COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

SENATE

EDUCATION AND EMPLOYMENT LEGISLATION COMMITTEE

Estimates

(Public)

WEDNESDAY, 28 OCTOBER 2026

CANBERRA

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EDUCATION AND EMPLOYMENT LEGISLATION COMMITTEE

Wednesday, 28 October 2026

Members in attendance: Senators Allman-Payne [by video link], Dolega, Grogan, Hume, Kovacic, Nampijinpa Price, O'Sullivan, Payman, Barbara Pocock, Roberts, Scarr, Sheldon, Sterle, Marielle Smith and Walsh

EMPLOYMENT AND WORKPLACE RELATIONS PORTFOLIO

In Attendance

Senator Walsh, Minister for Early Childhood Education, Minister for Youth

Department of Employment and Workplace Relations

Mr Simon Duggan PSM, Secretary

Corporate and Enabling Services

Ms Catherine Rule, Chief Operating Officer, Corporate and Enabling Services
Mr Scott Wallace, First Assistant Secretary, Enterprise Resource Planning Project
Mr Mick Roses, Acting First Assistant Secretary, Chief Information Officer
Mr Tim Ffrench, First Assistant Secretary, General Counsel
Mr Adam Shain, First Assistant Secretary, Chief Digital Officer
Ms Miranda Lauman, First Assistant Secretary, Chief People Officer
Ms Leah Tuckwell, Assistant Secretary, Communications and Media Branch
Ms Charlotte Keefe, Assistant Secretary, People Branch
Ms Janet Wilson, Assistant Secretary, Organisation Design Branch
Mr Ben Sladic, First Assistant Secretary, Chief Financial Officer
Ms Lil Rundle, Acting Assistant Secretary, External Budgets and Parliamentary Branch
Ms Erin Cockram, Assistant Secretary, Finance Branch
Ms Fiona O'Brien, Assistant Secretary, Property, ICT Procurement and Security Branch
Ms Jody Anderson, First Assistant Secretary, Portfolio Strategy
Mr Mathew Gilliland, Assistant Secretary, Strategic Policy Unit
Ms Penny Edwards, Assistant Secretary, Governance and Delivery Branch
Mr Cris Castro, Assistant Secretary, Closing the Gap Branch

Workplace Relations

Mr Gregory Manning, Deputy Secretary, Workplace Relations Group
Mr Stuart Kerr, Acting First Assistant Secretary, Chief Counsel
Ms Sarah Calautti, Assistant Secretary, Senior Executive Lawyer
Ms Emma Hallas, Assistant Secretary, Senior Executive Lawyer
Ms Kate McFarlane, Acting Assistant Secretary, Senior Executive Lawyer
Mr Matt Cowgill, First Assistant Secretary, Chief Economist
Dr Nu Nu Win PSM, Assistant Secretary, Office of the Chief Economist
Ms Jenny Humphrys, Assistant Secretary, Chief Data Officer
Ms Elizabeth Brayshaw, First Assistant Secretary, Fair Work Court Taskforce
Ms Bridie Cosgriff, Assistant Secretary, Entitlements Safeguards
Ms Sarah Godden PSM, First Assistant Secretary, Safety and Industry Policy
Ms Natasha Platts, Assistant Secretary, Safety and Industry Policy
Ms Elizabeth de Hoog, Assistant Secretary, Safety and Industry Policy
Mr David Cains, Assistant Secretary, Safety and Industry Policy
Mr David Denney, Assistant Secretary, Safety and Industry Policy
Mr Diab Harb, First Assistant Secretary, Employment Conditions
Ms Alanna Maddock, Assistant Secretary, Employment Conditions
Mr Daudi Somi, Assistant Secretary, Employment Conditions
Mr Matt Harris, Acting Assistant Secretary, Employment Conditions
Ms Alex Ng, Acting Assistant Secretary, Employment Conditions
Ms Sarah Costelloe, Assistant Secretary, Fair Work Court Taskforce

Mr Tim Johnson, Assistant Secretary, Fair Work Court Taskforce
Mr Anshu De Silva Wijeyeratne, Acting First Assistant Secretary, Entitlements Safeguards
Ms Lavinia Gracik-Anczewska, Assistant Secretary, Entitlements Safeguards
Ms Tara Mazzulla, Acting Assistant Secretary, Entitlements Safeguards

Employment and Workforce

Ms Tania Rishniw, Deputy Secretary, Employment and Workforce Group
Ms Lisa Schofield PSM, Acting Deputy Secretary, Employment and Workforce Group
Mr Bruce Cunningham, Acting First Assistant Secretary, Quality, Strategy and Improvement
Ms Meredith Bryant, Assistant Secretary, Quality, Strategy and Improvement
Ms Fiona Dewar, First Assistant Secretary, Customer Experience and Engagement
Ms Juliette Edwards, Assistant Secretary, Customer Experience and Engagement
Ms Kristina Durcinoski, Assistant Secretary, Customer Experience and Engagement
Mr Ken Bell, Assistant Secretary, Customer Experience and Engagement
Ms Kellie Spence, Chief Adviser, Employment Services Reform Taskforce
Ms Bronwyn Field PSM, First Assistant Secretary, Employment Services Reform Taskforce
Mr Niran Gunawardena, Assistant Secretary, Employment Services Reform Taskforce
Ms Edwina Spanos, First Assistant Secretary, Delivery and Partnership
Ms Susan Pietrukowski, Assistant Secretary, Delivery and Partnership
Ms Melanie Croke, Assistant Secretary, Delivery and Partnership
Mr Jason Stott, First Assistant Secretary, Pacific Labour Operations
Ms Felicity Rowe, Assistant Secretary, Pacific Labour Operations
Dr Patrick Bryson, Assistant Secretary, Pacific Labour Operations
Ms Quyen Tran, Assistant Secretary, Pacific Labour Operations
Ms Dany Turner, Assistant Secretary, Pacific Labour Operations
Ms Belinda Campbell, First Assistant Secretary, Labour Market and Industry Policy
Dr Richard Bolto, Assistant Secretary, Labour Market and Industry Policy
Ms Eve Wisowaty, Assistant Secretary, Labour Market and Industry Policy
Ms Zoe Spry, Acting Assistant Secretary, Labour Market and Industry Policy

Skills and Training

Ms Anna Faithfull, Deputy Secretary, Skills and Training Group
Ms Laura Angus, First Assistant Secretary, First Nations Partnerships, Participation and Regulation
Ms Tamara Prosser, Assistant Secretary, First Nations Partnerships, Participation and Regulation
Ms Cara Sergeant, Assistant Secretary, First Nations Partnerships, Participation and Regulation
Ms Helen Stitt, Assistant Secretary, First Nations Partnerships, Participation and Regulation
Ms Katrina Blair, Acting Assistant Secretary, First Nations Partnerships, Participation and Regulation
Mr Chris Alach, Acting First Assistant Secretary, TRA, International and Loans
Dr Bronwyn Meyrick, Assistant Secretary, TRA, International and Loans
Mr Kym Holthouse, Acting Assistant Secretary, TRA, International and Loans
Mr Tom Varendorff, Assistant Secretary, TRA, International and Loans
Ms Mel Bennett, Assistant Secretary, TRA, International and Loans
Ms Danica Yanchenko, Acting First Assistant Secretary, System Policy, Stewardship and Performance
Ms Victoria Galang, Acting Assistant Secretary, System Policy, Stewardship and Performance
Ms Marina Henley, Assistant Secretary, System Policy, Stewardship and Performance
Ms Naomi Perdomo, Assistant Secretary, System Policy, Stewardship and Performance
Ms Ann Borg-Barthet, Assistant Secretary, System Policy, Stewardship and Performance

Ms Jennifer Wettinger, Acting First Assistant Secretary, Apprenticeships, Industry and Workforce
Ms Jessica Thompson, Acting Assistant Secretary, Apprenticeships, Industry and Workforce
Ms Kimberley McDonald, Assistant Secretary, Apprenticeships, Industry and Workforce
Ms Emily Magro, Acting Assistant Secretary, Apprenticeships, Industry and Workforce

Jobs and Skills Australia

Mr Trevor Gauld, Acting Commissioner
Dr Simon Booth, Executive Director
Mr Cliff Bingham, Assistant Secretary

Comcare

Mr Colin Radford, Chief Executive Officer
Mr Michael Duke, General Manager, Strategy and Performance Group
Ms Louise Close, General Manager, Legal Group
Mr Justin Napier, General Manager, Regulatory Operations Group
Dr Leanne Blackley, Chief Operating Officer, Corporate Group
Mr Lachlan Vivian-Taylor, General Manager, Claims Management Group

Fair Work Commission

Mr Murray Furlong, General Manager
Mr Jack Lambalk, Executive Director, Enabling Services [by video link]
Ms Joelle Leggett, Executive Director, Labour Standards Support
Ms Chloe Eaton, Executive Director, Dispute Resolution and Support Services
Ms Zoe Bright, Executive Director, Legal Performance and Engagement
Mr Patrick Coyle, Acting Executive Director, Registered Organisations Services
Mr Robert Corcoran, Acting Executive Director, Tribunal Support

Office of the Fair Work Ombudsman

Ms Anna Booth, Fair Work Ombudsman
Mr Michael Campbell, Group Manager, Operations
Mr Mark Scully, Chief Operating Officer, Corporate and Engagement
Ms Rachel Volzke, Chief Counsel, Legal and Policy
Ms Michelle Carey, Group Manager, Regulatory Transformation
Ms Tiina Debevc, Executive Director, Enforcement Branch A
Mr Steven Ronson, Executive Director, Enforcement Branch B
Mr Anthony Fogarty, Executive Director, Policy
Ms Janine Dennis, Executive Director, Legal Enforcement Branch 2
Mr Dimitar Dimitrovski, Chief Information Officer and Executive Director, Technology
Ms Megan Cooper, Executive Director, Criminal Investigations

Safe Work Australia

Ms Marie Boland, Chief Executive Officer
Ms Angela Wallbank, Group Manager, Policy and Engagement Group
Mr James Sumner, Acting Branch Manager, Hazards and Industries Policy
Mr Nathan Lee, Branch Manager, Legal and Framework Policy
Ms Leanne Laajoki, Acting Chief Operating Officer
Ms Amber Skurr, Acting Branch Manager, Evidence and Communications
Mr Gareth Appleton, Chief Financial Officer

Australian Skills Quality Authority

Ms Saxon Rice, Chief Executive Officer

Ms Vidoshi Jana, Deputy Chief Executive Officer

Ms Katerina Lawler, Executive Director, Transformation and Reform

Ms Sharayne Given, Executive Director Registration and Performance

Committee met at 09:00

CHAIR (Senator Marielle Smith): I declare open this hearing of the Education and Employment Legislation Committee into the 2026-27 supplementary budget estimates. I begin by acknowledging the traditional custodians of the land on which we meet today and pay my respects to elders past and present, and I extend that respect to any Aboriginal or Torres Strait Islander people joining us here today.

The committee has fixed Thursday 17 December 2026 as the date for the return of answers to questions taken on notice. The committee's proceedings today will begin with corporate and enabling services, cross-portfolio and general matters of the Employment and Workplace Relations portfolio.

Under standing order 26, the committee must take all evidence in public session, and 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.

The Senate has endorsed the following test of relevance of questions at estimates hearings: any questions going to the operations or financial positions of the departments and agencies which are seeking funds in 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 does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Witnesses are reminded of the Senate order specifying the process by which a claim of public interest immunity should be raised, and I incorporate the public immunity statement into the *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: I remind senators of their obligations under the Behaviour Code for Australian Parliamentarians to treat witnesses with dignity, courtesy, fairness and respect.

Department of Employment and Workplace Relations

[09:02]

CHAIR: I now welcome Senator the Hon. Dr Jess Walsh, Minister for Early Childhood Education and Minister for Youth, who is representing the Minister for Employment and Workplace Relations. Minister, do you have an opening statement this morning?

Senator Walsh: Good morning, Chair. No, I don't.

CHAIR: I also welcome Mr Simon Duggan PSM, Secretary of the Department of Employment and Workplace Relations. Mr Duggan, do you wish to make an opening statement?

Mr Duggan: I do.

CHAIR: Please proceed.

Mr Duggan: Thank you. Chair, before I begin, I'd like to add my voice to those who've expressed their shock at the horrific attack on the member for Indi, Dr Helen Haines. On behalf of the department, I extend our thoughts and best wishes to Dr Haines, her family, her staff and her community.

I'll briefly update the committee on senior staffing arrangements in two matters central to the department's responsibilities: the Targeted Compliance Framework and our internal workforce strategy. Starting with senior staffing arrangements, there has been a temporary change to the leadership of Employment and Workforce Group, with Ms Lisa Schofield acting as deputy secretary while Ms Tania Rishniw leads employment services reform through to the May budget. There have been no other changes at the deputy secretary level since the last estimates.

Moving now to the Targeted Compliance Framework, or TCF, on 19 October I issued a public statement detailing progress on returning elements of the TCF to lawful administration, providing compensation to those adversely affected by unlawful administration in the past, and developing a digital protections framework. In that statement, I indicated that on 26 October decision-making would resume under two of the six paused elements of the TCF. The first element that resumed on that date is decisions made under section 42AG of the Social Security (Administration) Act, which allows a person's social security participation payment to be suspended for a work refusal failure. The second element is decisions made under section 42AM, which allows a person's participation payment to be cancelled if they do not meet a reconnection requirement within four weeks. Before recommencing these provisions, the department worked with Services Australia to complete comprehensive assurance activities and system testing, made necessary ICT changes and improved our guidance and training for decision-makers. This included requiring all relevant provider staff to complete updated training.

On the days leading up to 26 October, we also removed all existing mutual obligation failures in the system and lifted active payment suspensions for participants in Workforce Australia, Inclusive Employment Australia and Transition to Work. This means that participants receive the full benefit of the applicable resolution period and four-week reconnection period before a payment cancellation may occur.

We're actively monitoring the resumed provisions in partnership with colleagues at Services Australia and the Department of Social Services to ensure that the system operates as intended. This active monitoring of system

performance and work-refusal decisions will continue beyond when the first payment cancellations may start to occur, in early December.

The remaining four paused elements of the TCF, all of which relate to ensuring that legally required human discretion is supported in decision-making, will remain paused until further safeguards and assurance arrangements are in place. At this stage, those elements are expected to resume in the first quarter of 2027, subject to completion of comprehensive system, decision-making and assurance work.

In my statement on 19 October, I also indicated the department has commenced the compensation process for people who may be eligible because of unlawful payment cancellation decisions made under sections 42AM, 42AG and 42AH. We are taking a proactive invitation-to-claim approach using data held in DEWR and Services Australia systems to identify people most likely to be eligible for compensation under the Compensation for Detriment caused by Defective Administration Scheme. At the same time, we have made it clear in all of our communication that anyone who believes they may have suffered detriment can apply for compensation under this scheme at any time.

The first stage of this process focuses on those affected by cancellation decisions under 42AM. The department will be proactively inviting 50,652 people to apply for compensation, who have been identified through data analysis as most likely to be eligible for compensation under the requirements of the CDDA Scheme. This process commenced on Monday 19 October, and, by the end of yesterday, we had sent 1,430 invitations.

Receipt of an invitation or making a claim does not determine eligibility. Each claim will be assessed individually, having regard to the person's circumstances and any detriment experienced. Clear information and support are available online through providers via Economic Justice Australia, the community legal sector and Services Australia. Our focus is on ensuring affected people understand their options, are supported to make a claim and can seek a review where appropriate.

The department has also completed public consultation on the draft digital protections framework and the associated section 40Y guidelines. We are considering the feedback and expect to finalise the framework soon. Compensation, the resumption of compliance decisions and finalisation of the digital protections framework are separate processes. The department will continue progressing compensation while continuing to bring the Targeted Compliance Framework into lawful administration and ensuring that appropriate safeguards remain in place. Chair, the officials working on these matters will be here to provide evidence under outcome 1, scheduled for this afternoon.

The final topic that I wanted to cover in my opening statement is the department's workforce strategy. A significant focus in recent months has been ensuring that our workforce and resources remain aligned to the government's priorities and the department's broader accountabilities. In the May budget, the government made an additional investment in frontline employment services, driving an overall increase in the department's affordable staffing level for 2026-27. Outside frontline employment services, though, the department's affordable staffing numbers are lower this financial year. There's also a mismatch between the capabilities and APS levels of the staff that we need in frontline employment services and staff in other parts of the department.

Therefore, while the focus of our workforce strategy is to build the capability of our staff and allocate them to the areas of greatest need within the department, we've also been actively recruiting into frontline employment services at a time when we've been seeking expressions of interest for voluntary redundancies and incentives to retire. As of 23 October, the department has made formal voluntary redundancy offers to 101 employees this financial year, of which 91 have been accepted. We also had two of our senior executives accept an incentive to retire. Importantly, there have not been any involuntary redundancies, and I don't expect any will be required.

In making these decisions, our objectives have been to direct the department's resources to the highest priorities, retain and build the capability of our workforce and keep the department financially sustainable over the medium to long term. Thank you, Chair. My colleagues and I look forward to assisting the committee with its questions.

CHAIR: Thank you very much.

Senator O'SULLIVAN: Could we get a copy of that statement?

CHAIR: Yes. If it's possible for you to table a copy of that, Secretary, it would be appreciated—look, we already have it. Thank you very much. I'll pass the call to Senator Scarr.

Senator SCARR: This is my first estimates on this committee, so excuse me if it takes a bit of time to get familiar with who's who. Mr Duggan, I understand you told this committee on 2 June that the department 'remains on track to stay within its approved operating deficit'. What was the actual outcome?

Mr Duggan: Just to provide a little bit of context, 2025-26 was the department's fourth financial year of operations since its establishment on 1 July 2022. The department had recorded operating losses in three of those four financial years. One of my priorities since commencing as secretary has been to get the department back onto a sustainable financial footing. The answer to your question is that, for the last financial year, DEWR's annual report recorded an operating loss of $25 million, which is larger than the operating loss of $15 million previously approved by the finance minister—and that was disclosed in our portfolio budget statements.

On my commencement as secretary, I put in place a number of initiatives that were intended to bring our operating expenditure down. Those were largely successful. On an operating cash basis, we actually recorded a small surplus last financial year. The reason we ran an operating deficit, and one that was larger than the one that was approved by the finance minister, is, at the end of the financial year, we needed to record a number of accounting adjustments to account for the impairment of some assets. The economic value of property and of software was assessed by the accountants as being lower, which meant that those accounting adjustments more than offset what was an improved operating position on a cash basis to drive our accrual position to a larger operating deficit at the end of the financial year. It didn't impact our cash balance—our cash balance remains broadly what it was at the start of the financial year and at the end of the financial year—but, as I noted, it meant we recorded a larger operating deficit than I'd been predicting.

Senator SCARR: So that $10 million deterioration between the $15 million and the $25 million—as I understand your evidence, you're saying it's attributable primarily to impairment of assets, and that has an impact on the operating deficit?

Mr Duggan: It does. It's an accrual accounting adjustment. Effectively we recorded $26.6 million of what I describe as technical accounting losses related to the impairment of non-financial assets, in accordance with the accounting standards. As I mentioned, it was due to an assessment that the economic value of some of our property assets and software assets were not as high as had previously been reflected in our accounts.

Senator SCARR: On 2 June, you gave us evidence that you remained on track to stay within the approved operating deficit. We were then approaching 30 June, in terms of the year end. When were the decisions made and what was the process around the making of the decisions regarding impairment?

Mr Duggan: I became aware of the impairments after 2 June. Ms Rule might be able to provide you with a bit more information about the process which led to the impairments.

Ms Rule: These impairments were quantified in the process of preparing our annual financial statements, and, therefore, that was after 30 June 2026.

Senator SCARR: That's when they were quantified. When were you aware that there was an issue with respect to possible impairments?

Ms Rule: I'd have to take on notice the exact date. Our CFO may be able to shed a bit more light on whether that awareness was prior to 30 June.

Mr Sladic: Just to follow on from what Ms Rule and the secretary said: during the audit process with the ANAO, they do a lot of their testing towards the end of the financial year and into July and August. As far as specifics, Ms Cockram might be able to share when it was quantified. A lot of that work was happening post 30 June and leading into the final signing of the financial statements.

Ms Cockram: The requirement under the accounting standard is that the assessment be done at balance date. Generally, we will start the process as May-June, going through and identifying any of the indicators of impairment. I don't have the exact date of when the assessment and minute was signed off, but I believe it was in July.

Senator SCARR: So it was after—

Ms Cockram: After balance date.

Senator SCARR: Thank you. The report cites $26.6 million of write-downs, including $20.1 million of computer software being written down; is that correct?

Ms Cockram: Yes.

Senator SCARR: Can you walk us through the process by which it was decided to write down the software by $20.1 million, which is quite significant.

Ms Cockram: The accounting standards have very specific indicators of impairment that come to assessing the economic value. It's often driven by whether an asset is going to be used for the same period it was originally intended for use. Changes to the asset that make parts of the asset obsolete—so it was decisions around those indicators across a couple of different systems.

Senator SCARR: Can you give us a bit of context in terms of the specifics—which systems and why those decisions were made—to the extent that you can give us a bit of insight with respect to what those systems cost originally and why they had to be abandoned, effectively.

Ms Cockram: I'll have to take that on notice. I don't have that detailed breakdown.

Senator SCARR: If you could. As I understand it, there was $6.4 million of asset value in relation to leased buildings which was written down. What does that relate to?

Ms Cockram: Under the accounting standards, we're required to recognise a right-of-use asset when we enter into a lease for a building. It's recognising that when you enter the lease you recognise an asset for the use of that building and you recognise a liability to pay off the remainder of the lease. We had two properties here in Canberra which we vacated as part of our broader consolidation before the end of the financial year. But, because the leases don't end until partway through the current financial year, we were required under the accounting standards to recognise an impairment of that right-of-use asset.

Senator SCARR: How is that amount calculated? Is that rent which is going to be thrown away because you're not in occupation of the buildings?

Ms Cockram: For the right-of-use asset, there's a calculation under the accounting standard which takes into account the present value of the rent payments.

Senator SCARR: It's rent?

Ms Cockram: It's not as simple as that. There's a complex accounting standard.

Senator SCARR: But that's part of the calculation, at least, in terms of what rent you would have been paying to give you the right to occupy those premises. Where were the premises? Which premises?

Mr Sladic: I'm happy to confirm on notice. I think they were on Mort Street, in Civic.

Senator SCARR: And the department's no longer occupying those spaces?

Mr Sladic: Not since the end of June, no.

Senator SCARR: How much longer is there on the leases? Is it six months? Is it two years?

Mr Sladic: It's this financial year.

Senator SCARR: Just this financial year?

Mr Sladic: Current financial year 2026-27.

Senator SCARR: And it expires within this financial year?

Mr Sladic: That's right. I think it might be towards the end of the financial year, but I'll confirm that for you.

Senator SCARR: Are steps being taken to mitigate the loss in terms of whether other tenants can be found? Is there any process in that regard?

Mr Sladic: We looked at examining what options might be there through our property branch and property services providers, but I don't think, given it was only a year and given the general nature of the market, there was anything coming out of those initial considerations.

Ms Rule: This is part of a broader strategy to consolidate our property footprint, which we estimate will deliver us annual savings of around $8 million to $9 million a year across the country as we need a smaller footprint.

Senator SCARR: So Senator Scarr should be seeing the glass as half full, not half empty! Can I move on to employee costs. What were the employee costs for the year?

Mr Sladic: They were $602,891,000.

Senator SCARR: How did that compare with the original budget? What was the original budget?

Mr Sladic: That was $467,745,000.

Senator SCARR: That's a very material overspend, maybe 30 per cent, or $135 million. What's the reason for the employee costs to exceed the budget?

Mr Sladic: I think it comes down to the fact—and we updated this in the budget documentation post that original budget—that the split between suppliers and employees was quite a bit different to our actual expenses that we incurred. If you look at the split for future financial years it's much closer to the actual that we realised. I think we had more in suppliers than we're actually spending, and less in employees, so it's only slightly higher than what we actually spent in the previous financial year. It was understated from a split level in the budget documentation compared with what we were spending. That was the main reason.

Senator SCARR: My understanding—and correct me if I'm wrong, please—is that it was an increase of $21 million on last year. Is that correct?

Mr Sladic: Yes, I think that sounds about correct.

Senator SCARR: But the headcount fell by about 250.

Mr Sladic: By the end of the year. Certainly—

Senator SCARR: But it begs the question, right? The budget's greater than it was last year, or the actual is greater than it was last year, but there were fewer staff. How do you explain that?

Mr Sladic: By the time we got to the end of the year there were certainly fewer staff, and I think that goes to some of what the secretary was saying in his opening statement, around what we're doing to make our workforce levels overall more sustainable and more affordable.

Senator SCARR: Okay. That's reflected in the separations and redundancy figure going up—more than doubling—from the year before?

Mr Sladic: That's right—what's shown in the financial statements. I think you'll see that in the notes, yes.

Senator SCARR: How many people does that cover? I know the Secretary touched on this, but how many people are we talking about? Is that the figure of 91 acceptances, I think you said, Secretary, out of 101 offers? How many of those are in your report?

Mr Sladic: The statement from the Secretary was in relation to the round we're currently running, for the 2026-27 financial year. In the financial statements you'll see the accrual value of the separation and redundancy payments that we paid for that financial year.

Senator SCARR: How many people are we talking about?

Ms Rule: Are you referring to the 2025-26 financial year?

Senator SCARR: Correct—in terms of that $12.9 million figure.

Ms Rule: In the 2025-26 financial year we had 103 voluntary redundancies.

Senator SCARR: How many were at SES level?

Ms Rule: None, because SES aren't eligible for voluntary redundancies; they're eligible for what's called an incentive to retire, and there were five of those.

Mr Sladic: Five actually exited the department during 2025-26. And just to make sure it's clear for you, Senator: what we represent in the financial statements is the accrual value, and sometimes there can be a crossover between when an offer was accepted and when a person exited the department—just to make clear that distinction.

Senator SCARR: So you attribute it across the different financial periods.

Mr Sladic: We recognise the value of accruals, but Ms Rule has just given you the figure for physical exits.

Senator SCARR: So, of those five officers who accepted the incentives to retire, are any amounts attributable to them contained within the $12.9 million, or are they in a different line item? Do you understand what I'm saying?

Ms Rule: Yes, I do understand the question.

Senator SCARR: It says separations and redundancies. Is acceptance of an incentive to retire a separation?

Ms Rule: Yes, it is a separation. I do understand the question; I'm looking to my colleagues to see where we included it as a line item.

Ms Cockram: The $12.9 million is our total separations and redundancy cost for 2025-26 on an accruals basis. I don't have the exact dates that those five—

Senator SCARR: No, no; I'm not looking for those exact dates. But, if an amount were attributable to that financial year in relation to an incentive to retire, it would be included in that line item?

Ms Cockram: Yes, it would.

Senator SCARR: That's fine.

CHAIR: I'll rotate shortly.

Senator SCARR: Last question: does that $12.9 million include the former secretary's $828,980 termination benefit?

Mr Sladic: Yes, it does.

Senator SCARR: The whole amount, or just part of it?

Mr Sladic: No, the whole amount.

Senator SCARR: Thank you.

CHAIR: Senator Dolega.

Senator DOLEGA: Good morning. I was wondering if I could ask you about the department's work on Closing the Gap. As you know, it's always a topic that this committee likes to discuss. Could you share with us any updates you have for the department in progressing these priority reforms and any outcomes that you are seeing.

Mr Duggan: I'll start, and then I'll hand to my colleague to provide more detail. The department, as you know, plays a very significant role in closing the gap on Indigenous disadvantage. A new development is that in the past six months we have articulated a new strategic framework for the department. Within that strategic framework, we identify embedding Closing the Gap as being a core cross-cutting priority. So it's important for all of the work of the department, not just some of the work of the department.

As you'd be aware, we administer policies and programs that directly impact four of the 17 socioeconomic outcome areas. At the Commonwealth level, we share responsibility with the Department of Education for outcome 5, around student learning potential; outcome 6, further education pathways; and outcome 7, around youth engagement in employment or education. We also share outcome 8, on strong economic participation and development of people and communities, with the National Indigenous Australians Agency. We are making progress against each of those outcome areas. Target 8, around strong economic participation and development of people and communities, is on track to be met by 2031. Targets 5, 6 and 7 are improving but at this stage not on track. I'll turn to Mr Castro to see if there's anything he wants to add.

Mr Castro: Our department's implementation of the priority reforms really starts with priority reform 3, the internal transformation. In the past few years we've done a number of things to improve the governance and accountability around Closing the Gap within the department. One of the first things that we did under the previous secretary was establish a central Closing the Gap function to oversee and drive our Closing the Gap efforts. Shortly after that, we developed a Closing the Gap strategy that really gave authority for the rest of the department to understand the Closing the Gap priority reforms and make those changes. That quickly resulted in some big change for the department.

Our governance framework for the department was modified to ensure that everybody in the department took accountability for Closing the Gap and that our internal governance forums had First Nations voices on them as well. That was a clear transformation. Shortly after that, we also changed our internal audit framework to make sure that every internal audit that's conducted considers whether our business units are considering the department's commitments to First Nations people. They're really key transformational pieces, which were soon followed by a launch of a departmental Reconciliation Action Plan, which lays the foundation for developing those foundation skills to build better relationships with First Nations people, which is really important for the way that we engage, consult and listen to people.

Those internal transformations are starting to have a demonstrable effect on our externally facing policies and programs. We've seen in employment services, probably starting with the Parent Pathways program, a lot of engagement with First Nations people that effectively resulted in First Nations providers delivering services on our behalf to all parents under that program. We've seen growth in the ACCHO, Aboriginal and Torres Strait Islander community controlled, sector through programs like the SEE First Nations grant, which deliberately recognises that First Nations people have a different experience, and we wanted to get communities involved to make sure that the projects we were delivering were meeting their needs as well. I can keep going if you'd like.

Senator DOLEGA: Yes, I'm very interested—and also, Secretary, for those targets that weren't on track, in how we're working to those, if we can. Please continue, Mr Castro; that's great.

Mr Castro: When we talk about the targets, as Mr Duggan stated, we do share responsibility for those targets not just with other Commonwealth agencies but with states and territories as well. In our employment services space, I've talked about the Parent Pathways program. The Reconnection, Employment and Learning program, as well, which this committee has heard a lot about, took deliberate actions to make sure that that program was designed in consultation with First Nations people not just in the way that the program's set up to operate but also in the indicators of what success looks like in that program. What we saw there was 15 out of 16 organisations engaged to deliver that program being First Nations owned or Aboriginal and Torres Strait Islander controlled organisations, which is a really great outcome as well.

In our skills space, the National Skills Agreement was one of the first agreements that embedded Closing the Gap as a foundation. What we've seen through the National Skills Agreement is work to develop a new VET policy partnership and other actions to build the Aboriginal and Torres Strait Islander community controlled sector and their engagement. Some of the examples of what's been done in that space are: there's a new Indigenous Centre of Vocational Excellence set up. That's designed to identify best practice and share and grow that best practice across the vocational education and training sector. There's also a First Nations RTO community of practice, which, again, is about supporting First Nations providers to work together to share their experiences and to advocate for First Nations impacts throughout the skills and training sector as well. All states and territories have a bilateral implementation plan with the Commonwealth to deliver on Closing the Gap commitments, as well, which is really focused at getting more First Nations people through the skills and training sector.

Senator DOLEGA: That's a fantastic and very thorough update for the committee today; thanks. Was there anything else you could add, Mr Duggan, or is that—

Mr Duggan: I think Mr Castro has done a great job of updating you.

Senator DOLEGA: Thank you.

CHAIR: I note that we have media in the room, who have requested permission to film and take photographs of the committee's proceedings. The committee, I take it, agrees to this?

Senator SCARR: Absolutely. I'm enthusiastic about their presence.

CHAIR: Looking lovely and ready to be photographed, Senator! I remind the media that this permission can be revoked at any time and the media must follow the direction of secretariat staff. If a witness objects to being filmed or photographed, the committee will consider this request. The media are reminded that they are not to take images of senators' or witnesses' documents or of the audience and that media activity cannot occur during suspensions or after adjournment. More details are available to you, as I know you are well aware. I'm returning the call to the opposition with Senator Scarr.

Senator SCARR: I've got some questions in relation to the department's strategy 2026 project. Mr Duggan, I understand you gave evidence in June about strategy 2026. You described it, as I understand it, as a new, very small function of about four to five staff, reporting directly to you, with no budget allocation, running certainly to the end of the then financial year. Is that correct?

Mr Duggan: Yes, that's correct. I established the team on 13 April. There were five staff temporarily transferred from within the department: one SES band 2, Ms Anderson—who's now joined us at the table—who led the endeavour, one EL2, two EL1s and one APS5. They concluded their work around the first week of July.

Senator SCARR: You say they concluded their work in about the first week of July, but is it correct that your organisation chart, effective 1 October, now has a new team which has been established with respect to strategy? Can you just walk us through that.

Mr Duggan: Yes, that is correct. We established a portfolio strategy division on 10 August, and the purpose of that new division is to provide a centralised and coordinated strategic capability within the department. Its focus, primarily, is on cross-portfolio issues where we have a contribution to make as a department, but it has a number of responsibilities. And that division was formed out of bringing together existing functions that existed across other parts of the department. So its responsibilities, broadly, are for leading the department's governance, planning, performance and reporting arrangements. It coordinates implementation of our Closing the Gap commitments—you just heard from Mr Castro; he is one of the branch heads within the division. As I mentioned, it brings together department-wide perspectives on cross-cutting and portfolio-wide issues. It also has a capability to provide analysis and advice on emerging policy issues, so there's a bit of a strategic policy capability there, but it also supports the department's broader strategic direction, including implementation of the strategic framework, which was the key outcome of the strategy 2026 work.

Senator SCARR: Okay. I'll ask one further question, just to provide you with some context in terms of what my concern is. On the face of it, in terms of the history, we had the strategy 2026 team, which had four to five staff, or whatever it was, with Ms Anderson. And this has morphed into a three-team branch—a new division—dealing with these strategic issues, which, on the face of it, raises a question: how did we go from four or five people looking at the strategic issues to a three-team division? So can you just walk me through that evolution?

Mr Duggan: Yes. The strategy 2026 work was a specific endeavour, really to bring clarity to the department's mission and what our priorities are—what the values are that we demonstrate when the department is at its best. So that was a specific piece of work that—

Senator SCARR: What are the values?

Mr Duggan: We have five core values that have been articulated. They're to be impactful, courageous, collaborative, curious and inclusive. And that came out of extensive staff consultation—

Senator SCARR: I try to live to those values every day. Sorry! Go on.

Mr Duggan: They align pretty well with—

Senator SCARR: I like the values!

Mr Duggan: They align pretty well with the APS values as well.

Senator SCARR: Okay. Good.

Mr Duggan: So that was a specific piece of work, and that has really given good direction and guidance to align the department around priorities. That was important, including for the work that we were talking to you about earlier, which was trying to ensure that we brought our budgeting position back into alignment with our resource allocation. The need to do some really hardheaded prioritisation and deprioritisation started with a conversation with the department around how we align with the government's priorities and the department's broader accountabilities. This was an exercise in making sure that we all had a clear understanding of what those priorities were.

Senator SCARR: So why wasn't the existing structure fit for purpose, in terms of delivering those outcomes? Why did you need to set up this new team? Why was it necessary, in your view?

