independent statutory officers should not have the same immunities as those provided to public servants. So it is not as clear-cut as I think Senator Cameron has made out, but I do accept your ruling and advice. I don't accept Senator Cameron's conclusion here that this is somehow an indication of the status of the Registered Organisations Commission.

CHAIR: Minister, I accept that contribution. I am going to seek further advice from the Clerk on this—obviously not now. The idea of varying degrees of statutory independence, and how you balance those, is I think problematic at the very least. I would like to get back to questions, Senator Cameron, if we can.

Senator CAMERON: Mr Bielecki, why didn't you assert your independence?

Mr Bielecki: Senator, my recollection is that you asked a question of Mr Enright, who said he would take it on notice, and then the minister made a contribution. From there, I didn't have either a need or a chance to say anything and, until we had this ruling, I didn't fully appreciate the procedures that would prevail.

Senator CAMERON: You didn't appreciate the procedures?

Mr Bielecki: These are very fine points that relate to the procedures of the committee. I am not across all those procedural issues.

Senator CAMERON: Mr Bielecki, you are an independent statutory officer. You are paid hundreds of thousands of dollars to come here and understand the processes of the Senate. Obviously, you don't. That's fine, but again it demonstrates what a crock the Registered Organisations Commission is.

CHAIR: Senator Cameron!

Mr Bielecki: I reject that—

Senator CAMERON: Reject it all you like!

Mr Bielecki: Even senators had to get advice from the Clerk.

Senator Canavan: About 20 minutes or so.

Senator CAMERON: I didn't have to get advice; I knew what was going on.

Senator PATTERSON: If only we were all as clever as Senator Cameron!

Senator CAMERON: Maybe that would be a good thing. So, Mr Enright: I refer to your evidence at estimates on 25 October. On page 121 you said that you'd check whether your media staff spoke to the minister's office. Is that correct?
Mr Enright: That's my recollection.
Senator CAMERON: You said you would be very confident—more than confident—that it 'could not have come from my office'. Is that correct?
Mr Enright: That's my recollection, yes.
Senator CAMERON: On page 139 you said that you didn't think he was aware prior to the search being conducted. Is that correct?
Mr Enright: Who's 'he', Senator? I can't recall.
Senator CAMERON: That's your acting media officer, who has now, in court, indicated that he was aware of the raid and he did advise people of the raid. You know that?
Mr Enright: That's contrary to my understanding. A couple of points there: you referred to someone as an 'acting media officer'. We had a media officer at the time.
Senator CAMERON: Who was that?
Mr Enright: Well, there's a practice in this committee not to provide the names of people less than the SES—
Senator CAMERON: It's not practice. I'm entitled to ask you whatever I want to ask you.
Mr Enright: I'm just saying that as I understood it there's a practice of not naming public servants who are not senior executive officers.
CHAIR: That absolutely is true at estimates hearings.
Senator Canavan: Yes, that's practice.
Senator CAMERON: So, are you—
CHAIR: I can't stop Senator Cameron asking the question.
Senator CAMERON: claiming public interest immunity on that issue?
Mr Enright: Not at all. I'm just referring to the practice that I understood to be the practice of this committee that public servants below Senior Executive Service level are not named.
Senator PATERSON: You're right, Mr Enright. They are not needlessly and wantonly named on the record, recognising that they aren't paid enough to have their names dragged through this unnecessarily.
Senator CAMERON: And this is not needless and it's not wanton. This is about the Registered Organisations Commission—an employee engaging in criminal activity—
Senator PATERSON: Allegedly.
Senator CAMERON: Allegedly.
Senator PATERSON: Has it been found by a court? Have they been charged by police? No. Neither of those things have happened.
Senator CAMERON: There's an admission under oath.
Senator PATERSON: It is a civil trial in which a comment's been made. I think it's a bit of a leap to say that they've been found to engage in criminal behaviour.
Senator CAMERON: So, Mr Enright: who was it?
Mr Enright: If your chair requires me to name them, I will.
CHAIR: No, I do not require you to name them.

Senator CAMERON: I require you to name them.

Mr Enright: Well, the chair said he doesn't require me to.

Senator CAMERON: The chair doesn't determine what I ask.

Senator PATERSON: A point of order, Chair: I heard Mr Enright take that on notice earlier, if I'm not mistaken.

Senator CAMERON: No, he didn't take it on notice. See, this is the problem, Chair, with the Registered Organisations Commission and the Liberal Party: you can't distinguish them. And they're now even covering up for each other. This is just outrageous—absolutely outrageous.

Senator PATERSON: Senator Cameron, the conspiracy is only in your own mind.

Senator CAMERON: Mr Enright, will you answer my question? There's public money being expended on this officer, and you are obliged—

CHAIR: Mr Enright, Senator Cameron is breaching convention. However—

Senator CAMERON: to answer questions on expenditure.

CHAIR: do not answer the question. You will need to make a public interest immunity claim or you'll need to take the question on notice.

Mr Enright: Well, I don't need to take the question on notice. The man's name is Greg Russo.

Senator CAMERON: Okay. That's fine. When did you find out—

CHAIR: Senator Cameron, I think we'll just hold it there. It is six o'clock. We are breaking for dinner.

Proceedings suspended from 17:59 to 19:01

CHAIR: We will resume this hearing with the Registered Organisations Commission. We are in continuation. Senator Cameron, you have the call.

Senator CAMERON: I think I was up to some questions of Mr Enright. I'm not sure exactly where I got up to, because I failed to mark it out. On page 319 of the Hansard at the last Senate estimates, you said that you didn't think he was aware prior to the search being conducted.

Mr Enright: I'm not sure who 'he' is, Senator.

Senator CAMERON: You know who it was, don't you? You don't know?

Mr Enright: I'm not sure who you're talking about—who 'he' is.

Senator CAMERON: Well, in the context of the—

CHAIR: You're reading a quote in isolation, Senator Cameron. Let's give the official the information.

Senator CAMERON: It was the media officer who was on secondment from the Fair Work Ombudsman. Does that—

Mr Enright: I'm not sure what your question is. There was no media officer on secondment to the Registered Organisations Commission. We had a contract media officer, whose name was Greg Russo.
Senator CAMERON: Yes. But there was previously a secondment, wasn't there, from the Fair Work Ombudsman?

Mr Enright: Prior to Mr Russo, we had another contractor, who was not from the Fair Work Ombudsman. He was another contractor.

Senator CAMERON: Okay. I've been trying to avoid naming, but I will if I have to.

Mr Enright: I'm sorry; I didn't get the question.

Senator CAMERON: I'm trying to avoid naming the officer, because there was some concern about naming the officers.

CHAIR: Sorry, Senator Cameron, I'm a little bit uncertain as to what your question actually is now.

Senator CAMERON: My question is going back to the Hansard at estimates on October 25. Do you have that in front of you, Mr Enright?

Mr Enright: I do here—on page 139, did you say?

Senator CAMERON: Yes.

Mr Enright: I have page 139 in front of me.

Senator CAMERON: And you said you didn't think he was aware prior to the search being conducted.

Mr Enright: Could you assist me, point me to where that is, please?

Senator CAMERON: I have extracts.

CHAIR: Perhaps give the official time to find that paragraph.

Mr Enright: What was your quote, Senator, please?

Senator CAMERON: The quote is that you said you didn't think he was aware prior to the search being conducted. This is one of your officers.

Mr Enright: Yes, I found the sentence.

Senator CAMERON: So you know who I'm talking about?

CHAIR: Mr Enright, just take time to read and put yourself in the context of what you were saying back then so you can answer Senator Cameron's questions.

Mr Enright: Yes, I understand what the context is now, Senator. Thank you.

Senator CAMERON: And it's only your officers?

Mr Enright: No.

Senator CAMERON: A former?

Mr Enright: No.

Senator CAMERON: Part time?

Mr Enright: There was a relationship between a Fair Work Ombudsman employee—

Senator CAMERON: Who was that?

Mr Enright: Do you want me—are you going to be naming again?

Senator CAMERON: Yes.
CHAIR: Senator Cameron, I will again counsel you. There is a strong convention in this place that we do not name junior officers. If you can please avoid naming junior officers. And I will remind the witness that you can take questions on notice or you can claim public interest immunity if you have grounds. So, Senator Cameron, if you can proceed with your line of questioning without requiring the name, I would ask you to do so.

Senator CAMERON: So this was a share officer, correct, with the Fair Work Ombudsman?

Mr Enright: I wouldn't describe it as a share.

Senator CAMERON: What do you describe it as?

Mr Enright: There was a Fair Work Ombudsman media person who was responsible for engaging other contract media people for the ROC. That was his role.

Senator CAMERON: That's what I said to you earlier. He was doing media for you, was he?

Mr Enright: No. I didn't understand. That's what you said either then or now. What I'm saying is that there was a Fair Work Ombudsman employee who was responsible for arranging contractors to work for the ROC, and I've already named Mr Russo, and he was a contractor. That Fair Work Ombudsman representative was responsible for engaging that contractor.

Senator CAMERON: So, if that was his job, how did he then get access to information about the Federal Police raid?

Mr Bielecki: Chair, if I could interrupt, these are matters that are squarely before the Federal Court. The officer that's being spoken about is scheduled to give evidence on Monday. That trial is part heard. It's not appropriate to do a running commentary on a part-heard court matter.

Senator CAMERON: You are aware that we are not bound by any claim you make on this. There are levels—

CHAIR: No—

Senator CAMERON: We're not.

CHAIR: The official is able to make a public interest immunity claim on the basis of—

Senator CAMERON: Well, he should make a public interest immunity claim.

CHAIR: Or he is able to take questions on notice. Those two options are always available to witnesses.

Senator CAMERON: But he's not taking it on notice. He's saying he doesn't want to answer, basically, because of a situation. I want him to make a public interest immunity claim if that's the case.

Mr Bielecki: The sub judice convention prevents discussions of court proceedings that are part heard until they've been determined. The reason for that is that there is a risk it will somehow prejudice or influence what the judge might do with it. It's a very longstanding convention, and to breach that convention does run the risk of someone being in contempt of court. My understanding is that committees have in the past—

Senator CAMERON: It doesn't.
Mr Bielecki: recognised that.

Senator CAMERON: Where is this convention laid out?

Mr Bielecki: Sub judice—it's a longstanding common-law convention.

Senator CAMERON: It doesn't apply in the Senate.

Mr Bielecki: My understanding was that it did.

Senator CAMERON: Who gave this advice?

CHAIR: The technical difference is that it's prejudice to legal proceedings, but—

Senator CAMERON: Who gave you this advice?

Mr Bielecki: Well, it's a general principle, a legal principle.

Senator CAMERON: No, I'm not asking you whether you think it's—I'm asking you who gave you the advice that you've just put forward.

Mr Bielecki: Well, I've had my position confirmed, but I didn't need advice to know the operation of the convention. The difficulty is, I'm afraid that we've got the court action running in parallel with these proceedings and there are ramifications for doing a running commentary on the court action, and of course you'll tell me that there'll be ramifications for not answering your question.

Senator CAMERON: Are you proposing that the judge would be influenced by anything you say in here?

Mr Bielecki: The principle is based on not having running commentary so there's no risk of that. I'm not claiming any particular status in the process; this is the rationale behind that longstanding convention.

CHAIR: Can I be clear that you are making a public interest immunity claim on the basis of prejudice to legal proceedings?

Mr Bielecki: Yes, if I have to frame it that way; my understanding is based on sub judice. But the underlying principle is prejudice to the legal proceedings that are currently on foot and will resume on Monday.

Senator CAMERON: On that claim, there is, clearly, a position where this is about whether it would influence the judge or influence the proceedings. There's absolutely no way what Mr Bielecki says in here is going to influence the judge. The judge will make a determination on the issues that are before him, not what's happening in the Senate. So I take the view that you should answer these questions.

CHAIR: I will uphold the public interest immunity claim that you've made. We're happy to go into private session if you want to, Senator Cameron, and find all our colleagues.

Senator CAMERON: Oh well, you know, the cover-up is still on.

CHAIR: Senator Cameron!

Senator CAMERON: Mr Enright, when you said you didn't think he was aware prior to the search being conducted, this is the officer, Mark Lee—that's who we're talking about—who's been named in court in relation to being part of the leak. That's correct, isn't it?

Mr Enright: Yes.

Senator CAMERON: This is who we're talking about?
Mr Enright: It's who you're talking about, Senator, yes.

Senator CAMERON: And you were talking about him as well. And you spoke about his position.

CHAIR: The official has not mentioned that name, Senator Cameron, only you have.

Senator CAMERON: No, but that's who we're talking about.