Mr Duggan: I guess, as a newly arrived secretary in the department, I was looking for strategic clarity from the organisation, in terms of: did it have a clear strategic purpose? My observation was that it could be sharpened significantly, and therefore I launched that strategy 2026 process. But to go to your question of how we went from five people to a division of 50 people—

Senator SCARR: You understand why I'm asking the question.

Mr Duggan: I completely understand. Basically, that function of the division, which is around embedding the strategic framework that came out of the strategy 2026 work, is one relatively small part of what the division doe What the division did was consolidate existing functions. So we've moved existing staff out of other divisions to form this central division to bring together, in a sense, critical mass around strategy.

Senator SCARR: Okay, I understand. Ms Anderson. I can see you leaning forward, wanting to contribute to this discussion, so I'll just give you the opportunity, from your perspective. You were involved in the very small handful of officers involved in strategic 2026, and now you've got a lead role with respect to the new division, so can you provide your context?

Ms Anderson: Sorry, I'm partially deaf, which is why I lean in a little bit.

Senator SCARR: So am I.

Ms Anderson: Hence my enthusiasm. I can only repeat what the secretary has already stated, which is that, really, the division is made up of branches that were in existence. So it was a critical decision, obviously, from the secretary to bring together the Governance and Delivery Branch with the Closing the Gap Branch, as well as the existing Strategic Policy Branch. They were all in existence, but they were all in various different areas of the department. So there was that decision to align that work to drive the objectives of the strategic framework and also, as the secretary noted, to drive the overall governance arrangements through our executive board—for example, by focusing the department's priorities.

Senator SCARR: Understood.

Ms Rule: I'd just stress that some of the people who worked on strategy 2026 were temporarily on that work, and they've since gone back to the places whence they came.

Senator SCARR: Whence they came!

Ms Rule: Yes. For example, we had an expert in engagement and communications. She's gone back to the communications and engagement function. So we haven't gone up; we've just reallocated people to different pieces of work.

Senator SCARR: Yes. I get invited to go back to the place whence I came on a regular basis. Have you got an executive board paper or something that documents the decision-making process in relation to that and when the decision was made?

Mr Duggan: All of these decisions were on the basis of advice through an executive board paper to the executive board.

Senator SCARR: Could I ask you to take on notice the providing of a copy of that paper?

Mr Duggan: Yes, we'll provide that on notice.

Senator SCARR: Thank you. Where does this function now sit? It's within the Corporate and Enabling Services group; is that correct?

Ms Anderson: That's correct.

Senator SCARR: So who do you report to?

Ms Anderson: To Ms Rule.

Senator SCARR: I don't want to cause an issue here, so I'll ask you, Secretary: why is the reporting line to Ms Rule, given its strategic element, as opposed to directly to you?

Mr Duggan: The way I see our corporate enabling function is that it's really about all of the things that Ms Anderson described around corporate governance being completely consistent with what the role and functions of that group are. So, to my mind, it makes sense for the reporting line to go through our chief operating officer to the executive board and myself.

Senator SCARR: Where did it previously sit?

Ms Rule: It sat across three different groups, actually. So three branches have come together. The Strategic Policy Branch previously sat within the Office of the Chief Economist in our Workplace Relations Group, the governance team sat within my Corporate and Enabling Group, and the Closing the Gap unit also sat within the Workplace Relations Group. So, sorry, it was across two different groups.

Senator SCARR: Okay. This is a very important issue. Was there previously a dedicated Closing the Gap team?

Ms Rule: Yes.

Senator SCARR: There was? Okay. What is the ASL within the three-team division?

Ms Anderson: We've got approximately—

Senator SCARR: And how many SES are there?

Ms Anderson: We've got an ASL of approximately 50 in the division and we have four SES all up: me and three branch heads.

Senator SCARR: Okay. Do you have a budget? What's the remuneration cost?

Ms Anderson: Yes. It's primarily made up of the staffing costs, but I will take it on notice, if that's okay, because the budget is just being finalised at the moment.

Senator SCARR: That's alright. Are any of the positions new, from your perspective? I know you've consolidated functions from across the department. Are there any new positions in terms of new roles or—

Ms Rule: The only position that's new in this structure is the position that Ms Anderson is occupying. Otherwise, they're existing positions that have come from elsewhere in the organisation.

Senator SCARR: Sorry, I don't know this, Ms Anderson, but you're from within the department? That's from whence you came?

Ms Anderson: Yes. I've been working in the department for some time.

Senator SCARR: So you haven't advertised externally for anyone to make up these teams? They're all internal transfers, if I can put it that way?

Ms Rule: Yes, that's correct.

Senator SCARR: Has that left gaps in any other teams that you've had to backfill?

Mr Duggan: Given Ms Anderson was the only additional member of staff in this new construct and came out of the Workplace Relations Group, we then had to fill Ms Anderson's role.

Senator SCARR: And who'd you fill that with?

Ms Anderson: Ms Godden was moved into the position that I was formerly in, in the Workplace Relations Group, and my understanding is that she's also formerly from the Workplace Relations Group and her former position is currently being filled.

Senator SCARR: The October organisation chart shows Mr Gilliland as the substantive assistant secretary of both the strategic policy branch and the external budgets and parliamentary branch. Is that correct?

Ms Rule: Mr Gilliland is acting in the current role. His substantive role is in the external budgets branch. But this is simply a process of aligning SES to various roles that reflect different priorities. It's not an additional role. There's somebody acting in the external budgets role behind him. So there are two different roles. We've got some temporary arrangements in place that we're seeking to resolve right now through some very targeted recruitment action, and we'd expect that he doesn't—it's just a difference between the role he temporarily occupies and his substantive role.

Senator SCARR: So—I just lost my train of thought there.

Senator SHELDON: You can blame my son!

Senator SCARR: No, that's okay. I'm sure he's lovely, just like you, Senator Sheldon. Can you just walk me through who are in acting roles in that regard and which positions you're recruiting for? Can you just step me through that in terms of that area?

Ms Rule: Sure. The strategic policy role was originally established temporarily, and Mr Gilliland was mapped to that position. He's a substantive band 1 officer. So he was mapped to that role from the external budgets role, and we have somebody acting up in the external budgets role. We're currently in the market doing some very targeted—

Senator SCARR: So you've got acting officers in each of those two positions.

Ms Rule: In a sense, although Mr Gilliland is a band 1 officer, so he's already at that level, whereas we've got somebody acting up—

Senator SCARR: But he's acting in a different position—

Ms Rule: That's correct.

Senator SCARR: from the one he was in. Correct?

Ms Rule: Yes.

Senator SCARR: Will he go back to the previous role?

Ms Rule: It depends on the outcome of recruitment.

Senator SCARR: Are you looking internally and externally?

Ms Rule: Yes. We're currently in the market for SES band 1 officers. We've done an external recruitment process. That process is currently looking at shortlisting. We would seek to establish a merit list as a result of that process, and, depending on the skills and experience of the candidates who come through that process, we'll match people to the roles that we've got available. So it's possible we'll move some officers around depending on what the skills and experience are that come through that recruitment process.

Senator SCARR: Can I just raise this high-level point. I'm new to this department, but I've learned that five SES-level officers accepted invitations to retire and now you're out in the market looking for SES officers. Why couldn't those five SES officers do these jobs? Why did we have to pay them to separate—and we've talked about the separation costs—and now we're out in the market looking to fill those positions?

Ms Rule: There are a number of ways in which we manage our SES workforce. Recruitment is one, redeployment to different roles is another, and ITR, incentives to retire, is another part of our workforce management. I'm not going to speak, obviously, to the individual circumstances—

Senator SCARR: No, I'm just talking about—

Ms Rule: In general terms, sometimes the skills carried by those people who may have accepted an incentive to retire are not the right skills to map to a new role. For example, should we have somebody in ICT, they may not be well suited to transferring into a role in strategic policy.

Senator SCARR: Good answer. Ms Anderson, I've been impressed with your evidence. Presumably, when you did this strategy 2026 work, you didn't need to go out and hire a crew of consultants and whatever to do the job for you.

Ms Anderson: Thank you, Senator. No, we did it in-house.

Senator SCARR: You did it all in-house?

Ms Anderson: We did, yes.

Senator SCARR: Congratulations. Well done. I mean that because you're of the department, so to the extent you've got that capacity to do it within the department as opposed to going out and paying consultants for their precedence, that's good.

Senator DOLEGA: I agree, Senator Scarr. That's fantastic to hear.

Senator SCARR: In terms of the cost, it was only a very small handful. I'm not sure you could have used any more adjectives, Secretary, to emphasise how small the team was. A very small handful. What was the cost of that? Can you give us an estimate as to the cost of that process, the strategy 2026.

Ms Anderson: I think we'd have to take it on notice. Are you talking about the staffing profile?

Senator SCARR: It's just the staff, isn't it?

Ms Anderson: I think we'd have to take that on notice.

Senator SCARR: As I understand your evidence, they were essentially seconded from what they were doing.

Ms Anderson: That's correct.

Ms Rule: They were already in our budget; we just reallocated them.

Senator SCARR: If you've got anything else you can add there—I'm relieved we didn't have to pay consultants or contractors. In June you said this work would inform internal budgets. Which programs or areas were reprioritised or reduced as a result of the work? Can you give us any granularity on that?

Mr Duggan: It allowed us to do two things. One was to identify where there was an emerging priority that required additional resourcing. We did use it as an opportunity to give people—we did this through looking at where our skill sets matched our emerging needs. We moved people into high-priority areas at the same time as talking within each of the groups about where there are opportunities to effectively deprioritise work. A lot of that deprioritisation occurred at a fairly micro level. We managed to identify a lot of efficiencies and things that we could either stop or, in most instances, put a longer time horizon on, which meant that we required less resourcing initially but would require resourcing at some point in the future. It was a big exercise to do that right across the department. Through those transfers, as I said, I think we were in a position to be able to rebaseline staff.

One point I'd make is that this work is continuous. It's not that we did one exercise of reprioritisation and then we were set. This is a constant conversation in our executive board about how we continue to realign with government priorities and the department's broader accountabilities. So there's no point in time at which I'd say that work is completed and that work is finished.

Senator SCARR: Excellent. Do you have anything you can table—take it on notice—in terms of the 2026-27 internal budget allocations per group compared to 2025-26?

Mr Duggan: We will have all that detail. I'm happy to take that on notice and table it.

Senator SCARR: If you could, thank you. In terms of the work you're doing, Ms Anderson, in terms of strategic focus, does that include any issues in relation to workplace relations policy—for example, the Fair Work Court or the Secure Jobs Framework?

Ms Anderson: No, it doesn't really take on policy responsibility from existing areas such as workplace relations. In short, no, it doesn't. It's more cost-cutting issues.

Senator SCARR: I've got one more series of questions. Again, I wasn't here for these estimates. It's in relation to a media release that was on the department's website and subsequently removed after my friend and colleague Senator Nampijinpa Price raised concerns. Secretary, you provided evidence in relation to that matter back on 2 June. Do you remember the issue?

Mr Duggan: I do.

Senator SCARR: As I understand it, you told this committee:

As soon as that error was pointed out to us, we removed it from the website.

Ms Tuckwell, as I understand it, you told the committee it was 'rectified, from my recollection, within 24 hours'. Is that correct?

Ms Tuckwell: That was my evidence at the time, yes.

Senator SCARR: And then we received an answer on notice that I think provided us the timeline that it was published originally on 2 March and removed on 11 March. Is that correct?

Ms Tuckwell: That is correct, yes.

Senator SCARR: So that was nine days between publication and removal—is that correct?

Ms Tuckwell: Yes, and I think the important words there in my original evidence were 'my recollection' at the time. Once we went back and had a good look at the timeline, there were obviously some changes there.

Senator SCARR: Okay, but it is true, isn't it, that it was only removed the day after Senator Nampijinpa Price's office raised the issue, on 10 March?

Ms Tuckwell: Yes, and I think at the time that's what I was considering in terms of the 24 hours.

Senator SCARR: So it wasn't identified as an issue within the department; it was identified as an issue by Senator Nampijinpa Price, and it was only after Senator Nampijinpa Price raised the issue through her office that the release was removed—is that correct?

Ms Tuckwell: That is correct, yes.

Senator SCARR: Can I take it, then, that you're now formally correcting the evidence that you previously gave—is that correct?

Ms Tuckwell: Well, I think what I'm trying to explain is that what I was considering was the time period from being notified to removing the media release from the website.

Senator SCARR: So when you referred to that 24 hours, that's the 24 hours you were referring to?

Ms Tuckwell: Correct, yes.

Senator SCARR: Okay, I understand. The answer that you gave on notice said 'director of media'.

Ms Tuckwell: That's a staff member that reports to me. I'm the Assistant Secretary of Communications and Media.

Senator SCARR: The director of media judged the media release's quote to be 'overtly political'—is that correct?

Ms Tuckwell: That is correct.

Senator SCARR: Secretary, I'll seek your input on this as well. As I understand it, you've got about 54 FTEs within this Communications and Media Branch. It raises questions in my mind as to the initial process that led to it being onboarded onto the site and then why it wasn't picked up in the course of nine days. I might ask you, Ms Tuckwell, to explain that, and then, Secretary, I'll seek your input.

Ms Rule: Senator, I might jump in before Ms Tuckwell if that's okay.

Senator SCARR: Does Ms Tuckwell report to you?

Ms Rule: She does; therefore I take accountability for this issue as much as anybody else. I think our evidence, both in the answer to the question on notice and at the previous hearing, is that the media release was published in error by a junior staff member who didn't correctly apply the guidance around which material should be published to which websites. We've acknowledged that error. As soon as we became aware of the error, we corrected it. I think we have been very clear and focused on making sure that we strengthen the systems to try to prevent those kinds of errors happening in the future, but also in detecting whether things are published in error so that we can act more quickly and not need to rely on somebody else to bring it to our attention.

So I think there have been a series of things that Ms Tuckwell and her team have focused on—including strengthening those procedures, lifting the level at which people have the authority to authorise things to be published on websites, and reinforcing guidelines with the staff in the communications branch—just to ensure that we're not in this position again. This was, as I think I said at the last hearing, a human error, and we need to make sure that we strengthen our systems and processes to try and prevent those things in the future.

Senator SCARR: But it's true—isn't it, Ms Rule?—that your systems and processes should be robust enough that a human error, perhaps an understandable human error, by a junior staff member should be picked up, especially when you're publishing something public like this. Is that correct? Is that a fair comment?

Ms Rule: It's a fair comment. As I said, we've elevated the level at which people have the authority to publish those things, and we've strengthened the oversight of those matters to ensure that we're not inadvertently publishing things in the wrong places.

Mr Duggan: To add, it was an error to put the press release onto the website. Our systems and procedures should have picked it up internally rather than relying on a senator to bring it to our attention. Once it was brought to our attention, we acted within 24 hours to address the issue. We acknowledge our systems and procedures were not what they should have been, and we have made significant efforts since then to do that and to engage with all of our staff. I don't want this to be attributed as an error by a junior staff member. This was indicative of our systems and procedures not being as robust as they should have been.

Senator SCARR: Okay. That's the correct characterisation. Can you take on notice how many page views it got whilst it was up.

Ms Rule: Yes, we'll take that on notice.

Senator SCARR: Thank you.

Ms Rule: If that is available, we'll provide it.

Senator SCARR: As I understand it, the release came from the media adviser in the office of the minister. What communication have you had with the minister's office in relation to this matter? Can you take that on notice, please.

Ms Tuckwell: I can advise that we have provided them with our updated protocols.

Senator SCARR: Have there been any instances since July 2022—again, you can take this on notice—where the minister's office has provided material for publication on your media website where it was—to use the words that are used—overtly political and you've refused to publish it?

Ms Tuckwell: Sorry, could you repeat the timeframe of that question.

Senator SCARR: From July 2022.

Ms Tuckwell: I think we would need to take that on notice.

Senator SCARR: Okay. If you can, take that on notice. Have you engaged in an audit of the rest of the website since this occurred to make sure there's nothing else there that's overtly political?

Ms Tuckwell: Yes, we have reviewed the website.

Senator SCARR: What did you find?

Ms Tuckwell: As Ms Rule said—

Senator SCARR: Did you find anything else—

Ms Tuckwell: I would have to take that on notice.

Senator SCARR: that had to be taken down?

Ms Tuckwell: I don't believe so, no.

Senator SCARR: You don't believe so. Ms Rule, are you aware?

Ms Rule: Not that I'm aware of.

Senator SCARR: As I understand it—and I just have two more questions, Chair—the new directive to escalate contentious material was issued on 13 March. Is that correct?

Ms Tuckwell: That would be about right, yes.

Senator SCARR: Is it in writing?

Ms Tuckwell: Yes.

Senator SCARR: Can you table it? Do you have it?

Ms Tuckwell: I don't have it with me, but we could table it.

Senator SCARR: Okay. We've talked about the junior staff member. I've been and everyone in this room has been a junior staff member at one stage. I made my fair share of mistakes. Was there any counselling provided to anyone above that level with respect to discharge of their responsibilities? I am surprised, to tell you the truth, that it wasn't picked up in those nine days.

Ms Rule: As I said earlier, I see myself as accountable for this. This sits in an area of the business for which I'm responsible. I've worked with Ms Tuckwell and her team to make sure that we've taken the remedial action that's necessary. That includes working with all of the staff in that branch to lift their capability and understanding of these issues. In terms of the individual staff member, we've already reflected that this was a failure of systems and processes, so we've worked with that person as well as all of the other staff in that area to make sure we've got a consistent understanding of the processes and protocols.

Senator SCARR: It wasn't picked up. As I understand it, you've had media monitoring at a cost of $231,000, by the figure I have here, for the last nine months. Obviously, that wasn't effective in terms of picking up the issue. For example, you didn't pick up that the content of the media release had been reported in the media and then tracked back to the department.

Ms Tuckwell: Not that I recall, no.

Senator SCARR: Can you take that on notice.

Ms Tuckwell: Yes.

Senator SCARR: That's all I have for corporate.

CHAIR: That concludes our questions for corporate and enabling services, cross portfolio and general matters. Thank you, officials. We'll now call to the table officers in relation to outcome 3 workplace relations.

[10:07]

CHAIR: Senator Scarr, you have the call.

Senator SCARR: Hello, Mr Manning. My grandfather's middle name was Manning. Manning River—have you heard of the Manning River?

Mr Manning: I have.

Senator SCARR: The Prime Minister announced at the ALP National Conference on 23 July the establishment of a new fair work court, which I'm sure we're all familiar with. The department, in its annual report, noted that it 'developed policy that informed the Australian government's July 2026 announcement of a new fair work court'. When did that policy work begin?

Mr Manning: It would have been—I'll have to take on notice the exact dates that we first discussed it.

Senator SCARR: Sure.

Mr Manning: It would have been towards the start of this year. Potentially, in late 2025, we might have had a discussion about it.

Senator SCARR: So it was underway when you appeared at the last estimates on 2 June?

Mr Manning: Certainly, 2 June—

Senator SCARR: Well and truly underway.

Mr Manning: It would have been underway in the sense that, yes, we would have been thinking about options and knowing about the potential for that work to proceed.

Senator SCARR: I wasn't here on 2 June, but it raises the question as to why it wasn't raised during estimates.

Mr Manning: I don't recall getting questions about it. I'd have to check the *Hansard*. Certainly, if we had been asked questions about it, we would have spoken about it, should we have been able to.

Senator SCARR: But you can't ask questions about something you don't know about, can you?

Mr Duggan: It's not really our prerogative as officials to announce a government's intention to announce a policy.

Senator SCARR: Did the department provide a brief, costing or new policy proposal before to the minister or the Prime Minister's PM&C prior to 23 July?

Mr Duggan: We did provide a series of briefings to the minister. And just to add to Mr Manning's evidence—

Senator SCARR: Do you have a chronology, Secretary?

Mr Duggan: Yes, we do.

Senator SCARR: Could you walk through the chronology—after you provide the introductory comments you want to provide.

Mr Duggan: I'm very happy to. To add to Mr Manning's evidence, there have been discussions about reforms to the fair work dispute mechanisms that have been going on for some time now. In fact, there have been a couple of reviews that have been undertaken where the idea of a standalone industrial relations court has been prominent to the recommendations of those reviews. The first time we started to have conversations with the minister in her office around the prospect of a fair work court was towards the end of 2025. We then provided a series of briefings, including written briefings, in the lead-up to the announcement by the Prime Minister and in fact under FOI we received a request for dates of briefings to the minister, which we provided under FOI and are happy to take you through, Senator.

Senator SCARR: Who initiated the commencement of that work at the end of 2025?

Mr Manning: The minister's office, in discussions with the department.

Senator SCARR: So the minister's office initiated the commencement of that work. Is that correct?

Mr Manning: That's my recollection. But I'll take it on notice and confirm that for you.

Senator SCARR: Yes, if you can. And can you walk us through the dates of those briefings, Secretary?

Mr Duggan: Yes, I can provide you with the briefing chronology in broad terms. These are written briefings, and of course we will have had conversations with the minister's office and with the minister outside of that. But in the lead-up to the Prime Minister's announcements we provided a briefing on 11 May, 7 July and 15 July and then again on 20 July. Then, as you noted, the announcement was, from recollection, on 23 July.

Senator SCARR: So over that period of two weeks, between 7 July and 20 July, you provided three briefings. Presumably there was a very intensive engagement between the minister's office and the department during that time.

Mr Duggan: Yes. My recollection of that time is that yes, in preparation for putting the minister in a position to be able to support the Prime Minister's announcement there was quite an active engagement through that period on the issue of a fair work court.

Senator SCARR: Okay. There was an FOI release from your department—LEX2524—which listed the dates of briefings to the minister on the fair work court. As I understand it, it listed a briefing on 30 January 2024. What does that refer to?

Mr Duggan: The information I have in front of me is that it related to reforms to the fair work dispute resolution system. It may have been broader. Of course, a fair work court is one option for making reforms to the dispute resolution system. But, as I indicated, discussions of the fair work dispute resolution system have gone back for some time. In fact, in February 2024 there was a review of the fair work claims procedure that was undertaken by the department, and a review of the Fair Work Act small claims procedure made a recommendation to the government to consider the idea of improvements in the fair work dispute resolution system as far back as—

Mr Manning: I was just going to say, I think it's an issue that goes back to 2019—from memory, the migrant workers task force that had looked at the issue. From memory—and, again, I can take it on notice—that briefing back in 2024 related to that review of the small claims process that the Secretary is speaking about. It was being worked on at around that time, so it was looking at those issues around dispute resolution in the workplace relations system. Some submitters to that process had raised the idea of a fair work court in that context.

Senator SCARR: Okay. That brief that was provided on 30 January 2024: was that as a result of a request from the minister or the minister's office?

Mr Manning: I'd have to check that on notice. As I said, my understanding is that it relates to the small claims review. It might have just been because it was finishing up or at a particular stage that had justified a briefing. But I'll have to check.

Senator SCARR: Does anyone else at the table know?

Mr Manning: The genesis of that brief?

Ms Costelloe: We would have to check the genesis of that. I think it was a couple of years ago.

Senator SCARR: As I understand it, there were also additional briefings in late 2024 and January 2025. Is that correct? Did those briefings relate to—

Mr Manning: I've got the list in the same FOI request, and the one in November 2024 specifically mentions to relate to the outcomes of the small claims review. As was said, my understanding is that the one in January 2024 relates to that as well, but that's something I've undertaken to check and confirm on notice. As you say, there was also one in January 2025.

Senator SCARR: What happened between January 2025 and late 2025? Did anything happen during that period until you were requested to commence work again by the minister?

Mr Manning: As the secretary said, it's an idea that has been around and been raised in a number of different contexts, which I think is simply explained by the fact that, late in 2025, the minister's office, from memory, advised us that it's an idea that the government was considering pursuing, and work started on it.

Senator SCARR: I note departments keep track of election commitments to work out what they're going to have to do—

Mr Manning: Was it an election commitment?

Senator SCARR: Yes. Can you take that on notice?

Mr Manning: I would have to check, for example the Migrant Workers' Taskforce recommendations. There was a general election commitment about looking at those recommendations again, but I would have to confirm on notice whether there was a specific election commitment in either 2022 or the subsequent election. I don't recall; I'll have to check

Senator SCARR: Was there, from your perspective, Mr Manning, any liaison with the Federal Court of the FCFCOA in relation to the briefs you worked on prior to the announcement?

Mr Manning: Not by this department. I know that, in estimates on Monday, the Attorney-General's Department gave evidence about contact with the federal courts. That's a matter for them, given their portfolio

arrangements and the courts sitting in those portfolios. This department didn't have any engagement with the federal courts; that was something we left to the Attorney-General's Department.

Senator SCARR: But you weren't involved in those cross-departmental discussions?

Mr Manning: Post-announcement, there were formal consultations with the courts, and, certainly, I and the other witnesses at he table were involved in those consultations with the courts.

Senator SCARR: Who would you be liaising with? Is it the registrars?

Mr Manning: Again, the Attorney-General's Department would take the lead, but I might ask Ms Brayshaw to run you through the arrangements for how those consultations were set up.

Ms Brayshaw: The taskforce is made up of officials from both the Attorney-General's Department and this department. Following the establishment of that taskforce, one of our key pieces was to engage with both the federal courts and the Fair Work Commission. The Attorney-General's Department organised an initial meeting on 21 August with the Federal Court and the Federal Circuit Court and Family Court of Australia. Attending that meeting was the acting deputy registrar of the Federal Court and the registrar of the Federal Circuit Court and Family Court of Australia. Since then, we've had a number of engagements with them, both at that level and also with representatives from those agencies.

Senator SCARR: Do you have any figures on how many court disputes took, say, more than two years to resolve or any other data that you used in the briefs with respect to the time it was taking to resolve disputes through the current system?

Mr Manning: I'd have to check, on notice, as to what data was put in the briefs. Certainly, you're going to one of the aims there. I'm not sure if Ms Brayshaw or Ms Costelloe are able to talk about data that we've obtained from the courts to help work up options for government around timeliness.

Ms Brayshaw: In terms of the information we've got, we've received data that's consistent with what's in their annual reports regarding filings and finalisations of matters, and also median averages of filings.

Senator SCARR: Do you have that data there?

Ms Brayshaw: Yes.

Senator SCARR: Can you just walk through whatever you've got there at a high level.

Ms Brayshaw: In 2025-26, which is the annual report that's just been released, the Federal Circuit and Family Court of Australia Division 2 had 2,230 Fair Work Court filings. Of those, I understand 581 were small claims filings.

Senator SCARR: And in terms of time to resolve those matters?

Ms Brayshaw: My recollection is there's a median of three months, but I haven't checked the most recent annual report which was tabled.

Senator SCARR: But your recollection is it's a median of three months; is that correct?

Ms Brayshaw: For small claims—but I don't have that information with me.

Senator SCARR: Would the new Fair Work Court, as it's proposed, extend beyond small claims?

Mr Manning: The model for the court is a matter that we're working up advice to government on at the moment. Government hasn't made those decisions about the jurisdiction of the court.

Senator SCARR: Can I put this to you. Minister Rishworth said, when responding to a question:

No, I am not making any commentary on decisions that have been made. What we know is that workers sometimes have to wait two years for an outcome.

Ms Brayshaw, you referred to a median time of three months. I'm just trying to marry what the actual data is saying with Minister Rishworth's comment about the two years.

Ms Brayshaw: I should say that was for small claims. I think it's 6.6 months for Fair Work matters.

Mr Manning: I'm assuming that's a median or an average.

Ms Brayshaw: It's a median.

Mr Manning: Clearly, 50 per cent of them take quite a bit longer. We will take it on notice to see if we can provide the information that was provided in those submissions. I'm not aware of whether or not they are cabinet-in-confidence submissions. We'll provide that information when we can.

Senator SCARR: But the two medians you've referred to, Ms Brayshaw, are just over six months and three months, which is considerably less than two years; that's correct, isn't it, as a matter of fact?

Ms Brayshaw: I think one is talking about median and one is talking about the experience of individual matters.

Mr Manning: In relation to the small claims review timeliness and accessibility issues that we heard about and that were concerns, and as stated in the announcement of the court, trying to have quick and effective decision-making is an aim of the court. They're factors we're feeding into our considerations as we develop up advice on the model for the government to consider.

Senator SCARR: I'm trying to work out what the data tells us about the issue of delay. Did you provide any advice to the minister with respect to this two-year point?

Mr Manning: I've taken the specifics of that on notice. I will have to take that on notice, to look at that level of detail in that list of submissions that we spoke about before—to see if I can. We covered the issue generally around timeliness, but I can't recall what data.

Senator SCARR: In one of these briefs that were provided, you can't recall whether or not you referred to—

Mr Manning: I can't recall whether that specific piece of data you're referring to was in it or not. That's what I've taken on notice.

Senator SCARR: It's not what I referred to; it's what the minister referred to.

Mr Manning: You're referring to the answer.

Senator SCARR: That's correct. Okay, if you can take that on notice—and whatever other data was contained or that you have with respect to the timeliness of the resolution of those small claims.

Mr Manning: We're talking about data from the courts as well. I make the obvious point that there are two portfolios involved. Normally, if there were additional questions, it might be that we have to check with the Attorney-General's Department on that—and we can do that.

Senator SCARR: That's right, but it wasn't the Attorney-General who made the comment about two years; it was your minister.

Mr Manning: Yes. It just goes to the source of the data.

Senator SCARR: And that's what I'm particularly interested in—where the minister got that data in relation to the two years.

Mr Manning: I've taken that on notice.

Senator SCARR: If I can put it abruptly, one way the minister could have referred to it would have been to say, 'The mean is three months, but there are outlying cases where it's taken two years.' That's a bit different from just referring to the two-year case, which is presumably at the extremes. That's why I'm interested in the issue and in the data you have with respect to what the actual evidence is regarding the resolution of those claims. Secretary, you can take that on notice.

Mr Duggan: We will take that on notice, as we have. I'll just point out that the evidence today on not the small claims but the more complex matters being a median of 6.6 months—I think that was the evidence given by Ms Brayshaw—is not inconsistent with some people experiencing a delay of up to two years through the court. Those two things are not inconsistent, but we have undertaken and we will provide you with—

Senator SCARR: Absolutely, but, I can say as a former lawyer—probably you're never a former lawyer—that there can be all sorts of reasons why a case can take two years, including that the applicant goes missing or that you can't find someone. There can be all sorts of reasons as to why a case can blow out which aren't necessarily going to be rectified by establishing a new court.

Mr Duggan: I understand that. I am just making sure that there was no misunderstanding. Our advice has been consistent.

Ms Brayshaw: I may have said that we met with the acting deputy registrar. I meant to say the acting principal registrar of the Federal Court. I just wanted to correct the *Hansard*.

Senator SCARR: That gives me confidence in terms of your rigour. Thank you.

CHAIR: Senator Pocock.

Senator BARBARA POCOCK: I just want to follow up Senator Scarr's questioning. Going to that media release of 23 July from the minister, you refer to being faster but also cheaper, and you refer to the fact that sometimes, when people take cases, the case can cost more than the claim is worth. Do you have any data on costs at present for those trying to execute or pursue small claims, or even more complex ones, in the same way that Senator Scarr has sought data about time?

Ms Brayshaw: In terms of total cost of cases, I don't have that data, but some of the experiences we've heard from recent inquiries have been that, across different jurisdictions, between the federal and the state courts, there can be different filing fees, and that that, for some stakeholders, is already an expense that they're facing, as well as feeling that these are quite formal processes that they need to get legal advice for; the cost of that is part of the issues we've heard about. I would need to take that on notice to give you more data, but they're the kinds of things that we've heard and that I know have been raised not only in the Migrant Workers Taskforce report but also more recently in things like the small claims review and the wage theft inquiry earlier this year.

Senator BARBARA POCOCK: On notice, I'd like a picture of how that argument around costs is formed and what kinds of costs people get, and whether you've got any median or average availability or just anecdotes. I'm all for timely and cheap access to the law for workers.

Mr Manning: That issue you touched on is one of the issues that is front of mind in terms of working up options. I haven't got the number, but a relatively small amount of claims are taken through the small-claims process each year. It seems very different from the estimates of wage underpayment in the economy each year. There's clearly something happening in terms of the number of people formally deciding to go into court to pursue it that effectively means a lot of people aren't doing that in relation to alleged underpayments.

Senator BARBARA POCOCK: A lot of people cop a lot of rubbish before they get justice. We know that in relation to sexual harassment—the figures of people who actually take something formally. It's very painful, it's expensive and it takes a lot of time and energy. Thank you for that; I look forward to that answer.

I have some questions about the way in which you are proceeding to prepare for the Fair Work Court. I understand there's an interdepartmental taskforce—and excuse me if I've missed detail that you've already covered on this—that's overseeing the establishment of the court. Which department is that taskforce based out of? Is it your—

Mr Duggan: This is a joint taskforce between this department and the Attorney-General's Department. Leading the taskforce is Ms Brayshaw.

Ms Brayshaw: The taskforce was established in early August, and we have officials from both this department and the Attorney-General's Department. Together, we are working on undertaking engagement with the courts, the Fair Work Commission and the Fair Work Ombudsman, as well as consultations with key stakeholders, design and policy advice, and advice to government more generally. That's the work of the taskforce that's been set up.

Senator BARBARA POCOCK: How many people are on that taskforce?

Ms Brayshaw: There are currently 13 staff in the department that are working on it, and then there are also staff from Attorney-General's as well.

Senator BARBARA POCOCK: So 13 from your department—

Mr Manning: DEWR.

Ms Brayshaw: From DEWR, that's correct.

Senator BARBARA POCOCK: and an additional group.

Ms Brayshaw: Yes.

Senator BARBARA POCOCK: And do you have terms of reference or objectives, or can you provide—

Ms Brayshaw: In terms of our governance arrangements, we report to a Band 3 steering committee—a deputy secretary steering committee. I would say that the terms of reference are that we've been established to support the development of the Fair Work Court and to deliver a streamlined workplace dispute resolution system that's accessible, efficient and easy to navigate for workers and employers. That overarching principle and objective was developed between our secretary and the Attorney-General's secretary. And then, I was about to mention, we also have a steering committee at the deputies' level that provides strategic oversight and advice as needed. It's co-chaired by Mr Manning and the deputy secretary of the Attorney-General's Department, and we also have representatives from Prime Minister and Cabinet, Treasury and Finance. Also, the representatives of the federal courts and the Fair Work Commission are part of that. That provides that senior-level engagement, and, of course, we keep our secretaries and ministers updated. So that's kind of the general structure—and very much that overarching principle or objective is for us to support the development of that court to achieve those objectives.

Senator BARBARA POCOCK: I'm old enough to remember the court before it was abolished in 1997, and I know there's a lot of expertise out there in the academic world—historians and current practitioners—who will have reflections. How are you reaching into that academic community and those with historical experience?

Ms Brayshaw: I think that is something that we have on our list of engagements. We do want to talk to academics and those that have been involved in the experience of courts. We also have access to the annual reports of the former Industrial Relations Court, and I think those reports provide some insights into their priorities and their approach to what they were set up to establish. They've been helpful, but there's more that we will be doing in the coming months.

Senator BARBARA POCOCK: What consultations have you had underway? Where are you at on consultation?

Ms Brayshaw: We had a series of initial consultations that we undertook with the Attorney-General's Department as the taskforce, and we had those in early September. We met with union representatives and employer organisations—including small-business representatives such as the Australian Chamber of Commerce and Industry, the Australian Industry Group, COSBOA and the like. And we also met with the courts, as I've mentioned. Those were initial consultations following the announcement, which gave them an update about the role of the taskforce. They also touched on issues around jurisdiction, to seek views about the structure of the court, scope of jurisdiction, user experience, and their reflections about how the current system works, what things would be important going forward and whether there were other things in terms of the settings about how a new Fair Work Court would sit within the WR system with other institutions such as the Fair Work Commission. There were different views and mixed views, but I would say that there was an interest in ensuring that the design has a focus on that user experience for both employees and employers, gives people that clear pathway about how to resolve matters and promotes resolution of matters.

Senator BARBARA POCOCK: Have you got any reflections so far about the kind of experience that will be appropriate for appointments to the court?

Ms Brayshaw: I think the reflections we've received are about a merits based process—it's important—and having qualified candidates who bring experience, legal experience but also workplace relations experience. That's probably the extent of the reflections from those initial conversations, but, certainly, yes, that's my recollection.

Mr Manning: That's noting that one of the stated aims in the government's announcement is about having workplace relations expertise on the court. Certainly, there's an established process for judicial appointments, as I understand it. It goes to that. Then the issue that we'll have to give advice to government on how is that could be applied—sorry, we and mainly Attorney-General's, I imagine—in relation to judges and how it will apply to meet that aim of ensuring expertise in workplace relations.

Senator BARBARA POCOCK: Thank you. That's all my questions.

CHAIR: I'm returning to the opposition.

Senator SCARR: Yes, I've got more questions in relation to this area, so, if you could, please stay at the table. To follow up, Ms Brayshaw, you referred to the interaction with the registrars or whatever we called them in relation to the courts. Was that the first interaction between the department and the courts in relation to this matter?

Ms Brayshaw: The taskforce established in August, so that was my first introductory meeting.

Mr Manning: As I think I said earlier in evidence, the Attorney-General's Department has led consultation with the courts, given their portfolio relationship. We haven't had separate contact with them before that. As I understand, the evidence they gave on Monday was that the courts were told on the day of the announcement. I think there were conversations between the Attorney-General's Department and the courts before then, but, again, I would have to check that or refer back to that *Hansard*. This was our first engagement with the courts.

Senator SCARR: The first engagement was after this—what do you call it?—committee was established.

Mr Manning: The first engagement of the taskforce.

Ms Brayshaw: Of the taskforce.

Senator SCARR: The taskforce, okay. Can you check that on notice. Just confirm there was no other consultation, or you can confirm that now.

Mr Manning: I can give evidence that this department didn't have contact with the courts between the announcement and that consultation. What I can't give evidence as to is any engagement the Attorney-General's Department had with the courts. That would really be a question they could answer.

Senator SCARR: But you didn't have any consultation with the courts—

Mr Manning: No.

Senator SCARR: in the process of giving the briefings to the minister. Since you started this—

Mr Manning: Oh, no.

Senator SCARR: stream of work in December late last year, up until the last briefing you gave on 20 July, you didn't have any consultation with the courts, correct?

Mr Manning: Yes, that's my recollection.

Senator SCARR: Okay. Thank you. But you'll check that on notice?

Mr Manning: Yes.

Senator SCARR: Thank you. Ms Brayshaw, in relation to the structure of this taskforce, which department is the lead agency?

Mr Manning: It's very much a joint effort.

Ms Brayshaw: The way—

Senator SCARR: Co-leads, is that what you call it?

Mr Manning: Unfortunately.

Ms Brayshaw: I would say that it is a joint taskforce and it is co-led, but I think there's an understanding and an underpinning that both ministers have portfolio responsibilities. So, within that, the Attorney-General's Department brings expertise relating to the federal courts and the system and, as Mr Manning mentioned, appointments. In terms of the Department of Employment and Workplace Relations, we bring expertise in relation to workplace relations policy and the framework and settings within that system and some of the issues.

Mr Manning: And, obviously, the Fair Work Commission is in our portfolio as well.

Ms Brayshaw: And the Fair Work Commission.

Mr Duggan: I had a good conversation with the Secretary of the Attorney-General's Department about how to establish and structure this taskforce.

Senator SCARR: When was that, Secretary?

Mr Duggan: That was post the announcement. It would have been within a week or two, I'd imagine. I can take on notice precisely when, if that's helpful. We basically came to the conclusion that we both had very significant equities and therefore it made most sense for it to be joint. Ms Brayshaw, in a sense, has that overall coordination responsibility through the taskforce. She brings together the endeavours of both the Attorney-General's Department and our department to bring that together.

Senator SCARR: When was it formally established? When was the kick-off?

Ms Brayshaw: It was early August.

Senator SCARR: You can take on notice the particular date.

Ms Brayshaw: Can I take it on notice?

Senator SCARR: Yes. How many staff?

Ms Brayshaw: There are 13 staff from the Department of Employment and Workplace Relations. I'd need to check with Attorney-General's as to their numbers. If I can take that on notice—

Mr Manning: It's a smaller amount than 13.

Ms Brayshaw: Yes.

Senator SCARR: Does it have a budget?

Ms Brayshaw: In terms of that budget—

Mr Manning: There's no separate budget for it. I mean, obviously, each department is paying for its staff who are working on it. There was—

Mr Duggan: We brought it together within the workplace relations group, in terms of the department's contribution to the task force. So it draws on the existing resources of that group.

Senator SCARR: Okay. So Ms Brayshaw, you're engaging with stakeholders now. Is that correct?

Ms Brayshaw: We have started engaging with stakeholders, as well as doing project planning, looking at what needs to be developed in terms of those key design features, and meeting with federal courts and the Fair Work Commission and understanding their operational insights.

Senator SCARR: Which stakeholders have you been meeting with?

Ms Brayshaw: We've had an initial series of consultations, as I mentioned to Senator Pocock, which includes the union representatives as well as employer group representatives and the Law Council of Australia. This was an initial set of consultations, and I should say that we've also had meetings with the Fair Work Ombudsman, the Fair Work Commission, the Federal Court of Australia, and the Federal Circuit and Family Court of Australia.

Mr Manning: And obviously government agencies are engaged in the work itself. As we said, in relation to the band 3 steering committee that sits above, central agencies like Treasury, Finance, and Prime Minister and Cabinet come onto that as well.

Senator SCARR: Mr Manning, when you were engaged in the process from late December through to 20 July, did you have any engagement with external stakeholders—stakeholders outside of government?

Mr Manning: Not outside of government, no. I would have discussed it with the Fair Work Commission at some time in that period.

Senator SCARR: Is it true to say that, to your knowledge, the first that any external stakeholders would have known about this was when the Prime Minister made his announcement on 23 July?

Mr Duggan: We can only talk about the department's engagement—

Senator SCARR: And that's what I'm asking in relation to.

Mr Duggan: Whether or not the minister or her office had any engagement is not something we can provide at an instant.

Senator SCARR: But you're not aware of any other engagement prior to 23 July?

Mr Manning: I'm not aware of any engagement with this department prior to 23 July. I don't know, as Mr Duggan just said, whether ministers or their offices had discussions with any stakeholders.

Senator SCARR: Were you involved in the briefing that was given to business groups at, as I understand it, 8 am on 23 July by Teams meeting?

Mr Manning: On 23 July—

Senator SCARR: When the announcement was made.

Mr Manning: That was the date of the announcement. No, I wasn't involved in that.

Senator SCARR: Was anyone in the department involved in that?

Ms Brayshaw: Not that I'm aware of.

Senator SCARR: Can you check that?

Mr Manning: We could take that on notice.

Senator SCARR: Okay. In my previous role on the Legal and Constitutional Affairs Committee I was involved in the processes that led to the establishment of the FCFCOA and also the establishment of the ART as a successor body to the AAT. So I'm going to assume a few things. Did the Law Council of Australia request that an exposure draft or legislation be prepared that they'd be able to comment on prior to the introduction of legislation?

Mr Manning: We're a long way off the introduction of legislation. I'll defer to Ms Brayshaw about what they said in those initial consultations—

Senator SCARR: Just to provide you with additional context, Ms Brayshaw, the Law Council of Australia and other stakeholders, certainly in relation to the establishment of the ART, raised substantial concerns that the engagement occurred in too short a way. They didn't have sufficient time to get the input of all their relevant expertise, to mobilise all their relevant expertise, to give comments on exposure drafts, as opposed to trying to amend legislation once it was introduced in the parliament. So it goes to the issue of timing and how aggressive the timetable is and whether stakeholders are going to have a reasonable opportunity to give considered input, which the departments can then consider and reflect in legislation before it's introduced to the parliament. What response can you give us to those project time line issues?

Mr Manning: I might raise just one other general issue in relation to workplace relations. There are established arrangements in relation to workplace relations for consultation on legislation. There is a committee on industrial legislation and also arrangements for discussions with states and territories, given that some of the workplace relations system is underpinned by referrals. I'm just raising that, Senator, in case you weren't aware of those. In relation to the Law Council of Australia, I would assume that the proposition you're putting is correct—that they would want to see it, and see it with advance notice. I just don't know whether or not in the initial conversation they put that mark in there.

Ms Brayshaw: I don't recall them putting that request, but I can take on notice and correct if there was that. It was very much an initial consultation with them.

Senator SCARR: What's the timeline?

Ms Brayshaw: In terms of—

Senator SCARR: From now to passage of legislation, what's your indicative timeline?

Ms Brayshaw: That's a matter for government.

Mr Manning: Government's still making those decisions. The government will make that decision. We aren't yet working to a detailed timeline the government's signed off on, for example. But certainly we're fully aware that in the Prime Minister and other minister's joint announcement there was a commitment to consultation with all interested stakeholders before the court, and we'll imagine the taskforce will be leading that and continuing on those conversations that started. But we're not able to sit down and give you dates of when that will be happening with a complete end date at the moment.

Senator SCARR: When this initiative was announced, consultation was foreshadowed for this year and details coming soon. We're now in late October. We're about to go into November. Soon we're going to be in the Christmas period, and we still haven't got a consultation paper. Do you have any indicative timing you're working towards?

Ms Brayshaw: The first stage was to have those initial consultations with them and to set out some of the key issues. We are working on further stages of consultation, but I don't have details that I can give you today. We are conscious that we will need to do further consultation and seek those views from stakeholders, including the Law Council.

Senator SCARR: Will that be done through a formal paper, like a paper that's released, so all stakeholders have an opportunity to provide input and that input is made public?

Ms Brayshaw: I think those are matters to be—

Mr Manning: The exact form it will take is still something we don't have a final decision on yet. The proposal does give rise to a lot of cross-cutting and complex issues, so I would imagine something like that would be of assistance. We're just unable to say for sure because there hasn't been a final decision.

Senator SCARR: I was involved in those other two processes, and I can tell you it's extraordinarily complicated. I'm mindful of the need for there to be fulsome consultation and timetables not adopted that are overly aggressive because that could lead to unintended consequences. The minister has said she would like to set up the court quickly. You don't have a target date yet for when you're hoping the court would be operative?

Mr Duggan: Mr Manning provided evidence that the timeline for implementation is subject to government decision. Minister Rishworth said publicly that she'd like to see the court operating as soon as practically possible. There's a lot of work to do before we get to that point.

Senator SCARR: What about cost? Is there any estimate with respect to what this will cost? Again, there was a lot of commentary in relation to the costs involved in establishing the ART, at the time, on a cost-benefit analysis. Have there been any estimates with respect to how much cost is involved in setting up a new court?

Mr Duggan: The question of cost comes down to some very precise design details around the court, and various options are being worked through at the moment which have different cost implications associated with them. That is part of the advice around the options that we'll present to government.

Senator SCARR: Any high-level figures?

Mr Duggan: Not at this stage, no.

Senator SCARR: You understand, Secretary, you've got issues. You've got to obviously appoint the officers, the judicial officers. You've got to find premises. You've got to establish a registry—

Mr Duggan: Yes.

Senator SCARR: all sorts of questions as to how you engage with the existing courts in that regard. You acknowledge it's an extraordinarily complicated issue.

Mr Duggan: I acknowledge there are a lot of very practical questions that need to be answered in order to come to a conclusion for us to be able to put together a robust costing of what the court would be. We're working through our advice to government at the moment on those precise design choices.

Senator SCARR: Will there be any provision in this year's MYEFO, do you think?

Mr Duggan: That's a question for the government. It comes down to a decision by the Treasurer and the finance minister about what they would want to represent in their budget papers.

Senator SCARR: Have you been asked to give advice in relation to that?

Mr Duggan: Not in relation to whether or not a provision would be made, as far as I'm aware.

Senator SCARR: Minister, can I ask you to take on notice—I understand you're representing the relevant minister in this regard—as to whether or not the minister had any engagement with stakeholders with respect to the establishment of a fair work court in that period between December 2025, when Mr Manning kicked off his process of preparing briefs et cetera for the minister, and the point in time of the announcement on 23 July.

Senator Walsh: I'm happy to take that on notice.

Senator SCARR: Mr Manning, when you prepared your briefs, did you take into account the fact that the FCFCOA data with respect to the timeliness of dealing with small claims indicated that, on average, the time taken for claims under $100,000—I'm not sure what your definition is of a small claim; it's still a significant amount of money—

Mr Manning: I'd need Ms Brayshaw for confirmation. In our understanding, that's what the upper level of that process is.

Senator SCARR: As I understand it, the average time to deal with those claims had fallen from 8.7 months to the 3.1 months that Ms Brayshaw referred to as the median. Mr Manning, in your briefs, did you refer to the fact that the timeliness of dealing with those claims had fallen to a material extent?

Mr Manning: It's a while ago. I'd have to check; I'll take that on notice and add it to the data request I took on notice earlier around the timeline to see if that was in there. We're able to provide that on notice.

Senator SCARR: My particular concern is to make sure you were using—I'm sure you're diligent; I'm not, in any way, saying otherwise—the most up-to-date data.

Mr Manning: My assumption is, if that data, insofar as it's included, we'd be relying on the publicly issued documents of the courts in relation to that particular jurisdiction. I can't tell you as we sit here; I can't recall whether, in their annual report, for example, they break it down via the different areas of practice or not. That's what we'll take on notice, check for you and provide a framework.

Senator SCARR: I'm happy for you to take that on notice. Did you provide advice with respect to the option of simply increasing the resources available for dealing with small claims through the existing legal structures? Instead of establishing a new court, maybe providing for the appointment of additional judges or registry services to enable the existing courts to deal with small claims more expeditiously?

Mr Duggan: We went through the chronology of written advice that's been provided around the issue of Fair Work dispute resolution system. There are a large number of briefs that go to that broad issue, so we'll need to take on notice whether any of those briefings, what the range of options and considerations were in those briefings, and we'll need to let you know on notice whether any of those briefs included specifics around an alternative to raising resourcing of the existing court structure.

Senator SCARR: That's fine. The minister has said that dual appointments with the Fair Work Commission are quite unlikely due to constitutional issues. Has the taskforce obtained legal advice, Ms Brayshaw, in relation to that issue?

Ms Brayshaw: The taskforce has sought advice on a range of matters, and arrangements of appointments has been one of those.

Senator SCARR: Have you sought advice with respect to that particular issue of dual appointments so that a commissioner could potentially wear one hat as a commissioner and then wear a different hat as a member of a fair work court?

Mr Manning: We've sought preliminary advice, noting that government is still formalising options on the full range of constitutional issues relevant to establishment of a court, noting the obvious requirements in the Constitution.

Senator SCARR: Who did you seek that advice from?

Mr Manning: The acting solicitor-general for the Australian Government Solicitor.

Senator SCARR: Can you take on notice when you sought that advice?

Mr Manning: Yes.

Senator SCARR: Have you engaged in any discussion with respect to whether or not this could be done as a division of an existing court as opposed to establishing a whole brand new court.

Mr Manning: In relation to the legal advice, are you saying?

Senator SCARR: Also logistics et cetera—both.

Mr Manning: I think that's probably covered by the question Mr Duggan took on notice earlier, but obviously, Senator, the last two examples you've given are options in the sense that the courts already have that jurisdiction. You could always give them more money in relation to an existing jurisdiction.

Senator SCARR: Correct.

Mr Manning: I know that, Senator, but, as I said, there are still those issues around whether or not that would solve those issues of timeliness and expertise that were mentioned in the media release in relation to the announcement.

Senator SCARR: Did you deal with those issues in your briefings, in particular, the expertise issue?

Mr Manning: Again, I think that's captured by the question Mr Duggan took on notice earlier, but certainly the issue of wanting to see expertise in relation to workplace relations disputes has been a longstanding aim in relation to those discussions around the courts.

Mr Duggan: Senator, just to point out here, of course, on the basis of that advice, the Prime Minister came to a judgement that the government was going to pursue an independent standalone Fair Work court. It came to the conclusion that it requires specialist judges with workplace relations expertise to sit on the court. It came to the judgement that the existing court process was not delivering the speed, the efficiency, the simplicity or the accessibility to the dispute resolution system that it was seeking from the court. Hence, it took a decision that it needed to establish a new court in that regard. We've taken on notice whether or not we provided alternatives to a standalone court, and we'll get back to you on that, Senator, but the conclusion that was reached on the basis of that advice was pretty clear.

Senator SCARR: I'll move on to potential appointment processes. I think you touched on this, Ms Brayshaw.

CHAIR: You've just got three minutes before we break, Senator.

Senator SCARR: Okay, we'll see how far we get. Again, I'm harking back to the ART process. This will be a process which is carefully watched. Ms. Brayshaw, you spoke at a high level in relation to appointment processes, but is the taskforce considering the need for there to be independence with respect to that selection process, but also the need for there to be clear confidence amongst all stakeholders that the process of appointment is independent and is sufficiently at arm's length in terms of at least the assessment of skills et cetera from executive?

Ms Brayshaw: I think the minister has said that the government's position is that there should be a merit based process for these appointments, and so I think my answer would be yes to your question about that. It would be seeking to do a merit based process to identify candidates and consideration of appointments, as happens now with other judicial appointments.

Senator SCARR: So would there be an independent selection panel?

Ms Brayshaw: I note that these are still matters for decision by government, and that's some way down the track. We're still at those earlier stages around the design and features of the court. These will be matters that government will need to consider. But these are not matters yet—

Senator SCARR: I'm just going to ask you a few questions. Feel free to take them on notice or say that the matter is still under consideration. Will there be published selection criteria?

Ms Brayshaw: I think these are still matters under consideration, but I wouldn't envisage that a merit based process—I can take it on notice.

Mr Manning: I would just add in relation to this line of questions. I mean, there are existing arrangements overseen by the Attorney-General's portfolio. So it may be that we can take them on notice, given the taskforce is working there, but there may be matters that we're relying on them to answer, noting that no decisions have been made about any adaptations or changes or the particular arrangements in relation to this court. There's the stated aim about ensuring workplace relations expertise—I'm just making a point; we'll take it on notice—but I think we're going to have to get the assistance of the Attorney-General's portfolio to answer some of these questions.

Senator SCARR: Sure. But you appreciate, Mr Manning, especially on the basis of your experience, that there's always this issue of perceptions, especially in this area dealing with industrial relations, that there's an

appropriate balance between people with legitimate union backgrounds and also people who have worked for employer organisations or for employers. You recognise that?

Mr Manning: Yes, it's an issue that comes up from time to time in relation to the Fair Work Commission.

Senator SCARR: Is the taskforce considering ways in which to make sure that that balance is appropriately calibrated—and to make sure that perceptions that that balance has been achieved—in a correct way? Is that on the agenda of the taskforce?

Ms Brayshaw: As I said, I think the idea of a merit based process and the approach that's taken now with appointments for judges would be the starting point. Of course, what Mr Manning said about expertise, that's one element, but—

Mr Manning: We're in a difficult situation, Senator, in the sense that these aren't matters in which formal decisions have been made, but I would certainly expect that the taskforce is turning its mind to how to achieve a court that's balanced and merit selection processes and having that workplace relations expertise that the government's committed to.

Senator SCARR: Okay.

CHAIR: Thank you. We'll now suspend for 15 minutes.

Proceedings suspended from 11:01 to 11:16

CHAIR: We're returning to questions in outcome 3, workplace relations. Senator Scarr, you have the call.

Senator SCARR: Can I ask a question in relation to the jurisdiction of the proposed court. The ACTU, which it's entitled to do, has been advocating that the court have powers beyond underpayment claims. Has the government made any decision with respect to the jurisdiction of the court and whether or not that jurisdiction extends beyond underpayment claims?

Mr Manning: Not yet. Those decisions haven't been made.

Senator SCARR: The ACTU has also been calling for the court to operate next year. We're in late October 2026. Is next year practical?

Mr Manning: I think I gave evidence earlier. There have been no decisions made on timing yet. We also gave evidence about the complexity of the task. I think that would be a big effort to have it ready next year.

Mr Duggan: We're working as hard as we can to stand it up as soon as we can, consistent with what Minister Rishworth has said publicly about the court being stood up as soon as practically possible. But as Mr Manning has given evidence on we don't yet have a decision from government around precisely when the court will be in operation.

Senator SCARR: I refer to the fact that business groups were briefed at 8 am on 23 July on the date of the announcement. As I understand it, the department wasn't involved in that briefing. Is that correct?

Mr Manning: That was, I think, a question from earlier. That's my understanding as well, but I took it on notice to confirm that.

Senator SCARR: Does anyone else have any knowledge?

Ms Brayshaw: No.

Senator SCARR: Do you have any knowledge as to when the ACTU was briefed?

Mr Manning: I don't.

Senator SCARR: Minister, can you take it on notice as to whether or not the minister has any knowledge?

Senator Walsh: I can, yes.

Senator SCARR: Thank you. Chair, I might share the call to Senator O'Sullivan if I can.

CHAIR: No problem.

Senator O'SULLIVAN: Can I take you to the minister's statement on 1 May, which said:

The government has no intention of requiring employers to enter an enterprise agreement covered by a registered employee organisation as a condition of receiving Commonwealth government funding …

Mr Manning: I'll just get the right witnesses here. Is this is about the Secure Australian Jobs Framework?

Senator O'SULLIVAN: Yes.

Mr Manning: We'll just have to swap the witnesses. Actually, I'll just check. Are we talking about the Secure Jobs Framework or the proposed standards for the construction?

Senator O'SULLIVAN: The Secure Jobs Framework. This is the 'no intention of requiring' element to that announcement. Does that still remain the government's position?

Senator Walsh: Yes.

Senator O'SULLIVAN: Not requiring is different from preferring, isn't it?

Mr Duggan: Businesses won't be required to have an enterprise agreement to participate in Commonwealth procurement. Decision-makers for Commonwealth procurement will be able to assess a range of indicators on pay and conditions for businesses whose workers are covered by an enterprise agreement and those who are not. It's seeking to make sure that the outcome is achieved, but the precise form of arrangement for workers is not a condition.

Senator O'SULLIVAN: What's the point of having it then? Will it be part of the tendering score? Will there be a higher score associated to an application if it's—

Mr Duggan: The framework is pretty clear in its objectives: it sets out the Australian government's expectations around secure work, fair treatment of workers and good workplace practices in Commonwealth contracts. One of the things that has also been made very clear through the framework is that value for money really is central to spending decisions. The framework itself sits alongside price, quality, relevant experience and performance history as key factors in that assessment.

Senator O'SULLIVAN: Will there be a requirement for legislation for this to take effect?

Mr Manning: I might get Mr De Silva Wijeyeratne to run you through the process, noting that it's been the subject of consultation and there are decisions that are still to be made.

Mr De Silva Wijeyeratne: The Secure Jobs Framework would operate as a policy document. The government's focus at this stage is giving effect to the Secure Jobs Framework in the Commonwealth procurement context in order to do that. That will be done through amendments that are made to the supplier code, which is administered by the Department of Finance.

Senator O'SULLIVAN: In June, Ms Godden told the committee that ruling that out was 'getting ahead of where we are'. The discussion paper is now out and submissions have been closed. Where are we at now in terms of that process?

Mr Manning: I'm just wondering, again, in terms of our processes. Given Ms Godden's role, I'll have to work out whether she is responsible for this or whether we talk about the standards. But there has been a consultation process in relation to the framework. Again, I'll get Mr De Silva Wijeyeratne to run you through where that's up to.

Mr De Silva Wijeyeratne: That's correct. There have been two sets of consultations that have occurred in relation to the Secure Jobs Framework. There was a consultation process that occurred over the course of December 2025 to February 2026, and there was a consultation paper that was issued seeking feedback on potential requirements, application, implementation and compliance arrangements. Following that, the department worked with colleagues at the Department of Finance to prepare a draft Secure Jobs Framework as well as proposed amendments to the supplier code. As Mr Manning has alluded to, there has been a consultation process on those documents that has run, formally, from 23 September to 21 October this year, though we have granted a modest number of extensions to submitters. I believe that date might have passed yesterday or today.

Senator O'SULLIVAN: The minister introduced the bill and included in part 9 a provision that allows Commonwealth entities to prefer employees with union covered agreements in procurement and grants. Is that right?

Mr De Silva Wijeyeratne: Which bill are you referring to, sorry?

Senator O'SULLIVAN: I thought it was the Secure Jobs Framework.

Mr Manning: There hasn't been any legislation in relation to the framework.

Senator O'SULLIVAN: I might have this wrong, then.

Mr Manning: It may be the building cooperative workplaces No. 2 bill.

Senator O'SULLIVAN: It may be. I apologise. I haven't got that in front of me.

Mr Manning: What I might do is get Mr Kerr to come to the table.

Senator O'SULLIVAN: Are we potentially talking about two different things here?

Mr Manning: Potentially, but—potentially—they could be related, Senator.

Senator O'SULLIVAN: Okay. We'll keep going and then see where we land. Mr Kerr, maybe you can help me to understand where we're actually at here—part 9?

Mr Kerr: Yes, certainly. As Mr Manning said, I think you are referring to part 9 of the building cooperative workplaces No. 1 bill, which was passed by the parliament earlier this year. That part amended part 3.1 of the Fair Work Act. What it did was create targeted exceptions to specify general protections provisions for certain Commonwealth financial and contractual arrangements—so, really, grants and procurement. That allowed preference to be given to employers based on specified enterprise agreement coverage. I would note that it didn't require the Commonwealth to give a preference or require an employer to have an enterprise agreement, though; it was a facilitative sort of change.

Senator O'SULLIVAN: Thank you for that. I think we're clearer now on where we are. I'll go back to my first question, then. Not requiring is different to preferring. There is a preference for organisations that have that relationship with unions. Is there a higher score on your tenders? How is that working?

Mr Manning: The provision Mr Kerr's referring to was a provision that was made to change the operation of the Fair Work Act, which prohibited any distinction being made between different types of legislative instruments. So, for example, if the government was funding an area of public life and had a preference for there to be enterprise agreements in there to ensure that the conditions were above the minimum standards and could be passed through to the employers, then that provision could facilitate that and remove the prohibition that had existed before that. It doesn't require that to occur. It's purely a facility provision. It doesn't necessarily apply in any specific context. For example, it doesn't necessarily apply to the Secure Australian Jobs code, which we were talking about earlier. It was changing a restriction that was in the Fair Work Act up until that time.

Mr Kerr: The focus of those changes, as Mr Manning said, was a broader one. It was really to enable the Commonwealth government to use its spending power to encourage the use of EAs on the basis that the government considers that enterprise bargaining is an objective it wishes to promote.

Senator O'SULLIVAN: Will the construction standards rely on that exemption as well, do you know?

Mr Manning: We'll have to change witnesses again, sorry; we're covering a bit of ground. I'll get Ms Godden to come to the table, and we should have everyone to cover wherever you go on this particular issue!

Senator O'SULLIVAN: Thank you. Multifaceted—I keep hearing that word this week.

Mr Manning: It is. I will say, as Ms Godden settles in, that the government has made statements around not requiring EAs in relation to the standards.

Senator O'SULLIVAN: So are the construction standards going to rely on that exemption, Ms Godden?

Ms Godden: For the construction standards, no decisions have yet been made by government, but the minister has been very clear, as Mr Manning has outlined. She has made statements that there won't be that preferencing.

Senator O'SULLIVAN: I'm not sure—I'd dispute the clarity, because it appears that the assurance in the 1 May release does not cover preferencing at all.

Mr Manning: I think we're covering a few issues. We've spoken about the amendments to section 354, which have overturned a previous restriction. In relation to the standards, the minister has said on a number of occasions, for example, that the standards 'will not require employees to enter an enterprise agreement covered by a union' as a condition of receiving Commonwealth government funding, and 'nor will the government preference union covered enterprise agreements when considering tenders for federally funded building and construction work'. That reflects the fact that the standards, noting Ms Godden's comments that no decision has been made, are intended to drive good outcomes in federally funded construction work. That's the intention of them—how to lift up the standard of safety, productivity et cetera in construction where there's federal government funding.

Separately to that, there's the Secure Australian Jobs Framework, which, the intention is, won't apply to construction and also won't require an EA either. There are a number of related issues, but, in relation to both the standards and the Secure Australian Jobs Framework, the government's been clear that they don't require an enterprise agreement to be in place.

Senator O'SULLIVAN: Is the construction carve-out going to be legislated, then?

Mr Manning: I'd go back to Ms Godden's earlier answer that the government hasn't yet made decisions about how to implement the code. Ms Godden might run you through the—

Senator O'SULLIVAN: Would it require legislation for that carve-out? Can it exist without it?

Ms Godden: I think it's a little early to determine, but, for example, the minister spoke to the ACCI business leaders summit on 13 October and said:

These standards will not require employers to enter an enterprise agreement covered by a union to receive Commonwealth government funding.

Nor will the Government preference union-covered enterprise agreements when considering tenders for federally funded building and construction work.

They're the sorts of statements that I was referring to when I was referring to the clarity that minister had. The government didn't propose a predetermined scope or model for the construction standards, and feedback from the consultation process that has just concluded is to inform the development of any model, including implementation, so it's still early and those issues are being worked through.

Senator O'SULLIVAN: Does the discussion paper canvass tests that agreements are genuinely agreed rules on subcontractor selection or limits on labour hire?

Ms Godden: There were five themes covered by the discussion paper. Certainly, theme 2, 'Productivity, fairness and industrial practices', encompasses the enterprise bargaining process, and theme 3, around workforce development and job quality, included the appropriate and inappropriate use of labour hire. Certainly there was broad consultation through the discussion paper, and feedback on those sorts of issues was absolutely welcome.

Senator O'SULLIVAN: The 1 May statement gave some assurance that there also would be no intention of replicating Queensland's former Best Practice Industry Conditions scheme, or BPIC, as it's commonly known. How are those different from BPIC?

Ms Godden: My understanding of the Queensland Best Practice Industry Conditions scheme was that it prescribed a set of employment and workplace conditions that applied to major Queensland government funded construction projects through procurement and that that imposed requirements beyond the minimum legislative and award obligations and included very detailed requirements on how work was organised and undertaken on those projects.

Senator O'SULLIVAN: The submissions closed on 16 October. How many submissions were received?

Ms Godden: I might ask Ms Platts to assist us with that. We did also grant a number of extensions, at least until 23 October.

Ms Platts: We had received 51 submissions as at as recently as yesterday. As part of the submission process, the department did grant a number of extensions—22 in total—and there are still three that are outstanding.

Senator O'SULLIVAN: Will they be published? Will all submissions be published?

Ms Platts: As part of the submission process, applicants had to notify the department of whether they were happy to have their submissions published. There will be some, but that will be considered as part of wrapping up the consultation process.

Ms Godden: It's a matter for government whether those submissions are published, as well as—

Senator O'SULLIVAN: Do submitters ask for confidentiality?

Ms Platts: In the discussion paper, the government retains discretion about publishing and sharing information and redacting any parts and there was an opportunity for stakeholders that provided a submission to indicate whether they did not want their submission published and whether it contained any confidential information. That will be part of the consideration process before publishing.

Senator O'SULLIVAN: On what grounds would the government not publish a submission? You committed to openness, transparency and accountability.

Senator Walsh: I think the official has—

Senator O'SULLIVAN: Can the public be confident that there'll be a full disclosure?

Senator Walsh: I think the official has just outlined some of the circumstances where it might not be appropriate to publish submissions and it may be in the interests of confidentiality for submitters where they may have provided information that would be detrimental to them to have published.

Senator O'SULLIVAN: Is it correct that the standards could apply to defence estate works and to state delivered projects funded through Commonwealth infrastructure payments?

Ms Godden: These questions are all open. As I mentioned, the government didn't propose a predetermined scope for the construction standards. These were very much matters on which we sought feedback through the discussion paper.

Senator O'SULLIVAN: There is then therefore a consideration as to whether there'll maybe be a threshold as to whether it would—

Ms Godden: It's absolutely open, yes.

Senator O'SULLIVAN: Will the standards be mandatory or voluntary? Will they be in legislation, regulation, accreditation or contract conditions?

Ms Godden: Again, the government didn't propose a predetermined model for the construction standards, and the government has said that the standards should be focused on the areas where they can have the most impact but don't create unnecessary regulatory or administrative burden. All questions about scope, model and application were open under the discussion paper, and we sought feedback on that. No decisions have been made.

Senator O'SULLIVAN: When will the decision be made?

Ms Godden: It's a matter for government.

Senator O'SULLIVAN: Minister?

Senator Walsh: What I can tell you is that this is an important body of work that is about raising standards in the construction industry in something that our government takes very seriously. The National Construction Industry Forum are doing important work together. The work on the draft charter and the standards is an important step forward. It is important that the consultation occurs, and the officials have been outlining that consultation process. The government is still consulting on the reforms.

Senator O'SULLIVAN: Thank you for that answer, but my question was: when? Have we got a date, or is that something you'll take on notice?

Senator Walsh: Government is still consulting on the reforms.

Senator O'SULLIVAN: When does the second stage of the consultation start?

Ms Godden: No decisions have been made about that. As Ms Platts outlined, we're still waiting on a couple of submissions to come in, but even for those submissions received that was less than a week ago for the majority of them. We're currently working through the submissions in order to provide advice to government.

Senator O'SULLIVAN: Are you in a position to tell me who will be enforcing the standards?

Ms Godden: That was also a question that was live in the discussion paper.

Senator O'SULLIVAN: The Master Builders warn that builders could be left complying with multiple and overlapping procurement requirements. Will there be a single impact analysis of the various schemes, the regimes?

Ms Godden: I think it's a little bit early, Senator, but generally you would have an impact analysis for a discrete decision.

Senator O'SULLIVAN: What would happen if a business supplied to both construction and non-construction services?

Mr Manning: That's something we're working through with the Department of Finance, as you can imagine. I think in an earlier answer we spoke about the supply code, which is administered by the Department of Finance. In relation to the two separate processes, noting that they are separate—the construction standards apply and construction secure jobs framework won't—I imagine if you had a business that is wanting to participate in separate tenders for separate matters, then they will follow the process that the agency puts in place in relation to that tender. It would be the same now. For example, if someone was tendering twice now, then they'll be faced with two lots of tender requirements, two lots of tender documents, and they'll tender according to those requirements of that particular procurement.

Senator O'SULLIVAN: But it's not going to operate in isolation. There's obviously going to be an interplay. Does a RIS ever look at its interplay across various—

Mr Manning: You've sort of gone beyond my understanding of the impact analysis framework at the moment, Senator. I know there are certainly eligibility requirements that indicate when you have to do an impact analysis and—

Senator O'SULLIVAN: It's sort of left hand not talking to the right like, are we going to make sure that there's clarity and consistency?