CHAIR: Well, that's—

Senator CAMERON: This is another public servant who has leaked, who—

CHAIR: That's your statement, Senator Cameron, and we've already talked about the convention of not naming junior officers. Let's try to get back to questions that the witnesses can answer.

Senator CAMERON: Just let me make my position clear. When someone's engaging in criminal activity—

CHAIR: I think your position is very clear, Senator Cameron!

Senator CAMERON: then I don't care whether they're a junior officer or not. That's why we think there should be a commission against corruption. That would fix this lot out as well.

So Mr Enright, on page 139, you also said:

It's possible he was aware that searches would be undertaken, but I don't think it's the case that he was aware of the time, for example.

Given what you've outlined this Mark Lee's job was, why would he even get near this information? Who would be advising him?

Mr Bielecki: Well again, Chair, these are matters that are going to be explored in great detail in the court action, and it's not appropriate to be doing this commentary on a matter that's—

Senator CAMERON: It's not commentary! You're in Senate estimates.

CHAIR: Are you making the same PII claim?

Mr Bielecki: Yes, Chair. Senator Cameron has made the observation that I may not be able to influence the judge. I accept that, but he's also making commentary. The reality of the matter is that there should be no commentary about a part-heard matter.

CHAIR: I'm happy to uphold your PII claim. However, Senator Cameron can ask questions. I would caution Senator Cameron to ask appropriate questions.

Senator CAMERON: I always ask appropriate questions, Chair.

Mr Bielecki: Thank you, Chair.

Senator CAMERON: I'll ask again. Mr Enright, given that you outlined this officer was providing advice about the hiring of staff, how could this officer have accessed that information within ROC?

Mr Enright: It's the same response, Senator. These matters, particularly that matter, will be very much the subject of an issue at stake in these civil proceedings, and I'm concerned about any potential that I might be in contempt of court for answering them. So we can't answer them, on that basis, and the case is going on on Monday.
CHAIR: You're putting forth a public interest immunity claim on the same basis as for previous questions.

Mr Bielecki: We need to, because it's not appropriate to do a running commentary on matters before the court which are part heard.

Senator CAMERON: Mr Bielecki, I just wish you'd stop covering up.

CHAIR: Senator Cameron!

Senator CAMERON: This is an organisation—

CHAIR: Ignore the senator. That's not a question.

Senator CAMERON: So you are the commissioner of an organisation that has leaked information about a Federal Police raid, where the Federal Police—

CHAIR: Senator Cameron, you are making unsubstantiated accusations that have not been tested.

Senator CAMERON: I'm asking a question. Can I ask the question. So this leak, according to the AFP, could have put their officers in danger, and you want to try and hide behind public interest immunity?

Mr Bielecki: No, not at all. The leak also put my officers in danger. It was a great concern. But, as I said in my opening statement, the various allegations that are made are strongly denied by us. We're in the middle of the process, and it would be inappropriate for me to comment on matters currently before the court. The sub judice convention predates this event by a hundred years, I'd say. It's been around a long time.

Senator CAMERON: You're making this up, aren't you?

Mr Bielecki: Well, I don't know the exact period, but it's a long time.

CHAIR: Please do not engage in exchanges of that nature with Senator Cameron. It encourages him.

Mr Bielecki: Sorry, Chair.

CHAIR: Senator Cameron, you have the call if you want it.

Senator CAMERON: On page 139, Mr Enright, you said:

It's possible he—

that's Mark Lee—

was aware that searches would be undertaken …

How would he have been aware that searches would have been undertaken given what you described his job as? Do you guys leak that much?

Mr Bielecki: Chair, I need to repeat the claim.

Senator CAMERON: Then you went on to say:

… I don't think it's the case that he was aware of the time, for example.

What did you think he was aware of, Mr Enright?

Mr Bielecki: Chair, these are matters that are issues in the Federal Court proceeding. I repeat the claim.

Senator CAMERON: You repeat the claim. On page 140, Mr Enright, you were asked:
… there is a possibility that the media officer of the Fair Work Ombudsman was in discussion and maybe even providing advice to your media officer?

You replied:
I don't think that's the case, no.

You were asked:
Do you know?

And you replied:
I'm reasonably confident.

Do you want to correct the record now?

Mr Bielecki: That is a matter that is an issue before the court, and I need to repeat the claim.

Senator CAMERON: What's the claim?

CHAIR: The public interest immunity claim that's been upheld. Again, Senator Cameron, if you want to discuss it we can go into private session, or you can move to areas which are not to do with a legal action currently at foot.

Senator CAMERON: So you're part of the cover-up.

CHAIR: Senator Cameron!

Senator PATTERSON: Point of order, Chair.

Senator CAMERON: I withdraw. On page 140—

CHAIR: Last question for now, Senator Cameron. I'm going to share the call.

Senator CAMERON: you said:

What I can say is that any other media person, whether they're in the Fair Work Ombudsman or anywhere else, would not have been advised. Security would have been an issue for me with my media officers, so I'm confident about that.

So you were confident about the security, but it's now been revealed that your confidence was sadly misplaced. Do you want to correct the record?

Mr Bielecki: Chair, this is a matter that's clearly an issue in the proceedings, and I repeat the claim.

Senator PATTERSON: I'd like to ask some questions about worker entitlement funds. I understand that the trade union royal commission found that these funds are worth about $2 billion in total. Correct me if I'm wrong on any of these points. They're typically set up by registered organisations and at least the purported purpose of them is to hold funds to pay workers their entitlements. Is that correct?

Mr Bielecki: I'm aware of those funds. They're not funds that we would typically regulate.

Senator PATTERSON: That was what I was coming to. That's my first question: does the ROC regulate these funds? I take it your answer is that the ROC does not.

Mr Bielecki: We would become involved if there were some financial reporting by a registered organisation that dealt with that. Maybe it was inaccurate. Our involvement is in that financial space.
Senator PATERSON: If the ROC is not the regulator for these funds, are you aware of any other body that has regulatory oversight or responsibility for worker entitlement funds?

Mr Enright: If they're corporations, it would be ASIC.

Mr Bielecki: Mr Enright makes the good point that, if they're corporations, ASIC may have a role in regulating those. It's not to say that we may not get a whistleblower disclosure in relation to something like that, but it's not our bread-and-butter work.

Senator PATERSON: My advice is that they don't have a regulator per se.

Mr Bielecki: They don't.

Senator PATERSON: That's my advice. So they've don't make any reports to you about their financial activities?

Mr Bielecki: Organisations do.

Senator PATERSON: Registered organisations do?

Mr Bielecki: Yes, registered organisations do. Whether that would extend to an employee benefit fund, I don't know. I don't think so. Mr Enright might know.

Mr Enright: Well, the commissioner is right. We might see some aspect of it if a registered organisation reports in their financial report that they're a controlling entity or they have some ownership or—

Senator PATERSON: or receive income, perhaps.

Mr Enright: or receive income from a worker entitlement fund. Every financial report lodged by a registered organisation with the commission is required to be audited and, as part of that audit, if any particular organisation owned or controlled a worker entitlement fund, we would expect that, as part of that audit, that would have been audited as well. But that's as far as it extends. We don't regulate them or touch on them in any further way.

Senator PATERSON: So you wouldn't have any oversight on, for example, whether workers have been compelled to make payments into these funds?

Mr Enright: None at all. I understand that the government has some legislation pending on this before the parliament. As a matter of principle, would the ROC be well equipped to regulate these funds if it were given the authority to do so by parliament?

Mr Bielecki: Of course it's a policy decision for government about what jurisdiction is given to the ROC.

Senator PATERSON: Indeed.

Mr Bielecki: If we were given jurisdiction about that, it would look to probably be an extension of the work we do in financial analysis.

Senator PATERSON: Yes. What I'm trying to understand is whether you have the expertise. Would overseeing these sorts of funds be similar to the work you do overseeing union and financial affairs?

Mr Bielecki: It would be. There's potentially an added dimension that those funds may be regulated by trustees, and that would be something of a variation to what we're doing.

Senator PATERSON: Yes. My understanding is that there aren't any governance standards currently imposed on these funds. They're not required to register. They're not
required to provide write annual reports or to have an independent director. They’re not required as yet to make disclosures about, for example, any benefit that an official might gain from promotion of these funds. And it's also not clear that workers have choice between different funds available to them. But, Chair, I think I'll leave it there.

CHAIR: Back to you, Senator Cameron.

Senator CAMERON: Thank you. Mr Enright, I want to take you to page 140 again. You indicated at Senate estimates that you were confident that your media officer did not disclose that there was a raid to the media officer in the Fair Work Ombudsman. You replied, 'I'm confident that he didn't do it until some later point.' So you became aware that he did leak? Is that correct?

Mr Enright: No.

Senator CAMERON: Well what.

Mr Bielecki: Chair, this is material that's an issue in the court proceedings that are currently part heard before the honourable Justice Bromberg, and it's not appropriate to do commentary on a part-heard court matter, so I repeat my claim.

Senator CAMERON: We're not doing a running commentary. I'm asking questions.

Mr Bielecki: I understand you're asking questions.

CHAIR: You've answered the question. There's no need to engage in banter with Senator Cameron.

Senator CAMERON: I'm not engaging in banter. I'm engaging with questions, Chair.

CHAIR: Well, ask your question, Senator Cameron.

Senator CAMERON: I go to page 140, Mr Enright. I asked you how can you be so confident. You replied: 'Well, I've had conversations with—well, I know; I was there during the day, so I know how it unfolded. There was no certainty about the time.' Do you want to explain that in the context of what's happened now, where Mr Lee has been accused of being part of the leak?

Mr Bielecki: Chair, these are matters that are squarely issues that are going to be determined by the Federal Court, and I repeat the claim that I made before.

Senator CAMERON: Mr Enright, when did you first find out that Mr Lee was the source of the information that was illegally leaked?

Mr Enright: I'm reading the same media that you're reading, I suspect. I read that there has been an allegation of that kind made, and that's the extent of my knowledge.

Senator CAMERON: When did you first find out that Mr Lee had been interviewed by Minister Cash and offered a job in her office? Was it a week before the raid?

Mr Bielecki: Chair, this will also be an issue that will be before the court in the part-heard proceedings.

Senator CAMERON: How do you know?

Mr Bielecki: I know because the applicant in that case has filed lots of grounds that it's challenging this on and issues around the leak, part of what's in the court case.
Senator CAMERON: But I'm asking about Minister Cash offering a job to Mr Lee. I'm simply asking when—

CHAIR: I'm not sure how this witness would have particular evidence on that anyway.

Senator CAMERON: He may have.

CHAIR: He may have.

Senator CAMERON: He can answer the question.

CHAIR: Or he may make the public interest immunity claim that he has already made.

Senator CAMERON: May he. I'll ask the question again. When did you first find out that Mr Lee had been interviewed by Minister Cash and offered a job in her office? Was it the week before the raid?

Mr Bielecki: Chair, I repeat the claim.

Senator CAMERON: So what discussions, Mr Enright, did you have with the minister or her office about the AWU investigation between the time the allegations were made and *The Australian* and the raid was executed?

Mr Bielecki: Chair, these are matters that will be issues before the part-heard Federal Court proceeding, and I repeat my claim.

Senator CAMERON: Mr Enright, did you ring the minister's office and ask whether ROC should be acknowledging the letters you receive from the minister?

Mr Bielecki: Chair, these are issues that have arisen in that case and I'm sure will be further explored in the explored in the case, and I repeat the claim.

Senator CAMERON: So you're seriously saying that this an officer in this commission can't tell the Senate whether you rang the minister's office and asked whether ROC should be acknowledging the letters you received from the minister?

Mr Bielecki: The question you ask relates to an issue that is in the proceedings and, as I've been saying, I don't think it's appropriate to be doing a running commentary on a part heard matter. It's contrary to the convention of sub judice, and I repeat the public interest immunity claim.

CHAIR: And we welcome Minister Payne.

Senator Payne: Thank you and my apologies. I thank Senator Canavan for his assistance.

CHAIR: No problem at all. Senator Cameron currently has the call.

Senator CAMERON: It's now public knowledge that you did ring the minister's office. Why did you do that, Mr Enright?

Mr Bielecki: Chair, this, I'm sure, will be a question that will be put to Mr Enright in the proceedings. The information has emerged in the proceedings. These are issues that are before the court; I repeat the claim.

Senator CAMERON: So, Mr Enright, do you think it's appropriate conduct for you, a senior officer in a so-called independent statutory authority, to be ringing the minister's office on these issues?

CHAIR: There's an accusation inherent in that question that hasn't been tested—

Senator CAMERON: It's public knowledge.
CHAIR: I would dispute whether it's public knowledge. It is something that has been stated publicly.

Senator CAMERON: You can't dispute. It is. Why don't you let Mr Enright or Mr Bielecki at least try and answer? I mean, it's bad enough the blanket claims for public interest immunity without you encouraging it.

CHAIR: Senator Cameron.

Senator CAMERON: Well, you are.

CHAIR: It is a matter before the court. The public interest immunity claim has been upheld. The official is well within his rights.

Senator CAMERON: I'm asking again, Mr Enright: why did you do that? Why did you ring the minister's office?

Mr Bielecki: I repeat the claim, Chair.

Senator CAMERON: So do you, Mr Bielecki, believe it's appropriate conduct for your officers to ring the minister's office in relation to this type of issue?

Mr Bielecki: As I said in my opening statement, there are various allegations made by the AWU in the proceedings seeking to impugn the ROC. They're strongly denied by the ROC. As I said, it would be inappropriate for me comment on matters currently before the court, so I repeat the claim.

Senator CAMERON: Mr Bielecki, have you been subpoenaed?

Mr Bielecki: Not that I'm aware of, no.

Senator CAMERON: You're not aware of much. Mr Enright, is that the only time you sought advice from the Minister or her office about how the ROC should conduct itself in relation to this investigation?

CHAIR: Well, there's an assumption in the question that the official has not agreed with. So I'll let you take the question—

Senator CAMERON: It's on the public record.

CHAIR: I'll let you take the question but I will just make that point.

Mr Bielecki: I repeat the claim, Chair.

Senator CAMERON: So, Mr Bielecki, what procedures have changed in the Registered Organisations Commission since the raid?

Mr Bielecki: That's a very wide question. We consistently and continually improve our procedures. I couldn't give you a narrative of each particular one that may have changed. We have a lot of procedures we deal with because we do a lot of work, for example, in the education space. We do a lot of work in the financial analysis space. In that space, for example, there are instruments that are issued that deal with the kinds of material that should be included in financial returns.

Senator CAMERON: Sorry to interrupt, but have these procedures changed since the raid? That's what I'm asking you.

Mr Bielecki: No, what I'm saying to you is our procedures are constantly being improved and some of those have changed since that point in time.
Senator CAMERON: I would have hoped so.

Mr Bielecki: I'm not saying it's because of the execution of the search warrant; I'm just answering your question.

Senator CAMERON: I'm asking you about procedures and protocols for conducting investigations. Have they changed?

Mr Bielecki: They haven't changed.

Senator CAMERON: So nothing's changed—business as usual for the ROC?

Mr Bielecki: Procedures and protocols haven't changed.

Senator CAMERON: So it is business as usual. Have any of the processes changed since the raid, the processes that you operate under?

Mr Bielecki: Not that I can think of, no.

Senator CAMERON: So it is business as usual. Have any of the processes changed since the raid, the processes that you operate under?

Mr Bielecki: Procedures and protocols haven't changed.

Senator CAMERON: So have you never had a discussion internally about this disastrous position this so-called independent organisation finds itself in? You've had no discussions about whether you should change procedures or processes within the office—is that correct?

Mr Bielecki: That's a different question, and, as I've said, we constantly review the procedures and protocols that we adopt. If we see that they can be improved on, we will.

Senator CAMERON: Have you done that?

Mr Bielecki: As I've said to you, I can't recall any procedure that has been changed since that point in time.

Senator CAMERON: No processes have changed either?

Mr Bielecki: Not that I'm aware of, no.

Senator CAMERON: So it's business as usual?

Mr Bielecki: It's the same procedures and processes that are still in place.

Senator CAMERON: What have you done to ensure that your organisation never again gives the Liberal government a heads-up about a raid so that they can make a political point in the media? What have you done?

CHAIR: That's purely speculative. You don't need to answer that question.

Senator CAMERON: It's not speculative. It's exactly what happened.

CHAIR: You don't need to answer that question.

Mr Bielecki: Thank you, Chair.

Senator CAMERON: I'll ask you again: what have you done to ensure that your organisation never again gives the Liberal government a heads-up about a raid so that they can make a political point in the media?

CHAIR: Senator Cameron, you know that's not a legitimate question.

Senator CAMERON: Of course it is. Why is it illegitimate?

CHAIR: Because it begs many questions, many of which are in dispute and some of which are before a court.
Senator CAMERON: Chair, you should not engage in this. I thought you were better than this.

CHAIR: Thank you, Senator Cameron. I appreciate that.

Senator CAMERON: I did. I thought you were better than this. Mr Bielecki, will you answer the question?

CHAIR: You don't need to answer the question.

Senator CAMERON: Yes, he does have to answer the question, or he has to claim public interest immunity. That's what he has to do.

Mr Bielecki: I reject the accusation in the question.

Senator CAMERON: The accusation in the question?

CHAIR: Yes, there is a clear accusation in the question, Senator Cameron.

Senator CAMERON: You've made no changes to ensure that your organisation never gets into this terrible situation again. That's your evidence—correct?

Mr Bielecki: The procedures and processes of the ROC haven't changed since that point in time so far as I'm aware.

Senator CAMERON: Have you ensured that your media advisers receive training about what they can and cannot share with the minister or her office?

Mr Bielecki: There's no need for training, because our media adviser is aware.

Senator CAMERON: How is he aware? Is it a he?

Mr Bielecki: It's a he, yes.

Senator CAMERON: How is he aware?

Mr Bielecki: He's aware his approach is not to deal with any information without approval from either myself or Mr Enright.

Senator CAMERON: Where did he get this information from?

Mr Bielecki: Say that again?

Senator CAMERON: Where did he get these instructions from?

Mr Bielecki: That's his modus operandi.

Senator CAMERON: Pardon?

Mr Bielecki: That's his approach to dealing with media matters.

Senator CAMERON: You are the commissioner, aren't you?

Mr Bielecki: Yes.

Senator CAMERON: You have not done anything to provide appropriate training to your media advisers in relation to this issue. It's just modus operandi. Is that your evidence?

Mr Bielecki: Our single media adviser does not have any dealings with the minister's office.

Senator CAMERON: That's what you thought about Mark Lee, isn't it?

Mr Bielecki: It's inappropriate for me to comment on matters that are currently before the court.
Senator CAMERON: I'm not sure he did think if he knew!

CHAIR: Senator Cameron.

Senator CAMERON: Did you know that Mark Lee was engaging with the minister's office?

Mr Bielecki: I would very much like to talk to you about these things, but I'm prohibited from doing so.

Senator CAMERON: No, you're not. You can answer the question.

Mr Bielecki: At risk of being in contempt of court.

Senator CAMERON: You would not be in contempt of court.

Mr Bielecki: I cannot give a running commentary on matters that are issues in the trial.

Senator CAMERON: Nonsense. Have they received any advice about not breaching the Criminal Code?

CHAIR: I'm not sure I understood the question, Senator Cameron, so could you—

Senator CAMERON: Have your media advisers received any advice about not breaching the Criminal Code, because a previous media person breached the Criminal Code?

CHAIR: Ignore the last part. You can answer the first part of the question.

Senator CAMERON: That's on the public record.

Mr Bielecki: There's no need for advice as such. All staff have to comply with the law. I would expect that of all staff in the ROC.

Senator CAMERON: If they were your expectations and you weren't involved in it, then your expectations have been dashed, haven't they?

Mr Bielecki: Mr Enright reminds me that we do privacy training and discussion at our weekly staff meetings, so that would serve to reinforce the importance of maintaining the privacy obligations of the ROC.

Senator CAMERON: Why did Mr Enright have to remind you of that? Weren't you aware of that?

Mr Bielecki: I was aware of it.

Senator CAMERON: Why didn't you tell me?

Mr Bielecki: It just didn't come to mind to mention it.

Senator CAMERON: How much has been expended on legal fees on this issue now by ROC?

Mr Bielecki: The total litigation costs paid to date are $507,182.70. We've received invoices in the sum of $42,903.01, but those invoices have not yet been paid.

Senator CAMERON: So about $622,000?

Mr Bielecki: No. It adds up to, I think, close to $550,000.

Senator CAMERON: So where's the $570,000 come in?

Mr Bielecki: That was the first figure. It was $507,000, not $570,000.

Senator CAMERON: It's $507,000 plus the $42,000?

Mr Bielecki: Yes.
Senator CAMERON: Sorry about that. Who's paying the legal fees in relation to the AWU matter?

Mr Bielecki: The ROC is paying.

Senator CAMERON: So that's cost you half a million dollars?

Mr Bielecki: As I've mentioned, it's about $450,000.

Senator CAMERON: Are you expecting further expenditure?

Mr Bielecki: Yes. The trial is ongoing. As you know, or you may not know, there's been over 20 interlocutory hearings in the matter and it's been necessary for the ROC to have been represented by counsel and solicitors at 19 of those. We've been in trial all of last week, and there are more hearing days.

Senator CAMERON: Have you made an internal budget appropriation for the legal fees?

Mr Bielecki: Not an appropriation as such, but I'm monitoring the budget very closely.

Senator CAMERON: So you're not sure how much this could cost you?

Mr Bielecki: The course of the trial is not something that I can control. It's taking the course that it's taking and, if it takes more days, it will cost more.

Senator CAMERON: Do you think there might be $10,000 more or $100,000 more or even more? You don't know, do you?

Mr Bielecki: I can't be sure, but it does, obviously, cost money to have barristers and solicitors in court every day.

Senator CAMERON: How many barristers are representing you?

Mr Bielecki: We have one senior barrister and one junior barrister.

Senator CAMERON: What about instructing solicitors?

Mr Bielecki: We have two instructing solicitors, and I think there's one third person who I think is a paralegal, but I'm not sure.

Senator CAMERON: Can anybody tell me what exactly the situation is? If you're not sure, who is sure? Does anyone here know exactly what it has cost you?

Mr Bielecki: I'm sure we'll be getting some more invoices pretty quickly, but I can take on notice to provide you with a figure when we've got those.

Senator CAMERON: How has this case affected your budget in terms of your operations?

Mr Bielecki: Obviously, it's a $450,000 expense that we weren't anticipating. It's also a situation where proceedings have been brought against us.

Senator CAMERON: I thought it was $507,000?

Mr Bielecki: Sorry, $550,000. Thank you for the correction. It's a proceeding that's been brought against us that we are defending.

Senator CAMERON: That's obvious. Given that you had a budget allocation, have you had discussions with government about making up the budget allocation as a result of this huge expenditure of taxpayers' money?

Mr Bielecki: No.
Senator CAMERON: Do you intend to do that?
Mr Bielecki: No, that is not my present intention. I don't think I—
Senator CAMERON: So you will continue to operate even though you're up to half a million dollars expenditure now? What's your total budget appropriation?
Mr Bielecki: Our budget for the 2018-19 financial year is $7.752 million.
Senator CAMERON: So it's a fair lump out of the budget?
Mr Bielecki: I'm afraid it is, yes.
Senator CAMERON: Is this going to affect your operational capacity?
Mr Bielecki: No. It's obviously soaking up resources but, no, it won't interrupt our business as usual.
Senator CAMERON: Have you been overallocated by government—that you can soak up half a million dollars in your budget?
Mr Bielecki: No. In the area we're in, it's going to happen, in a number of the enforcement actions that we take and in litigation that we embark upon, that there will be defences run. In this case, which is slightly atypical, the case is brought against us and we have to run the defence. But the budget allows for us to deal with contested and contentious litigation matters.
Senator PATTERSON: I'm sure the Labor Party would be pleased about that and the unions would be pleased about that—less enforcement actions. It's a dividend from their court actions.
Senator CAMERON: We'll just get rid of this lot; that's what we'll do.
Senator PATTERSON: In the meantime, just tie them up with litigation to find your documents.
CHAIR: Senator Paterson! Senator Cameron!
Senator CAMERON: We'll save the public a lot of money. We'll get rid of these incompetents.
CHAIR: Senator Cameron!
Senator CAMERON: Have your procedures relating to the process of executing search warrants changed?
Mr Bielecki: No. The procedure's laid out in the legislation.
Senator CAMERON: So it's business as usual?
Mr Bielecki: Search warrants really aren't business as usual. They happen from time to time, quite irregularly.
Senator CAMERON: But you could have internal processes when you're aware of a search warrant being executed to keep that to senior staff, so that your media staff don't know about it in the future. Have you done anything along those lines?
Mr Bielecki: The occasion hasn't arisen, but I'm happy to take on—
Senator CAMERON: But it has! That's why you spent half a million dollars.
Mr Bielecki: But you're asking since that—since the execution of the warrants.
Senator CAMERON: Yes. Your procedures were flawed. You had a junior officer aware that the Federal Police were executing a search warrant. That junior officer committed a criminal offence and publicised it, and you've done nothing about it.