Mr Manning: What I would say for both of these is proportionality is a stated aim for both of them. They each have separate aims overall, will be dealt with separately and are intended to deal with separate industries. But we'd be very mindful in how it all lands together that it is as proportionate as it possibly can be. That was a factor that was raised in, for example, the consultation that we've been referring to about the potential code for construction.

Ms Platts: That's right. The discussion paper set out the current ecosystem or system for the construction industry in terms of how it has multiple parts, and there's shared responsibility between different jurisdictions. But what the discussion paper and the government has announced is that it is not seeking to add any unnecessary duplication when it comes to regulation and administrative burden. As part of the discussion process, there were specific questions, which sought views on any potential duplication or overlap and that there was going to be a concerted effort as part of any design to manage those different layers.

Senator O'SULLIVAN: On duplication—good segue—the HIA submission says that the conduct behind these standards: coercion, bribery, intimidation and illegal phoenixing is already unlawful and that the gap is not in the law. The gap is, in fact, enforcing it, which of the 12 matters in the minister's 1 May release are not already unlawful under existing Commonwealth or state law?

Ms Godden: I think we'd need to take that one on notice.

Senator O'SULLIVAN: The detail of it, but in terms of the theme that I'm discussing, I mean, look—

Mr Manning: I think, for example, one of the matters put forward as something submissions might be received on, went to whether or not there should be a fit and proper test for participants in the construction industry, such as head contractors. So I don't think that's a matter that is regulated at the moment, for example.

Ms Platts: And there were a number of matters in that original list that go to broader objectives for the construction industry. Things like engagement of apprentices are not typically covered by a legal instrument.

Senator O'SULLIVAN: You do understand that for construction, they're already dealing with multiple layers of complexity when it comes to regulations and the code and everything that they have to contend with. It's important not to have duplication and not to overburden this sector that is already under strain and already has significant increased costs. We've got a housing problem in this country that's worse than it's ever been. We've got construction costs in infrastructure projects across the country ballooning and stepping out of control. Duplication and complexity are major problems. What confidence can you give industry that this is not just going to add an additional layer?

Ms Godden: That's why the government acknowledged that explicitly in the discussion paper and sought views on that. It is important, and the government has been very clear in recognising industry's concerns and seeking views.

Mr Manning: To add, it's probably worth positing—to go to the point about industry and to pick up Ms Godden's point—that industry has been working with government and employee organisations on how to improve the culture in the construction industry generally as well. That's why they established that charter that the minister referred to earlier. In a way, the standards represent the government's efforts to align its work and funding to those industry efforts to improve the culture as well, but, as Ms Godden said, in a way which doesn't go to your point of coming with a disproportionate level of regulation.

Senator O'SULLIVAN: Thank you. I want to wrap up for the chair. The HIA says more than 98 per cent of residential construction businesses have fewer than 20 employees, and that residential builders would carry the heaviest proportional burden. I have two questions. Will the standards apply to residential builders on Commonwealth funded housing—for example, projects funded through the Housing Australia Future Fund? My second question is: has Treasury been consulted on any of this at all?

Ms Platts: That consideration-of-application scope was a key focus of the discussion paper. That included different subsectors of the construction industry, such as residential. Whether there should be thresholds or application of any standards to particular parts of industry was part of the consideration process, and no decisions have been made. On consultation with Treasury, we work very closely with our counterparts at Treasury. We have established interdepartmental committees. On the National Construction Industry Forum, the Treasury portfolio is represented through the housing portfolio by Minister O'Neil, who is also a member of the forum. We work very closely with Treasury.

Senator O'SULLIVAN: Thank you.

CHAIR: I'm going to go to Senator Kovacic and then to Senator Sheldon. Senator Kovacic, noting we have to move on at around 12—I'll give you a nudge in 15—you have the call.

Senator KOVACIC: It's nice to see you all again—

Senator O'SULLIVAN: Perhaps we can have some on-hold music playing. Sorry, we've got some page number issues that we're contending with.

Senator KOVACIC: I'm sorry for the delay. My questions relate to the CFMEU administrator. Can I take you to the administrator's interview on *7.30* on 30 July. When asked why John Setka should ever be allowed back, Mr Crosby said:

Because the rules limit me to a maximum period of five years. That's as much as I can do.

Asked whether the rules needed to change, he said, 'Maybe.' He added:

We are changing the rules. We're bound by the Fair Work Act, and we'd have to look at how that interacted with the Fair Work Act.

Is the department aware of those comments?

Ms Godden: Yes.

Senator KOVACIC: What rule changes is the administrator seeking?

Ms Godden: In that specific context, I'm not aware of the details. However, I am aware that the CFMEU administration has been looking at the rules of the Construction and General Division of the CFMEU and is working with the general manager of the Fair Work Commission as the regulator of regulated organisations to review their rules and ensure that they are appropriate and suited for the CFMEU going forward. I'm aware of a much broader program to review the rules of the division.

Senator KOVACIC: Can I clarify: I thought he was seeking a review with respect to the rules, 'because the rules limit me to a maximum period of five years.'

Mr Manning: I think, potentially, there are a couple of matters being referred to in it. The scheme of administration, from memory, provided for expulsion or suspension of membership of the unions for a period of up to five years. Additionally, the rules of the union itself would go to the ability of the committees of management et cetera, which the administrator stands in the shoes of, to expel or suspend members. So, in a way, you could see a situation where, under the scheme of administration, someone could be removed and their ongoing ability to be a member could then be dealt with under revised rules of the union. I think that those two matters are being dealt with there in the comments. That's my assumption, I should say. Obviously, I haven't spoken to him. And, as Ms Godden said, the union is undertaking a review of its rules, which go to things around its membership et cetera, in liaison with the Fair Work Commission. My understanding is that work will go into 2027.

Senator KOVACIC: So it's nothing in relation to the Fair Work Act itself? Because he referenced that: 'We're bound by the Fair Work Act', and nothing—

Mr Manning: One thing I'll have to take on notice—sorry, Senator—is whether the provisions of the legislation that enable the scheme of administration to be put in place dealt with that. I don't know from memory. We'll look and confirm that on notice. I have a stronger recollection in relation to the scheme of administration itself, which permitted removal or suspension et cetera for up to five years.

Senator KOVACIC: What I would really like to understand is: which are the specific rules that he needs amended in order to be able to do what he needs to do? If he is currently bound to limit that to five years and would like for it to be longer, where is it that we make the change to enable the administrator to do what he's asking government, effectively, to enable him to do?

Ms Godden: As Mr Manning said, I believe it is in the scheme of administration itself, but we will take that on notice to confirm.

Senator KOVACIC: Can you tell me whether the administrator has consulted the department, the minister or the Fair Work Commission about how they interact with the Fair Work Act and the administration scheme?

Mr Manning: It's possible that they've consulted the Fair Work Commission about it as part of that work we've referred to, in reviewing their rules. The commission will be here soon, but, again, if it doesn't come up then, we can take that on notice and check with the commission for you. I don't recall that they've consulted with the department about it, but I'm looking to Mr Cains in relation to some of the regular catch-ups.

Ms Godden: We do have regular catch-ups with the administration, so we would need to take on notice if it had been raised in one of those regular catch-ups. They're generally very broad ranging catch-ups that cover a wide range of matters in relation to the administration of the union. It could well have been raised in one of those. There's no specific memory that's coming to mind, but I would want to check.

Senator KOVACIC: If you could, I would appreciate that. Also on that topic, has the administrator or the Fair Work Commission general manager raised the five-year limit with the department or with the minister? If so, when was that?

Ms Godden: I think I've taken it on notice to check if the administrator has raised it with the department. Certainly, we also have frequent catch-ups with the general manager and other officers who are responsible for registered organisations, and it may well have been discussed in one of those regular meetings.

Senator KOVACIC: But there's no recollection of whether they've specifically sought an extension or a change to that five-year limit?

Mr Manning: There's certainly no recollection to confirm that. I think it reflects where we're at in the process, in the sense that the administration is working through that initial suspension or removal under the scheme of administration. That work is ongoing. We're not really privy to the details of it, and it might be something to raise at catch-ups in terms of where it's at with timing et cetera.

Senator KOVACIC: Are you aware, though—this is in response to your answer now—that there is consideration of changing that or that there is a view that that is insufficient?

Ms Godden: We're certainly aware of the *7.30* program that you mentioned, so we were aware from that point.

Senator KOVACIC: Mr Crosby also said in that show, 'we have ideas about the way in which you regulate this industry', but he wants to leave it to governments. Has he put any of those ideas to government, to your knowledge?

Ms Godden: Yes. The administration made a submission on the construction industry standards. I don't believe they made a submission on the draft charter put forward by the National Construction Industry Forum, but I believe they strongly endorse the principles in the charter. We have the benefit of their submission in relation to the standards, and we're aware of their views, as a member of the NCIF, in relation to the charter.

Senator KOVACIC: The five-year cap sits in the administration determination, as we've discussed; can the minister amend that? Do we know? Has the department provided any advice on doing so?

Ms Godden: I would have to go back and check whether we have provided any advice. Certainly, the registered organisations act provides for the determination to be made by the minister. I would assume, therefore, under the Acts Interpretation Act, that the minister would have the power to vary it.

Senator KOVACIC: She should be able to do so?

Ms Godden: I can confirm that on notice.

Senator KOVACIC: Could you? That's my understanding as well, that she would be able to do that.

Mr Manning: To vary the scheme of administration.

Ms Godden: Obviously, when that scheme of administration was determined, that was the subject of a High Court challenge that took a considerable amount of time to get a resolution. The feedback that we received from industry and the administration is that it placed a very big question mark over the administration, and that it was very difficult to make progress during that time. Certainly, varying the scheme of administration is not something that you would undertake lightly, given the likelihood of a second challenge.

Senator KOVACIC: For my understanding—and I know that you need to check a number of things—has the department done any work in relation to extending that five-year cap of what that would look like, or would that be something you would do only on the instruction of the minister?

Ms Godden: We're certainly aware of the private members' bill that you have brought before parliament, and we have provided some brief factual advice in relation to that.

Senator KOVACIC: My next question was in relation to that Fair Work Amendment (Disqualified Officers) Bill that was introduced on 19 August. Could you tell me what analysis the department has done and whether you have advised or briefed the minister on it?

Mr Cains: As I understand it, we have provided some background information on the bill, providing some analysis to the minister on how those provisions would operate if they were enacted.

Senator KOVACIC: Can you give me a little bit more detail on the workability of that, whether it would give greater flexibility to the minister in relation to disqualified persons, and whether those recommendations were supported by government? If not, what, specifically, was objected to?

Mr Duggan: You're going to the content of our advice. We provided evidence that we have provided advice on the matters, but now you are going into questions about the content of our advice.

Senator KOVACIC: Yes, I am.

Mr Duggan: We can talk topically about that, but we are not in a position to be able to give you any more detail on any recommendations that we might have put to the minister.

Ms Godden: Correct; I don't think we could add anything to the evidence that we have just given.

Senator KOVACIC: So you are unable to give me the general gist of anything beyond what you have already provided?

Mr Duggan: Ms Godden and Mr Cains gave you the topics that were covered and the fact that we have provided briefing. That's the extent to which we're able to provide evidence.

Senator KOVACIC: Are you able to give me an indication of whether the government was supportive of or objected to the advice, or guidance?

Mr Duggan: No, we don't have any information on—that gets to a decision or a question of deliberation of government. Beyond, as I said, the fact that we have provided briefing, the broad content of that briefing—in terms of the government's response or reaction to that briefing, we're not in a position today to give you that evidence.

Senator KOVACIC: I guess it wasn't more around the view. I think it was more around whether there were any specific elements of it that were problematic or that government felt weren't workable and that needed any additional analysis, I guess. What I'm trying to get an understanding of is, if there are barriers here, what kind of barriers they are. One would assume that, if it were an outcome that government wanted—and it's obviously based on the bill put forward by Senator Hume; it's something that we're clearly supportive of—there would be a way forward. So, if there are barriers, it's what they actually are.

Ms Godden: I could only repeat that it was a fairly brief, factual background.

Senator KOVACIC: Are you able to tell me whether, since 30 July, the minister has commissioned any policy work on extending ban periods or on the powers of the administrator made more generally?

Ms Godden: I think we'd have to take that on notice.

Senator KOVACIC: Okay. Are you able to tell us how many people have been removed, expelled, suspended or disqualified under the scheme? And do you keep track of when each of those bans expire?

Mr Manning: Certainly, the administrator sets out those numbers, from memory, in their six-monthly report to parliament. So I think the latest report, which was tabled on 1 October, from memory, or in early October, has those numbers, but Ms Godden or Mr Cains might be able to give you the numbers from that report.

Senator KOVACIC: Okay.

Mr Cains: The scheme of administration removed over 200 office holders from their positions in the union. We also have advice from the administration that more than 50 per cent of the 320 employees of the division have left the union for a range of reasons since the administration commenced—dismissals, redundancies, resignations, other types of departures and so on.

Mr Manning: And, in the legislation, the scheme established, essentially, a removed-persons framework, whereby anyone who's removed as a result of the administration scheme—there are restrictions on their being a candidate for or appointed to an office in another registered organisation, being employed or engaged by a registered organisation or being a bargaining representative. It then allows them to make applications in relation to any of those particular functions—if they should seek employment, for example, in another union.

Senator KOVACIC: But my understanding is there are individuals who have left the CFMEU voluntarily and who may have otherwise been removed. They leave before they become removed persons and then they appear in other unions, like the ETU, and there is a significant prevalence of that occurring right now. What can we do to manage that? If you've got someone that's about to be removed from the CFMEU—and let's just say they move to the ETU—is that then left alone? Is that now the ETU's problem to start from the beginning again, or is there some kind of a disclosure or a directive from the CFMEU administrator to the ETU that says, 'We were about to remove this person; be careful'?

Ms Godden: We just wouldn't be aware of routine communication between the administrator and other unions. That would be a matter for the administrator as the person running the CFMEU. Mr Manning has run you through the removed-persons framework. There's also the ability of the administrator to commence disciplinary proceedings to consider expelling individuals from the union, which would have certain impacts under their rules and potentially under other unions' rules as well. We are aware that the administrator has commenced a range of disciplinary proceedings in relation to certain individuals.

Senator KOVACIC: My concern is—and this is why I'm asking my questions to the department—if there is now a clear open door or loophole for individuals to avoid becoming a disqualified person and effectively change their shirt, go somewhere else and evade that discipline from the administrator, it does two things. No. 1, it impacts the administrator's ability to do his job effectively, and, No. 2, it exports the problems elsewhere. Some of those that I'm aware of have moved from the Vic/Tas division to the Western Australian division and some to the New South Wales division. We have this challenge where, on the numbers alone, all appearances suggest this is looking really good, but, really, the individuals who are a problem have moved elsewhere into the union infrastructure.

Mr Manning: If someone moves from the Victoria and Tasmania division to the Western Australian division or the New South Wales division, they'd still be in the CFMEU.

Senator KOVACIC: No, into another union.

Mr Manning: It goes to your point. Discussions between the unions might alert them to that, and we don't have any visibility.

Senator KOVACIC: The question I'm asking is: do you have a concern in relation to that as to the effectiveness of the legislation in relation to a potential removed person finding a way around the legislation?

Mr Manning: Obviously, we've got an interest in making sure the regime works as well as it can. I would come back to Ms Godden's earlier comments about the legal challenge. There is a balance in the legislation between what is a pretty big action taken in relation to people's employment and the administration of the union and what was challenged in the High Court in relation to the implied freedom of people to participate in political communication et cetera. Pleasingly, the legislation was upheld as valid by a majority, but it's still quite a delicately balanced thing. They're the type of considerations we'd be taking into account in any advice we gave to government about it.

Senator KOVACIC: Have you given any advice to government in relation to potential loopholes for people to evade becoming a disqualified person?

Mr Cains: Can I come in there and point out that the scheme of administration does provide for people to become removed persons even if they leave employment voluntarily. If the administrator forms the opinion that they may have otherwise been action taken for their position to be terminated—or cease to be employed, however you want to put it—there is a potential for them to still become a removed person despite them leaving of their own accord.

Senator KOVACIC: Do you have any data on how many times that's occurred?

Mr Manning: We can take that on notice. I don't recall that in the most recent report.

Ms Godden: We'll take that on notice to confirm that.

Senator KOVACIC: Do you have a rough idea of if it's occurred at all? I won't hold you to it; I'm just curious.

Ms Godden: We certainly had discussions with the general manager of the Fair Work Commission, the Fair Work Ombudsman and the administration quite early on in relation to the time period of 1 July to 23 August 2024. I believe that there was some interaction between the regulators and the administration in relation to who might be covered, but we'll take it on notice to confirm that mechanism as well as if we have any more information in relation to that in the department. That was a little while ago now. I don't think we ever got a list or number of people, but we certainly did facilitate those discussions and were a part of some of them.

Senator KOVACIC: If you could also provide for me on notice a schedule of the earliest dates on which each of the removed persons could actually return—I'm assuming you're keeping a register of those.

Ms Godden: Removed persons need to obtain a fit-and-proper-person certificate in order to return. The earliest date is the date on which they obtain that certificate. Certainly, we're aware of a number of union officials who have successfully obtained that certificate, and we can take that on notice—

Senator KOVACIC: If you could provide a schedule—I'm assuming you have a schedule—of the dates when individuals were banned, disqualified or suspended.

Mr Manning: We could work with the Fair Work Commission to work out which removed persons have made applications.

Ms Godden: And where they're successful.

Senator KOVACIC: Perfect, thank you. I've got a couple more before I rotate to Senator Hume.

CHAIR: No, we'd be rotating to Senator Sheldon.

Senator KOVACIC: Apologies. How much more time have I got?

CHAIR: Well, we've been with the opposition for over an hour now, so I'll probably pass to Senator Sheldon for a few moments, and then I'm happy to come back.

Senator KOVACIC: Yes, I've got a few more as well, thank you.

CHAIR: Would you like to take the call now, Senator Sheldon?

Senator SHELDON: I think we probably have the people I need for this question, but I'll be in your hands if we need somebody else. I want to go back to the CFMEU administrator and also, obviously, the importance of the NCIF, the National Construction Industry Forum, and that code that's been built. It does reflect a little bit about the importance of governments' doing procurement policy. There are numerous companies that can be used as examples, but I have used this one before and I think it's appropriate: last year, the CFMEU administrator's interim report outlined shocking allegations in regard to Future Form. And I noted that Future Form was in a number of state and partially federally funded projects as well through supply chains, so there is a direct link on the money trail of responsibility. But I also note that companies like Multiplex are also, separately, where there isn't federal or state government money, engaging Future Form—have been, to my knowledge, at least up until a few months ago.

That company—in that administrator's report and a number of subsequent media reports, there were allegations of mafia-style intimidation, threats and violence designed to terrorise a union official into silence, from the administrator: masked men turning up at his family home, spray painting vile abuse across the property while his wife and young children slept inside; his car and boat being doused in petrol and set alight while he and his wife and his kids were asleep inside their home; his relative being ambushed in a car park by several men claiming to represent Future Form. These men told him that they knew where he worked, where his family was and even that they were at the dentist at the very moment that these men were confronting him. We could all imagine how devastating that would be, because it would be sheer terror that you would feel, and even just repeating it brings up some of the terrible scenes that we've seen in the construction industry. The message, of course, from Future Form was simply to stop investigating that company. The NSW government has subsequently made a ministerial direction to not use them—and I made my comments before about Future Form.

This goes to a very important thing. One of the recurring complaints that I hear and have seen reports on is that workers that work for good companies are being undercut by contractors who willingly cut corners on wages, conditions, job security, sham contracting. And these are big projects; these aren't some fly-by-night small operators. These are big projects with big money—tens of millions and hundreds of millions of dollars involved. So, with the discussions and the aim of the discussions of the NCIF—how's that supposed to tackle not only what we've seen previously from the construction union but also, more generally, what happens in the construction industry, combating this sort of behaviour that Future Form illustrates?

Ms Godden: The potential Commonwealth standards for the construction industry could establish clear minimum expectations for the industry in terms of addressing structural and systemic issues that may require government oversight, regulation and enforcement. They would be designed to address existing gaps without duplicating existing arrangements. The potential construction standards represent an opportunity for government to support the industry in the reform work that's being undertaken, largely through the National Construction Industry Forum but also otherwise. Both the draft charter—which is an industry led voluntary framework that was intended to support industry participants to align decisions and behaviours with agreed expectations and demonstrate a commitment to acting in good faith—and the potential construction standards are intended to support improved productivity, lawfulness, sustainability and worker outcomes. They're both consistent with the work of the National Construction Industry Forum as it's reflected in its blueprint, in particular some of the priority recommendations under that blueprint, particularly priority recommendation 3.1, which is about procurement frameworks and settings. That is not the only work that is underway in relation to priority recommendation 3.1. We're also working closely with the Department of Finance, who have engaged the Australian Procurement and Construction Council. They've been commissioned to also do work to support this recommendation.

So there is a considerable body of work underway to tackle this problem that reflects the severity of the concerns that you have outlined and that are shared by quite a few members of the National Construction Industry Forum—the blueprint sets out their agreed pathway for addressing challenges in the industry.

Senator SHELDON: The ATO estimates it is losing $1.4 billion in unpaid taxes each year from dodgy companies who are ripping off taxpayers. That has an effect on everyone as a community. It affects our defence spending and our education spending—the list of important things goes on. One contractor told the *AFR* in an

article on 28 February 2024 that they were 'sick of what is happening' to the industry. Referring to Sydney Metro, they said that subcontractors 'undercut everyone on price and leverage the ATO to make a living' and continued:

The tier-one builders turn a blind eye because it all comes down to price. The true cost of the Sydney Metro developments, the new hospitals and schools should factor in the unpaid taxes. The taxpayer is being screwed.

Again, part of the purpose of the code is to look at these sorts of things—which, I would argue, are still running rife in elements of the industry.

Of course, then we can go to illegal phoenixing as well. On 14 March 25, there was a prime example, involving construction company City Scape and the $3.8 billion Burswood Point urban housing, where the company owed $10 million to the ATO and it was written off at 10c in the dollar. Bryce, a CFMEU member and construction worker, said, 'Our family was destroyed by the Phoenix model of collapse of GN construction, and I hope no worker ever goes through that again.' Tax avoidance and phoenixing companies not paying workers have, unfortunately, been seen too often—and, of course, as I mentioned in the previous question, violence occurs.

Mr Manning: To add another dimension to that, it impacts this portfolio because we administer the Fair Entitlement Guarantee program, where people whose entitlements aren't paid can go and get them from government and then government seeks to recover them. Construction has for a long time been, and remains, one of the largest sectors in that, so that's another way it impacts the taxpayer.

The issue you touch on is an issue that the NCIF has been very focused on since its inception in the sense that, in addition to the race to the bottom on price, it also means that it impacts on the employment models in the industry. It stops people building careers through the industry et cetera and creates lots of disincentives. That's why the charter that Ms Godden referred is an important foundational bit of work, because it sets out those shared goals and expectations of behaviour that the industry agrees we should see not only generally but on individual projects. Then there are a range of other bits of work in the blueprint that Ms Godden spoke about that go to trying to overturn that impact of just competing on price and then getting into everything from sharp to outright illegal behaviour and violence, for example. It's an important first step, and then the standards are meant to complement that by saying that the NCIF is a tripartite body.

One thing government can do is use its investment in construction to drive the types of behaviour it wants to see around secure work, diversity of workforce, safety and productivity. To go to some of those examples you've used that we touched on earlier in relation to Senator O'Sullivan's questions—things like, should there be a 'fit and proper person' test for certain contractors of a certain level on projects of a certain size so that people who are either proven to be engaging in or there are allegations that can be substantiated, could be excluded, potentially. That's the type of work the government's got under consideration at the moment. As I said earlier, we're looking at all of those submissions and then giving advice to government in relation to how it can use its purchasing power to be part of that industry drive for change.

Senator SHELDON: Sorry to say this, but this part leads to the same point. Evidence can be drawn from lots of places: from the worker who's been ripped off is probably not a bad starting point, as are companies that are being unfairly competed with. My experience has been that good companies are reluctant to speak out. It's a club. They are fearful of repercussions from other contractors, let alone the nature of business, so it does go to this important question about putting those guidelines in place to try to give that opportunity for people to speak out. The union and the administrator obviously play an important role in giving whistleblower protections as well. Is it the whole industry's responsibility? When I say industry, I mean union, employers and government.

Mr Manning: They were comments, from memory, that the administrator touched on in the media interview that we're touching on today. For example, they want to ensure that workers have access to the same terms and conditions regardless of who their employer is, but they can't control who their employer is. It goes to broader issues around the culture of the industry and who is able to be involved in the industry. The NCIF is very much meant to be unions and employers coming together to represent the whole industry to try and lift those standards and behaviours that have been seen in the industry.

Senator SHELDON: There's been a whole series of reports from successive governments, including the previous government, and reports of state governments of different political persuasions, that have outlined this: phoenixing, tax avoidance, wage theft, superannuation theft—again, that superannuation theft goes into many billions of dollars. It's not that we haven't got enough reports. It's a question about how we get the industry to change culture. Would that be a fair analysis?

Mr Manning: I think it's a fair analysis. We've touched on at estimates before how regulatory agencies are now working together more closely to make sure they're getting a complete picture and aligning their actions to

try and take a more holistic approach to it as well. I think there are roles there for the whole industry as well as regulators.

Ms Godden: I was just going to add to Mr Manning's evidence. He's referring to the Commonwealth senior official's forum, in part. The JAWG, obviously, is the regulators and law enforcement working together to share information, but, in addition, we're working through the Commonwealth senior officials forum to connect policy agencies with regulators and law enforcement so that we can share information and really understand how best to tackle the challenges in this industry, because there is real power to connecting the policy development side of government with the on-the-ground experience from the regulators and law enforcement. You mentioned the ATO. The ATO has representation on that and many representatives from the Fraud Fusion Taskforce as well. That is part of what we are trying to tackle, from many different dimensions, because this is a complex problem.

Senator SHELDON: I'm just slightly changing track, but with the same sort of message. It's probably an opportune time that Senator Sterle has jumped in, because I know a lot of employer associations are in the trucking industry. The Fair Work Ombudsman has been doing work in this space with the Australian Taxation Office and other enforcement agencies about sham contracting. The transport industry is traditionally low margin. There are a number of exceptionally good operators out there that employ people on fair wages, still with tight margins, being undercut by companies that are sham contracting. I know the taskforce's work has been there, and I know Senator Sterle has been holding a series of meetings with the department, the Fair Work Ombudsman, the Australian tax office and, most importantly, the whole industry—employers, unions and employer associations, which have been of one mind. I just want to say this for the record too: I appreciate what my colleague's done but also the work that has been done with those agencies. Maybe you have some insight that you want to share with us about where that's up to.

Mr Manning: Ms Godden can keep going on about some of the work of the senior officials network but also the JAWG—but I'm going to have to get someone to remind me what the A stands for.

Ms Godden: The Joint Agency Working Group.

Mr Manning: I know, for example, that the ATO are on it, and they say they've got over 80 investigations into phoenixing construction at the moment. Ms Godden has some other statistics she could talk to.

Ms Godden: Across the Commonwealth there are currently 129 active investigations, or cases, in relation to the unlawful behaviour in the construction industry, and 47 matters have been commenced in either the Fair Work Commission or the courts. The matters, we understand, are spread between the AFP, the Fair Work Ombudsman, the general manager of the Fair Work Commission, the ATO, the ACCC and APRA in terms of regulators and law enforcement.

The Commonwealth senior officials forum has very broad membership, as you would expect—this department; the departments of infrastructure, finance, Prime Minister and cabinet, Treasury, industry, home affairs; and then ATO; Fair Work Commission; Fair Work Ombudsman; AFP; ACCC; APRA; ACIC; ASIC; and AUSTRAC. We also invite other agencies to participate or share information or insights as might be necessary or desirable. For the next meeting, we're looking at inviting ASQA, the Australian Skills Quality Authority, in relation to some of the concerns with the issuing of fraudulent qualifications in the construction industry. We stay very flexible. We've also previously engaged with DCCEEW and ARENA in relation to concerns that this behaviour might spread from construction into the clean energy industry, for example, with that transition. While we have a core membership, we're always very flexible in ensuring that we're making those connections across the Commonwealth to try and get the best possible response.

CHAIR: Senator Sheldon, I'm going to rotate now. I'm returning to the opposition. I'll just note we were due to go to the Fair Work Commission at 12, and we've got a number of senators there. Senator Hume, you have the call.

Senator HUME: I want to follow up. I know some questions have already been asked about the building cooperative workplaces bill, but I'm concerned that on 2 June in this committee Ms Godden told the committee that a tender advantage for union agreements was 'really getting ahead of where we are'. When pressed on whether anyone at the desk knew what was on the table, Mr Manning, you said, 'Not at this stage.' But then, the very next morning, the minister introduced this building cooperative workplaces bill with part 9 in it, which is specifically about those issues. I suppose my question goes first to whether Mr Manning or Ms Godden were aware on 2 June that a bill containing those provisions was going to be introduced the next day.

Ms Godden: In relation to that evidence, I think your question was:

As part of those consultations, will there be discussion as to whether a contractor receives, potentially, a higher tender score, funding preference or prequalification advantage if it has a union enterprise agreement?

I understood that question to be in the context of the potential construction standards, which is where previous questions had gone, and my answer was referring to those construction standards.

Senator HUME: Can I just, then, be clear. Did you know that there was a bill that was being introduced the next day that was going to do that, even if it wasn't in the construction standards? My question was about the issue, as opposed to the standards. Did you know that there was a bill coming?

Ms Godden: I was aware of the contents of the bill, yes.

Senator HUME: Well, it wasn't, then, really ahead of where we are, was it? It was right where we were.

Mr Manning: Today, no decisions have been made about the content of the construction standards. The discussion paper was put out on the basis of no predetermined view about proceeding with it all or the content of it. So it's quite accurate to say, some months ago—there are no decisions. They're separate issues. I can't recall and don't have in front of me my evidence that you're referring to there. I think the issue of officials' knowledge of the legislation was addressed at the last estimates hearing, and we confirmed that we knew what the content of that bill was. But that's a separate issue from knowing what the content of the construction standards is, in the sense that we still don't know what the content of the construction standards, if any, will be, because those decisions haven't been made.

Senator HUME: Let me ask a question, then, about when cabinet approved part 9 of that policy.

Ms Godden: I'm not sure we ever have visibility of when that final decision is made to introduce as part of the legislation approval process.

Senator HUME: The question I asked you at the last estimates was around whether a tender advantage for organisations that had union agreements was going to be part of policy.

Mr Manning: We gave evidence earlier today that, in consulting on the construction standards, various statements have been made that there wouldn't be a requirement and there wouldn't be a preference for a union endorsed EA—and not a requirement for a union EA as well. So I'm not sure I'm following the question.

Senator HUME: The question was—yes, there absolutely was a policy that was going to preference organisations with union agreements. Even if it wasn't in the construction standards, it was clearly in a bill that you knew was going to be introduced the next day. Perhaps it was that you were—

Mr Manning: But can I—I do need to clarify that the bill, as passed, does not require a preference of the type you're discussing.

Senator HUME: I'm sorry. The minister's second reading speech referred to preferencing agreements 'negotiated in good faith', but, clearly, in the bill, the new section 354(2A) allows discrimination against an employer whose agreement 'does not cover an employee organisation'. There's a law that singles out non-union agreements. But that doesn't sound like good-faith bargaining to me. Clearly, what I was asking about at the last estimates pertained to that specifically, and you knew it was there.

Mr Manning: I don't accept that to be true, in the sense that the legislation, as passed, permits certain outcomes to occur; it doesn't require them. It certainly doesn't require them in relation to the construction standards, the contents of which haven't been settled and on which the government, or the minister, has made statements about its not requiring an EA and not preferencing a union EA. So—

Senator HUME: Then why is part 9 even necessary?

Mr Duggan: We gave evidence earlier today that it removes a prohibition—

Senator HUME: Yes.

Mr Duggan: in that regard, but it doesn't provide a proactive necessity in order to do that.

Senator HUME: Why is that necessary?

Mr Duggan: Previously, there had been a prohibition, and so, in order to progress the work that has been done around the Construction Code and the work that's being done around the secure jobs framework—a necessary precondition of that work was to remove any prohibition.

Senator HUME: That suggests that the changes to the Construction Code are going to—

Mr Duggan: No. Again, we provided evidence on this earlier today. The minister's been very clear that there will be no requirement for a union agreed—

Senator HUME: Then you don't need part 9, if that's the case. You don't need it. It's just superfluous. It's decorative.

Mr Manning: The hypothetical example I gave in the testimony earlier was that, should there be an area of public life the government wishes to fund and for which it wishes to have in place arrangements that are above the minimum standards provided for in an award, then it could preference employers with an enterprise agreement as part of that. So there might be more beneficial terms and conditions. That couldn't have occurred before. As a result of that change, that type of hypothetical could occur. I'm speaking fairly generally, but that's the type of example that's separate from saying it will definitely happen in relation to construction. With the construction standards, if I can repeat my earlier evidence of today, the government said that that won't be the case.

Senator KOVACIC: But it can occur. You're saying they have the mechanism to allow it to happen—so it doesn't have to happen, but it can happen.

Ms Godden: It's a facilitative provision.

Senator KOVACIC: Correct. So it can happen but it doesn't necessarily happen.

Mr Manning: It could preference an enterprise agreement.

Senator KOVACIC: That's right. So, if the government chooses to deploy that mechanism, it will happen.

Mr Duggan: But it's not the government's policy to do that.

Senator KOVACIC: No, it's not their current policy to do it, but, if circumstances change or they change their position tomorrow, they can do it; is that correct?

Mr Manning: As we said earlier, the government hasn't decided, if it proceeds with the construction code, how it will implement it. Again, you're asking us for a hypothetical.

Senator KOVACIC: It's not a hypothetical. If it chooses to utilise it—you're telling me that, currently, they're not choosing to do so, but if they choose to do so they can; is that correct?

Mr Manning: With respect, it is a hypothetical to ask me to say what can happen in relation to a code that is not yet in place. When the code is in place, decisions will be made about how to implement the code, should the government proceed with it, and there are a range of mechanisms. Whether or not the government could then turn around the next day and implement it differently will depend upon the mechanism by which it is implemented—and, as we've said numerous times now, decisions haven't been made on that. So I can't agree with the hypothetical because it will depend upon how the code is implemented.

Mr Duggan: Except that the government has been very clear on its policy, which is that it will not, as part of the code, require a union agreed enterprise agreement.

Senator KOVACIC: But that is just a policy. That's not legislated.

Senator HUME: It's not even a policy; it's just a statement.

Mr Manning: It's a statement of intent.

Mr Duggan: That covers both the construction code but also the secure jobs framework.

Senator KOVACIC: There were not going to be any changes to CGT before the last election; that was government policy, too, and here we are.

Mr Manning: I keep coming back to the fact that decisions haven't been made on how to implement the code. The hypothetical you're asking us to agree with will depend upon those decisions.

Senator HUME: If this is so above board, with nothing to see here, why didn't you mention it last estimates? Why didn't you mention it that this part 9 was going to be attached to a bill about something entirely different, about helping the Fair Work Commission deal with its backlog? Why wasn't it mentioned if it doesn't mean anything?

Mr Duggan: I think you and I had an exchange the following morning—

Senator HUME: We did.

Mr Duggan: where I made it very clear that the department answered all the questions that came to us openly and honestly, as we always do.