CHAIR: There are assertions in the question and you do not need to accept.

Senator CAMERON: It's a public record.

Mr Bielecki: I don't accept them, Chair.

Senator CAMERON: It is on the public record.

Mr Bielecki: The accusations are on the public record, and there are allegations in the case. They're being defended. The case is part-heard and I'm not going to discuss or comment on matters that are currently before the court.

Senator CAMERON: With the legal fees that you've paid so far, do they include Mr Enright's legal fees?

Mr Bielecki: There are no separate fees for Mr Enright. The fees relate to the defence of the ROC.

Senator CAMERON: So Mr Enright is using the same lawyers that the ROC's using currently in this Cash case?

Mr Bielecki: Mr Enright is a member of the ROC. The case is brought against the ROC, and the ROC is defending the case.

Senator CAMERON: Is the ROC paying the legal fees of anyone else? Who are the individuals?

Mr Bielecki: The ROC is not paying legal fees for any individuals. The ROC is paying for the defence of the allegations made against it by the AWU.

Senator CAMERON: Does that include Mr Lee? Are his fees being paid by the ROC?

Mr Bielecki: His fees are not being paid by the ROC.

Senator CAMERON: Do you know who's paying his fees?

Mr Bielecki: I don't have that kind of information, Senator.

Senator CAMERON: Has Mr Lee sought payment from ROC of his legal fees?

Mr Bielecki: No, Senator.

Senator CAMERON: I suppose, to sum up, you won't answer any questions?

CHAIR: The officials have answered many questions.

Senator CAMERON: The cover-up is on.

CHAIR: Senator Cameron, you made many accusations.

Senator CAMERON: You have made no changes to your procedures in the context of what is a disgraceful breach of legal activity by the AFP. You've done nothing there. You've made no changes to your education program. I mean, what do you do? This is an incompetent organisation.

Mr Bielecki: I reject that, Senator. The ROC is comprised of very many dedicated and hardworking people. We undertake our work in three streams. The first stream is a very active education stream, where we produce—I think we're up to possibly 150—different fact sheets or guidance notes to assist organisations with compliance. We put out a newsletter and
subscriber notices. We have over 800 subscribers who rely on us for information. We also provide specific, tailored reminders to organisations. Last financial year, there were in excess of 1,400 reminders given specifically to specific organisations to help them with their compliance. And if our general resources are still not enough for an organisation to understand its obligations, we take queries from them by telephone or at information sessions and provide specific advice to them. That's a very big part of what we do.

The second part of what we do is the second stream, the analysis—

Senator CAMERON: Before you get to the second part—

CHAIR: No; the official has the right finish his answer.

Senator CAMERON: I'm going to let the official finish, but I want to ask a question on that point, if you don't mind. You don't mind?

CHAIR: Do you wish to finish your answer?

Mr Bielecki: As long as I can finish. I would like to help the senator if I can.

CHAIR: Finish your answer and then we'll go to the next question.

Mr Bielecki: Thank you, Chair. The second stream is the financial analysis stream. The 106 registered organisations that we regulate and I think it's around 375 or 385 branches, including those registered organisations, have to lodge with us annual returns and financial returns. All of those are assessed. Some are assessed on a preliminary basis, looking for fundamental things that might be missing or incorrect. Every year a proportion, roughly about 20 per cent, are subject to a more detailed assessment. By this means we are able to keep an eye on, I suppose, the financial dealings of the registered organisations and their branches.

Registered organisations report to us if they have in excess of $2 billion in assets, and I think if they earn something in the order of $1.5 billion in revenue. So there are quite a lot of financial matters to be reviewed. That stream also deals with the registration of auditors. That's a new requirement that came in with the amendments to the act. That has given us access to the auditor cohort, so we have started providing materials and training for the auditors so that they are able to understand the specific features of our act.

Also, that stream will be involved, together with other parts of the ROC, in undertaking for the first time an audit of officer training. Officers who take up roles that involve financial obligations are required under the act to complete training within six months of doing so. We're not sure that everyone has, but we've alerted everyone for a long time now that we're proposing to do that audit. If there was someone who hadn't done the training, we would hope that by now they have.

Our third stream is compliance. In that area we have a number of tasks that go on. One of the most busy areas is in relation to protected disclosures, or commonly known as 'whistleblowers'. Up until 17 January—they're the latest figures I have—we've had more than 130 potential disclosures made. Investigations have been completed in relation to 40 of those. This is an important part of our work, because these whistleblowers alert us to a wide variety of potential contraventions.

We've also taken the next step, which is to prepare material that organisations themselves can make use of so that they could be a first port of call for a whistleblower. If they want to adopt the materials we're making available, they would be able to establish an internal
whistleblower scheme and speak-up culture. I note with interest that the parliament has just enacted some new whistleblower laws in the corporate area and for the private sector, if I understand it correctly. That work has a number of strictures that apply to it. Investigations have to be conducted within tight time lines. There's quite a deal of work to be done to manage it. Disclosures can be made to other agencies. Some disclosures that are made to us have to be referred to the Federal Police, and so that's a very busy area of our work in the compliance area. We have a number of investigations underway, which are referred to on our website. From memory, there are five or six.

Senator CAMERON: Have you got much longer to go?

Mr Bielecki: Say again?

Senator CAMERON: Have you got much longer on this little diatribe?

Mr Bielecki: You've asked me what we do, Senator, and what I'm trying to tell you is that we do a lot. We have a number of cases running in the courts, and we've run a number of cases in the courts.

Senator CAMERON: So you're going to be responsible for providing advice on officer training for registered organisations, or will you be engaging in officer training?

Mr Bielecki: No, we don't provide the training. We approve trainers, who come to us and ask for approval of packages. We've been making the point for a number of months now—

Senator CAMERON: You've answered my question.

Mr Bielecki: Thank you, Senator.

Senator CAMERON: If you can't even organise appropriate training within your own organisation, how can you provide advice to registered organisations when you're such a mess yourselves?

Mr Bielecki: I reject the premise of your question. I reject the accusation. My view is that ROC staff are very well trained.

Senator CAMERON: Look, I reckon you've probably got some good staff there, but the leadership is just abysmal. The leadership is absolutely abysmal.

Mr Bielecki: I reject that.

CHAIR: I don't think it was a question anyway.

Senator CAMERON: Given that you couldn't even ensure compliance with the law in your own organisation, how can anyone be confident that you and Mr Enright can provide the leadership to provide any compliance measures elsewhere?

Mr Bielecki: I reject the allegation embedded in your question. The ROC is getting very good leadership.

Senator CAMERON: Is that self-praise? Where did you hear that? Because I haven't heard it anywhere.

Mr Bielecki: I don't move in your circles, Senator; I just know the hard work that we do and the hard work—

Senator CAMERON: Yes, but hard work is different from leadership.
Mr Bielecki: Senator, you're forcing me to embark upon a discussion about the merits of my leadership style. They speak for themselves.

Senator CAMERON: Well, I haven't seen it, I must say. So contraventions: how can you be advising registered organisations about how to avoid contraventions or deal with contraventions, how can you enforce action against contraventions if your own staff are engaged in contraventions and cover-ups?

Mr Bielecki: I deny the allegations embedded in your question.

Senator CAMERON: That's on the public record.

Mr Bielecki: What's on the public record is a bunch of accusations.

Senator CAMERON: Mostly true.

Mr Bielecki: I don't accept that for a moment.

Senator CAMERON: Well, we'll come back to that, I'm sure. When will you answer my questions? When will you be in a position to answer my questions?

Mr Bielecki: If you're referring to the questions that touch on issues that are before the Federal Court, when the court has finally disposed of the matter we'll be able to talk about it.

Senator CAMERON: I don't want to talk about it. I want you to answer my questions.

CHAIR: The official answered your question, Senator Cameron.

Senator CAMERON: You must be a mind reader. I didn't get it from that response. I'm sure all the Liberals get it, hey?

CHAIR: Senator Cameron, do you have any further questions?

Senator CAMERON: So you are committing to, when this court case is finished, providing answers on every one of those questions I've asked tonight?

Mr Bielecki: What I'm committing to is when the courts are finished with the matter—bearing in mind that there could be an appeal by one party or another—when all of that's over the sub judice convention will no longer apply and if you want to ask questions about what went on in the proceedings I will be able to answer them.

Senator CAMERON: Mr Enright, because you're basically the person that does the business in this organisation, will you start to provide answers to these questions that are available as soon as all the litigation is finished? Could you start work on that?

Mr Enright: I'm not sure what starting work means.

Senator CAMERON: Let me explain to you. The questions I've asked tonight, can you start documenting answers to those questions and provide them when the court litigation is finished?

Mr Enright: I'd love to be able to answer those questions in this evening, but unfortunately we can't. I absolutely undertake that, once all that matter is resolved that the commissioner has referred to I'll be happy to answer every question you've got that's relevant.

Senator CAMERON: I'm asking you about the questions that have been asked tonight. Will you be able to come here with answers to the questions that have been asked, without me having to sit and go through this nonsense again?

CHAIR: The witness answered the question.
Senator CAMERON: No, he didn't.

Mr Enright: Let me just repeat: when these matters are resolved, as the commissioner has indicated, I'll sit here and answer every possible question that you have that's relevant to this matter, and I'll be glad to do so.

Senator CAMERON: Will you be in a position to answer them immediately?

Mr Enright: Immediately the matters the commissioner has referred to have been resolved. I can't see any impediment, subject to the appeal process he's talking about. I'll be more than happy to answer every possible relevant question you have in relation to this matter, and I'll be glad to do so.

Senator CAMERON: Mr Bielecki said that this could be a long-drawn-out court case. Hopefully we'll have a change of government and we'll be able to get rid of this incompetent, terrible organisation that is simply a front for the Liberal Party's attacks on working people in this country.

CHAIR: Let's move on from the commentary. Is that the end of your questions, Senator?

Senator CAMERON: I'm not getting any answers, so what's the point? It's either incompetence or public interest immunity.

CHAIR: I'm about to release the Registered Organisations Commission.

Senator PATERSON: Before, you do, Chair, I'd like to make the observation that we've effectively just had a couple of hours of sustained abuse and smear from Senator Cameron towards public servants who are simply trying to do their job. Senator Cameron is perfectly entitled to disagree with the purpose of the organisation and the legislation that established it, and we have different philosophical bases between our parties for that. I'm appalled at the way public servants have been treated in this hearing today by Senator Cameron. I think it's very unfair to people who are just trying to do their jobs.

Senator CAMERON: Competent, non-biased public servants get treated well. People like these don't.

CHAIR: I release the Registered Organisations Commission. You go with our thanks. We now move to the Australian Building and Construction Commission.

Senator CAMERON: Jeez, from one disaster to another.

Australian Building and Construction Commission

[20:05]

CHAIR: Welcome. Do you wish to make an opening statement?

Mr McBurney: I do, Chair.

CHAIR: Please go ahead.

Mr McBurney: I will address the committee on two matters which have arisen since my last appearance at Senate estimates. Firstly, on 14 December 2018, the Minister for Jobs and Industrial Relations announced the appointment of two new deputy commissioners to fill vacant roles within the ABCC. Ms Jill Jepson has been appointed as deputy commissioner of corporate and code. Ms Jepson has retained her responsibilities as chief operating officer for the ABCC and taken on new responsibilities as the deputy commissioner responsible for the building code group. Ms Jepson commenced in her new role on 17 December 2018. Mr Matt
Kelleher has been appointed deputy commissioner of legal and has responsibility for oversight of all legal matters arising within the agency, including our litigation. Mr Kelleher commenced in his new role on 7 January 2019. Both newly appointed deputy commissioners are at the table.

Secondly, I wish to draw to the committee's attention further a matter—that is, that section 119A of the Building and Construction Industry (Improving Productivity) Act 2016, which required that the minister must cause to be conducted a review into the operation of the act. The formal report on the independent review of the act was tabled in the federal parliament on Thursday 6 December 2018. The independent review, conducted Rex Deighton-Smith of Jaguar Consulting, examined the performance by the ABCC of its full service regulator function, the independent oversight of the ABCC's compulsory examination powers, whether higher penalties are acting as a deterrent in preventing contraventions of designated building laws and whether the act should be amended.

The review assessed that the activities of the ABCC since its establishment, together with the strategic priorities identified by the ABCC commissioner, have been consistent with its full service regulator function. I note that the full report and recommendations have been published on the Department of Jobs and Small Business' website, as has the government's response. To the extent that the report impacts on the operations and makes recommendations regarding the functions of my agency, we have carefully considered the report. We have provided information to industry regarding the report. We have also provided a link to the report from our website. I'm happy to take questions in due course on any matters arising from the report. Thank you, Chair.

CHAIR: Due course would probably be about now. Senator Cameron?

Senator CAMERON: With the report that you just spoke about, who funded the JBWere consulting report?

Mr McBurney: I'm not able to answer that question. I believe that it's a question for the department, but I can take it on notice and provide an answer for you.

Senator CAMERON: You don't know?

Mr McBurney: I'm not aware of precisely who funded the independent review.

Senator CAMERON: Government funding, obviously?

Mr McBurney: I would presume it's funded in one way or another by the government.

Senator CAMERON: Have you heard the old saying 'he who pays the piper calls the tune'?

Mr McBurney: Is that a question?

Senator CAMERON: Yes.

Mr McBurney: Yes, I have heard of that saying.

Senator CAMERON: That's good. Very appropriate, isn't it? Were there any measures in MYEFO which impacted upon funding for the ABCC?

Mr McBurney: Sorry, could you repeat the question?

Senator CAMERON: Was there any funding allocations since the 2018 budget?

Mr McBurney: For the ABCC?
Senator CAMERON: Yes.

Mr McBurney: Yes, there has been an announcement by the minister of additional funding for the ABCC. That announcement was made on 12 December 2018. The minister committed additional funding of $3.7 million over four years, commencing in 2019-20. The funding has been earmarked to engage additional resources. Part of those additional resources are to help safeguard workers' entitlements.

Senator CAMERON: How much is going into workers' entitlements?

Mr McBurney: The announcement by the minister indicated that the additional funding of $3.7 million would also involve an ASL increase of seven staff. I expect three of those seven staff to be applied to our wages and entitlement team. I anticipate that's where we will allocate three of the seven additional staff.

Senator CAMERON: You anticipate that, but you haven't made a final decision?

Mr McBurney: The final decision will be made on 1 July, when the funding kicks in. There are—

Senator CAMERON: Why would you wait until then?

Mr McBurney: Because we're required, under our act, to apply our resources proportionately in accordance with complaints made to the agency. There are three areas identified for the additional staffing and the additional funding. One of them is wages and entitlements. One of them is an additional responsibility we've assumed, which is security of payments. The third identified area for a need for additional staff is front-line operations in the state of Queensland.

Senator CAMERON: How is this broken down over the forward budget years?

Mr McBurney: As I understand it, the $3.7 million is to be spread evenly over the forward estimates for the four years, commencing on 1 July, 2019.

Senator CAMERON: How many workers have been approached or contacted or are under investigation for attendance at the political rallies last year in support of Australians who need a pay rise?

Mr McBurney: I will ask Deputy Commissioner Pettit to address this issue, as he has had carriage of matters arising from the workers' rallies. Just for clarification, we're dealing with workers' rallies that occurred on different dates in late 2018. But I'll ask Mr Pettit to address your question.

Mr Pettit: We currently have six investigations ongoing in relation to the alleged unlawful industrial action of workers in leaving their worksite to attend the Change the Rules rallies. It would be inappropriate for me to provide detail of ongoing operational activities.

Senator CAMERON: I'm not asking you that. I'm simply asking how many people are under investigation?

Mr Pettit: There are six investigations currently underway.

Senator CAMERON: Okay.

Mr Pettit: I don't think it's appropriate for me to disclose how many workers are being investigated.

Senator CAMERON: Why not?
Mr Pettit: Because it may prejudice the investigation.
Senator CAMERON: How would it do that?
Mr Pettit: It's normal protocol that we don't disclose ongoing operational activities.
Senator CAMERON: I'm not asking about protocol. I'm asking about how this would have any influence on your investigation?
Mr Pettit: Disclosing what is occurring during the course of an investigation may dissuade some people from cooperating with us.
Senator CAMERON: I'm not asking you about what's happening in the course of the investigation. I'm simply asking you: how many workers are under investigation? That's a simple question. That's not going to affect your investigation.
Mr Pettit: I'll take it on notice and see if I can provide that information to you.
Senator CAMERON: So these six investigations—are these six companies or six what?
Mr Pettit: There's a mix. Of the six investigations, some relate to individual projects and some relate to particular head contractors who reported workers from multiple sites leaving work on the day.
Senator CAMERON: So head contractors reported workers, did they?
Mr Pettit: There's an obligation under the Building Code for code-covered entities to report incidents.
Senator CAMERON: How many head contractors reported workers?
Mr Pettit: I don't have that in front of me. Give me a—
Senator CAMERON: There are only six overall investigations. Mr Pettit, this is your area of responsibility?
Mr Pettit: Yes.
Senator CAMERON: And you don't know the six without having to go back and look at some documents?
Mr Pettit: I just didn't bring all the papers up with me. There's only limited space at the table. We received 34 notifications from building companies.
Senator CAMERON: Is that head contractors? Where does 'head contractors' come in?
Mr Pettit: I'd have to take that on notice as to whether they were all head contractors, with some of them subcontractors. They were all code-covered entities.
Senator CAMERON: But you said to me that there were six investigations split between individual projects and head contractors. That was your answer. I'm just asking you to explain. Now you've got 34 building companies.
Mr Pettit: On the stats I have in front of me, we received 34 reports in relation to workers attending Change the Rules rallies from code-covered entities. There are six of those that are still open as investigations. I'll take on notice—
Senator CAMERON: There were 34 reports, so 28 are not being followed up—is that correct?
Mr Pettit: We opened nine investigations.
Senator CAMERON: You said there were six investigations.
Mr Pettit: Yes, we opened nine. You were asking, 'Did you open an investigation into every one of those reports?'

Senator CAMERON: No, I'm asking you: if there's 34 building companies, how many head contractors were there?

Mr Pettit: I'll take that on notice. I may have misspoken before.

Senator CAMERON: How many individual projects were there? Can you take me to them?

Mr Pettit: I don't have that level of detail in front of me.

Senator CAMERON: Do you know what's going on?

Mr Pettit: I just didn't bring that level of detail with me. I'm happy to take it on notice.

Senator CAMERON: Mr Pettit, you are responsible for this.

CHAIR: Senator, the official is allowed to take the question on notice.

Senator CAMERON: I thought it was bad with the ROC—this is even worse! So 34 building companies have advised you that workers went off the job—is that correct?

Mr Pettit: Yes.

Senator CAMERON: How many investigations are underway with those 34 building companies?

Mr Pettit: We opened nine investigations. Three of those have subsequently been closed, and there's six ongoing at the moment.

Senator CAMERON: What happens with the rest? Are they finished—gone?

Mr Pettit: Of those other reports?

Senator CAMERON: Yes.

Mr Pettit: There is no intention to take further action in relation to the other reports.

Senator CAMERON: What are the penalties for individual workers?

Mr Pettit: It's $42,000.

Senator CAMERON: So $42,000 is the penalty for an individual worker. That could be anywhere from all of their salary for a year to a big proportion of their salary, wouldn't that be right?

Mr Pettit: That's a matter for the court as to what penalty they impose.

Senator CAMERON: But that's the penalty that's available?

Mr Pettit: It is.

CHAIR: Is that the maximum?

Mr Pettit: That is the maximum. In the last proceeding against workers in which penalties were imposed, they received a penalty of $1,400 each against a maximum of I think $10,800.

Senator CAMERON: So they lost a week's wages?

Mr Pettit: I don't know what the wages of the workers would have been.

Senator CAMERON: There's the potential for an individual worker be fined $42,000.

Mr Pettit: That's the maximum penalty, yes.
Senator CAMERON: How could a worker afford that?
Mr Pettit: Senator, I—
Senator CAMERON: You don't know, do you?
Mr Pettit: I think that's a matter of opinion.
Senator CAMERON: It's not a matter of opinion. I'm asking: how could a worker, even if they earn $70,000, afford to pay this penalty?
CHAIR: The official does not need to answer that question.
Senator Payne: I'm not sure that's a judgement you can ask the official to make.
Senator CAMERON: The officials are prosecuting these issues. It's their responsibility to make sure an investigation is undertaken where workers could lose $42,000. For a lot of them, that's half a year's wage. For many of them, it could be their yearly salary.
Senator Payne: I understand the point that you're making, Senator, but the officials are administering the law as it stands. I'm not sure that's an assessment that you can ask them to make. They're doing what they're required to do under the law.
Senator CAMERON: That would be the equivalent of you, Minister, losing about $170,000; correct?
Senator Payne: I've not done the maths.
Senator CAMERON: It was close.
Senator Payne: Thank you.
Senator CAMERON: Dear oh dear. How did the ABCC become aware of the allegations that these workers attended the rally without permission?
Mr Pettit: As I said, we received reports from companies who are covered by the Building Code.
CHAIR: Which they are required to give—is that correct?
Mr Pettit: That's correct.
Senator CAMERON: The companies are obliged to advise the ABCC of workers attending the rally without receiving permission.
Mr Pettit: They're required to inform the ABCC of alleged unlawful industrial action.
Senator CAMERON: Attending a rally for political reasons as unlawful?
Mr Pettit: No, attending a rally in itself is not unlawful under our legislation; however, the failing or refusing to perform work is unlawful.
Senator CAMERON: It's cause and effect, isn't it?
Mr Pettit: It was open to any employee to seek leave from their employer.
Senator CAMERON: Are you aware of any other organisations like the ABCC in OECD countries?
Mr Pettit: No.
Senator CAMERON: There are none, are there?
Mr Pettit: I'm unaware; I've never done that research.
Senator CAMERON: Commissioner, are you aware?
Mr McBurney: I must confess: I haven't done that research. I don't know what the equivalent bodies might be in other jurisdictions.

Senator CAMERON: So, if I put it to you that there is no equivalent, you wouldn't know?

Mr McBurney: I don't know.

Senator CAMERON: So you've just got this myopic view about what happens here. You don't look around to see if there are other organisations engaged in similar attacks on workers. You don't do that. You don't take the view that you need to understand what's happening elsewhere?

Mr McBurney: I don't regard the work that my agency does as being properly characterised as an attack on workers.

Senator CAMERON: Of course it is! You're saying a worker being fined $42,000 is not an attack on that worker?

CHAIR: It's the responsibility of the ABCC to do what is—

Senator CAMERON: I'm not asking you, Chair!

CHAIR: required under the act.

Senator CAMERON: Chair, you are not entitled to start answering questions. This is an independent organisation.

Senator PATTERSON: Point of order, Chair.

Senator CAMERON: I'll make a point of order. Senator Paterson has taken a point of order.

Senator PATTERSON: Senator Cameron, in a very clever way, is effectively trying to get the officials to express a view on a policy matter by asking them about the appropriateness of the law that they administer—whether the fines are appropriate and what the impact of the fines is. The officials did not write the law. They were not responsible for passing the law. They're responsible for enforcing it. He's asking them to express an opinion on a policy by asking them about the appropriateness of those fines.

Senator CAMERON: So you've never looked around the world to see if there are any other organisations doing similar work?

Mr McBurney: What I've done is ensure that I'm fully across my functions, and my functions are set out in section 16 of the act, and I derive my functions from the federal parliament, which has determined that I must exercise the functions in section 16 of the act. Furthermore, I've been directed, and I'm required by legislation, to discharge my functions in a professional and apolitical manner.

Senator CAMERON: Well, if there's a change of government, you won't be there, so you won't have to worry about what has happened elsewhere.

Senator PATTERSON: Tell us about what might happen in the Senate, Senator Cameron.

CHAIR: Senator Cameron!

Senator CAMERON: How many, if any, code covered entities are under investigation for not notifying the ABCC of workers attending the rally without permission?
Ms Jepson: We don't have that information to hand, but we can provide that to you on notice, if you like.

Senator CAMERON: If you can't give me the numbers, are there any at all?

Ms Jepson: We're not aware of any.

Senator CAMERON: Have there been companies who may have breached this obnoxious act that you haven't come after?

Mr McBurney: The responsibilities I have as commissioner are to discharge the functions in section 16, and it says I must do so without distinction between class or category of building industry participants. So what we do is act on all complaints that are provided to the agency that constitute a contravention of the law that arises within our jurisdiction. Furthermore, as well as responding to complaints received, we investigate any contraventions that we're aware of that come to our attention by whatever means, be it from reports from industry, notifications under the code, media reports or referrals from other agencies. But it's clear under our act that we must investigate any contraventions that arise.