Mr Manning: In addition to that, the Public Service operates under endorsed policies—for example, in the development of legislation—that make it very clear that it's not for public servants to announce the timing and content of legislation; that's a longstanding practice of successive governments. These are matters for the government. The legislation handbook is quite explicit in relation to that. Not only was it not the subject of questioning; as I say, there's a longstanding practice of successive governments choosing when to announce legislation, both its content and timing.

Senator HUME: Do you make recommendations to the minister about when to announce legislation, contents and timing?

Mr Manning: No.

Mr Duggan: It's a matter for government.

Senator HUME: So you just leave that bit blank on your briefs to ministers.

Mr Manning: We would get involved in—we're speaking hypothetically now.

Senator HUME: No. When you give a brief to a minister about a particular policy, if you've got legislation that's 100 per cent ready to go, do you just leave that bit blank and say, 'Introduce it when you like,' or do you say, 'We suggest that you introduce in this week so that we can get this done and get the consultation underway'?

Mr Duggan: We will give implementation advice to the extent that implementation of government policy requires legislation. We'll be very clear in that advice on when that timing of that legislation needs to occur, for the policy to be in effect in the timeframe that the government determines. It's then a matter of government business as to when they schedule the precise day within a sitting period on which legislation is released. That's a matter for the minister.

Senator HUME: Did you give advice on the building cooperative workplaces bill about the timing of the introduction?

Mr Manning: We would have complied with the legislative approval process, which required a legislative approval briefing in the week in which something's going to occur. It normally goes to when we're able to get the work done by as compared to the types of issues Mr Duggan just covered off in his evidence.

Senator HUME: The question I asked was: did you give advice on the timing of the introduction of the building cooperative workplaces bill?

Mr Manning: From what perspective? I ask you to clarify the question.

Senator HUME: I don't know how much clearer it can be: did the department give the minister advice on the timing of the introduction of the building cooperative workplaces bill?

Mr Manning: We would have worked with either the minister or the minister's office more on when we'd be able to get work done by. We're always in conversations in relation to timing, from the perspective of our ability to deliver something, but we don't normally proffer views about go-to political matters; we're not giving advice on those types of considerations.

Senator HUME: I'm going to try one more time: with the building cooperative workplaces bill, did the department give the minister advice on when it should be introduced, and did the minister accept that advice or do something different?

Mr Manning: I'm going to pick up on the word 'should'. I'm going to take it on notice. We would have followed through all the procedures in the legislative approval process, and some of those go to timing. I'm not sure 'should' is the word. We're normally trying to meet deadlines we've been asked to meet in relation to the introduction of things. We might advocate a view to say, 'It requires an appointment'—I'm speaking hypothetically—'and, therefore, you need to do it by this in order to get it done by that.' We're giving that advice about logistics and operational matters, but normally advice is limited to those matters. I'll take that on notice and give you an answer to that question and the dates of any of that advice.

Senator HUME: Thank you—any advice you gave to the minister around the date of the introduction of the building cooperative workplaces bill, and whether the minister agreed with that advice or advised you otherwise of her preference. I have some questions about the recently announced noncompete reforms.

Mr Manning: We'll just change witnesses.

Senator KOVACIC: I have a small block for these witnesses. Do you prefer that we do that now or change witnesses? I don't mind.

CHAIR: Because we're running late, that's probably best, Senator Kovacic. You have the call.

Senator KOVACIC: I'll be quick. The Fair Work Commission confirmed to me last December that a removed person can hold a right-of-entry permit if they retain the administrator's trust and confidence. Are you able to tell me how many removed persons now hold permits?

Ms Godden: That would be only if they stayed within the CFMEU. They couldn't move to another union and keep that right-of-entry permit. We don't have data on the number of CFMEU persons who would be removed persons and also hold right-of-entry permits.

Senator KOVACIC: You don't collect or receive that data?

Ms Godden: No.

Senator KOVACIC: Can you tell me whether a person disqualified under the administrator's scheme can take up a position in another registered entity today under the rules.

Ms Godden: That will go to the removed persons scheme that Mr Manning set out. If their role as an officer, their employment or their role as a workplace delegate comes to an end, or during a period of suspension in any of those three categories, the removed person must not become a candidate for or be appointed to an office in a registered organisation, start to be employed in or engaged by a registered organisation or be a bargaining representative, purport to be a bargaining representative or hold out that they are a bargaining representative, unless they have been issued a fit-and-proper-person certificate by the Fair Work Commission.

Senator KOVACIC: I'm trying to understand whether that's exactly the gap that our bill is trying to close, so that they can't move from one to the other. They effectively can move from one registered organisation to another, correct?

Ms Godden: Only if the Fair Work Commission determines that they are fit and proper to do so, yes.

Senator KOVACIC: That was my question: are you aware of any removed or disqualified persons who have taken up a role with another union or related entity? You don't collect the data on that?

Ms Godden: No. I'm certainly aware that some fit-and-proper-person certificates have been issued. Whether the person who obtained the certificate has gone on to have employment, I would have to take on notice—whether we have that information. It may have come up in discussions with either the Fair Work Commission or the administration.

Senator KOVACIC: But no one tracks the movement of those individuals across entities?

Mr Manning: No. I don't think we formally track it, because, if the Fair Work Commission has determined that they're fit and proper to undertake a role in another organisation, then they're open to do that.

Senator KOVACIC: Do you know if they track it? I'm just curious: do we know where these people are or where they're going?

Mr Manning: I'm not sure if they track it—

Senator KOVACIC: I'll ask them.

Mr Manning: but they'll be here soon.

Senator KOVACIC: Yes. But you don't track it and you don't receive that information from the administrator?

Mr Cains: No. We are aware that some have been issued certificates. We may have been provided some detail around individuals in the past, but we don't track it.

Senator KOVACIC: In what circumstances would you be provided that information? I'm just curious as to why it's ad hoc rather than process driven advice or reporting.

Mr Cains: I guess it's just part of our role in monitoring the scheme. It may have been in relation to a media article about someone being appointed to a union or something like that or just someone in the team picking up that a case was before the commission.

Ms Godden: I think also, particularly in the first year of the administration, we were really interested to understand whether and how the framework was operating. We probably paid more attention to those first handful of fit-and-proper-person applications for certificates and would have engaged a bit more proactively with the Fair Work Commission and the administrator to test that it was operating as intended.

Senator KOVACIC: Sure, because what I'm curious about is how you can actually monitor it if you don't know how many of them there are and how many are moving around. If you saw all of the disqualified persons receive a new certificate and move into other entities, then it'd be fair to say that the process isn't working, because everybody who's been disqualified has then, at some point, been ruled fit or deemed fit and then gone somewhere else. If we don't know how many, how do we know if it's working?

Ms Godden: I think it's more about the individual circumstances, because the original list of removed persons was a very blunt instrument. It removed all the officers from every branch other than WA and the ACT. When I say a blunt instrument, that was just removing everybody without necessarily making a determination as to whether they should or should not be a removed person. They were removed by virtue of their office, and then the procedure was for those people to be able to establish whether they were actually fit and proper.

Senator KOVACIC: I get all of that. I'm just curious to understand whether anybody holds reporting on this that can tell us, '350 people were removed, and, as of today, 200 of those 350 people have been deemed fit and are now working in other organisations,' or, '10 of those people have been deemed fit and are working in other organisations.' I want to understand if anyone holds that information.

Ms Godden: We'll certainly take that on notice to see what we hold.

Senator KOVACIC: Thank you. I'll finish up on this one and I'll put the balance on notice. Mr Crosby also told *7.30* that, after a five-year expulsion and three-year membership, which would be the membership criteria, it would really be eight years before Mr Setka could hold office again in the CFMEU. Under the current rules, he could return to office as a senior official in the CFMEU in the 2030s. Is that also the department's understanding? Is that correct?

Ms Godden: Certainly, the five-year period being the maximum is my understanding. I can't recall the provision of the CFMEU rules, but I have no reason to doubt Mr Crosby's understanding of them. I would repeat my previous evidence that the CFMEU is actively looking at its rules, so, as to what its rules would be when it emerges from administration, I think you couldn't assume that they would necessarily be the same as they are now.

Senator KOVACIC: Well, I go to Mr Manning's own point earlier about hypotheticals; based on the rules today, he would be able to return as a senior official in the CFMEU in the early 2030s. Correct?

Ms Godden: I think he would also require a fit and proper person certificate, Senator, because my understanding is that, while he left his position voluntarily, it was between that period of 1 July and 23 August. It may be that the Fair Work Commission could confirm, or we could confirm with the administration, but I understand that he is a removed person.

Senator KOVACIC: So he would still require a fit and proper person confirmation after serving the five years?

Ms Godden: To become a candidate for or to be appointed to an office in a registered organisation—that's my understanding.

Senator KOVACIC: If you could confirm for me on notice, I would appreciate that.

Ms Godden: Certainly.

Senator KOVACIC: Thank you.

CHAIR: Are there any further questions on this outcome?

Senator HUME: I have one very, very brief line of questioning around these non-compete reforms. Obviously industry is watching this one very carefully. Can I ask what the department's role is in the non-compete reform policy? Which division is involved?

Mr Manning: It's this group; we'll change the witnesses. We're certainly supporting Treasury in relation to implementing the measure, but I'll get the relevant witnesses to come to the table.

Senator HUME: Thank you. Did officials draft or instruct on the Fair Work Act amendments in schedule 2?

Mr Somi: The Workplace Relations Group has been involved in the development of the non-compete reforms. Primarily our responsibilities relate to the amendments to the Fair Work Act. You're probably aware that there are two schedules to that bill, which was released for public consultation over the course of September, and the department was primarily responsible for the drafting of the Fair Work Act insert.

Senator HUME: Terrific, thank you. The non-compete reforms were announced originally in 2025—correct me if I'm wrong; I'm getting nods, good, thank you—

Mr Manning: These are budget measures—

Senator HUME: Yes. The original announcement covered non-compete clauses for workers under the high-income threshold, and they promised to only consider and consult further on non-solicitation. The exposure draft bans co-worker non-solicitation terms for every employee at every income level. When was that decision taken and who took it? Was that you guys or was that Treasury—or, I should say, was it your minister or was it the Treasurer?

Mr Somi: I might need to take the specifics of that question on notice. What I would confirm is that the commitment did foreshadow consideration of the co-worker non-solicitation clause, and that was subject to consultation over the course of the development of these reforms. So it wasn't new to stakeholders; while it didn't form part of the original election commitment, it was subject to significant policy development during the course of consultation.

Senator HUME: Is there some analysis, then, that supports extending the ban to employees earning above $190,100?

Mr Somi: I might need to take that on notice, my apologies, Senator; I'm relatively new to this piece of work. We've had some changes within the group following on from the development of the Fair Work Court Taskforce. We might need to take on notice the details of the policy development of this particular piece of work.

Senator HUME: If there is some analysis that supports extending that ban to higher incomes, can I ask that it be tabled?

Mr Manning: Yes, Senator, and—picking up—there was a consultation process. If there were particular submissions that drew on that, we'll refer you to them as well in our response.

Senator HUME: Thank you. The explanatory memorandum says at paragraph 2.87 that 'co-worker' is defined neither in the bill nor in the Fair Work Act. Yet there is a civil penalty prohibition that turns on that definition. I'm interested to know why an undefined term is used as the basis for penalties over a million dollars—$1.09 million? Will that term be defined before introduction if stringent penalties are going to apply?

Ms McFarlane: That's something that we could take a look at. A lot of the terms in the draft legislation haven't been defined so that they can have their ordinary meaning. My expectation is that would be the reason why it's undefined.

Senator HUME: So 'yes' is the answer?

Ms McFarlane: Yes.

Senator HUME: Section 23D captures some workplace policies, and 'any other agreement or arrangement, whether written or unwritten'. How is a small business, or indeed a court, meant to establish the existence and content of an unwritten arrangement for the purposes of a civil penalty?

Ms McFarlane: I can probably provide some assistance with that one as well. The reason why that is undefined and the purpose behind that provision is to capture the kinds of spoken but, I guess, unwritten policies that a workplace might have. For example, you might have a business that says to all new workers who are commencing: 'This is how we do it in the workplace. There is an expectation that when you move on, you don't work for competitors for 12 months.' So that was the intention behind keeping it broad, because that could have a chilling effect and would be contrary to what the reforms are trying to achieve.

Senator HUME: So if I'm a manager and I tell my staff, 'Hey, if you leave, don't poach my team,' is that enough?

Ms McFarlane: I think it would depend on the facts.

Mr Somi: Further to Ms McFarlane's evidence, this feedback has come through fairly clearly through the consultation process. We are taking that feedback on board as we further refine the reforms, and these are some of the issues that are being considered at the moment. So, while that is the current drafting of the legislation, it is a matter that has been raised with us, and the department is aware that we might need to look into that further.

Senator HUME: Terrific. I want to know what consultation was done specifically with small businesses before this exposure draft was released.

Mr Somi: I think it's a tricky question for this department to answer. Treasury has largely been responsible for the development of these reforms over a number of years. These were initially foreshadowed in the competition reform piece being led by the Department of the Treasury. They have gone through multiple rounds of consultation on competition reforms, including the restraint of trade in employment elements, which are largely what this bill would give effect to. While the department hasn't necessarily been involved in the detail of that consultation up until this point, these matters have been canvassed through consultation. Specifically on this bill, the department does have its standard consultative mechanisms around the Fair Work Act, which Mr Manning alluded to earlier, and the COSBOA was involved in that consultation.

Senator HUME: So COSBOA has been consulted specifically on the elements of the Fair Work Act that this policy affects. What about the Australian Small Business and Family Enterprise Ombudsman?

Mr Manning: There have been a couple of rounds of consultations. As we understand it, small business peaks and various small businesses were engaged in that Treasury-led process around the broader competition law reforms. Additionally, as the legislation has become more developed, there's been the usual consultation that occurs on any amendment to the Fair Work Act—whether the small-business ombudsman was part of that, I don't know. It wasn't off the top of my head, but, notwithstanding that it's in Treasury, we can take on notice who they consulted with to, to see whether or not the Small Business and Family Enterprise Ombudsman was part of those early consultations.

CHAIR: Senator, this will be the last question before we suspend for lunch.

Senator HUME: Okay. Treasury's impact analysis was published on 21 September. That was two weeks after the consultation opened. Did the department see that impact analysis before it was released?

Mr Manning: I'm not sure any of the witnesses working on it at the moment know that. I think I'll have to take that on notice. I don't have personal knowledge of that.

Senator HUME: If you could, I think that would be very helpful. I am conscious that we need to move on to the Fair Work Commission. I do have more questions on this issue, and I will put them on notice.

CHAIR: I just want to clarify with the committee that we are now in a position to dismiss officials from outcome 3. Great. You go with our thanks. After the lunch break, we'll be returning with the Fair Work Commission.

Proceedings suspended from 12:59 to 14:00

Fair Work Commission

CHAIR: I now welcome officers from the Fair Work Commission, including its general manager, Mr Murray Furlong. Mr Furlong, do you have a statement?

Mr Furlong: No.

CHAIR: In that case, we will go straight into questions. Senator Kovacic.

Senator KOVACIC: Before I hand over to Senator Hume, I just want to table some correspondence, which is a letter from me and Senator Hume to the administrator, Mr Crosby. I am just mindful that we may receive some answers to questions today that may take the form of 'they're matters for the administrator'. We did seek the administrator's attendance here today, and he has declined, and that is noted in that letter. I am also tabling advice from the Clerk around witnesses at estimates, which also clarifies that it is possible for an officer to attend estimates—just so that there is clarity around that. We have a concern that we have a scenario where we can't get the administrator to attend and neither the department nor you yourselves are able to answer the relevant questions. We table those documents for your reference.

CHAIR: They're being distributed, and I'll confirm tabling shortly.

Senator KOVACIC: Thank you.

CHAIR: Senator Hume, are you seeking the call now?

Senator HUME: Yes. Mr Furlong, I want to ask some questions specifically referring to the last budget estimates. When you appeared before this committee on 2 June, I want to know whether you were aware that the government was going to announce the cooperative workplaces legislation, because it was announced very soon after you left.

Mr Furlong: The commission does not necessarily get involved in matters of policy. We have provided information to the department and to major stakeholders about some of the challenges we were facing in relation to our workload, some possible amendments to the Fair Work Act that would assist us in improving efficiency and dealing with the very significant increase in our caseload of recent years. I knew that there was a bill. I knew that it was going to be introduced in parliament, but I cannot recall ever receiving advice. In the normal course of events, I would not be privy to that information.

Senator HUME: Obviously, the coalition opposition were keen to assist you with those matters as well. We were very surprised that, having had you appear at the last Senate estimates, you left when the committee adjourned at 10.00 pm. At 10.05 pm a media release was put out about this bill, and it was introduced the very next morning. Was that something that you were aware was going to happen?

Mr Furlong: No, I'm not aware, and, in the normal course of things, I would not be aware of those sorts of interactions or those announcements.

Senator HUME: When did the commission first see a draft of that bill?

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

Senator HUME: Can you tell me whether you first saw a draft before you appeared at Senate estimates?

Mr Furlong: I had seen sections of it. I would have to take that on notice, because officers of the Fair Work Commission would most probably have had interactions with departmental officials about the nature and the prescription of those amendments. I am not too sure if we saw a full bill or sections of the bill prior to its being introduced. I can say that, in terms of one of the geneses of the bill, I attended the National Workplace Relations

Consultative Council last year. I handed out a document that outlined a series of interventions and technical amendments. My understanding is that it was that document that the bill was crafted from.

Senator HUME: Having seen elements of the bill prior to Senate estimates and yet not having referred to it, were you specifically asked not to refer to it?

Mr Furlong: No. We don't enter the policy conversation, so it wouldn't be a natural place for the commission to go.

Senator HUME: I understand that, which is why we were so surprised that there was no mention of it, that the media release occurred five minutes after this committee had adjourned, that it was introduced the next day and that it was then guillotined before it passed. Had there not been one section in it that the government clearly knew was going to be a problem for the coalition in part 9—entirely irrelevant to what it is that the Fair Work Commission had specifically requested it needed—and had that not occurred, this wouldn't have been an issue. Clearly, this was intentional. The fact that it needed to be guillotined was intentional. Due to the timing of the release of that legislation, the committee and I never had the chance to ask you about the bill before it passed, something that I don't think is an unreasonable thing. Did the commission make a submission or provide any written advice to the minister or the department on that bill?

Mr Furlong: As is custom and practice over decades in terms of my experience with these sorts of matters, we interacted with the department and provided technical advice on the operation of the proposed reforms. Those conversations were: will this assist the commission in dealing with your caseload by improving your efficiency and the efficacy of the institution? That was the nature of those conversations that I was privy to, but, in the normal course of things, I'm not privy to every conversation that's had at the officer level between the Fair Work Commission and the department. But it's my understanding and it's reasonable to assume that there were a significant number of conversations that would have occurred, interactions, where, certainly, elements of the bill—whether or not it was the full bill—were discussed.

Senator HUME: I am assuming that you think that the bill will assist the Fair Work Commission to deal with its backlog?

Mr Furlong: Yes. We were very thankful for the support of government and parliament in passing the legislation. While it is still early days, we are seeing an improvement in not just the efficiency of our operations but also the regulatory burden on the parties that come before us.

Senator HUME: Is the technical amendments document that you circulated at the National Workplace Relations Consultative Council to which you referred something you can table?

Mr Furlong: I think I already have tabled it.

Senator HUME: At the last estimates? Did I miss it?

Mr Furlong: We can table it again.

Senator HUME: Yes, I would appreciate that. Were there elements of that proposal that were not adopted—for example, anything on fees, paid agents or AI disclosures?

Mr Furlong: It has been a while since I have looked at that document. I think there was a reference in the initial document—it was 12 months ago—that referred to paid agents and some possible licensing arrangement or regulation associated with paid agents.

Senator HUME: Is that still a recommendation of the Fair Work Commission to government, something that they need to respond to?

Mr Furlong: Obviously that's a matter for government, but we suggested, in an open and transparent manner, opportunities to improve the efficiency of the organisation, and that was certainly one of them.

Senator HUME: In that document, was there a request for the procurement preference in part 9?

Mr Furlong: No.

Senator HUME: Was it consulted on the Greens' intractable bargaining amendment before that was agreed on 29 June?

Mr Furlong: Sorry, could you just clarify—

Senator HUME: Well, the issues that you had raised in that document—sorry, forgive me. There was a Greens intractable bargaining amendment—that was on a different bill; forgive me. I'm going to find out exactly when that bill was and whether that was consulted on. I do want to ask you this though: since 7 July, exactly how many general protections and unlawful termination matters have gone to conciliation now without the jurisdictional hearing that that bill enabled?

Mr Furlong: We might be able to provide some specific detail, and Ms Eaton will be able to assist there. But, in terms of that element of the reform—jurisdictional objections relating to general protections dismissal cases—the commission now no longer needs to deal with the jurisdictional issue to determine whether or not a person is dismissed. We have found that that issue has decreased the number from 15 to 20 per cent of cases to five per cent of cases since the amendment—that is, to be dealt with. And, if you extrapolate that out over a year—for 2024-25 we received 9,024 general-protections-involving-dismissal applications, so it is a very significant number. Over the course of a year, it will be somewhere between 1,000 and 2,000 cases, which is why I was referring to the relief in the regulatory burden associated with this jurisdiction. Is there anything else you'd like to add?

Ms Eaton: I think, since 7 July, there have been approximately 120 matters that would have gone directly to staff rather than going to a member to determine the jurisdictional issue before being able to do dispute resolution.

Senator HUME: How many have been decided on the papers? Can you do that?

Ms Eaton: No. On a general protections matter the commission's role is to conduct dispute resolution, which we do in a variety of ways. It is usually through a conversation. Sometimes we do dispute resolution via email, but that's a very small proportion. Most of our cases would be over the phone.

Senator HUME: Since 7 July, how many applications for orders under section 587A have been made, and how many have been granted?

Ms Eaton: I don't have that information before me.

Senator HUME: Is that something you can take on notice?

Ms Eaton: I will take that on notice.

Ms Bright: Is that the vexatious litigants one?

Senator HUME: Yes.

Ms Bright: We haven't yet made any orders under the vexatious litigants provisions. We anticipate that will be an incredibly useful provision when the correct circumstance arises, but it hasn't yet.

Senator HUME: There have been no vexatious litigants since 7 July?

Ms Bright: My recollection of the provisions of the act is that the commission has to dismiss an application and then it has to be brought before a full bench to make a vexatious litigant declaration. That has not happened since 7 July. We do have vexatious litigants from time to time, and they do take up a lot of the commission's resources. That provision will be incredibly useful when that happens.

Senator HUME: How many certificates have been issued by staff under delegation and under what classification? Is that the number that you gave me before—how many have been done by staff rather than the commission?

Mr Furlong: That function hasn't been delegated as yet from commission members to a staff member. One of the reasons is that we are undertaking significant organisational change at the moment to deal with the 70 to 80 per cent increase in our workload over the last three to five years. Some of the deeper changes we're making are in relation to the general-protections-involving-dismissal jurisdiction. In the last couple of weeks, we've been rolling out digital technology to improve the efficiency in the operations of this jurisdiction. We haven't made a decision. Until we resolve and we have consolidated all of those changes—once that's settled, the president will consider whether or not the power, or the delegation, should be issued to a staff member. But it is certainly something that we will take advantage of, I imagine, at the appropriate time.

Senator HUME: Let me give you a broader question. The issue that this bill was trying to address was the backlog that was at the Fair Work Commission. How is the backlog looking?

Mr Furlong: I am pleased to report that the growth in our caseload appears to have moderated, possibly to a new normal, over recent times. For the first three months of this financial year, we received 13,303 lodgements to 30 September. If you extrapolate that out over a full financial year, you arrive at somewhere between 53,000 and 54,000 applications, which is commensurate with what we received in the 2025-26 financial year. Compared with 2021, we received around 32,000 applications. This might be the new normal. The president and I have been very open and transparent about the disruption in the workload of the commission and the number of cases we're receiving, the difference in the nature of the parties that are coming before us—more individual, rights based cases, more people being self-represented than was previously the experience of the commission. We moved really quickly because we wanted to get in front of the curve in terms of significant changes and ambiguity. I am pleased to report, in terms of the workload, that the clearance rate for 2026-27—this is reporting to 30 September—was 109 per cent. The median age of matters on hand was 38 days—so it's within six weeks of

lodgement at 1 October—and this is significantly lower than the recent peak of 47 days calculated in February this year.

CHAIR: Senator Payman.

Senator PAYMAN: In June it was reported that the Fair Work Commission adjusted the caseload of Commissioner Sophie Mirabella following her being charged by police.

Senator SCARR: On a point of order—can I ask for a short adjournment? There may be matters Senator Payman is not aware of that I would like to discuss in private with committee members before she asks a question.

CHAIR: I'm happy for the committee to suspend and resume in a few moments.

Proceedings suspended from 14:17 to 14:28

CHAIR: Senator Roberts, I'm going to pass to you for this part of the crossbenchers' time, and then we'll return to Senator Payman in your spot.

Senator ROBERTS: Thank you, Chair. Thank you, all, for appearing today. It's good to see you, Mr Furlong. My question are going to be more for clarification. There will be a number of questions, but I think the answers will be pretty short. At the last estimates hearings we confirmed that the Fair Work Commission must ensure that modern awards are upheld and form the basis for minimum employment conditions. We confirmed that the commission as a body has the authority to make, vary and revoke modern awards. However, an individual fair work commissioner acting as an administrative decision-maker does not have the authority to make, vary or revoke a modern award. Is that agreed?

Mr Furlong: Yes.

Senator ROBERTS: An individual commissioner must instead interpret, apply and enforce the minimum provisions and protections of the award as it stands.

Mr Furlong: The enforcement of provisions of an industrial instrument—modern awards, enterprise agreements—rests with the Fair Work Ombudsman. Their statutory functions are around providing education, advice and compliance with modern awards and enterprise agreements.

Senator ROBERTS: Interpretation or adjudicating is up to the Fair Work Ombudsman?

Mr Furlong: No, the compliance with those instruments. I think they are giving evidence after us today.

Senator ROBERTS: An individual commissioner must still interpret, apply and not enforce?

Mr Furlong: Yes.

Senator ROBERTS: Instead, they must interpret and apply the minimum provisions and protections of the award as it stands?

Mr Furlong: They should consider them in relation to the matters that are before them, yes.

Senator ROBERTS: The established procedure for varying or revoking a modern award is consideration by a Full Bench of the commission, with input from employer and employee representatives?

Mr Furlong: There are provisions in the Fair Work Act that allow for modern awards to be amended on application or on the commission's own motion. Routinely, they go before full benches of the commission in the determination of those matters. They bring on evidence, they deal with the evidence, they ask interested parties to provide evidence, consider it and then they will make any variations to those awards.

Senator ROBERTS: Chair, I would like to table a document.

CHAIR: We can circulate it, and then the committee will make a decision on tabling. Do you have copies?

Senator ROBERTS: Just circulate it; that's fine. It does not have to be tabled; I'd prefer to table it.

CHAIR: We'll have a look at it and then I will confirm that, but it can be circulated.

Senator ROBERTS: The CFMEU has previously successfully opposed attempts by employer bodies to insert casual mineworker roles into the Black Coal Mining Industry Award. I have a copy of a CFMEU publication titled 'Employers push for casualisation in black coal award defeated', which is no longer readily available online, so that's why I'm sharing it with you. The CFMEU, as the black coal mining union, opposed casuals. As a mine manager in the 1980s, I know that they were adamant about not allowing casuals or even contractors. However, it started the first labour hire firm that was used in the coal industry. I've forgotten the name of it, but it retrenched mineworkers. It had a labour hire firm that it owned. It then sold that and was involved with other labour hire firms in various stages of ownership. It was well and truly opposed to it in a public stance, but it was supporting it and being a labour hire firm in private.

The purpose of an enterprise agreement is to provide terms that, subject to the statutory requirements, operate against the relevant minimum standards. Where an enterprise agreement permits mineworkers to be employed as casuals when the relevant award does not provide for that classification, the agreement appears to introduce employment arrangements materially less secure than the full-time or part-time arrangements contemplated by the award. Is that correct?

Mr Furlong: The evidence that I provided previously is that a modern award will apply unless it is ultimately displaced by an enterprise agreement. The enterprise agreement will apply to the workers that are covered, the employees that are covered, by that enterprise agreement. The application of the minimum rate of pay is applicable not to penalties but the minimum rate in that enterprise agreement.

Senator ROBERTS: And the BOOT test?

Mr Furlong: Yes.

Senator ROBERTS: That is the better off overall test?

Mr Furlong: That's right.

Senator ROBERTS: It must at least match the provisions of the award?

Mr Furlong: That's right.

Senator ROBERTS: Since 2019, I raised concerns that black coal mining industry enterprise agreements made from 2010 onwards have, in some cases, delivered terms and conditions below those available under the relevant award, including lower rates of pay, and that a large number of those agreements were negotiated, recommended or endorsed by the CFMEU. Minister, given that an individual Fair Work commissioner cannot vary or revoke a modern award, do you agree that approving a black coal mining industry enterprise agreement that permits casual mineworker employment where the relevant award does not permit that classification raises a question as to whether the commissioner acted beyond their statutory authority or jurisdiction?

Senator Walsh: I am not sure that I can accept all of the premises that are in your question. Obviously, the government supports fair pay and good job security for workers, which is why, for example, we passed our same job, same pay provisions, which have been very important in the mining industry. The Fair Work Commission is independent. We respect the independence of decisions of the commission.

Senator ROBERTS: Will the government investigate and then acknowledge and address the historical underpayments, subject to that investigation, that may have resulted from such agreements, irrespective of which employee or employer organisation negotiated or endorsed them?

Senator Walsh: Again, I don't have all the information to accept all the premises of your question, but we do respect the independence of the Fair Work Commission.

Senator ROBERTS: If you could get the evidence, you would investigate?

Senator Walsh: That's a hypothetical question.

Mr Furlong: Senator, do you mind if I just clarify a piece of evidence I gave? In terms of varying a modern award, a single member of the commission can, but custom and practice, in the normal course of things, is that they are dealt with by full benches of the commission.

Senator ROBERTS: Let me ask you a question back: that is because it is a very significant thing to do?

Mr Furlong: It is. It can impact on many hundreds of thousands, if not—

Senator ROBERTS: I have been in the CFMEU as a member. Sometimes the person running the meeting can manipulate that. Heaven forbid, but it happened. I've seen it. When the union membership endorses something at a mine—I'm not talking about nationally but at a mine—it can be as a result of manipulation. Thank you, Mr Furlong.

CHAIR: No response required?

Senator ROBERTS: No.

CHAIR: Senator Kovacic.

Senator KOVACIC: Mr Furlong, at the last estimates you told the committee—my questions relate to the CFMEU—that you work on a trust-but-verify basis and meet weekly with senior officials from the administration. Is that still the case?

Mr Furlong: Yes, I meet very regularly with senior officials from the administration.

Senator KOVACIC: Does Mr Crosby attend those meetings?

Mr Furlong: I deal with Mr Crosby on a needs-to-know basis. My scheduled fortnightly meetings are with the chief of staff.

Senator KOVACIC: With Mr Crosby's chief of staff?

Mr Furlong: Chief of staff, yes.

Senator KOVACIC: Would you mind detailing how the commission keeps track of the administration's progress? Is there a progress tracker or a similar document the commission uses for this?

Mr Furlong: The administrator is independent of me and is independent of government. For all intents and purposes, he has all the powers of all officers under the rules of the organisation vested in himself. He conducts the operation of the union in accordance with the rules of the organisation, in line with the scheme of administration and, obviously, the obligations under the amended RO Act and section 323 of the RO Act. My interactions and the commission's interactions with the administration, the office of the administration and the CFMEU Construction and General Division are many times each week. They have two purposes. One is to clean up that union, and the second is to advocate on behalf of the members of that union with enterprise bargaining, and with ensuring the work health and safety of members on site.

Senator KOVACIC: But the original purpose of the union is maintained—not what it has become.

Mr Furlong: Absolutely. In terms of the meetings the interactions include right-of-entry permits, enterprise bargaining, other interactions around annual returns and other obligations under the Registered Organisations Act. The CFMEU still has to meet all of its obligations under the Registered Organisations Act that apply to all registered organisations, and so we ensure it is complying with all of its obligations under the RO Act. In addition, I obviously have a significant interest in ensuring the scheme of administration is being effectively applied. When I appointed Mr Crosby, I gave him, attached with his instrument of appointment, a list of matters that I would like him to consider focusing on over the next 12 months. Yesterday I received correspondence from the chief of staff and from the administrator that outlined some of the areas they are focusing on. Having spent decades in and around regulation and industrial relations, I remain satisfied by the operations of the administration and the work they are undertaking. My assessment is that they are essentially doing more than every other industry participant combined. I can talk to some of the areas of the work that they're focusing on at the moment, some very significant, impactful work that I believe will significantly improve workplace relations in the building and construction industry.

Senator KOVACIC: There is nothing that you specifically track? If I reframe it: in your report on Mr Crosby's appointment as administrator, you said that he explained what success for the administration would look like at the end of the three years. I take your answer to my question, but I assume that there is no tracker or similar document, because you believe there is no need for one. Are there any benchmarks or milestones that the commission has set down that we can mark progress against so that we have an understanding of how the administration is progressing? I note your comments that you are satisfied but, beyond that, is there any documented process to substantiate that?

Mr Furlong: To hopefully provide you with some comfort, the administrator is intending shortly to circulate a discussion paper relating to the conditions under which he would eventually recommend to the government that part of the CFMEU be released from administration. The administrator, in relation to this piece of work, intends to consult widely on this matter and will engage stakeholders at every level.

Senator KOVACIC: I have two questions. I can understand there is no document or process by which progress is measured. It is purely a matter of satisfaction of both you and the administrator. Is that correct?

Mr Furlong: In terms of the formal process, there are ongoing conversations and consultations. They have outlined a program of work. They have a strategic plan in place.

Senator KOVACIC: I get that. If you were on a board, you would have a risk tracker. If you were having a changeover, an organisational changeover or anything such as that, you would check off each of those to ensure they are completed. Is there any such document?

Mr Furlong: That document is being prepared at the moment.

Senator KOVACIC: It does not yet exist in that format?

Mr Furlong: In that format? No.

Senator KOVACIC: When did the preparation of that document begin?

Mr Furlong: As I just indicated, in my conversations with the CFMEU it has been contemplating the development of—your word—a 'tracker' for a number of months. It has been on its work program. Obviously, it has a lot of competing priorities, but it is something that, from my understanding and from my conversations with

them and questions that I have asked, it is intending to prepare. The basis of that will be that the administrator will have to be satisfied before approaching the minister about whether or not any of the branches of the division should be released from administration.

Senator KOVACIC: Respectfully, I'm mindful that we are two years into the administration. If it goes for the full five years, we are almost halfway. To suggest that a process to track progress is being considered and was perhaps not yet high on the list of priorities is a concern to me, because I am very much of the view that you can't track or improve what you don't measure.

Mr Furlong: I agree with that premise. I am possibly in a unique position to observe the activities of the administration. With my knowledge and experience, I am satisfied with the activities they have taken to date and what they have proposed to do over the next six to 12 months. I think it was brought into evidence earlier today that over half the employees of that organisation are no longer working for that organisation. There will be very few organisations in Australia that have undergone such significant reform change as the CFMEU Construction and General Division. No-one is saying that the work is done. If you read Mr Crosby's biannual report to parliament closely, you will see that he indicates that there is significant work to be done, particularly in the Victorian-Tasmanian branch. No-one is resiling from that assessment.