Senator CAMERON: A proper little spy organisation, aren't you.

CHAIR: Senator Cameron, let's stick to questions rather than make commentary.

Mr McBurney: Sorry, Senator?

Senator CAMERON: A proper little spying organisation.

Senator Payne: We'll take that as a comment.

Senator CAMERON: Yes, it is a comment.

Senator Payne: Yes. Well, it's not a question.

Senator CAMERON: How many workers are under investigation for attending the rally?

Mr Pettit: I'll take that on notice. I don't have that number with me.

Senator CAMERON: Wouldn't you think you'd have been asked? Do you just come here without any information?

Mr McBurney: Senator, could I answer the question, as commissioner, which I'm entitled to do?

Senator CAMERON: Sure.

Mr McBurney: We have six live investigations into unlawful industrial action in relation to an unknown number of workers attending the rallies. Those investigations are ongoing, and Mr Pettit has provided details of how many investigations are currently open and how many notifications have been received. The precise number of workers under investigation will depend upon what responses have been received to date from workers. So one of the steps taken in the investigation is to write to each worker, afford natural justice to the worker and ask them for an explanation as to why they failed to attend work. So the number of actual workers under investigation will vary, depending upon where each of the six investigations is at. We can take the question on notice and we can provide you with an answer on notice: as at a specific date, how many workers were under investigation as at that date.

Senator CAMERON: So you have actually written to these workers—some of them?

Mr McBurney: Some of them, yes.
Senator CAMERON: How many pieces of correspondence have been issued?

Mr McBurney: Senator, we're talking about six investigations—

Senator CAMERON: No, I'm talking about up till now—

Mr McBurney: Yes. So—

Senator CAMERON: —how many workers have received correspondence from the ABC in relation to their attending a political rally?

Mr McBurney: Senator, in relation to the six open investigations that concern the rallies held in the second half of 2018, we will take that question on notice and we will provide you with an answer on notice as to how many letters have been sent as at this stage.

Senator CAMERON: Is it Mr Pettit who is in charge of this?

Mr McBurney: Mr Pettit is the deputy commissioner responsible for operations.

Senator CAMERON: Mr Pettit, why can't you tell me how many letters have been issued up till now?

Mr Pettit: Senator, I don't have that information with me and I would need to take it on notice.

Senator CAMERON: So do you know?

Mr Pettit: No, I don't know, Senator. I need to take that on notice.

Senator CAMERON: You don't know. Why don't you know?

CHAIR: The officials have taken it on notice, Senator Cameron. Let's move on.

Senator CAMERON: Oh, my goodness! It's been reported in the media that the ABCC has compelled subcontractors to provide workers' postal addresses for the purposes of their investigation; is this correct?

Mr Pettit: Yes, Senator.

Senator CAMERON: Provide me some details on how you did this and what responses you've had.

Mr Pettit: Senator, this is to facilitate the process where we write to the workers to give them an opportunity to indicate if there was a reason why they didn't attend work on the day or why they left work when they should otherwise have been there. So we approach their employers to get their details so we can write to the workers to give them that opportunity.

Senator CAMERON: What part of the act provides for employers to provide home addresses of workers to the ABCC?

Mr Pettit: Senator, we have a general power to request information from employers in the course of our investigation.

Senator CAMERON: So you've got a power to request. Does that mean there is a compulsion on the employer to comply?

Mr Pettit: Yes. Section 72 of our legislation allows our inspectors to enter premises and to access records relevant to a compliance purpose. And then, further to that, section 77 allows our inspectors to issue a notice to produce a record or document to the inspector. And that's the provision where, if an employer, for example, in this situation, didn't comply with it, they could be subject to a civil penalty for not complying with our notice.
Senator CAMERON: So have you issued notices to each of these 34 building companies?

Mr Pettit: It wouldn't have been to all 34. If you want an exact number of how many had notices issued, I'd have to take that on notice.

Senator CAMERON: I'm beginning to think Nigel Hadgkiss is back in town. Do the six investigations relate to six individual companies?

Mr Pettit: Senator, as I said before, some of the investigations relate to an individual employer. Others relate to a project on which there were multiple employers.

Senator CAMERON: How many of the six are for individual employers?

Mr Pettit: I don't have that number before me, Senator. I'll take it on notice.

Senator CAMERON: Oh, goodness! So you obviously don't know—or won't tell me—how many employers engaged—

CHAIR: Senator Cameron, the official has every right to take something on notice.

Senator CAMERON: I'm asking a question. How many contractors have got multiple companies underneath them that you're investigating?

Mr Pettit: Again, Senator, that's the inverse of the question you just asked—

Senator CAMERON: Don't you know?

Mr Pettit: I don't know the break-up between the six of how many involve a single entity employer and how many involve multiple employers on the one site.

Senator CAMERON: Didn't you think you would be asked these types of questions, given the political nature of the activity you're undertaking?

Mr Pettit: I did not think you'd be asking for that level of detail, no.

Senator CAMERON: You didn't?

Mr Pettit: No.

Senator CAMERON: Is there anyone here who has that knowledge? You've got a number of officers here in addition to what's here at the main table.

Mr Pettit: We'd have to interrogate our case management system to go through each investigation. As the commissioner was saying earlier, some of these things may have started with a subcontractor on a site, and over the course of the investigation—the first step in investigations is to see whether subcontractors actually gave their employees permission to leave the site. Some of the subcontractors will fall out during the process as they disclose that they did give permission, and there will be some who disclose they didn't give permission, and those ones will still be on foot.

Senator CAMERON: Have coercive powers been used in this investigation?

Mr Pettit: No, Senator.

Senator CAMERON: Have they been threatened in the course of the investigations?

Mr Pettit: No, Senator.

CHAIR: Sorry, I didn't hear the question.

Senator CAMERON: Sorry, Chair. I asked if coercive powers had been used, and the answer was no.
CHAIR: I heard that.

Senator CAMERON: I asked if they had been applied for threatened in the course of the investigation, and the answer was—

Mr Pettit: No, Senator. In terms of our examination powers, they haven't been used. I'm unaware that any threats have been made to use those.

Senator CAMERON: So what resources have been expended to date to investigate workers attending a political rally?

Mr Pettit: Just to make it clear, we are not investigating whether they attended the rally; we're investigating whether they performed work on the day that they were rostered to perform work on.

Senator CAMERON: Come on!

Mr Pettit: It may be that workers never got to the rally. We don't know whether workers ultimately made it to the rally or just took the day off.

Senator CAMERON: Well, what resources have been expended on workers taking a day off?

Mr Pettit: I'll take that on notice and provide you the detail in relation to each investigation.

Senator CAMERON: What resources have been expended on employers not reporting an employee's attendance?

Mr Pettit: As we indicated before, I'm not aware of any activity we've undertaken on that front. It's a difficult one for us to investigate because how do we know that a code covered entity's workers have gone off the site unless it's reported to us? It is one of the things that when our inspectors visit a site to do code compliance activities they will look at to see whether there are any gaps in which workers all left the site. They may well look at the site diary and see if there is any indication there that workers left the site. But we can't open an investigation into something we don't know has occurred.

Senator CAMERON: Are you aware of a company called Liberty OneSteel?

Mr Pettit: Yes, Senator.

Senator CAMERON: Workers from Liberty OneSteel who are alleged to have not turned up for work on that day and who may have attended the Australia Needs A Pay Rise Rally is one cohort that's been contacted for information, according to the media. Is that correct?

Mr Pettit: That is one of those six investigations. It wouldn't be appropriate for me to provide detail.

Senator CAMERON: You remember that now, do you? Why couldn't you have told me that when I asked you?

Mr Pettit: You were asking me for the breakdown, across the six, of who was a head contractor and who was a subcontractor. I thought you were seeking numbers, not identities.

Senator CAMERON: What are the identities, then?

Mr McBurney: The identity of the companies who have reported matters to the ABCC will be a subject of a claim of public interest immunity because I consider—
Senator CAMERON: You've just told me one.

Mr McBurney: Senator, can I finish my answer?

Senator CAMERON: Well, when you're answering—

Mr McBurney: Yes, I'll address that issue.

Senator CAMERON: address why you're prepared to indicate yes to one but not others.

Mr McBurney: As I understand your question, you've asked for the identity of the companies in relation to which workers may have taken unlawful industrial action. I make a public interest immunity claim in relation to the details of investigations that are currently on foot and ongoing concerning the six investigations Mr Pettit referred to, detailing who is under investigation or detailing the companies who may have made notifications to the ABCC. In respect of OneSteel, the OneSteel matter has been reported in the media and Mr Pettit has confirmed that they relate to one of the investigations. So, that is a matter in the public domain and we can confirm that OneSteel is the contractor in relation to which we have an ongoing investigation of unlawful industrial action. I just wanted to foreshadow the details of that and the other investigations. I would be loath to provide any information that might prejudice our investigation. What I can do—

Senator CAMERON: Do you really want to fine these workers 42 grand—

Mr McBurney: is provide whatever information would assist the committee at the conclusion of the investigation. I can do that in relation to all six investigations. We're also in a position to provide to the committee, on notice, the numerical break-up and detail relating to the six investigations, but not the identity of companies involved. That might prejudice our ongoing investigations.

CHAIR: I know—how long is a piece of string—but do you have any prospective time frame on the investigation? Do you expect it to be dealt with in weeks, months?

Mr McBurney: The six investigations are at different stages. Some will be more advanced than others, but I might defer to Deputy Commissioner Pettit, who can give an indication as to the likely time frame. I might just make one observation: that we do set an internal KPI to achieve and complete investigations within 12 months. We're dealing with matters that arose last year. Wherever possible, we complete investigations in a much shorter period. In relation to three of the nine investigations that initially commenced, three have already been finalised. We have six ongoing. They will all be completed at different times. I will ask Mr Pettit if there is anything he can add to my answer.

Mr Pettit: I envisage the majority of the remaining six will be finished by the middle of the year. I can also assure the committee that those workers who have been written to during the course will be given a letter at the end of the process to inform them of the outcome, if there is no finding against them.

Senator CAMERON: Well, they'd better vote Labor, otherwise they could lose 42 grand. Given the ABCC’s jurisdiction is limited to commercial and civil construction, on what grounds have these workers been contacted?

Mr Pettit: My understanding of the OneSteel investigation is that that contractor is in the business of prefabricated components to use on building sites, which falls within the definition of ‘building work’ under our legislation.
Senator CAMERON: So, this is a widening, you claim, of your jurisdiction?

Mr McBurney: Our jurisdiction is set out in the act. In any investigation, one of the assessments we undertake is whether the matters under investigation are within jurisdiction. That's a matter that our legal team will address in each individual investigation. I'm just reluctant to embark on an analysis or commentary of the particular facts in the OneSteel matter, if that would prejudice the ongoing investigation—

Senator CAMERON: Let's just talk about steel work in general. Do you consider that they're now covered by ABCC legislation?

Mr McBurney: What we must look at in every investigation is the definition of 'building work' set out in section 6 of the act. The definition includes, under subsection (1)(d)(iv):

the prefabrication of made-to-order components to form part of any building, structure or works, whether carried out on-site or off-site; …

Section 6 is a matter that requires examination in any investigation we are currently—

Senator CAMERON: Does a steel-rolling mill fall under that legislation?

Mr McBurney: That's a matter we won't need to explore in any given investigation.

Senator CAMERON: Have you explored it in relation to OneSteel?

Mr McBurney: I don't want to—

Senator CAMERON: It doesn't matter what you want to do. I'm asking you if you have explored that issue in relation to the public information we have that OneSteel workers are under investigation? Have you carried out that assessment?

Mr McBurney: What's been disclosed publicly is that there is an investigation being carried out by the ABCC into unlawful industrial action related to employees of OneSteel. I propose to make a claim of public interest immunity—

Senator CAMERON: Oh, do you—

Mr McBurney: into any details of that ongoing investigation.

Senator CAMERON: I'm not asking you for details of your investigation, other than—

Mr McBurney: I consider that questions as to whether the investigation concerns building work in the OneSteel investigation is a matter that's under active consideration, and I make a claim in respect of that.

Senator CAMERON: Dear oh dear—talk about government overload. In December, Mr Morrison visited Whyalla in relation to major announcements about the steel mill expansion and praised OneSteel head Mr Gupta, including for 'getting the workforce and the management working together'. Who referred the workers to the ABCC for investigation?

Mr McBurney: We will need to take that question on notice.

Senator CAMERON: There's a surprise, hey! If the company is found not to have notified the ABCC about employee absenteeism, does the ABCC intend to exclude it from eligibility for government building work?

Mr McBurney: I cannot exclude any company from the eligibility for Commonwealth work. That discretion and decision resides solely with the minister. What the ABCC does have jurisdiction to do is to investigate or audit any contraventions of the Building Code.
Senator CAMERON: You provide advice to the minister on these issues, don't you?

Mr McBurney: Yes, we investigate it and we provide a—

Senator CAMERON: Have you provided any advice to the minister in relation to the Whyalla steelworks?

Mr McBurney: I've provided no advice concerning a code sanction brief to the minister in relation to the Whyalla steelworks.

Senator CAMERON: Minister Payne, if the Whyalla steelworks is found to have breached the ABCC Act, does the government intend to exclude it from eligibility for government building work?

Senator Payne: I'll take that question on notice.

Senator CAMERON: Mr Pettit, are you aware of a company called Accuracy Interiors?

Mr Pettit: Yes, I am.

Senator CAMERON: Are you aware that there's a liquidation issue there?

Mr Pettit: I'm aware that the company is in external administration.

Senator CAMERON: At the last estimates, we asked about the issue of the cooperation of Accuracy Interiors in your probe into Royal Hobart Hospital. Do you remember that?

Mr Pettit: Yes.

Senator CAMERON: Since then we've received an answer on notice, on 24 December, that the company had gone into liquidation but the administrator was cooperating. Is that correct?

Mr McBurney: I can answer that question. In question on notice No. 57, you asked about the Royal Hobart Hospital site and we provided an answer. In that answer we said:

The ABCC Commissioner has made a public interest immunity claim relating to information concerning an ongoing investigation into the Royal Hobart Hospital site. File notes and reports that fall within the scope of the public interest immunity claim are not provided.

Documents relating to concluded enquiries at the Royal Hobart Hospital site since September 2017 are attached. The public interest immunity claim made by the Commissioner is also attached.

I then wrote to the committee in respect of our public interest immunity claim. In relation to that, I said:

At page 83 of the Hansard proof, Senator Cameron asked 'can you provide details of any file notes and any reports relating to the Royal Hobart Hospital site in the last 12 months?'.

I indicated in that letter:

The ABCC will provide details relating to concluded enquiries at the Royal Hobart Hospital site since September 2017.

For the same reasons outlined above, a claim for public interest immunity is made over reports and other documents which relate to the substance of allegations that are under active investigation.

Senator CAMERON: When do you expect that investigation to be concluded?

Mr McBurney: I received correspondence from the committee asking that very question and asking for a reply as soon as possible. I responded to that letter on 18 February 2019. I wrote to the committee and I said: 'The investigation into the underpayment of wages is currently expected to run until at least April 2019.' I said: 'The investigation into the payment
of induction fees is currently expected to be completed by the end of February 2019.’ I separated out those two matters because the letter I received from this committee asked me to inform the committee as soon as each investigation is completed and to give an indication of the likely duration of the ongoing investigations into both allegations. So we provided that information.

Senator CAMERON: There was an article in the Hobart Mercury on 4 November which stated: 'A company called Accuracy Interiors went into liquidation early October and the Victorian business's phone has been disconnected.' Are you aware of that report?

Mr McBurney: Yes.

Senator CAMERON: ASIC documents suggest the company was liquidated on 2 October and Richard John Cauchi and Michael Carrafa were appointed liquidators. Are you aware of that ASIC report?

Mr McBurney: I'm not personally aware of that report.

Senator CAMERON: Is anyone aware?

Mr Pettit: The individual inspectors responsible for the matter would be. I was aware that it had gone into administration, not the relevant dates or who was appointed as the administrator.

Senator CAMERON: When did you become aware of that?

Mr Pettit: I think I've been aware since the investigation commenced that the company was in administration or in the process of going into administration.

Senator CAMERON: So you were aware that the company had gone into liquidation, when I was asking you about it on 24 October in supplementary estimates?

Mr Pettit: Sorry, Senator?

Senator CAMERON: Were you aware of this when I was asking questions at supplementary estimates?

Mr Pettit: That the company has been in administration?

Senator CAMERON: Yes.

Mr Pettit: I'd have to take that on notice.

Senator CAMERON: You said you were aware from the commencement of the operation.

Mr Pettit: My recollection is that we—

Senator CAMERON: When did your investigation commence?

Mr Pettit: My recollection is that we've known for a considerable period. Our investigation commenced on 6 September.

Senator CAMERON: Then why didn't you advise me that they had gone into liquidation when I was asking these questions at supplementary estimates?

Mr Pettit: I'd have to go and check the transcript of Hansard.

Senator CAMERON: How could you not provide the answer on 24 October but provide it on 24 December?
Mr McBurney: In all fairness to Deputy Commissioner Pettit, he was not the officer responsible for answering questions.

Senator CAMERON: I'm talking about the ABCC.

Mr McBurney: The questions answered at the last Senate estimates hearings were answered on the basis of the information we had to hand at that time. The information provided in answers on notice was provided as at the date that appears on those answers.

Senator CAMERON: So why couldn't you just have advised me what was happening when I was asking questions?

Mr McBurney: The answers given to you in the previous estimates hearing were the answers to the best of the knowledge of the officers attending, as at that date, as to what they knew. Some of those questions were able to be answered. Other questions were the subject of a PII claim, and that PII claim is maintained.

Senator CAMERON: Can you tell me what cooperation you received from Accuracy Interiors prior to them going into liquidation?

Mr McBurney: I'll just take advice on that. I maintain a claim in relation to the level of cooperation provided by Accuracy Interiors. This is an ongoing investigation. I will be in a position to answer that question at the conclusion of the investigation.

Senator CAMERON: You can't even tell the committee, about a liquidated company, whether they were cooperating or not?

Mr McBurney: Senator—

Senator CAMERON: Why can't you? What would that have to do with your investigation?

Mr McBurney: I maintain a claim of public interest immunity in relation to the level of cooperation and information given by persons who are potential respondents to any action that might be taken at the conclusion of the investigation.

Senator CAMERON: I'm not asking about individuals. I'm asking: did the company cooperate? They either were cooperating or they weren't. That is not germane to you continuing your investigation.

Mr McBurney: Well, I'm making the claim, Senator.

Senator CAMERON: You're making the claim?

Mr McBurney: Yes.

Senator CAMERON: It's unbelievable! Are you watching for phoenixing activity from the former directors of this company?

Mr McBurney: What I've stated, and what we've stated on the public record, are the two matters under active investigation—that is, the underpayment of wages by Accuracy Interiors and the payment of induction fees. They are the two matters under active investigation as part of this Royal Hobart Hospital investigation.

Senator CAMERON: You're very helpful, aren't you! The ABCC spent $6,314 for the delivery and installation of a cupboard and shelving during the 2017-18 financial year. Can you describe the new coat-locker in question?

Mr McBurney: Yes, I can.
Senator CAMERON: This almost challenges 'bookshelf Brandis', this one!

CHAIR: Do you think you're almost there with the answer? We're due for a break, but if you've got the answer close to hand—

Senator CAMERON: We should finish this off, Chair.

CHAIR: How long? Five minutes?

Senator CAMERON: It just depends how long it takes to tell us about this.

CHAIR: We will extend very briefly and try to finish with ABCC.

Senator CAMERON: Finish with ABCC or just this question? They have been entirely uncooperative, so there's no point in keeping going.

Senator Payne: That is unfair.

Senator CAMERON: It is not unfair.

Senator Payne: Yes, it is.

Senator CAMERON: It's not.

Mr McBurney: The installation of cabinetry occurred in my office, the commissioner's office. You asked for the details of that cabinetry. That cabinetry measures 3,000 millimetres in width and 1,250 millimetres in height. I don't have the details on the depth. It is in-built cabinetry comprising shelving and a lockable cupboard. It was installed in the commissioner's office. It was installed at a cost of $6,314. It was done so on my instructions, and our facilities manager arranged for that to be done within the Commonwealth procurement guidelines.

Senator CAMERON: Do you have any photographs of it?

Mr McBurney: I don't have any photographs of it. We can provide photographs of it on notice.

Senator CAMERON: Yes, provide a photograph of this. Did you think of going to IKEA?

Mr McBurney: No, I did not.

Senator CAMERON: So you wanted to spend $6,300 of public money?

Mr McBurney: I said to our facilities manager that the shelving was required and asked him to arrange for the installation, in accordance with the guidelines, at the cheapest and most reasonable price available—and that's what he did.

Senator CAMERON: You should sack him.

Mr McBurney: I think that—

Senator CAMERON: Is your office the same as Ms Cato's when she was the acting commissioner and that of Mr Hadgkiss before that?

Mr McBurney: It's the same office as Mr Hadgkiss occupied. And I believe it was Ms Cato's in the period of time she was acting commissioner, yes.

Senator CAMERON: So where did they put their coats?

Mr McBurney: I don't know where they put their coats. The cabinetry comprises shelving and part of the shelving includes a lockable coat cupboard. I can provide you with a photograph.
Senator CAMERON: What triggered the demand for this new arrangement? Is it because you're getting showered by money from government that you can afford $6,000 to hang your coat and put a few book shelves up?

Mr McBurney: No. I commenced on 6 February 2018. I visited the office two weeks prior to commencing and it was a bare office. There was no shelving in the office.

Senator CAMERON: Did Mr Hadgkiss take it with him?

Mr McBurney: I don't believe there was shelving when Mr Hadgkiss occupied the office.

Senator CAMERON: So what did he do? What happened? Did books lie on the—

CHAIR: I'm not sure the official can answer that question.

Senator CAMERON: Who was there when Mr Hadgkiss was there?

Mr Pettit: I was.

Senator CAMERON: You were? So did Mr Hadgkiss have no books in his office?

Mr Pettit: There's never been a book shelf in that office. There is a low bench, so I assume he put his books on top of the bench.

Senator CAMERON: It was good enough for the disgraced Mr Hadgkiss but not good enough for the current commissioner—$6,000. I suppose if you're going to get all these workers—

CHAIR: Senator Cameron—

Senator CAMERON: that will be there for your largess.

CHAIR: Senator Cameron—

Senator CAMERON: I'm finished.

CHAIR: You go with our thanks. I release ABCC.

Proceedings suspended from 21:04 to 21:18

Fair Work Ombudsman

CHAIR: I welcome representatives from the office of the Fair Work Ombudsman. Do you wish to make an opening statement, Ms Parker?

Ms Parker: No, I don't, thank you.

CHAIR: In that case, we'll go straight to questions. Senator Cameron, you have the call?

Senator CAMERON: Ms Parker, you know I've been critical for some time about the enforceable undertakings that the Fair Work Ombudsman engages in, and I was particularly critical of the cut-off dates for liability that were negotiated with companies that breached the law. Have you had a look at the comments by the royal commissioner in the banking area where he was extremely critical of enforceable undertakings? Are there any lessons in that for the Fair Work Ombudsman?

Ms Parker: Yes, there are definitely lessons, I would have thought, for all regulators from the Hayne royal commission, Senator, and we've obviously watched all of that with some interest. We've currently got a little team reviewing those recommendations and asking: what do they mean for the Fair Work Ombudsman? Do they mean anything? Do we feel we have the right approach, or do we need to make some changes?
What I've observed—and Mr Campbell can add to this—is that some of the criticisms were about the negotiations around those and negotiating media release wording. Those kinds of things were criticised through the royal commission. Certainly, looking at what the Fair Work Ombudsman does, they don't negotiate media releases and never have. And certainly EUs are not things that go back and forth. There are some bottom lines in those. They're quite tough. One of the things we're reviewing, for example, is that we have requirements in them to do public apologies, obviously to pay back what's been owed, do things like being subjected to external audits and make restitution payments. Some of those are to charities and other organisations. We're having a look at those to see whether it might be more appropriate to simply have fines sent to consolidated revenue so there's no opportunity for the company to say, 'We gave money to charity.' Instead, you pay the fine, basically. So the answer is that we are certainly really interested in what the commissioner had to say and we'll review.

**Senator CAMERON:** I must say that, when I heard Commissioner Hayne raise these issues, it drew me right back to the Fair Work Ombudsman's conduct. I recognise that you were not here at the time, but you talk about paying back what was owed. That's not been the case in many of the enforceable undertakings where a time limit has gone in. So, if you're caught, you don't end up even having to pay back what you've ripped off workers. I thought that was the most outrageous part of these enforceable undertakings by the Fair Work Ombudsman. I won't labour it. I'm glad you're having a look at it. Maybe, when we come back next time at estimates, there will be a Labor minister sitting beside you and you've worked out how you're going to fix this.