Senator KOVACIC: I accept your comments in relation to that—and you are the expert—but I would also suggest that no other organisation has caused the damage both to its members and to the taxpayer that the CFMEU has in recent years. I think that is an equal parallel. Your report also lists areas of focus you discussed with Mr Crosby, including resolving longstanding demarcation disputes, particularly with the AWU, and preventing delegates or organisers misusing WHS and enterprise agreement levers to drive industrial outcomes. Has the commission recorded any progress on these two issues in particular since Mr Crosby's appointment?

Mr Furlong: I will deal with the demarcation matter first. I'm very pleased to report that significant progress has been made in relation to the resolution of longstanding demarcation disputes between the AWU and the CFMEU. Geoffrey Watson SC's report that related to conduct in Queensland in particular talked about the menacing conduct and intimidation associated with demarcation, particularly in relation to the AWU. On the back of that, I understood that there was a very significant issue. Associated with my letter of appointment to Mr Crosby, I asked him to focus on this particular element, and he has absolutely done that.

There is a signed agreement between the AWU and the CFMEU to work together with a former Fair Work Commission member, a very highly respected and esteemed Fair Work Commission member in former commissioner Julius Roe, through their eligibility rules and determine where the eligibility sits for each of those unions—and not only to determine a standing agreement between the organisations. They have done a lot of work together already, and other stakeholders have been involved.

I understand that Mr Roe has also met with employer associations and those who represent the interests of employers as well. In terms of an initial draft decision for certain elements of the demarcation, he has made preliminary findings. Part of the agreement is that the AWU and CFMEU have agreed to comply with and to observe what Mr Roe identifies as the demarcation between the two unions. To improve things for the future, it's not just about people understanding where the demarcation between the unions rests. In the normal course of matters, there will be disputation because there will be areas where it's not particularly clear where the eligibility sits. One matter that has been considered by Mr Roe and the unions at the moment is: when these issues arise, what is the best mechanism for resolving them? It's not through industrial fixes. It's not through other means. It's to identify a mechanism that they both agree to such that, when a dispute arises, this is how it will be dealt with.

Senator KOVACIC: At the last estimates you told the committee in a letter which you sent Mr Crosby that you asked him to focus on reform work in Victoria, because a significant amount of work still needed to be done in that branch. I note the matters upon which you have just commented that I have just asked you about, but are you able to point to anything specifically that has changed or has been improved in the Victorian branch since that letter? Again, is that progress recorded anywhere? If so, are you able to table that for us?

Mr Furlong: I can. There are a number of matters. I neglected to respond to your question about the weaponisation of WHS matters. I received correspondence and communications from employer interests in the industry. On receiving that information, I wrote to HWSA, the work health and safety agencies. That is made up of the CEOs of the regulators across the country, including the Commonwealth regulator. I asked them to meet with the most senior leaders of the employer interests to discuss elements of weaponisation in the WHS. I've also discussed this in quite significant detail with Mr Crosby. In terms of Victoria, there is information in the biennial report that was recently tabled in parliament. In addition, I'm aware of operational activities that are underway in Victoria about which I do not want to disclose too much information, because I may disturb the operation.

Senator KOVACIC: I did read the report, but is there anything more specific than what was contained in that report?

Mr Furlong: There is. There's a memorandum that has been issued by the administrator to staff, former staff, former officers and other relevant persons from the Victoria-Tasmania branch in relation to the Victorian royal commission.

Senator KOVACIC: Are you able to table that for us?

Mr Furlong: I can table it for you. It sets out very clearly who the union will assist if it's called to give evidence and who they will not assist. Category 1 are people they will not provide representation for. It is outlined in this document as former senior office holders who exercised substantial leadership responsibility, including persons occupying positions such as divisional branch secretary, assistant secretary, president, vice-president or other positions that involved substantial governance and industrial leadership responsibilities. There is a presumption against representation. In relation to that, there will be a presumption against providing representation where there is credible information to the administrator that a person engaged in misconduct, facilitated or enabled misconduct, or obstructed reform efforts of the administration. That relates to officials in Victoria and other people associated with the union.

CHAIR: Senator Payman.

Senator PAYMAN: The June statement of Commissioner Hunt and Vice President Asbury stated

Protocols will now be put in place to ensure a mutually safe and respectful workplace for Commissioner Hunt and Vice President Asbury.

What protocols have been put in place?

Ms Bright: There's a significant amount of public information available about this matter between Commissioner Hunt and Vice President Asbury. They issued a media release on 5 June and asked for privacy going forward. Both of the commission members are working and have a full caseload at the commission.

Senator PAYMAN: You can't discuss protocols that have been put in place?

Ms Bright: I understand that there are protocols in place so that the commission members don't attend the office at the same time, but that's all I'm aware of.

Senator PAYMAN: Ms Hunt had approval from public servants for her email setting to be changed, so any emails from Ms Asbury went straight to her junk folder and not to her inbox. Is that still the case?

Ms Bright: I would have to confirm on notice, but I think that might still be in place, yes.

Senator PAYMAN: Commission staff also agreed that Ms Hunt would be given advance notice of when Ms Asbury was travelling away from the office for work as Ms Hunt was only prepared to go into the office when Ms Asbury was not present. Is that still occurring?

Ms Bright: I understand that is part of the 'they don't attend the office at the same time' protocol.

Senator PAYMAN: The President, Mr Hatcher, gave permission for Ms Hunt, who earns more than $400,000 a year, to work from home whenever she wanted. Is that still the case, and how often is she working from home?

Ms Bright: I don't have that information, but working from home is a flexibility that a lot of commission staff and members take up. It would not be unusual that there are working-from-home arrangements in place across the commission.

Senator PAYMAN: I am just curious to know how many days or how often she is working from home. Are these officials, Commissioner Hunt and another official, who are on more than a $400,000 a year salary fit and proper people to be making decisions on workplace disputes of Australian workers?

Mr Furlong: In the normal course of things, in any workplace issues sometimes arise. The Fair Work Commission is a very respectful, kind and safe work environment. In the very rare times that these situations do arise, we deal with them like any workplace does. These members have sworn an oath of office and are discharging their functions in accordance with the requirements of the Fair Work Act.

Senator PAYMAN: I may have missed this earlier, but Ms Bright said that their workload has not changed?

Ms Bright: That's right.

Senator PAYMAN: It remains the same. Thank you.

CHAIR: I note that we're overdue in moving to the Ombudsman but, notwithstanding, the opposition has the call.

Senator HUME: Mr Furlong, on 21 May, you wrote to the AFP commander warning of limited tangible progress on their pursuit of the CFMEU and called for a well resourced response. I would like to ask you some questions about your engagement with the AFP on this. Before that letter, had you raised these concerns with the AFP at all, formally or informally?

Mr Furlong: Mr Coyle will be able to give you some information on the quantity of referrals and allegations but also information and reports that were provided to the AFP. What prompted that letter is that I attended a meeting—there were several meetings with AFP officers—of the Joint Agency Working Group. From that meeting, I wanted to ask further questions around the progress. I wanted to be satisfied, from my perspective as the regulator of registered organisations, that there had been operational activity undertaken to deal with these issues of alleged noncompliance.

Senator HUME: Had any industry participants told you that they had tried to report matters to the AFP and been turned away?

Mr Furlong: None is coming to mind. I can take that on notice.

Senator HUME: The letter was sent 12 days before the commission last appeared before the committee. Did you consider speaking to the committee about those concerns?

Mr Furlong: At that point in time, I didn't receive any questions in relation to it.

Senator HUME: That was not my question. My question was whether you considered proactively telling the committee that this was something that you had done.

Mr Furlong: I hadn't received information, a response from the AFP, I believe, at that point in time. Obviously, I wanted to give them the opportunity to consider my request and to respond.

Senator HUME: They did reply on 10 June. Can you confirm to this committee that the reply informed you that the agency would not brief beyond what is shared in the Joint Agency Working Group and Taskforce Hawk meetings?

Mr Furlong: That's accurate, yes.

Senator HUME: Were you satisfied with that response?

Mr Furlong: Satisfied? Probably not, but I understand, from an operational, regulatory and a law enforcement perspective, that the information that they could disclose they would reasonably disclose. I maintain a strong working relationship with the officers at the AFP who are responsible for these operations. I continue to engage with them, and so do my officers from the organisation.

Senator HUME: You say that you continue to engage. Have you written to them again or have you met with them again on this particular issue?

Mr Furlong: I've met with them about these particular operations, yes, and I received a verbal update within the constraints of what could be provided about sensitive operational matters that are active before the AFP.

Senator HUME: Do you feel that you've seen the tangible progress in operations that you were looking for in the letter?

Mr Furlong: As a very proactive regulator, I don't think I'm ever going to be satisfied with the amount of activity. I understand that there still are active matters and complex matters that they're dealing with—corrupting benefits and things of that nature. I'm certainly not in a position to comment on AFP operations.

Senator HUME: Your letter formally restated the commission's offer for assistance to the AFP. When was the first offer to assist made?

Mr Coyle: The corrupting benefits legislation was first enacted in 2017, and there has been an ongoing engagement with the AFP across the period of time. As subject matter experts in relation to registered organisations, we have provided previous assistance to the AFP in relation to those types of matters and to New South Wales police in relation to Michael and Darren Greenfield, who were convicted of corrupting benefits legislation contraventions. We have provided that level of subject matter expertise. We have provided educational materials about corrupting benefits to registered organisations so that they can understand those provisions better. From that perspective, the standing offer has been there in relation to law enforcement agencies for a number of years, and we've had engagements from time to time over that period. It would probably now be difficult for us even to identify the number of engagements over that period, but there has been in respect of a range of corrupting benefits matters that have been alleged over the last nearly 10 years.

Senator HUME: It has been reported since that in July the AFP declined a request from Victoria police to investigate alleged Commonwealth corrupting benefits offences. Is that something that you were aware of, that the commission was aware of?

Mr Coyle: Through our participation in the Joint Agency Working Group, we will have had some vision of those matters, but obviously that's a matter as between two law enforcement agencies. We have only a tangential role in that regard.

Senator HUME: You were aware of it?

Mr Coyle: Yes.

Senator HUME: That led to Victorian and Queensland police running their own probe and conducting raids in September. The government has since said that it had full confidence in the AFP and that operational decisions are independent, but I think the frustration of the commission is clear. When did you become aware of that issue, or was it raised in the Joint Agency Working Group?

Mr Coyle: I'm sorry, can you clarify the question, please?

Senator HUME: You have a Joint Agency Working Group, yes?

Mr Coyle: Yes.

Senator HUME: Was the fact that the AFP had declined a request from Victoria Police to investigate alleged Commonwealth corrupting benefits offences raised in that group?

Mr Coyle: I would have to take it on notice specifically, but the Joint Agency Working Group is an opportunity for agencies to come together to deconflict possible matters. There are discussions generally about reports of information that come through and which agency may or may not accept it. I think it would be fair to say it remains, however, under the Joint Agency Working Group, a matter for each agency as to whether they will or will not accept or investigate a referral that might be made.

Senator HUME: Yes, I can understand that. Was it an issue that was raised in that group, though?

Mr Coyle: I gave evidence before that my recollection was that, through the Joint Agency Working Group, there were some discussions about whether matters would be referred to the AFP in that case.

Mr Furlong: If you wish, Senator, we can take it on notice, provide some further information on that and other referrals that were made to the AFP insofar as they've occurred, and provide you with the documentation around those.

Senator HUME: That would be good. I don't need you to breach any confidences about what those instances were, but, if there have been instances, I would really be interested in the number, the dates that they were referred and whether the AFP has since pursued them.

Mr Coyle: If it's appropriate, the substance of those referrals as well?

Senator HUME: That would be terrific, if appropriate, but I don't want to put at jeopardy the rest of the information if you can't share the specifics. Did you inform the minister or the department that you had written to the AFP on this issue?

Mr Furlong: Not that I can recall, but in the normal course of things, I wouldn't. I am an independent statutory officer, an independent regulator. I may have had a conversation with a senior official at the department, but the decision would have been made before, and the letter would have been sent before, any conversation occurred.

Senator HUME: In that letter you specifically stated that the CFMEU administration cannot by itself resolve those issues. Is that a statement that you stand by?

Mr Furlong: Yes, I do.

Senator HUME: What more do you believe is needed from law enforcement if the administration on its own cannot resolve these issues?

Mr Furlong: I think it requires the best efforts of everyone involved. I was listening to the evidence earlier this afternoon and contemplating the contribution that other industry participants have made. Late last year, I gave a presentation to CEOs, very senior people, tier 1 builders in Victoria, and I'm happy to table that presentation. I concluded that presentation by saying that it requires conspicuous leadership from everyone and that the CFMEU itself can't resolve all of the issues, because all of the issues don't just rest with the CFMEU. It is the activities of other very senior people in the industry that need to contribute to the solution. Given that I significantly—and rightly so—focus on the CFMEU, what I asked for last year in this presentation to these very senior officials from tier 1s was that they need to contribute to the solution and that they need to start showing conspicuous leadership.

I said, 'If we were to meet again in 12 months, what would you like to be able to say?' I think I might have said, 'What would you like to be able to say to your children that you were able to achieve over the past 12 months?' We now are coming up to that 12 months.

Senator HUME: The concern of the commission, and, indeed, of the opposition, is that, unless there is law enforcement attached to the good work of the administrator, any good work of the administrator will be for naught if there is not subsequent law enforcement action.

Mr Furlong: That is absolutely accurate. It is consistent with what Mr Crosby has indicated as well.

Senator HUME: Minister, can you tell us or give us some comfort that the government will insist that law enforcement respond to the work that the administration is doing in order to make sure the work that the administration is doing is significant and has its intended effects?

Senator Walsh: Of course, we're in the situation that we're in today where we have Mr Furlong giving evidence that the administrator of the CFMEU is doing more than any other participant to clean up the industry because of decisions of this minister and previous ministers of this government to take the unprecedented step of passing legislation to allow the administration of the CFMEU. We've heard evidence today about the effects of the administration, including that, on commencement of the scheme, there were 200 officers of the union who were removed at that time. Since then, an additional 150 people were removed, constituting about half of the workforce of the CFMEU.

I note that the progress that has been made on cleaning up the industry under this government far outweighs and outstrips progress made in the previous decade. I don't think a single person was removed from the CFMEU by the ABCC, let alone around 350 officers and people removed. If this government had not taken the decision to pass legislation allowing the administration of this union, we would not be in the position that we're in today where we're getting this evidence from officials and where Mr Furlong is saying that it is in fact the administrator of the CFMEU who is doing more work than any other participant to clean up this industry, including employers in the industry as well. We are extremely focused on delivering a clean union and a clean industry, and that is exactly what we are doing.

Senator KOVACIC: With Senator Hume's permission, if I could interject, given what we've heard today from the commission—and, perhaps more importantly, what we haven't heard—and your comments about cleaning up construction more broadly, why has the government voted three times this year against establishing a Senate select committee into corruption? It's not just the CFMEU specifically but corruption in construction? You're saying that the administrator has done more than anyone else, including organisations involved. Why not allow every crossbench senator who voted in support of the inquiry, and only Labor and the Greens opposed it? That's actually counter to the statement that you just made. Perhaps you can answer why the government is so determined to avoid proper scrutiny of corruption in the whole construction industry?

Senator Walsh: There is more scrutiny on corruption in the construction industry because of the decisions that this government has taken that coalition governments never took. We have taken the strongest action available to us by placing the CFMEU into administration, a step never taken by the coalition. Indeed, under the coalition and under the ABCC, corruption flourished in the construction industry. Of course, we are doing the hard work of cleaning up the construction industry. The evidence today has been that it is the administrator of the CFMEU that is doing more than any other participant to clean up the industry. Mr Crosby, the administrator, provides a biannual report to parliament. That has been available. Indeed, Senator Kovacic just said that you've been reading that report. There is transparency and scrutiny. Of course, Mr Furlong is answering all of your questions today here in Senate estimates again. I repeat that this government has done more than any other government on record to clean up corruption in the construction industry, including in the construction union.

Senator KOVACIC: It's your government's view that a national inquiry isn't necessary to investigate potentially billions of dollars lost to corruption in construction particularly as they relate to Commonwealth construction and infrastructure projects? It's not necessary?

Senator Walsh: We have taken the strongest action possible at the Commonwealth level.

Senator HUME: No, you haven't. This is the point. The strongest action possible would be having a concurrent administrator and an inquiry here. In fact, the government has resisted the strongest action possible, because the administrator's responsibilities only surround the CFMEU, not the industry more broadly. We know that there are senators even around this table from your own side who suggest that corruption runs far deeper than just the union. Why would the government resist an inquiry into corruption in the construction industry more broadly, particularly when we now hear evidence that, potentially, law enforcement agencies aren't pursuing the work that the administrator is doing?

Senator Walsh: I shall repeat again that we've passed legislation to allow the administration of the union. There has been evidence today that 200 officers of the union were removed at the time that the scheme was implemented and that around half of the workforce has been removed from the CFMEU. Respectfully, there is no inquiry of this parliament or of the Senate that could achieve that. Indeed, no previous government could achieve that. The ABCC did not achieve that. That is just, of course, part of the work that the government is doing. The government has also sought to bring together the industry to work on a code and a framework for the industry going forward. We are a government that believes we need unions and employers in the room together to make progress. That is exactly what we are doing.

Senator HUME: The government has repeatedly opposed a dedicated Senate inquiry that could fill the gaps of the royal commission in Victoria and the Queensland commission of inquiry that would perhaps enable the AFP to do the things it's currently saying it can't do. The CFMEU administrator has declined to appear at estimates. How do you, Minister, expect the parliament to actually scrutinise the work that the administrator is doing? That is our job. Are you saying that we actually don't have the capacity to scrutinise it effectively and that only your government by instruction of the administrator can do that? Clearly, the AFP is saying that's not adequate.

Senator Walsh: I just want to check, Chair, whether the correspondence that Senator Kovacic has referred to was tabled?

CHAIR: I believe all of the correspondence we've now received in today's distribution has been tabled.

Senator Walsh: Senator Kovacic, you referred to your invitation to Mr Crosby to appear—

Senator KOVACIC: That's correct. My question, effectively, is that the government has repeatedly opposed a dedicated Senate inquiry. The administrator has declined to appear at estimates. How on earth are we meant or how is the parliament meant to properly scrutinise the work of the administrator if we cannot have an inquiry and we cannot ask the administrator questions?

Senator Walsh: Letters have been tabled. I note the letter from Mr Crosby to Senators Hume and Kovacic and would just like to put this on the record: that he respectfully declined the invitation to appear at estimates doesn't deem it to be appropriate in all of the circumstances. However, he offers to meet with you at a time of your convenience to brief you—

Senator KOVACIC: A private meeting is not transparent—

Senator Walsh: In addition, of course, under the scheme of administration, which our government delivered, which you never did, the administrator is required to report to parliament, as he has recently done. The administrator works closely with Mr Furlong, and the Fair Work Commissioner, Mr Furlong, has answered all of your questions today.

Senator KOVACIC: Minister, to finish this off, do you believe that the parliament should be able to scrutinise the performance of the administrator?

Senator Walsh: I think the results of the administration are clear. Again, there were 200—

Senator KOVACIC: That's not evidence.

Senator Walsh: There were 150—

CHAIR: We will allow Minister Walsh to finish.

Senator DOLEGA: I have a point of order.

CHAIR: If you have a point of order after you've heard her answer, I'm happy to hear it.

Senator Walsh: There were 150 officials removed from the union. Evidence has been given today that that was about half of the people who have worked at this union. Evidence has been given today that the administrator appointed by Mr Furlong under the scheme introduced by the government is doing more than any other participant in the industry to clean up the industry. That is the evidence that has been given today. The administrator has offered you a briefing, and, in addition, the administrator reports transparently to the parliament.

Senator KOVACIC: How does the administrator report transparently to the parliament?

Senator Walsh: In the report that is tabled in the parliament that you referred to earlier.

Senator KOVACIC: That doesn't allow for any discussion. It doesn't allow for any scrutiny. It doesn't allow for any questions. That's a statement.

Senator Walsh: Sure.

Senator KOVACIC: Okay. Trust us; we're the government! Okay.

Senator Walsh: I hope I'm not the only person that the irony does not elude for you wishing to understand more about a scheme of administration that you had 10 years to do and that you never did. Under your government, corruption in this union and in this industry flourished. It was a very good time for corruption in the construction industry under the government that you led. On our watch, we have taken the strongest action possible.

Senator HUME: You haven't. That is a lie.

Senator Walsh: This union is in administration. We've heard evidence today from the officials that the administrator is doing more than any other participant to clean up the industry and we've heard evidence about the progress of that work today.

Senator DOLEGA: Point of order!

CHAIR: Senator Dolega, on a point of order.

Senator HUME: Senator Dolega, I know where you're going with this. I withdraw the comment. However, I would say that the minister saying that the government has taken the strongest action possible is clearly not true.

CHAIR: If you're making the withdrawal, the courtesy to the committee is to just simply—

Senator O'SULLIVAN: I'll make a point of order: it's misleading.

CHAIR: No, Senator O'Sullivan, you don't have the call. We're dealing with a point of order. I'm asking Senator Hume simply to withdraw.

Senator HUME: I withdraw the comment.

CHAIR: Thank you, Senator Hume.

Senator KOVACIC: I would like to make a comment as well.

CHAIR: If it's a point of order, I'm happy to come to you, but, if it's not, I'm confirming that the minister has finished her response. Are you finished? Who is seeking the call for a question or a point of order? They are the options that are available.

Senator KOVACIC: If it's not a point of order, I hope you'll forgive me, but it's in relation to relevance. I'm trying to be mindful of time and that we are behind. I've received three answers that contain the same information about the number of people who have been let go. Clearly, it's a written statement. It's not relevant. I would not like us to continue to be behind, but I am going to ask all of my questions. If I keep getting the same answer, I'm still going to keep asking all of my questions.

CHAIR: I remind all senators of the importance of relevance, but, from what I can observe, I believe it is. It's a very broad test when it comes to estimates hearings. Senator Kovacic, you do have the call, though. We have five minutes before we go to the break.

Senator KOVACIC: I will need time after the break as well.

CHAIR: That's fine. No-one is seeking the call other than you, so this is your time to manage.

Senator KOVACIC: Mr Furlong, at estimates on 3 December, I raised concerns about CFMEU officials being allowed to resign rather than being dismissed, potentially allowing them to avoid being classified as removed persons under the act. I want to return to that issue in light of recent allegations, but, before I go to that, I want to ask: do you keep a register—I asked the department and they said that they didn't—of the number of removed persons, or tracking of those individuals, who now are back as officials in any union?

Mr Furlong: Mr Coyle will be able to assist you.

Mr Coyle: In terms of a register, no, but we do have some insights from a range of different sources. There's a complex matrix of different elements to this that need to be taken into account. The scheme of administration, when it commenced, resulted in about 214 unique individuals being removed from offices across the CFMEU—

Senator KOVACIC: I've heard from Senator Walsh multiple times this afternoon.

Mr Coyle: That is one of the mechanisms by which a person could become a removed person, but a person could also become a removed person by activity of the administrator during the administration. We are not, on a day-to-day basis, privy to the actions of the administrator.

Senator KOVACIC: The administrator doesn't report any of this data to you? That's what I am trying to understand. The administrator may hold it; they may know it. Does the department not know it, and does the commission not know it either?

Mr Coyle: The administrator independently runs the CFMEU. He will take such action as he deems necessary. His opinion as to the steps that he has taken may be a relevant consideration as to whether a person

falls under one of the relevant removed persons categories. He has, however, from time to time, reported to us a list of persons who are removed persons. Most recently, on 1 June this year, he provided us a list of 27 names of persons who he considers have been removed under the scheme by the activities of the administration.

Senator KOVACIC: What would make it different for him to provide you those 27 as opposed to any others prior or since? I want to understand why you get that list and not any other list?

Mr Coyle: Perhaps I can approach this in two different ways. The first is that we have recently published a guidance note in relation to removed persons to provide information to other registered organisations about what their responsibilities are, about the potential risks associated with engaging persons who formerly worked at the CFMEU or were officers of the CFMEU without undertaking due diligence, such as making inquiries about whether they are a removed person or whether they have received the necessary certificates to enable them to be employed or to act as a bargaining representative or become an officer of a different organisation.

Information exists in respect of any person to be able to identify, through engagement with the administrator, whether or not that person is a removed person. We at the commission do not have an up-to-date, updated-daily list of names of people. But, to the extent that matters come before the commission, we engage in respect of individuals with the administrator and with the Fair Work Ombudsman about information that they may have about a person if they were to apply for a right-of-entry permit, for example. In those circumstances we can obtain the information necessary to satisfy ourselves as to whether or not a person falls within a category of removed person.

Senator KOVACIC: If you're approached for a right-of-entry permit, do you cross-check to see if they are a removed person?

Mr Coyle: We do.

Senator KOVACIC: Do you need to go to the administrator to get that information, and will they confirm that with you?

Mr Coyle: We already have a list of quite a number of names of people.

Senator KOVACIC: You don't have all of them, so you will not know. Do you cross-check with the administrator or your own list?

Mr Coyle: We have a standing arrangement where we would look at engaging with the administrator about whether they have information about a person that is relevant to a right-of-entry permit application if they were previously a permit holder for the CFMEU.

Mr Furlong: There's also a similar regime associated with removed persons. There are reactive regulatory powers that we have in relation to this. I will ask Mr Corcoran to give you a minute update on one of our investigations that relates to these provisions around a removed person.

Mr Corcoran: As a regulator, we receive information from a range of sources. If any stakeholder is concerned that a person who is a removed person has been employed contrary to the removed persons provisions, we can receive information about that and we can investigate those matters. To the point in question, we currently have a current investigation in relation to the UFUA and whether the UFUA may have engaged a person who was a removed person—that being Michael Ravbar, the former secretary of the Queensland divisional branch.

CHAIR: We are due to suspend. I understand that we still require these witnesses after the break.

Proceedings suspended from 15:30 to 15:45

CHAIR: The committee will now resume. We're returning with questions to the Fair Work Commission. Senator Kovacic.

Senator KOVACIC: I asked some questions earlier regarding CFMEU officials being allowed to resign rather than being dismissed, potentially allowing them to avoid being classified as 'removed persons' under the act. Are you aware of a current investigation or of a most recent past investigation into a CFMEU New South Wales organiser concerning his dealings with a labour hire company called Unite Recruit?

Mr Furlong: I'm not personally aware, no, not on the basis of that information.

Senator KOVACIC: I understand that the organiser concerned is a Mr Ozluk from the New South Wales branch of the CFMEU. You have no knowledge of that?

Mr Furlong: No.

Senator KOVACIC: I'm told that the administrator engaged an independent barrister from Victoria to conduct the investigation. That information hasn't been provided to you by the administrator?

Mr Furlong: The administrator and his senior officers provide significant information. I want to check my records, because it may have come up in a conversation. It may have come up in an update that I have personally received. I just want to caution as we go forward that I haven't prepared briefings to answer questions on this. It will take me a couple of minutes.

Senator KOVACIC: If there is anyone else in the room who might have that information, I'm happy to wait a moment.

Mr Furlong: O-s-l-a—is that the gentleman's surname?

Senator KOVACIC: O-z-l-u-k.

Mr Furlong: I don't have any record, just on the basis of that very quick search.

Senator KOVACIC: For some context—and obviously not referencing this particular scenario—my understanding is that the allegation suggests that the individual was engaging in conduct where he was taking around someone from Unite Recruit, suggesting to organisations that the union had a relationship with Unite Recruit and that he was recommending that Unite Recruit be hired on particular sites. Would that constitute behaviour that would or would not be acceptable?

Mr Furlong: Talking hypothetically—that is the limitation?

Senator KOVACIC: Yes, correct.

Mr Furlong: Depending on the nature of the conduct associated with that recommendation, if Mr Ozluk were to receive a benefit—

Senator KOVACIC: Any individual.

Mr Furlong: If any individual were to receive a benefit from that labour hire for recommending or applying coercion, duress, influence—

Senator KOVACIC: This suggests influence, at the very least.

Mr Furlong: Then it could be perceived as a corrupting benefit. Further, if it relates to enterprise bargaining as well, which is a different scheme, there are obviously obligations and requirements around that. I might just hand it to Mr Coyle to see if there's anything that he would to add here.

Senator KOVACIC: I can table it. There's a page from the website of that organisation which notes specifically that Unite Recruit describes itself as CFMEU aligned and EBA compliant. I will just circulate that now; I'll get it right, Chair. If there were a circumstance where you had an organiser from the CFMEU taking an individual from this organisation around with them and suggesting to contractors that they should be hiring somebody from here, would that constitute a problem under the current circumstances in terms of undue influence?

Mr Furlong: It goes to the circumstances. It could be a recommendation from an organiser to, say, a head contractor without any corrupting benefit and without them receiving any benefit. But, if there is an employer or labour hire company out there that is absolutely meeting all of their obligations under an enterprise agreement and the union is satisfied that they are EBA compliant from the perspective of paying their workers what they're entitled to and they're not engaging in sham contracting, other unlawful phoenixing activity or other conduct that's associated with some labour hire or other entities in and around the construction industry, in and of itself a recommendation would not pose—

Senator KOVACIC: The recommendation on its own is not a problem. What about if that organiser drove in their car a representative from that organisation, took them from site to site and went to head contractors and said, 'These are our best guys; it would be really good if you used their services'? Would that be considered to be—

Mr Furlong: I think it would certainly warrant investigation or inquiries. I'm not too sure if you—

Senator SHELDON: I am a supporter of the administration—I've spoken on it many times in parliament in supporting it—but I'm concerned about hypotheticals. That's quite hypothetical.

CHAIR: There is no standing order which prevents hypothetical questions being asked in estimates. It's up to the officials how they respond.

Senator KOVACIC: What I am trying to understand, particularly given the current circumstances with what we're seeing in Victoria, what we've seen in Queensland and what is now beginning to unfold in New South Wales and WA, is: if you have an organiser from the CFMEU taking somebody from an organisation around to sites and saying to those head contractors, 'These are our best guys; it would be really good if you could throw some work their way', how would that be perceived by yourselves and the administrator? If I were one of those

head contractors, I would be worried about saying 'no' to that. More generally, what distinguishes that line between recommending someone and making someone feel like they do not have a lot of choice but to comply?

Mr Furlong: I am trying my best to assist you with this line of questioning. It gets more difficult the more we extend the example. I feel like I could possibly be moving to a place where I would be misleading the Senate if I were asked to answer further on the abstract. One of the things that I can say which might provide some assistance is that there is a code of practice for organisers of the CFMEU. It has been reviewed by the administration, but there is also a review of the delegates code of conduct. The CFMEU has over 1,000 delegates across the country. Each branch is developing a detailed delegate development strategy implementation. Organisers and delegates are being retrained. Everyone acknowledges that there's further work to be done, but Mr Crosby and his team are in the process of retraining their delegates and their organisers across a whole raft of matters, including about behavioural change and respect at work.

Senator KOVACIC: Is there a requirement for the administrator to notify the commission where an investigation substantiates serious misconduct by a CFMEU official? What happens if that CFMEU official is terminated?

Mr Furlong: The CFMEU administrator—and he has exercised this power previously—has the power to refer matters to me for investigation. We have initiated investigations and have prescribed certain thresholds for the commission to satisfy in relation to those interactions. Those powers have been exercised by the administrator, and we have acted in accordance with our obligations under the RO act as well.

Mr Coyle: Some of the difficulty that we are having in answering some of these questions belongs to the limited jurisdiction that we have. The general manager is the financial regulator of the registered organisation. We are responsible for investigating civil penalties, including officers' duties, which apply to those elected officials. From the information you've provided, we here are talking about an organiser in New South Wales. There are some limited cases where an organiser may be an officer, but in most cases they are not; they are an employee of the union. Some of what you're talking about could, in theoretical sense, step into some of those corrupting benefits issues. They may be simple conflict-of-interest issues as between that person and their employer, but, at its most simple, these are then issues as between the employer and the employee about whether the employee is conducting their employment in accordance with their duties.

Senator KOVACIC: For transparency, I am not being difficult with the detail. Given that you do not have awareness, I don't want to share further detail; I don't think that's appropriate given that you don't have that level of awareness. I have articulated my concern a number of times today. I understand the parameters from within which you are trying to operate. Without having the administrator here, we have this entire black hole of information that we cannot get. I'm really concerned about my ability to do my job to scrutinise when I cannot get the information. This is why we are picking around at the edges to try and understand what we can. What I am trying to get at is: if there has been a serious misconduct issue with an employee who is not an official, the administrator does not necessarily have to notify you, because they are not officials as they are just employees; is that correct?

Mr Furlong: Strictly speaking, possibly.

Senator KOVACIC: Possibly?

Mr Furlong: It depends on the circumstances.

Mr Coyle: Senator, if I may, for the purposes of the removed persons elements, a person who is an employee of the union can become a removed person by the activity of the administrator. If a question were to come to us at some point in time about an individual, we may find out through engagement with the administrator that a person has become a removed person through the conduct of the administrator.

Senator KOVACIC: That's where my total confusion in this whole thing is. How can you properly do your job and identify matters that warrant regulatory action and intervention if you do not know all of the instances of when this is happening in terms of what these people are doing?

Mr Coyle: Just like most regulators, we respond to information that we receive.

Senator KOVACIC: That's right. If you're not getting it, you don't know. If the administrator is not telling you, you can't respond?

Mr Coyle: The point at which the administrator takes action in relation to employees is perhaps not the relevant point of engagement for us. The point of engagement for us would be if someone who may be a removed person shows up in a different organisation without having obtained the certificate and someone makes a complaint to us about that, we can then investigate. There are significant civil penalties attached to that behaviour.

Senator KOVACIC: I'll put the balance of the questions on notice that relate to the specifics.

Senator HUME: I just have a couple of follow-up questions on that particular issue. Of the people to whom you are referring as removed persons, do you have a count of how many are officials, how many are organisers and how many are delegates?

Mr Coyle: Probably not broken down in that way, but we're talking about not a particularly long list. There were 214 officers removed on day one by the scheme itself. There is a list of some 27 names that have been shared with us to date as being removed by the activities of the administrator since. Anecdotally, we know the roles of most of those people.

Senator HUME: Anecdotally, you do not know whether they fall into any one of those categories?

Mr Coyle: It's a matter that we would be able to identify if we needed to, but it is not something that we have proactively done.

Senator HUME: How many people who have left the union were not considered removed by the union or removed by the administrator?

Mr Coyle: I think you have heard from the bar table a few times that there has been significant turnover of staff across the organisation. A lot of those people have left under their own volition. Many of them have left in various circumstances. There may be some, as you have identified, where the administrator has foreshadowed some disciplinary action and they resign. It remains an open question, from my perspective, as to whether those people may qualify as being 'removed people' under this scheme, and that would be a matter of the facts in each particular case that we then would need to investigate.

Senator HUME: As the registered organisations administering body, how do you deal with that?

Mr Coyle: If credible information comes to us about a particular circumstance, we will take interest in it, make the inquiries and will investigate it if necessary.

Senator HUME: Isn't it the intention of the administrator to report, in his report to government—considering the government has appointed this administrator—not just the number of people who have been removed from the union but the positions from which they have been removed?