**Ms Parker:** Obviously, through the claiming, it's not an enforceable undertaking; it's a proactive compliance deed. But we certainly—

**Senator CAMERON:** But there's not much difference.

**Ms Parker:** We certainly took on board the date, and of course we will endeavour to go back as far as we could. The point is taken and we are certainly having a look at that matter.

**Senator CAMERON:** I felt as though I had been vindicated on these issues when I heard the commissioner raise these issues. Could you confirm how the Community Engagement Grants Program is being funded by the ombudsman?

**Ms Parker:** Yes.

**Mr O'Shea:** The Community Engagement Grants Program is a four-year rolling program of grants. We currently provide funding to the total of $1.8 million to six community organisations around Australia to do work within the community sector.

**Senator CAMERON:** What work?

**Mr O'Shea:** As I say, there are six different recipients. There's the Northern Territory Working Women's Centre, the Employment Law Centre of Western Australia, the South Australian Working Women's Centre, Growcom, JobWatch and the Redfern Legal Centre.

**Senator CAMERON:** When the program was announced, was the Fair Work Ombudsman given extra money to budget for the program?

**Mr O'Shea:** Yes, Senator.

**Senator CAMERON:** How much?

**Mr O'Shea:** It was $1.8 million a year, and it was for four years, in the forward estimates.
Senator CAMERON: How many people administer the program within the Fair Work Ombudsman's office?

Mr O'Shea: There is one person who spends most of the time on it, and obviously there's a managerial structure above that that is put into play, depending on what's required. For example, when yearly reports from the recipients come in they are obviously overseen by a more senior officer, but in terms of the day-to-day running and the engagement with the community organisations there is one officer.

Senator CAMERON: Are those officers' salaries allocated against the funding for the program?

Mr O'Shea: Not specifically, no. Those officers are within my branch and they do a range of work. At peak times that require work for the Community Engagement Grants Program they would do most of their work on that program. But they are, I guess, salaried staff as per most of the other APS staff.

Senator CAMERON: So the extra funding basically goes directly to those organisations that you outlined?

Mr O'Shea: That's correct. I have a breakdown. I can table it if you like. The working women's centres of South Australia and the Northern Territory, for example, get $275,000 and $385,000 respectively. As I go through the six—if you want me to—you'll note that it totals $1.8 million a year.

Senator CAMERON: Okay. Maybe on notice you can provide that detail.

Mr O'Shea: I'd be very happy to.

Senator CAMERON: The Fair Work Ombudsman received additional funding of $1.4 million in last year's MYEFO to undertake compliance activities to protect the welfare of seasonal workers. Can you confirm the money is for seasonal workers generally, or is it to assist with the compliance of the government's Seasonal Worker Program?

Mr O'Shea: I'll have to take on notice the exact breakdown. We have a role in the Seasonal Worker Program. As you know, it's administered by the Department of Jobs and Small Business. Our role is to conduct compliance activities where required, do compliance history checks for the department for approved employers, conduct on-arrival briefings for those new arrivals to Australia who are undertaking the program, and provide workplace relations advice to the department and the participants.

Senator CAMERON: I'm still not clear whether it's for seasonal workers generally or for the government's Seasonal Worker Program.

Mr O'Shea: The funding comes to the Fair Work Ombudsman to assist us in undertaking that role. The money—if I understand your question correctly—does not go to the department for undertaking or administering the program. It's for us for our compliance role.

Senator CAMERON: Maybe it's how I'm asking the question. Let me try and be clear. There are two cohorts—maybe there are more than two cohorts—of seasonal workers. One is workers who come here and work seasonally, right?

Mr O'Shea: Okay. I understand your question.

Senator CAMERON: The other cohort are those who are engaged under the government's Seasonal Worker Program. Is that clear?
Mr O'Shea: That's clear.

Senator CAMERON: All I'm asking is: is this funding used in the Seasonal Worker Program or that general cohort, or both?

Mr O'Shea: I'd probably prefer to take it on notice, but my feeling is that it is undertaken for the Seasonal Worker Program, to ensure compliance with that program.

Ms Parker: Basically, why we've got two lots of money is that one was about working holiday visa holders. In the 2018-19 MYEFO we got $6.675 million over four years and eight ASL, and that was to support an increased number of working holiday makers. So it was a general approach to visa holders because of changes to visa arrangements. Then there was some additional funding received around the Pacific Labour Scheme. That's where citizens of specific island countries can take up non-seasonal low and semi-skilled work opportunities in specific industries in rural and regional Australia for up to three years. Again, it's not the Seasonal Worker Program but it covers things like accommodation and food services, health care, social assistance, forestry, fishing and non-seasonal agriculture. That was started on 1 July 2018. It's an uncapped program, and we got $6.424 million and additional ASL of six over four years. They were again activities to support compliance with workplace laws. So our work with the Seasonal Worker Program is really ongoing work. They run a Seasonal Worker Program through the department and we get complaints when it comes to potential wage underpayments or issues in that program. Does that answer your question?

Senator CAMERON: Let me have a look at the Hansard. It's late at night. Do you have a breakdown of how you're going to use the money other the four years? Is there a management program developed for it?

Ms Parker: Yes. We can talk about what we spend the money on, if you'd like, in general terms. It might be easier to say in general terms.

Mr O'Shea: As I said earlier, we have four specific functions relating to the Seasonal Worker Program. We conduct compliance activities—they are both reactive and proactive. We do compliance history checks for approved employers for the department to make sure that they're given the best opportunity of getting the right employers into the program to start with. We conduct many dozen on arrival briefings, which include our Fair Work inspectors going out to very remote and regional areas to brief people, sometimes on the day that they arrive in the country. We provide specific workplace relations advice to the department and the program participants. That is, anyone who is an employer, or any one of the workers or the department itself, if they have specific workplace relations questions relating to them—often around piece work, for example—we provide that service. This is all done under a written agreement with the department of jobs.

Senator CAMERON: Did you request the extra funding? Not you personally, did the Fair Work Ombudsman request the additional funding?

Mr O'Shea: No.

Ms Parker: I'm trying to separate my in the department and then moving to the Fair Work Ombudsman. When the proposals for things like having a specific labour scheme come up, the department will always consult with the relevant regulatory agency and the portfolio and say, 'What this might mean for your business?' Then we would say, 'We think it's going cost this much, because we will have this much extra work.' While we don't ask for it, we certainly
advocate for it once there's a new policy and we think it's going to put an impost on us. We advocate and say, 'We can't do that without additional resources.' I suppose it's not true to say we would start by lobbying for dollars.

Senator CAMERON: The government has made an announcement about a bush wage for apprentices. Are you aware of that?

Mr O'Shea: Not myself.

Ms Parker: No. Did you call it a bush wage?

Senator CAMERON: Yes. It was colloquially called the bush wage. It was a subsidy to employ apprentices. The original idea came from One Nation and Senator Hanson. It was to provide wage subsidies for apprentices for employers who had never employed an apprentice before. As soon as I heard this, and as soon as I knew it was Senator Hanson, the alarm bells started ringing anyway. But the issue for me was that many employers who have never employed an apprentice before especially in the bush—given my knowledge of being a union official who looked after country areas—I was horrified to think that some of those companies would be left looking after apprentices. I was concerned about the health and safety issues, firstly and, secondly, the exploitation issues. As you're well aware there's basically systematic exploitation of apprentices in this country. That's one of the reasons we can't get apprentices. I'm really concerned that the government has not raised this with the Fair Work Ombudsman in the context of making sure the young people are actually being paid properly.

Ms Parker: I haven't had any consultations on that.

Senator CAMERON: Could you have a look at this?

Ms Parker: Yes. Is it an official policy?

Senator CAMERON: Yes, there's been an announcement. I think there's a $60 million allocation, off the top of my head.

Senator Payne: It's an incentive to employers.

Ms Parker: So it's an incentive, not a wage as such.

Senator CAMERON: No, it's a wage subsidy. In the first year it's a certain percentage and in the second year it's a certain percentage. So it's a wage subsidy. As I said, certainly in the engineering trade, some of those bush engineering workshops you wouldn't let your kid near. Those are just the facts. Given the predominance of exploitation amongst apprentices, I would certainly ask if the Fair Work Ombudsman could give consideration to a monitoring proposal in relation to this bush wage, and maybe next time we come back you could advise me of whether you've had discussions with government and what you're going to do about making sure the kids don't end up getting ripped off. I'm genuinely concerned about it.

Ms Parker: I assume it would have been through the Department of Education and Training through the skills side, so we can talk to them.

Senator CAMERON: Yes, talk to them, but it's your job, as you're aware, to monitor effective payments.

Ms Parker: Yes. One thing we can also do is to ask that department, if it is that department—I'm assuming it is—to ensure that they're talking about people's right and entitlements and giving them information about us. That would be useful.
Senator CAMERON: Yes. As the Fair Work Ombudsman, are you conducting any more surveys on apprentices? Have you got any planned?

Ms Parker: Do you mean surveys or audits?

Senator CAMERON: I don't know whether they're proper audits. What do you call them?

Mr Campbell: We haven't, at the moment, got any specific apprentice campaigns underway, in terms of field campaigns. But, as we've talked about in the past, apprentices are a classification of employee that we ask for records of as part of our usual campaign work. We've talked before about specific campaigns that have assessed only apprentices in certain sectors. We don't have any of those underway at the moment.

Senator CAMERON: Have you done any follow-up work in relation to the campaigns that you've already undertaken?

Mr Campbell: We have effectively a rolling set of campaigns that revisit and test the compliance of employers that were previously audited. A segment of that will involve employers that are employing apprentices. So our follow-up campaigns will be testing compliance. That is a rolling approach. We can test that.

Senator CAMERON: On notice, can you provide me with details of the methodology you're using for follow-up. I assume there's a methodology. Is there?

Mr Campbell: Yes, absolutely. It's all risk based.

Senator CAMERON: So can you provide me with the methodology you're using, the results that you've seen and the issues that may still be outstanding for apprentices.

Mr Campbell: Yes, I'll take a look at that on notice.

Senator CAMERON: I also indicate that there was a report in the press last week about a hairdresser in Penrith receiving a significant fine.

Ms Parker: Yes.

Senator CAMERON: Can I just thank the Fair Work Ombudsman for the work that was done. I think it was both Mr Campbell and the previous Fair Work Ombudsman who had the majority of the carriage.

Ms Parker: Yes, that's right.

Senator CAMERON: I raised that issue, and I was absolutely disgusted that young kids in Western Sydney were being ripped off by this employer, so I'm glad to see that the Fair Work Ombudsman has nailed this guy. Will you be monitoring whether he attempts to open other hairdressing establishments in Western Sydney?

Mr Campbell: As best we can. If he popped up on our radar again, he's red-flagged.

Senator CAMERON: Why don't you turn the radar on the person instead of waiting to see if he pops up on it?

Mr Campbell: We're not informed every time a hairdressing salon is opened. I'm not trying to be facetious there; it's just the reality. If he presents, through intelligence we receive either from the community or from another regulator, and opens another hairdressing salon and attempts to run a model as he has in the past, he'll be a repeat customer.

Senator CAMERON: Can't you organise with whoever—what's the organisation that actually—
Ms Parker: Registers.

Senator CAMERON: Can't you red-flag this guy with the registrar if he attempts to open up a business?

Mr Campbell: I'm happy to look at that on notice.

Ms Parker: I don't think we can but we certainly share intelligence with other agencies. Businesses do need to register. What I've seen of the system is that the records remain and then if one worker were to ring up and say, 'There's a problem with this person,' it would be flagged and we'd look at it immediately.

Senator CAMERON: I'm not happy with that, to be honest, because this person had hairdressing salons in Parramatta, Penrith—different names, but he must register as a business owner. I just can't see why the Fair Work Ombudsman can't get an arrangement with the registrar to red-flag these people. I'm not saying you stop them setting something up, but then you can monitor whether they're ripping young people off, that's all.

Mr Campbell: As I said, I'm happy to look at what we could do to get a pre-emptive red flag on someone who seeks to run a business where they've previously been found by a court to have contravened the law.

Senator CAMERON: Good, I appreciate that. I might not be here, but I look forward to seeing what happens.

Mr Campbell: We'll write you a letter either way.

CHAIR: Thank you very much for your patience. I realise it's always hard being on last for the day, but you are released to go back to your homes. There being no further questions, this concludes the committee's examination of the Jobs and Small Business portfolio. I thank Ministers Reynolds, Cash and Payne, officers from the Department of Jobs and Small Business, and all witnesses who have given evidence today. I also thank Hansard, broadcasting and the secretariat.

Committee adjourned at 21:42