Mr Coyle: I think the administrator's approach with us has been to respect the privacy of these individuals who are employees, and has shared with us such information as is necessary. Generally, we have a view of the circumstances or the names and the positions that people held who have been removed. Again, to the extent that a complaint were to come to us about an individual, we could make those inquiries.

Senator KOVACIC: Without knowing the names of all of those people who have been removed, how do you, as my colleague has said, know that they are not phoenixing themselves in other organisations?

Mr Coyle: We do not have a proactive approach to trying to track the movements of the 150 staff who have departed from the CFMEU. We do not see that as our regulatory role, but we will act if we receive credible information that someone who may be a removed person is operating contrary to the legislation.

Senator HUME: Is the objective of putting the CFMEU into administration to clean up the CFMEU or to remove corruption from the construction industry?

Senator Walsh: The objective of the administration is for there to be a clean union, to remove corruption from the union.

Senator HUME: To remove corruption from the union?

Senator Walsh: Yes. It is also, as Mr Furlong gave evidence to before, to ensure there is a strong and effective union to represent workers in what is a dangerous occupation, what can be an insecure occupation and in what can be a poorly paid occupation in some parts of the sector.

Senator HUME: They're doing all right now. Is it the government's position that corruption in the construction industry is limited to the CFMEU?

Senator Walsh: I think there's evidence that there is corruption in the industry as a whole or in parts of the industry. I note again the evidence that was given earlier by Mr Furlong in that the administrator is driving reform not just in the union but across the industry. Of course, the administration itself is one part of the government's agenda in relation to building a stronger and cleaner construction industry. Some of the other measures that the government has been taking have been referenced here, including the Joint Agency Working Group. There was some evidence given earlier today about the National Construction Industry Forum as well, which has released a blueprint about how to work together as an industry—unions, employers and government in a tripartite way—to

build an industry today and for the future that is productive, safe, has a good culture and is sustainable. That group is doing a considerable body of work as well in order to drive a better, cleaner construction industry.

Senator HUME: Minister, you said earlier in your testimony that your government was doing more than any previous government to clean up corruption in the construction industry. Can I just ask you: in the past 15 years, legislation that has been brought to this parliament to do exactly that has been rejected over and again by the Labor opposition. I shall ask you about various pieces of legislation and perhaps you can tell me which way your party in opposition has voted. The Fair Work (Registered Organisations) Amendment Bill 2013 was voted on in 2014. I understand it is before your time, but surely you know how your side of parliament voted?

Senator Walsh: I can tell you that I will not have that information. I'm sure it's on the public record.

Senator HUME: I can help you. I just didn't want to teach you how to suck eggs; I can tell you. The Fair Work (Registered Organisations) Amendment Bill voted on in 2014 was rejected by Labor. The Fair Work (Registered Organisations) Amendment Bill voted on in March 2015 was also rejected by Labor. The Building and Construction Industry (Improving Productivity) Bill 2013 was voted on in August 2015. That was also rejected by Labor. The Building and Construction Industry (Consequential and Transitional Provisions) Bill was voted on in August 2015. That was also voted against by Labor. In 2015, the Fair Work (Registered Organisations) Amendment Bill [No. 2] was again rejected by Labor. The Building and Construction Industry (Improving Productivity) Bill 2013 [No. 2] was voted on on 18 April 2016, and rejected by Labor. The Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013 was voted on on 18 April 2016, and that too was voted against by your party. Are you telling me that this Labor government, by putting the CFMEU into administration, is doing everything it can, everything in its power, to clean up corruption in the construction industry? That was your testimony.

Senator Walsh: Yes. What I have said is that we are taking the strongest action available to clean up the construction union and the construction industry. We have your government's record on display. I understand your effort to attempt to clean up your government's record with that statement that you just made, but it remains the case that, on your watch, corruption in this industry flourished. On our watch, this union is in administration. As the general manager of the Fair Work Commission has said, the administration of this union is doing more than any other participant in the industry to clean up this industry. That is the result of the actions that this government has taken.

Senator HUME: What does success look like for the government in its efforts to clean up this industry? What are your KPIs?

Senator Walsh: Mr Furlong gave evidence before about the objects of the act that set up the administration. We want to see a clean union and we want to see a union that is effective in advancing the interests of safe and secure jobs in the construction industry. This administration is a significant part of the government's agenda. Another significant part of the government's agenda is working together in a tripartite way across the whole industry through the National Construction Industry Forum, which we created because we believe that the solutions for this industry need to be found with the industry as a whole. That is why we have brought NCIF together. It's why the minister is participating in that forum with industry, and of course we welcome the blueprint for the future of the sector that NCIF has worked together to deliver. That is a blueprint supported by more work, including a charter for the sector to set shared goals and expectations, as well as the procurement frameworks that we were talking about before to make sure that, when public dollars are going to construction projects, the work being done is conducted in a way that is lawful, productive, safe and sustainable.

Senator KOVACIC: Noting the minister's comments, the government's discussion paper on its proposed Commonwealth construction standards specifically identifies the need to prevent employee bargaining representatives from dictating the choice of subcontractors on construction sites. As I articulated in my previous questions, does that concern extend to union officials pressuring contractors to engage particular labour hire companies? I am happy for the general manager to answer that or for a brief answer from the minister.

Mr Furlong: From my perspective, that's a matter of policy and something that I cannot provide you with any guidance on.

Senator KOVACIC: Is it not a matter of setting the same standard? If a standard applies to subcontractors, surely that standard applies to union officials?

Mr Furlong: My understanding is that the standards have not been made yet, and there is ongoing consultation with the Department of Employment and Workplace Relations into the substance of those standards. I am only aware of that because, as the regulator of registered organisations, I have been consulted, but my

understanding is that the consultations continue—and Mr Manning might want to add to this—and that the standards have not been set.

Senator KOVACIC: Is it your view or your hope, or would it be your advice, that the proposed standards prohibit union officials from pressuring contractors on Commonwealth-funded projects to engage preferred labour hire providers, particularly where those officials have personal or financial connections to those providers? Surely that would be a given?

Mr Furlong: It is very difficult to talk in the abstract in those circumstances.

Senator KOVACIC: No, it's not abstract.

Mr Furlong: The premise is not offensive.

Senator KOVACIC: It may be okay for union officials to pressure contractors on Commonwealth projects to take up—

Mr Furlong: I just want to return to the evidence that was provided earlier. In terms of my role as a governance regulator for each of the organisations and the financial management accountability of those organisations, I'm not best placed to answer that question.

Senator KOVACIC: The minister mentioned the proposed standards in the discussion paper, so that is why I asked the question. Surely there would be something in those standards that would preclude a union official from coercing or forcing someone to use a labour hire company in which they have a personal or financial interest. I would assume that is a given.

Senator Walsh: Mr Furlong indicated that it is a matter for government. As you said, I raised the standards for the construction industry. You talked about the discussion paper, which sets out the areas for feedback: integrity and lawful conduct, productivity for industry and industrial practices.

Senator KOVACIC: Would you consider that to be unlawful conduct, Minister: to coerce someone to use a labour hire company in which they have a personal interest?

Senator Walsh: You are asking a lot of hypothetical questions about work that is underway. What is real is the work that is underway. I was just in the process of giving a broad overview of where we are at in the work that we are doing before going to Mr Manning to articulate further where we are at. Essentially, we are doing this important work through the National Construction Industry Forum, setting up standards. There is a discussion paper that is out. It talks about integrity, lawful conduct and coercion. You use the word 'coercion'. I would not consider coercion to be an act of integrity or lawful conduct. This is a paper that is out. It is under consultation at the moment. It is part of the NCIF's ongoing work program. I believe Mr Manning has some further information.

Mr Manning: I was just simply going to say that the issue you are raising was an issue on which views were expressly sought in the standards discussion paper. It is question 9 in relation to that: what safeguards, if any, are needed to complement existing laws and commercial practices to ensure decisions about subcontractor engagement are transparent, merit-based, commercially appropriate and free from coercion or inappropriate influence?

Senator KOVACIC: That is the purpose of my question, because it references subcontractor behaviour. I wanted to get an understanding of whether the same applies to union officials.

Mr Manning: The views sought of course relate to the entire system, so all parties in the system. One of themes in the discussion paper was what, if anything else, is needed to ensure the bargaining system arrangements could be strengthened to ensure there is genuine, good faith bargaining, for example, and that goes to that issue as well.

Senator HUME: We spoke earlier about the building cooperative workplaces bill and how that was introduced the day after Senate estimates rose. We did not get a chance to speak to the Fair Work Commission about that bill and how it would affect your work. There was an element of that bill that we have spoken about additionally today, section 9, which integrity experts have specifically said opens the door to corruption and it has done when it has been replicated in state legislation. This is why we need an opportunity to scrutinise this legislation. This is why we reject it when the government says it is as transparent 'as we can be and we want to see corruption in construction eliminated and we're doing more than any other government could do'. Minister, can you please give some assurance that there will be no sneaky or underhand action of government to try to slip legislation through without appropriate scrutiny, particularly in construction, where corruption is clearly rife?

Senator Walsh: I reject the premise of your question. I will save you and Senator Kovacic in particular from going through everything that the government is doing to attempt to do the really important work of driving a safe and clean union and a safe and clean industry. That is what we are about; not about the words in your question.

Senator HUME: I think you said that you were the 'most transparent government'. Do you think that slipping through a piece of legislation and announcing it in a media release five minutes after the Fair Work Commission had left the building is a demonstration of your government's commitment to transparency?

Senator Walsh: I think that the legislation was introduced in the usual way. The introduction of legislation is a matter for the government business program in the parliament. It is managed by the managers of government business. The way in which legislation passes through the parliament is a matter for the parliament.

Senator HUME: Is your government committed to transparency?

Senator Walsh: Of course.

Senator HUME: Can I have a copy, please, of the Fair Work Commission's most recent annual report? Why was it tabled five minutes ago and not during a time where we could have had a chance to go through it and ask questions? Did you think that perhaps the Fair Work Commission would have left the building before we had a chance to get a copy of this report? What is this? Why is there a problem with transparency?

Senator Walsh: I think you know, Senator—

Senator HUME: We do know!

Senator O'SULLIVAN: The—

CHAIR: Senator O'Sullivan, you do not have the call. If you're seeking a point of order, you can do so, but you do not have the call. Minister Walsh has the call. She can be heard in silence and then I will come back to you to put a question. Senator Walsh.

Senator Walsh: I think the senator can see that I had no information as to whether the report had or had not been tabled. I understand from Mr Furlong and yourself that this report has been tabled. I'm sure that it has been tabled through the normal process of the parliament for tabling reports.

Senator HUME: The minister is not even being transparent with you, and you're representing her. You didn't know that this was going to be tabled today? You didn't know that it was going to be tabled potentially while the Fair Work Commission was sitting next to you?

Senator Walsh: I don't see the issue that you see. Documents are tabled in the parliament. Bills are introduced into the parliament. That is the normal business of the parliament.

Senator HUME: The annual report of the agency that is sitting next to you at the desk was tabled in the parliament after your minister thought that this agency would have left the building.

Senator Walsh: That's your assertion.

Senator HUME: Why wasn't it tabled yesterday?

Senator Walsh: I reject your assertion. You have the report. If you have any questions, both Mr Furlong and his team are here to answer those questions.

Senator HUME: Mr Furlong, is there anything in this report that you think would be of interest to the opposition?

Mr Furlong: I think there is a lot of operational information in there. I think that the opening statements from the President and myself go to a number of the issues that we have discussed today in relation to the disruption to our workload. How we have responded to that provides information that I have put on the record today about our performance as well, and obviously KPIs, PBS and our financial performance for the year. It is regrettable that the tabling of our report occurred today. As I understand it, in an effort of full transparency and disclosure here, our annual report is one of the last annual reports to be provided to the minister's office. As part of that process, it is regrettable. I apologise for my agency's contribution to the late tabling of that report.

Senator HUME: Did you know that it was going to be tabled today?

Mr Furlong: I understood that it was going to be tabled today. We received a notification either very late yesterday or earlier this morning that it was going to be tabled today.

Senator HUME: Is that not something that perhaps you should have mentioned early on in testimony today for the sake of full disclosure and transparency?

Mr Furlong: I am telling you now. You have asked the questions and I have responded as honestly as I can. I would also like to put on the record that in terms of every October round of Senate estimates while I have been the general manager—I think this might be my fifth or sixth annual report in this role—each of them has been tabled prior to the sitting of estimates.

Senator HUME: Minister, this is becoming a pattern of behaviour of your government in that it's treating even its junior ministers with contempt if it's not telling you that annual reports are being tabled while you are at the desk with the agency whose report it is. It's no wonder your caucus is losing confidence in your Prime Minister. If this is the contempt in which your minister treats you, imagine what they feel for us.

CHAIR: I will just remind everyone here that this process works best when statements are put as questions and then answered appropriately. Minister Walsh, if you seek to respond to that comment, you are able to, but otherwise, Senator Hume, I ask you to rephrase it as a question.

Senator Walsh: Mr Furlong has given evidence that, regrettably, the report was provided a little later than he would have liked, if I can paraphrase, and the report has been tabled in the usual way in the parliament. I reject your assertions in relation to the minister needing to tell me exactly when a report was to be tabled.

Senator HUME: Happy to be blindsided?

Senator Walsh: We are doing the important work that we have been talking about today, and that is what is important.

Senator KOVACIC: Mr Furlong, is there anything in the report—and Senator Hume asked a similar question—that is concerning to the Fair Work Commission or that is not as you would like it to be?

CHAIR: The question is bordering on opinion, in my mind, but it is up to you.

Senator KOVACIC: Not from the commission. If I were on a board of directors where we had an annual report I had published and submitted and I was asked by a shareholder, 'Is there anything that worries you in that report?' I would say, 'I'm actually concerned about X, Y, Z or risk management,' or whatever it is.

CHAIR: My view, as chair, is that borders on opinion, but I'm not preventing Mr Furlong from answering it. It's up to him if he does.

Mr Furlong: There is one thing that I am comforted by and one thing that I am concerned about. I am comforted by the fact that, over 18 months to two years of significant disruption to the operation of the commission from the impact of AI and other changes to our users, the organisation leaned in, evolved and changed at pace, dealt with the ambiguity, implemented new systems and now has case management practices and systems in place to manage this elevated workload. We are thankful to government for allowing us to run an operational loss last financial year to support these efforts to get the commission to a point where it has the internal capabilities and systems to deal with this significant increase in work and change in the nature of the work. With change, and significant change, comes ambiguity and comes stress. Due to the tireless efforts of the members and the staff of the Fair Work Commission, we have been able to navigate this change and the ambiguity and stress that comes with it. As to the oppressive nature of the workload in addition to all of the change that we have driven through the organisation, one of our performance metrics from our annual report corporate plan about employee engagement dropped by three percentage points. That is something that, as we come out of this period of massive disruption to the organisation, I am very much looking forward to working to improve in the current financial year.

Senator KOVACIC: Your report records zero new investigations commenced under part 4 of chapter 11 of the Registered Organisations Act in 2025-26. Given the continuing allegations of corruption and misconduct across registered organisations, can you give us some insight as to why no new investigations commenced? That's on page 44 of the annual report. While you are at it, page 46 references no infringement notices for that same period. I would be interested in some insights on whether that reflects improved compliance or a lack of enforcement. Perhaps, as an example as we discussed earlier with the CFMEU, if you are not receiving the information from the administrator, it makes your regulatory responsibilities much more difficult to navigate.

Mr Coyle: You correctly identify what is disclosed in the report. We have, during the relevant period, engaged in significant enforcement activity. We have commenced a couple of civil penalty litigations that arise out of investigative activities, and we continue to work on some substantial investigations that are moving forward which result from information that we have received. We also have several matters that are in the pre-investigation stage. We have commenced two investigations since this reporting period that we're talking about.

Senator KOVACIC: Is the answer that, because you're already conducting substantive investigations, there were no new investigations during that period, but you're carrying out other investigations and have begun two new investigations since the beginning of this financial year?

Mr Coyle: Yes.

Mr Furlong: It is not only the investigations; that is just one metric, one regulatory activity, that we undertake. Since the last time we were here in June, in relation to the CFMEU—I think it is important I go

through this because it will give you a sense of the scale of the operations that the commission has undertaken in relation to this particular issue—four investigations into alleged conduct of former CFMEU construction and general division officials—

Senator KOVACIC: Yes, the one on page 45. I was quite interested in whether that one has concluded and what the findings were, given that it concerned alleged use of union funds for senior officials' criminal defences and conduct preventing the effective administration of the union. What happened there?

Mr Coyle: I think the one to which you are referring is an investigation that is currently still ongoing.

Senator KOVACIC: So it has not been concluded?

Mr Coyle: That one has not yet been concluded.

Senator KOVACIC: Have you come across that anywhere else, where members' funds are being used to fund senior officials' criminal defences?

Mr Coyle: We're aware anecdotally of a range of matters across many years where the union has paid for legal fees associated with the work involved with their officials, but this is the only matter that we are presently aware of that relates to a corrupting benefits matter.

Senator KOVACIC: In the past two years, has the administrator alerted you to any such instances that they have come to be aware of?

Mr Coyle: No additional matters. This was a matter that was previously investigated by Geoffrey Watson SC.

Senator KOVACIC: Finally, your report records at page 114—and I'm very disappointed that we have only just seen it—that there were 17 applications for certificates that could allow people subject to CFMEU administration restrictions to hold office or be employed by registered organisations. This is a concern for me, given the purpose of the administration, which is to get these people out of unions and out of the construction sector. How many were approved and how many involved former CFMEU officials?

Mr Coyle: I have up-to-date figures in relation to that matter as of today, if you were interested in those—

Senator KOVACIC: I am very interested.

Mr Coyle: rather than what the position was as of 30 June? There have been 31 applications in relation to the various certificates, but they relate to 13 individuals. There are three different types of certificate that one is able to apply for. One relates to employment, one relates to becoming an officer in another organisation and one relates to the ability to be a bargaining representative. Those 13 individuals have applied in the two years and three months since this scheme came into effect. Those matters go before and are heard before a commission member. Twelve persons have been successful in obtaining the various certificates that they have applied for, and one matter was withdrawn.

Senator HUME: Chair, I just want to note that, according to this report, the letter of transmittal went to the minister on 6 October. It's now 28 October. That means there have been nine sitting days when this document could have been tabled.

Senator KOVACIC: I would suggest, to finish—and I'm happy to have a response—that the reason this was tabled when it was expected the witnesses were no longer at the table is that the report states that 'no new registered organisation investigations, not a single infringement notice and serious CFMEU investigations still unresolved'.

CHAIR: Is anyone seeking to respond to that? It's not really a question.

Mr Furlong: I think that's an inaccurate description of the operations of the organisation. I'm very happy to go through and I'm happy to sit here for as long as you wish for me to explain the extent of the operations of the organisation, the regulatory functions, what we have undertaken in relation to the CFMEU administration and playing our part in improving workplace relations but also conduct more broadly in this industry. I think that it is an untrue and an unfair assessment.

Senator HUME: If the minister had been honest, upfront and transparent and allowed this document to be tabled, we could have done exactly that with you, but instead we do not have the time to do that. We can only take these statistics on face value.

Senator KOVACIC: To note, what I have stated is not something I have made up. Page 44 says 'zero new investigations'. Page 46 says 'zero infringement notices'. Page 45 identifies two CFMEU investigations still ongoing. That is how I have captured that information. I have not made that up. It is not a mistruth. What I have said has come from this document. Granted, I have not been able to peruse it in great detail, nor has our team, but that is the reality of it.

Senator HUME: Well done government!

CHAIR: Mr Furlong, would you like to respond to that? I remind people that it is much easier to follow this process if it's a question-and-answer-style session. Mr Furlong?

Mr Furlong: Yes, I would like to respond. My response is going to take probably two minutes. Since we were last here, at estimates in June, we progressed four investigations into alleged conduct of former construction and general division officials, including matters that were referred to us from the administrator. We participated in meetings with the Joint Agency Working Group, members of the Victoria police Taskforce Hawk, the Department of Infrastructure and other government departments and law enforcement bodies. I have also provided information to the Queensland commission of inquiry, and I have met with the Victorian commission of inquiry. I have met with industry participants who represent the interests of employers, employees, builders, subcontractors and government. I have met with officials from the CFMEU administration on many occasions about many matters, including current and future strategic and operational priorities. I have conducted operational activities in relation to the antiavoidance provisions of the RO Act, including commencing an investigation, the first of its kind, that goes to the conduct of Mr John Setka to determine whether Mr Setka or any other person has contravened the antiavoidance provisions of the RO Act. I have engaged former Fair Work Commissioner Julius Roe to work with the CFMEU and the AWU to resolve the long-running demarcation dispute on major civil construction works. The commission is sponsoring and providing the resources for that. I have written to the administrator, Mr Crosby, seeking copies of communications from Mr Setka about the administration to inform whether or not I should commence that investigation. We have updated our antiavoidance fact sheet to reflect that Mr Crosby is the administrator. I provided correspondence to Mr Crosby. Obviously, this was just after his appointment. We have commenced Federal Court civil penalty proceedings against former Victorian-Tasmanian branch officers following an investigation that we conducted. The proceedings seek the disqualification of, compensation from and civil penalties against those former officials. I am considering at the moment whether or not to commence an investigation into the Victoria-Tasmania branch's financial relationship with Building Industry 2000 Pty Ltd, including alleged transfers from that fund with or without proper approval. I've participated in the NCIF regulator consultation on potential Commonwealth standards for the construction industry following the release of the discussion paper on 21 August 2026. We have concluded an investigation into former New South Wales branch officers about the payment of legal expenses of two of those officers. I continue my fortnightly meetings with the administrator's chief of staff. That is since the last time we were at this table. I would have to say that for every activity I have just disclosed there are probably four or five others that I could easily add comment to.

Senator KOVACIC: I'm not challenging the work that you do and the difficulty of the work that you do. I'm simply stating that the numbers I provided were out of your report.

Senator HUME: To be honest, we would have loved to have asked you questions about all of those activities, but, because this was tabled so late, your minister threw you under a bus.

Senator Walsh: I have to respond to that and say that, as I understand the process, these annual reports are provided. Mr Furlong is obviously doing a mountain of work. He's described that the report was provided later than usual. Senator Hume cited the date that the report was provided. I understand there's another process that occurs before these documents are tabled. I would also like to put on the record that, following multiple referrals from our government, there are 129 active investigations that we know of ongoing into the construction sector through the Fair Work Commission, the AFP and the Fair Work Ombudsman in addition to state and territory police investigations that are underway as well.

CHAIR: I believe that does conclude the committee's questions for the Fair Work Commission. Mr Furlong and your officers, thank you. We will suspend for a few moments whilst the Ombudsman joins us at the table.

Office of the Fair Work Ombudsman

[16:44]

CHAIR: I now welcome Ms Anna Booth, the Fair Work Ombudsman. Did you have an opening statement to make?

Ms Booth: No, I do not.

CHAIR: Senator Roberts.

Senator ROBERTS: Our first questions go to the minister, then to the Fair Work Ombudsman and then to a member of your staff. Minister, congratulations on the partial outcome of the same job, same pay laws and their application. According to the Mining and Energy Union, formerly part of the CFMEU, approximately 5,000 coalminers in the black coal mining sector have received annual pay increases of between $30,000 and $40,000

each per year, meaning an extra $200 million or so a year in workers' pockets. Over the next 10 years, that's approximately $2 billion in extra wages. Are you aware of that?

Senator Walsh: I am, of course, aware of our same job, same pay reforms, that they have benefited 8,000 workers and that they have benefited many workers in the mining industry. We expect workers in the mining industry on labour hire arrangements doing the same work as people directly employed to be able to receive the same pay. We said we were going to deliver that reform, and that is exactly what we have done.

Senator ROBERTS: You've partially done that. What a great partial outcome! What this demonstrates is that labour hire workers in the black coal sector have been underpaid by large amounts for a long time. Thankfully, these same job, same pay outcomes fully confirm and support our One Nation report of February 2024. That demonstrates with hard data that over at least the last 10 years the total likely underpayment of black coal miner labour hire workers has been up to $2 billion. Are you aware of that?

Senator Walsh: I want to clarify that we're talking about the same thing, because I am fairly sure that now you are talking in at least partially glowing terms about a piece of legislation that you opposed, being the same job, same pay legislation?

Senator ROBERTS: Correct. I'll be happy to explain that in a minute.

Senator Walsh: Do you now support same job, same pay?

CHAIR: Senator and Minister, that's not the way this process works. The questions are directed at the table and answered from the table.

Senator ROBERTS: It is a shame that the same job, same pay laws did not and do not address the historical underpayments now confirmed as real by the same job same, pay laws application. Would you agree that the same job, same pay outcomes have demonstrated and highlighted these historical underpayments, Australia's largest wage theft? Your legislation covered up and hid that wage theft.

Senator Walsh: We passed legislation. Applications need to be taken to the Fair Work Commission to apply, essentially, for coverage of the same job, same pay provisions, which then allow workers to be paid the same if they are on labour hire as direct employees. From that point, if that application is successful, there would be new pay rates that would be enforceable for that workforce. That is my understanding, and Mr Manning can assist further.

Mr Manning: I think, Senator, we perhaps are talking about two different things here in the sense that, as the minister said, there is the regulated labour hire regime, which is part of those statistics, where I think over 100 orders have either been made or agreed, benefiting about 8,000 workers up to about $60,000 a year. I assume some of those figures you are quoting are about certain sectors of the mining industry specifically. That is separate from the notion of a formal underpayment in the sense that some of those workers were getting paid lawfully under other instruments, but the regime put in place arrangements whereby, if the same work was happening and there was an enterprise agreement in the host workplace, they should get paid according to that. But that is separate from the notion of not being paid lawfully pursuant to the prevailing instrument, which is what I would normally associate with an underpayment.

Senator ROBERTS: I'm glad you raised that. We will get to that, and I will ask you more questions in the near future. Minister, is Labor's same job, same pay bill—I said it's a partial bill—and the cover-up of Australia's largest wage theft the reason you did not support my bill concerning same job, same pay that came out before yours? You did not support my bill because it exposed wage theft, unlike your bill, which did not mention backpay and which sought to cover up that backpay need? Was your bill intended to hide Australia's biggest wage theft?

Senator Walsh: Our bill, which you opposed, has delivered, on Mr Manning's evidence, pay rises of up to $60,000 per year for 8,000 workers across the country. We believe that people should be paid appropriately for the work that they do. We knew that labour hire was being used in some cases to undercut workers' pay and conditions. We believe that workers working alongside each other doing the same work who are directly employed and on labour hire should be paid the same. We have provided the architecture for workers to achieve that outcome. At the same time, the legislation also serves as a disincentive for employers to undercut existing wages and conditions by outsourcing to labour hire. We think all of those things are a good thing. That's why we introduced the legislation. The legislation is working. It's delivering pay rises of up to $60,000 a year for 8,000 workers so far, and this is legislation and outcomes that you oppose.

Senator ROBERTS: Minister, you did not answer my question. I will ask it again: was your bill designed or intended to hide Australia's largest wage theft? Why did you vote against a motion I moved in the Senate to require the government to investigate claims that casual miners working under enterprise agreements in the black

coal mining industry are being and have been underpaid? That was moved on 16 May 2024 and was successfully passed in the Senate. You also opposed, I believe, 'if underpayments are found to have occurred, facilitate the reinvestment of the underpayments'. Minister, did your bill which followed my bill—I initiated this—intend to hide these underpayments that have now been proven?

Senator Walsh: If workers are underpaid, they have a number of avenues that they can take, including raising that with the Fair Work Ombudsman, who is here to answer questions. Our legislation was to do what it is achieving: 8,000 workers are receiving up to $60,000 a year extra because of our legislation. It was designed to do what it says on the label: same job, same pay. If you're a labour hire worker doing the same work next to someone who's a direct employee, you have the opportunity to apply to be paid the same. Some 8,000 workers have taken up that opportunity and are receiving up to $60,000 per year in pay rises—outcomes that you opposed and, it seems, continue to oppose.

Senator ROBERTS: Minister, would the Albanese government be prepared to partner with One Nation to move a bill to address and compensate casual coalminers for these historical underpayments, remedying what is a grave injustice to these hardworking Australians and a devastating failure of Australia's industrial relations framework?

Senator Walsh: Again, there are a number of avenues that workers can take to deal with underpayments. I do not have information about the specific underpayment that you are talking about having occurred. I am not sure whether Mr Manning or Ms Booth have information about that can assist you.

Senator ROBERTS: Let's turn to Ms Booth, then. Ms Booth, thank you for your letter of 8 October 2026 and your accompanying report exploring underpayment in the black coal sector. My focus is on what you referred to on page 5 of your report as 'the third cohort of 14 cases'. I extend my congratulations to you, too, for your media coverage in the *Australian* newspaper on 8 October, with the article headed 'Fair Work Ombudsman dismisses Malcolm Roberts' claim of widespread coalminer wage theft'. The PR machine appears to be well oiled. On 16 May 2024, my motion was passed in the Senate. This motion stated: '(b) requires the Government to investigate claims that casual miners working under enterprise agreements in the black coal mining industry are, and have been, underpaid.' I understand that on 6 August 2024 then Minister for Employment and Workplace Relations, Senator Murray Watt MP, wrote to your office requesting you to lead an investigation into the payment of casual coalminers under the enterprise agreements in the black coal industry. Do you believe this request by Senator Watt to your office was influenced by the Senate motion passed on 16 May 2024?

Ms Booth: I do not have awareness of Senator Watt's intentions. All I know is that we were asked to conduct an investigation and did so thoroughly and extensively—56 individual investigations in total. It was the result of those investigations that I wrote to you about. In relation to the specific cohorts of workers, I would ask Mr Campbell and, if necessary, Mr Ronson to give you more detail.

Senator ROBERTS: It's widely accepted that this Senate motion was in response to the February 2024 One Nation report which demonstrated factually, with backup data, widespread underpayment of labour hire workers in the black coal sector. Do you agree?

Ms Booth: I'm not able to agree or disagree.

Senator ROBERTS: Are you aware of the One Nation report?

Ms Booth: No, I'm not.

Senator ROBERTS: In the light of this, can it be inferred that your report is really a response to the One Nation report?

Ms Booth: Our report is a response to the investigations that we were requested by the Senate to undertake, which we did undertake. The report, as you're aware, is extensive. If you have further questions that relate to aspects of that report, Mr Campbell and Mr Ronson are very happy to provide those details here.

Senator ROBERTS: I will be asking them questions in a minute. The report produced by One Nation applied a 'better off overall' test, comparing the all-in flat hourly rates applied under the enterprise agreements to the base all-in flat hourly rates under the black coal award. Our One Nation better off overall test analysis demonstrates underpayments, but you have not seen that report, which I am surprised by, by the way, but I will come to that. Your report ignores and fails to examine the application of the 'better off overall' test, focusing exclusively on the assertion that casual labour hire employees are not subject to the black coal award. Would you agree that this is a key difference between your report and what I say is in the One Nation report?

Ms Booth: Our report is founded on the legal interpretation that we take in that an enterprise agreement prevails over the content of an award. Any further detail about how that applies on a case-by-case basis, which is

different, of course, depending on every case, would have to be responded to by Mr Campbell or Mr Ronson, because I do not have visibility of the individual investigations.

Senator ROBERTS: The Fair Work Act, section 206, states, 'The base rate of pay under an enterprise agreement must not be less than the modern award rate.' Does the assertion in your report that the employees in question are not subject to the award remove your obligation under the act to test whether the employees are paid less than the base all-in flat hourly rates under the award?

Ms Booth: My recollection of the application of that section of the act—and I here am drawing upon my past as a Fair Work Commission member—is that it acts to apply the minimum rate in the award to the minimum base rate in the enterprise agreement in circumstances where that particular base rate in the enterprise agreement is less than the minimum base rate in the award, but it does not re-enliven the scrutiny of an enterprise agreement in relation to whether it does or does not pass the 'better off overall' test. That's a different concept entirely.

Senator ROBERTS: Can you understand that the everyday Australian, particularly those affected by this massive underpayment, would view your report as misleading and inadequate as it ignores the core requirement to apply the better off overall test to labour hire coalminers' wages?

Ms Booth: I neither agree nor disagree on how an ordinary person might interpret the content of our investigation report.

Senator ROBERTS: I have a few questions left for Mr Ronson. Ms Booth is encouraging me to ask them.

CHAIR: Sorry, Ms Booth is not managing the committee's business, I am. We normally do rotations of around 15 minutes. I am happy for you to place another question, but then I do need to keep rotating the call, as there are a number of senators here. But I can come back to you on a further rotation if you wish. Would you like me to rotate now and then come back?

Senator ROBERTS: Yes, because I have about four questions.

CHAIR: I'm coming to the opposition and then I'll come to Senator Payman and then I'll come back to you. Senator Kovacic, you have the call.

Senator KOVACIC: In July 2024, then workplace relations minister, Mr Burke, asked the Fair Work Ombudsman to undertake a targeted review of all CFMEU agreements made by the Victorian branch that apply to the Big Build projects. Can you confirm if that is correct?

Ms Booth: I will ask Mr Campbell. I have a recollection around that time of such a request, but I would prefer to give you accurate information.

Mr Campbell: Sorry, you're testing my memory a little bit, but of course I do very much recall Minister Burke's correspondence to the agency asking that we make a number of inquiries into allegations of potential breaches of the Fair Work Act as they related to Big Build projects, particularly in Victoria but also as allegations spread into other states. With respect to collective agreements, our role is to ensure they're enforced and are made in a way which is consistent with the act such that there is no coercion or unlawful influence on a person to enter into or not enter into a collective agreement. The scope of it was limited to our jurisdiction, if that makes sense. Others, like the Fair Work Commission et cetera, looked into their aspect of the process.

Senator KOVACIC: How many agreements were examined? Are you able to tell me?

Mr Campbell: We wrote to—and I'm just going to go off my memory for now, because I do not have—

Senator KOVACIC: You could provide the balance of information on notice?

Mr Campbell: I should be able to help, but I may not be able to give you a specific. We wrote to every employer that we could identify that had a CFMEU agreement and worked on a Victorian Big Build or government site. We asked them to provide information to us about their collective agreement and any concerns they have about how it was constructed or how and why they entered into it as a way of our trying to generate leads, if you like. Off the back of that, we received intelligence and leads then to conduct further inquiries into agreement construction issues.

Senator KOVACIC: Could you provide on notice the number of agreements that were examined?

Mr Campbell: Yes, I will be able to provide some on notice on that.

Senator KOVACIC: Did the review find any agreements that were not genuinely agreed or any evidence of coercion, adverse action or misrepresentation in the manner in which they were made?

Mr Campbell: We found that most of the people who had CFMEU agreements were content that they did, because that gave them access to work on government sites, as it was. That was the feedback that we got.

Senator KOVACIC: That was the price they had to pay?

Mr Campbell: I will not judge on the how, but that's the feedback that we got. We did identify some matters where we had some concerns about how agreements were potentially struck, as in the voting process that sat behind the collective agreements. That started to shift outside of our jurisdiction a little, so we had to be careful about how far we took that as compared to referring it to other organisations to examine, but that was the smaller proportion of it. Most of the feedback we got was that having an agreement was of benefit to their business. We got more feedback from those concerned that they didn't have access to an agreement to gain access to sites.

Senator KOVACIC: Did they suggest to you why they couldn't get an agreement?

Mr Campbell: There were some allegations that—

Senator KOVACIC: I suspect so. Could you identify for us the types of allegations they identified to you without, obviously, disclosing any specifics?

Mr Campbell: I'll probably do a better job on notice. If you are not happy with the answer I give you, I am happy to look at providing it.

Senator KOVACIC: Let's give it a go.

Mr Campbell: We certainly found that, where there had been historic disagreement with the CFMEU, it was a basis on which the employer said they may not have been able to have access to an agreement, or a particular organiser or representative of the CFMEU. Equally, if they had a relationship with the AWU historically, that was a potential cause in their mind about why they may not have been able to have access.

Senator KOVACIC: A barrier?

Mr Campbell: Potentially. As I said, this is just information we received. We didn't confirm it, but we certainly take it as intelligence that we use to help shape our investigations.

Senator KOVACIC: The reason I ask these questions is that you're familiar with the reports from Geoffrey Watson and the evidence that has come out of the Queensland commission of inquiry. I asked Mr Watson questions specifically relating to this in the productivity committee inquiry. From what I have seen, it does appear that there are a number of EBAs that are illegally entered into and that it is effectively the cost of doing business, or being able to do business, on these large projects. This is a real problem for the taxpayer, because they are either state funded or state and Commonwealth funded projects. My question to you is whether the review of any of these agreements, or any of the allegations or concerns that were aired with you, has led to any formal investigations or proceedings?

Mr Campbell: My short answer is no, because it's outside of our jurisdiction.

Senator KOVACIC: Have you referred it to anyone?

Mr Campbell: We have made a number of referrals to different organisations, but I suppose our coercion is the coercion for someone to enter into a collective agreement with a certain organisation. That coercive behaviour needs to be more than simply pressure; it needs to effectively deny the free will of the individual to make another decision. That's the bar we work to. 'Coercion' obviously has a range of applications as a word, but we have a legal bar that we work to. That's something we are willing to investigate, but, if a person makes a decision from a commercial perspective to enter into a collective agreement, that is not coercion for the purposes of the Fair Work Act.

Senator KOVACIC: It's interesting, because you could say, 'I don't really want to do this but, if I don't do this then I don't get the work and then my business does not survive.' It is about being stood over, right?

Mr Campbell: I could not comment on that. I am happy to share my experience to a point with this issue.

Senator KOVACIC: That's fair enough. Have you briefed the minister on the review's findings and, if so, when did that occur?

Mr Campbell: We did write to the minister in October 2024, I think it was, setting out some of our findings against the key subject matters that he raised in his correspondence to us.

Senator HUME: Can I just ask: is that letter public, or was that private correspondence?

Mr Campbell: I don't know. It seems like a lifetime ago already. I'm happy to take on notice if that was—

Senator HUME: If you could take that on notice, we would love to be able to see that letter and have that letter tabled if it was not private correspondence.

Mr Campbell: Yes, I will just need to check.

Senator KOVACIC: In relation to the findings of your review, will that be made public, or has that been made public as yet?

Mr Campbell: I don't know. Again, I don't think we made a public statement, but we have made public statements about different aspects of it. The agreement part was obviously interesting, but I suppose it didn't go directly to our jurisdiction. For us, we were looking for the conduct that probably flowed from it or that was around it. We were looking for coercive practices by CFMEU officials and others with respect to employers and collective agreements in the workplace relations regime under the Fair Work Act. In terms of the construction of the agreements itself, we only had a limited role.

Senator KOVACIC: Last October, the Ombudsman told this committee that it had received referrals from the Victorian Infrastructure Delivery Authority. Did those referrals form part of that review?

Mr Campbell: Possibly. We had to rely on a number of different organisations to identify all the employers that we wanted to write to. Obviously, the commission was a big help for us to know which employers had agreements with the building construction division of the CFMEU in Victoria and to allow us to zero in to then write to. We did draw on a number of people. I do not know whether it was VIDA or not, but VIDA is an organisation that we do receive information from, among many others, about issues occurring on government funded sites and other sites as well.

Senator KOVACIC: Again, you can provide this on notice. Do you have a response rate for those letters that you wrote out? How many of those organisations responded to your letter seeking an in-confidence review of their agreement?

Mr Campbell: It was not a particularly big number.

Senator KOVACIC: It was quite low? Is that consistent with what you expected, given the circumstances?

Mr Campbell: Possibly. I was not expecting a flood, because I am writing to people who have CFMEU agreements. In my history and experience—

Senator KOVACIC: They're not going to say, 'I'm not happy with this', because guess what's going to happen?

Mr Campbell: I can't comment on that, but what I can comment on is my experience said that the individuals who had CFMEU agreements in place indicated they did not have issues to raise with us.

Senator KOVACIC: Those who did respond responded and said, 'We're happy we have an agreement because it gives us the work', and you had a lot who did not respond at all?

Mr Campbell: Of that cohort, but we obviously receive information from others in the sector.

Senator KOVACIC: Then you had others who said, 'We cannot get near it because they don't like us'?

Mr Campbell: Correct. We deal with them in accordance with our usual investigative processes.

Senator KOVACIC: Do you have concerns around the agreements that have been entered into with the CFMEU?

Mr Campbell: If they have been lawfully made, I do not have a position.

Senator KOVACIC: Do you have concerns that there are a number that have not been lawfully made, or can you not make that judgement?

Mr Campbell: I can't make that judgement. I would reflect that the administrator has indicated that he has some concerns about CFMEU agreements that have been made historically and that, now that he has been administrator, he probably would not want to enter into those arrangements into the future.

Senator KOVACIC: I will ask two more questions and then we will be done. I will put the rest on notice. I have some questions relating to the administration of the CFMEU. How many referrals has the Fair Work Ombudsman received from the CFMEU administration since May of this year?

Ms Booth: We have received referrals.

Mr Campbell: We have received referrals.

Senator KOVACIC: Do you have a total number? If you want to table that document and if you have a breakdown of those referrals by state and by type of offence as well, that would be useful.

Ms Volzke: While Mr Campbell is looking for those numbers, I can just confirm, in relation to that report that you were previously discussing, that it has not been made public at this stage.

Senator KOVACIC: I'm happy for you just to table that document, Mr Campbell, to save us all time.

Mr Campbell: You do not want my scribbles, but I will definitely take that on notice.

Senator KOVACIC: Or even to let us know before the conclusion of your session.

Mr Campbell: Do you mean the answer to your question about referrals from the CFMEU administrator?

Senator KOVACIC: Yes, correct; the number of referrals and the detail of the number by year.

Mr Campbell: Sure. It is not a huge number. We have had three from the administrator. It takes away from the opportunity we have to work with the administrator to identify opportunities for us to proactively investigate issues in the sector. The administrator has been willing to engage with us on issues that we have concern about in the sector as well.

Senator KOVACIC: Were they all in Victoria?

Mr Campbell: Definitely in New South Wales, and maybe one in Victoria, but I can confirm that for you if you wish.

Senator KOVACIC: Yes, if you could, please? It is likely that there were two in New South Wales and one in Victoria.

Mr Campbell: There are also ones that we have on foot. They might raise a concern about a particular company, for example, and we will say, 'Noted. Thank you for that referral, but it is a matter that we are already investigating.'

Senator KOVACIC: Are you able to share with me the type of offence for each of those three?

Mr Campbell: I think the majority of those cases would go to underpayment of wages.

CHAIR: Senator Payman.

Senator PAYMAN: In an FOI request to the Fair Work Ombudsman with reference IA-2925, on page 150, there's an email dated 21 May from Ms Anna Booth. Ms Booth notes, in relation to the referral of criminal wage theft cases for prosecution, that the Fair Work Ombudsman had 'not yet referred one, although we're likely to before the end of the financial year'. Did this happen?

Ms Booth: No. We have not yet referred any matters to the Commonwealth Director of Public Prosecutions.

Senator PAYMAN: Is there a status or any likelihood of what we yet are to see with any cases referred?

Ms Booth: Ms Carey is here, and it is within her group. As I think you are aware from the inquiry that you chaired, she is responsible for the branch that is our criminal investigation branch. Before she tells you what she wants to tell you, I will just make the point that was obviously my hope, but investigations take the time they take and need to be thorough. That's the situation we're in. Ms Carey, anything to add?

Ms Carey: I can give an update on the matters that are on foot. I am unable to give precise timing as to when a matter would be referred. Matters are referred to the DPP when we are satisfied that we have sufficient evidence that reaches the criminal burden of proof. I am happy to give you an update on the number of investigations and matters that we have.

Senator PAYMAN: In the interests of time, is that something that you could provide to the committee on notice?

Ms Carey: Absolutely.

Senator PAYMAN: On unpaid super, does the Fair Work Ombudsman accept that unpaid super is unpaid remuneration and should be treated as seriously as wage theft?

Ms Carey: Unpaid super is covered by the offence provision. There are some exceptions to that for some cohorts of workers that are based on the constitutional limitations of the referral powers. There are some state and local government employees, for example, excluded from the offence provision in relation to unpaid superannuation, but it is one form of a required amount that is covered by the offence provision in the act. That is by virtue of superannuation being part of the National Employment Standards.

Senator PAYMAN: The National Employment Standards came into effect on 1 January 2024. What responsibility does the Ombudsman have in enforcing that entitlement?

Ms Carey: The primary responsibility for enforcement of underpaid superannuation is with the Australian Taxation Office. Superannuation is obviously complicated, but it's a form of a tax to avoid the charge. Once it was introduced into the National Employment Standards, obviously we have jurisdiction in relation to underpayment of superannuation and other entitlements. Where it forms part of our investigations, holistically in relation to people's entitlements under relevant awards or the minimum wages, superannuation is a component that we do investigate and can take enforcement steps in relation to.

Senator PAYMAN: Is it correct to say that you routinely check whether an employer has also failed to pay correct super when you're investigating wage theft?

Ms Carey: We generally will look at super in the context of the underpayment. In calculating the underpayment, we can look at whether or not there is superannuation that is owing on the total amount of the underpayment. In relation to superannuation in terms of whether it has been remitted in the required time, primary responsibility for that sits with the ATO. We do think payday super, which obviously commenced on 1 July, would, we hope, have a significant impact on improving that.

Senator PAYMAN: In 2025-26, how many Fair Work Ombudsman investigations into both wage underpayments and unpaid super have been identified? I'm curious to understand how many workers were affected and what was the total value of the super identified?

Ms Booth: Senator Payman, do you mean specifically in the criminal jurisdiction or across the entire jurisdiction?

Senator PAYMAN: I'm happy for you to do the entire jurisdiction.

Ms Booth: I don't have those numbers. I think that might be something we would have to take on notice to see.

Senator PAYMAN: Do you have the numbers for the criminal jurisdiction?

Ms Carey: Not with me, but I can take that on notice.

Senator PAYMAN: No worries. I would like to know in how many of those matters the Ombudsman secured payment of the outstanding super and how many were referred to the ATO? Since intentional underpayment became a criminal offence, do we know how many Ombudsman investigations have examined suspected intentional non-payment of super, or is that something you have not—

Ms Booth: That is definitely a question for Ms Carey, but I suspect she may need to take it on notice.

Ms Carey: I would have to take on notice the subject matter. Obviously, we do not provide detailed information about ongoing investigations, but I can take on notice what information I can provide in that respect.

Senator PAYMAN: No worries. Can you go through, I guess, what the formal process entails when ensuring an employer investigated for underpaying wages is also examined for unpaid super and that workers recover both entitlements? What does that process look like? Is that obviously working closely with the ATO in this instance as well?

Ms Carey: Yes. I can talk from a criminal investigation perspective. Mr Campbell can speak in relation to our broader operations. We do not proactively monitor payment of the superannuation guarantee, firstly, because it is, as I said earlier, a charge to avoid tax, and the tax becomes payable; it crystallises at the particular time at which the contributions were due to be remitted. That is not information that the Fair Work Ombudsman has access to due to secrecy provisions that operate between the two jurisdictions. It's not something that we proactively, independently investigate in the criminal jurisdiction independent of the underpayment matters. We tend to focus on superannuation as part of that assessment of the underpayment that we're investigating rather than necessarily the failure to remit superannuation, which is the primary responsibility of the ATO. I do not know if Mr Campbell would like to add anything to that.

Mr Campbell: I think you've summarised that aspect of it well, Ms Carey. Obviously, where that stewards an entitlement that we can enforce, we will build that into our investigation. It might be something that we can resolve voluntarily between the parties through a first contact, but, if it's coming down to an investigation where we see that it's likely to require a compliance and enforcement outcome, we will use our powers to gather evidence to support the allegations we say exist. Then we will make them out. If superannuation is owed, we will build that effectively into the contravention and seek recoveries. That will either be through the use of a compliance notice or, alternatively, we will litigate to the contravention.

Senator PAYMAN: Some have raised criticism that this process requires workers to deal separately with the Fair Work Ombudsman for wage underpayment and the ATO for super, which obviously creates this regulatory gap and puts the burden on the worker to seek their unpaid entitlements. How do we fix that? Is that a correct characterisation of there being a regulatory gap where the burden is placed on the worker to retrieve their entitlements?

Ms Booth: It's certainly not the case that we separate the wage payment from the super in either our investigations or our enforcement. For example, when we issue a compliance notice, it will include the unpaid super if that has been assessed. You will see a litigation that we take. The reporting of the court or the judgement of the court will isolate the amount that was unpaid for wages and super. In our subsequent media releases when we announce the results of our court cases, we will also indicate super separately, but that doesn't imply that the worker has to go to the ATO to recover that. As Ms Carey indicated, if the concern is around the employer's

compliance with the superannuation guarantee legislation specifically, that is something that they would need to go to the ATO in relation to. As far as I am aware, when workers recover lost wages from our processes, it always includes their superannuation.

Senator PAYMAN: There has not been a case where the wage has been recovered but the super has not?

Mr Campbell: Before it was in the NES, that might have potentially occurred, but, as part of the NES, it confirms that we have a jurisdiction there. I would like to think that, where we can exercise powers to recover super, we do. It might just be that, where it goes to SGL enforcement, there's an aspect to the conduct or the situation that means it's squarely in the ATO's jurisdiction. It's not necessarily a gap. These are overlapping jurisdictions, like we have in migration law, corporate law, discrimination law. There are overlaps, but we try to make sure we're not in any jurisdiction passing people off to others to do the work that we could have done.

Senator PAYMAN: Since the NES on 1 January 2024, does it apply to cases prior to that date retrospectively?

Mr Campbell: I do not think it is retrospective, but, again, if you know differently, I'm happy to hear it. I can't remember our being critiqued for shifting superannuation work to the ATO when it should have otherwise been dealt with through our processes.

Senator PAYMAN: I'll put the rest of my questions on notice.

CHAIR: Senator Roberts.

Senator ROBERTS: I refer to the Fair Work Ombudsman report of 8 October 2026 into underpayments of casual coalminers in the black coal sector. On page 5, the report refers to 'a third cohort of 14 cases'. My understanding is that you oversaw and directed the investigations into this third cohort of cases. Is that correct?

Mr Ronson: That is correct.

Senator ROBERTS: I am aware of redacted copies of many of the preliminary assessments into those 14 cases. In each instance the preliminary assessments state:

As the FWO has determined that … the terms and conditions are governed by the relevant enterprise agreement, we do not consider that the Black Coal Mining Industry Award applied.

Further:

Consequently the wages and entitlements should not be derived from the award, but rather the relevant enterprise agreement.

Is it correct to say that these preliminary assessments by the Fair Work Ombudsman's office are based on wages and entitlements under the relevant enterprise agreements and not the award?

Mr Ronson: The best way to answer that question is: what you have described as appearing in those preliminary assessments is correct. What the report attempts to do is explain why that is the case. We have gone to great lengths to explain the legal technicalities, the interactions between the award and the enterprise agreements and just the situation as we determined it and we've assessed it. The way to best express my answer to you is to say it is what it is. There is not much we can do about that.

Senator ROBERTS: Section 206 of the act states that 'the base rate of pay under an enterprise agreement must not be less than the modern award rate'. The assertion in the preliminary assessments is that the casual coalminers are not subject to the award. Why does this position remove the obligation, which is your obligation, under the act to assess whether or not the enterprise agreements which apply to the casual coalminers result in a base rate of pay which is less than the award?

Mr Ronson: I don't think it does. I think Ms Booth previously answered that particular question well. Ms Volzke has explained that, where the enterprise agreement is validly made, we had no reason to believe it was not.

Senator ROBERTS: No reason?

Mr Ronson: We had no reason to believe it was not; therefore, the agreement applied. Picking up on your section 206 point, I refer you to the previous evidence of Ms Booth.

Senator ROBERTS: I am aware that one of the 14 cases has formally disputed your preliminary assessment, provided considerable counterarguments and requested a review. I understand this was lodged at the end of July 2026. Can you please advise on the progress of that review, when you expect the review to be completed and a response supplied?

Mr Ronson: Yes, that's correct. What you've said is correct. It's with an independent assurance team within the Fair Work Ombudsman. I am part of the investigation branch. It's not right or appropriate for us to review our own work. It is with the assurance team. My understanding is—and I'm happy to be corrected if it's wrong—that it's quite advanced. I can't probably add more. I can take it on notice as to what its full status is.

CHAIR: Senator Hume.

Senator HUME: I want to follow up on some of the questions that Senator Kovacic asked around the CFMEU administration. I want to understand how many right-of-entry permit applications the Fair Work Ombudsman has opposed since the CFMEU administration began and how many of those oppositions succeeded.

Ms Booth: I know that we have opposed. I will refer to Ms Volzke for the correct number.

Ms Volzke: We commenced one Fair Work Commission right-of-entry matter in relation to Mr Edmond Margjini, seeking suspension of his permit, but we subsequently discontinued that when the criminal charges against him were discharged. We also have sought permission to be heard in relation to a number of permit application matters at the beginning, as opposed to seeking the suspension, which we did with Mr Margjini because he already had the permit. There were three of those. One of them was in relation to Mr Joel Shackleton. Another one was in relation to Mr Dean Rielly. We were heard in relation to that matter. That hearing occurred on 10 December 2025. We made submissions in relation to that, but the decision was subsequently made by the Fair Work Commission on 27 May 2026, granting him that permit. There might be one more as well relating to Mr Hassett.

Senator HUME: On Mr Rielly, I realise this was a conversation that occurred during the last round of Senate estimates. Has the ombudsman been monitoring Mr Rielly since June or, once the commission has approved it, are we done? How does that work?

Ms Volzke: Mr Campbell has already spoken about the investigation activities that we do, but it's the Fair Work Commission that's responsible for administering, I guess, the regime. But, certainly to the extent that there is any intelligence that comes our way, we would action that appropriately.

Senator HUME: Have there been any complaints or any intelligence about Mr Rielly since his permit was granted?

Mr Campbell: None that spring to mind. I am not saying that there has not been, but I also need to be careful; if it is a subject of investigation, it may not be something I will put into the public domain either way. I tend to know when concerns have been raised about a person of interest, but it's not jumping to mind straightaway.

Senator HUME: I want to ask about a report in the *AFR* in May this year that the CFMEU shut down Lendlease sites across Sydney and then, three weeks later, disrupted work at Chifley South and at three New South Wales government hospital projects. The union cited safety concerns. Has the Fair Work Ombudsman investigated whether any of those shutdowns did constitute unlawful or unprotected industrial action?

Mr Campbell: Yes. According to Lendlease, there were safety related concerns.

Senator HUME: There were safety related concerns?

Mr Campbell: According to Lendlease.

Senator HUME: In the ACT in July, the ACT Integrity Commission's Operation Kingfisher made corruption findings against two senior officials over an $18.8 million school upgrade contract. A local builder whose bid was assessed as better and cheaper did not win that contract. The commission was told that the CFMEU did not like that builder because he did not have a union agreement. Is the ombudsman aware of Operation Kingfisher and its findings?

Mr Campbell: No, I'm not. I don't recall an investigation into that, noting that it sounds like the matter was investigated by another organisation with respect to the title you have given.

Senator HUME: The Fair Work Commission has not received any other complaints about the CFMEU pressuring builders in the ACT because they do not have union agreements?

Mr Campbell: Do you mean the ombudsman?

Senator HUME: Yes.

Mr Campbell: Can I take that on notice? I would need to confirm whether we have had a coercion investigation in Canberra. We may have had some allegations about that, but I can't recall it.

CHAIR: That concludes our questions for you, Ms Booth. Thank you to you and your officers.

Department of Employment and Workplace Relations

[17:37]

CHAIR: I'm calling officers from the department in relation to outcome 1, Employment. Senator O'Sullivan.

Senator O'SULLIVAN: I'd like to talk about the targeted compliance framework. I appreciate the opening statement you made earlier today, Secretary. We have covered off some of my questions, but some I now would

like to explore in a bit more detail. I refer to the powers that you said would resume on 26 October—that was the evidence you gave last time—about suspending the payments of people who refuse or fail to start suitable work and cancelling payments when people do not meet a reconnection requirement within four weeks of being notified. On 19 October you confirmed that both would resume on Monday. Refresh me: what did you say in relation to when it recommenced?

Mr Duggan: In my opening statement I noted that I made a public statement on 19 October indicating that on 26 October decision-making would resume under 42AG, which allows a person's social security participation payment to be suspended for a work refusal failure, but also section 42AM, which allows a person's participation payment to be cancelled if they do not meet a reconnection requirement within four weeks.

Senator O'SULLIVAN: Did that then occur on the 26th?

Mr Duggan: Yes, that's correct; Monday the 26th.

Senator O'SULLIVAN: You said that the provisions were only resumed once you were satisfied. On what date were you satisfied?

Mr Duggan: To preface my response, in terms of my obligations under section 7 of the Social Security Act, I have particular responsibilities under that act for the general administration of the social security law as it relates to mutual obligations. I take those responsibilities very seriously. One of those responsibilities is restoring those elements of the TCF that have been put on hold as soon as I am assured that the systems and procedures are in place to support lawful administration in accordance with the current legislation. We have established within the department a task force, and that task force now has been in operation for approximately two years. It has been providing assurance to me and my predecessor over that period about the work program to bring all the elements of the targeted compliance framework that were suspended into legal compliance. I have been briefed very frequently on this. I was briefed as recently as the Sunday prior to the commencement of the targeted compliance framework, the two sections that I referred to, to give me that final assurance that all of the systems elements were in place prior to that recommencement on the Monday. It just gives one a bit of a sense of the frequency of engagement around this, to give you that assurance.

Senator O'SULLIVAN: It was not a single moment? There was not a single date?

Mr Duggan: There were lots of written briefings and meetings very frequently. As you could imagine, it has been a very big endeavour for the team to be able to get the system back into legal compliance over the time period. An enormous amount of work has gone into it. I can go into all of the assurance work that we did, if that is of interest to you, but it was a huge body of work. I have been very closely engaged all the way through.

Senator O'SULLIVAN: In terms of coming to that final decision to restart, when did you make that decision?

Mr Duggan: I made that decision the week prior to making the public statement. In that public statement I was very clear that I then needed to be assured just prior to the implementation that all of the systems elements were in place as well as that the providers themselves were ready to be able to start making decisions under the resumed provisions. All the way up to the 26th, I was receiving updates on the information. On the basis of those updates, we were responding to the team, letting them know that, if there were elements that needed further work, the team would go away and do that further work. The final confirmation occurred the day before.

Senator O'SULLIVAN: Are you the delegate on the decision, or does it go to the minister?

Mr Duggan: I am actually the decision-maker under the legislation, so that's correct.

Senator O'SULLIVAN: The minister was not involved in the decision?

Mr Duggan: This is a particular set of responsibilities that are assigned to the Secretary of Employment.

Senator O'SULLIVAN: I presume that you inform the minister ahead of the announcement?

Mr Duggan: This is something on which I meet with the minister frequently. I have informed her all the way along about progress, and then we informed her in writing prior to the commencement.

Senator O'SULLIVAN: What date was that?

Mr Duggan: I will just check with my colleagues to see whether they have the date of the written brief. We will have to take that on notice.

Senator O'SULLIVAN: In August, the department said that, once the work on the human decision-making is implemented, a jobseeker's circumstances will be comprehensively considered before any decision to cancel their payment. Was that in place before cancellations restarted on Monday?

Mr Duggan: Yes. If you can just give me a minute to give you a sense of the assurance processes that we went through? Essentially, there were four lines of assurance that were provided to me before I made the final

decision to recommence. This is a complex system. It is a system that is shared with Services Australia but also with the private providers. We had extensive testing with Services Australia to demonstrate that the systems changes were operating as intended and, of course, in accordance with the legislative requirements. The second thing was updated training, guidance and system controls. They were put in place with providers but also the departmental staff who would be subsequently involved in decision-making. The third line of assurance was we had extensive legal review, audit and assurance processes. As part of that, I commissioned an in-flight internal audit to critically assess the work of the task force that was putting this together to bring me separate advice on whether or not the task force was delivering on the legal requirements, the system requirements, but also responding to the Ombudsman's recommendations in this regard. I was getting, if you like, a second stream of advice on this to ensure I could be absolutely assured this was all being brought into place with legal compliance.

Senator O'SULLIVAN: Just so I understand, at a high level this now means mutual obligations is able to be properly assured?

Mr Duggan: This was to bring two elements of mutual obligations that had been paused back online, but there are other elements of mutual obligations that have continued which were not in question in terms of the legality of their administration.

Senator O'SULLIVAN: Yes, I know that. What were those two? You did mention that in your opening statement.

Mr Duggan: To remind you again: 42AG, which was allowing a person's social security participation payment to be suspended for a work refusal failure; and 42AM, which allows a person's participation to be cancelled if they do not meet a reconnection requirement within four weeks.

Senator O'SULLIVAN: On the Ombudsman's recommendation of five days to reconnect before a payment is suspended, in August the department said it accepted all the Ombudsman's recommendations. Services Australia marked that as not accepted and said it is your call. What was your call on that particular point?

Mr Duggan: The Ombudsman provided us with two reports that are relevant: one titled *Automation in the Targeted Compliance Framework: when the law is changed but the system isn't* and a second one on *Fairness in the Targeted Compliance Framework: when the decisions are made beyond your control*. You are correct in that we issued a public response to both of those reports, accepting all of the Ombudsman's recommendations. Some of those recommendations were relevant for the provisions that have now restarted following my recent decision. Other elements are part of a longer term work program. They're not as relevant for the decisions that I just made but will be relevant to restoring the remaining elements of the targeted compliance framework, which, as I said in my opening statement, we intend to bring back into line in the first quarter of next calendar year.

Senator O'SULLIVAN: Are jobseekers still able to be suspended on the spot?

Mr Duggan: There is a number of provisions that have remained in operation. I ask you to be a little bit more specific in terms of whether there is a specific part of the targeted compliance framework that you are referring to?

Senator O'SULLIVAN: My understanding is that with the recommendation from the Ombudsman in relation to that five days to suspend, in August you said that you accepted the Ombudsman's recommendations but Services Australia marked that as not accepted. I'm talking about the ability for, as I understand it, Services Australia to be able to suspend someone on the spot. Is that not right?

Ms Schofield: I will ask my colleagues to jump in with further detail. To go to what I think is driving your question, there is both shared and joint responsibility between the department and Services Australia for the different parts of making the system work. Some of the recommendations from the Ombudsman Services Australia do not need to implement, because those powers sit with the department. It could be that, when you're reflecting that Services Australia has said that it's not a call for them but a call for the department, what they were referring to was that, actually, this is not a power or a function that they hold, and it would be a call from the department.

Senator O'SULLIVAN: Can you check that either now or come back to us on their reasons why?

Ms Dewar: The recommendation to which you are referring came out of the second Ombudsman's report where he requested that DEWR and Services Australia review the automatic process to suspend jobseekers' income support in the penalty zone, ideally to provide jobseekers with five days to reconnect or provide a valid reason for any mutual obligation failure prior to suspension. The response from the department—and Ms Schofield and the Secretary are correct—

Senator O'SULLIVAN: Is this the department or—

Ms Dewar: For this department, that is a piece of legislation that this department administers, which probably gets to why Services Australia responded in the way that it did. Our response is that, effectively, any change about the application of reconnection time is a matter for government. It talks to the construct of the targeted compliance framework. It's only in part of the targeted compliance framework, the penalty zone, that no resolution time is provided.

CHAIR: The committee will now suspend.

Proceedings suspended from 17:49 to 18:51

CHAIR: We have Senator Allman-Payne appearing remotely. That decision has been approved by the committee. Senator Allman-Payne, I'll come to you for a 15-minute block. You have the call.

Senator ALLMAN-PAYNE: Mr Duggan, I note that you were answering questions asked by Senator O'Sullivan earlier about the assurance actions that the department has taken prior to restarting some of the suspensions and cancellations. Could you elaborate a little bit more on some specific areas of that. First of all, what did the testing with Services Australia look like, and how many cases were trialled in that testing?

Mr Duggan: I'll hand over to my colleagues, who'll be able to give you all the details.

Ms Schofield: I'm happy to kick off while my colleagues are getting to the right places in their folders. In terms of the IT testing piece, we had a three-phase, interagency IT testing strategy that we developed with Services Australia to undertake assurance activities just beyond the standard testing processes. This was really designed to validate critical system interactions and payment calculations delivered through that three phased approach aligned to the key decisions. Phase 1 and phase 2 testing is completed and indicated that the systems are operating in line with legislative requirements.

To strengthen assurance and traceability, business rules were mapped to the test cases, demonstrating that system functionality operates as intended. It enabled clear linkage between policy requirements and system behaviour. Testing undertaken to support the resumption of section 42AM and 42AG validated 248 business rules with over 500 test cases completed. The phase 3 testing commenced following reinstatement—that's operational now—and includes production testing with Services Australia and a hypercare period of IT system monitoring following resumption on Monday. Hypercare arrangements will be stood up again between November and December to ensure that the first work-refusal failure payment suspensions and section 42AM(3) payment cancellations are operating as intended once they start to flow through the system should any of those eventuate at that time.

In parallel with the IT changes supporting the resumption, DEWR has also modernised components of our IT platform in response to both the Deloitte and the Commonwealth Ombudsman review recommendations. This work included upgrading to contemporary design standards and migrating the code base to a modern platform, supporting enhanced version control and release management. Essentially, collectively, these really strengthened the integrity and the resilience of the TCF coding that exists in our system.

Senator ALLMAN-PAYNE: Mr Duggan also referred to training that was provided to providers. Can you elaborate on that a little bit more. Is it possible to provide the committee with copies of documents related to that training?

Ms Dewar: The training and guidance has been rolled out in two areas. One is to the employment services providers and the second is to the staff within the department who work within the Digital Services Contact Centre. The provider training has focused on the guidance that they need to know and the rules they need to now understand that relate to 42AG and 42AM. Those training modules were released on 2 September, and they're mandatory for provider staff who undertake compliance actions. One of the safeguards that exists within the system is that if a person, an employment services consultant, had not completed the new training prior to the recommencement of provisions on Monday, the 26th, they are unable to access the compliance system. They are unable to apply compliance against any of their participants. The training for our digital services contact centre staff and our national customer service line staff commenced on 5 October, and that training has been scheduled into their weeks. Again, any staff who did not complete the training by Monday 26 October will be required to complete it prior to undertaking any compliance action.

Senator ALLMAN-PAYNE: Is it possible to have tabled or to take it on notice what those modules cover from the providers?

Ms Dewar: Senator, I'll have to take that on notice.

Senator ALLMAN-PAYNE: Great, thank you. I have one more question on that, my apologies. Mr Duggan also referenced—and I don't know if this is the right term or if I heard it properly—was it an in-flight audit?

Mr Duggan: That's correct, Senator. I referred to it as an in-flight internal audit that I commissioned to run in parallel with the work of the taskforce, which was effectively providing me with independent advice from the taskforce around both the systems changes and the implementation of the advice that we'd received from the Commonwealth Ombudsman in terms of how we should approach restoring elements of the TCF.

Senator ALLMAN-PAYNE: Is there a report of that audit?

Mr Duggan: Yes, Senator. I received two reports from that audit. It was conducted in two phases. The first report was provided to me and then informed a second phase of work by the taskforce. I received a final audit report prior to making my decision to restore those elements of the TCF.

Senator ALLMAN-PAYNE: Can you provide a copy of that audit report to the committee?

Mr Duggan: Senator, yes, on notice. I'm happy to provide a copy of that report.

Senator ALLMAN-PAYNE: Thank you. You also said that there were extensive legal reviews of the taskforce. Are any of those legal reviews able to be provided or is they in confidence?

Mr Duggan: Through our internal legal team, we received extensive AGS advice in the course of events. I am a little bit limited in what I can share about that because I don't want to cut across the legal privilege of that advice.

Senator ALLMAN-PAYNE: Well, could I maybe ask if you could provide on notice any aspects of that which are able to be provided?

Mr Duggan: Yes, Senator. I'll provide whatever we're able to on notice.

Senator ALLMAN-PAYNE: Thank you. Just going then to some of the things that have been restarted. Starting with payment suspensions under 42AG for supposed work refusal, these are typically reported by people's employment services providers. I'm really interested to understand what safeguards the department has put in place to ensure that people won't lose their payment on unfair or unreasonable grounds.

Ms Dewar: Yes, 42AG, the payment suspensions for work refusal failures, the changes and updates that have been made in the system require that an employment services consultant must confirm that a work refusal failure has occurred, and they must record that decision and the evidence in the system prior to progressing that suspension.

Senator ALLMAN-PAYNE: Can you just clarify for me, when you say that a work refusal has occurred, is the job service provider, under the law, required to exercise discretion in terms of whether there is a valid reason for that refusal.

Mr Bell: A payment suspension under 42AG(1)(a) will occur if a provider hasn't been able to make contact with a participant to speak about a potential work refusal failure. When they make contact, that's when the conversation and the determination about a valid reason will come in. The payment suspension itself precedes that discussion and that determination of a valid reason.

Ms Schofield : Senator, if I can just add just a couple of things in that space. One of the things that we identified, one of the changes to the decision-making process and the IT system that was required so that the payments are only suspended once a decision-maker—we've changed that so they have to be satisfied that a work refusal failure had occurred based on evidence rather than thinking it may have occurred. So we have tightened up that process in our IT systems, and that formed part of the training that has also rolled out for staff of employment service providers. The other thing I'd say just in relation to safeguards or changes for participants is that we've also done a lot of work looking at and changing the notifications that participants receive in this process to try and make all of those decisions and the points where they are in a particular process much clearer.

Senator ALLMAN-PAYNE: I guess one of the things that occurs to me as I'm thinking through the requirements when you talk about making contact is that right now we're in a cost-of-living crisis. People on JobSeeker are getting around $400 a week. There's not a rental in the country, I think, that anyone on that income could afford. Is it not conceivable that we may have jobseekers in situations where they don't have credit for their internet or their phone and they can't afford public transport or fuel? How does someone make contact if their financial circumstances—and for most people on income support their dire financial circumstances—mean that they may not be able to and that this is in fact placing an obligation on them to do things that they otherwise can't afford even to make contact? I don't think that's a stretch to suggest that there are people in that situation. What happens in that situation? It would seem to me then that a suspension or a cancellation is actually going to exacerbate and potentially harm that person in circumstances where the very fact that they're being kept on a poverty payment makes meeting these requirements sometimes impossible.

Ms Dewar: What I can talk to is, as Ms Schofield referred to, the training that has been provided and the requirements that exist with a provider. When a participant fails to attend a compulsory appointment—and I note that that may be either in person or over the phone—the provider must attempt to contact the participant on the same day as the non-attendance. The contact attempt must be recorded before any non-attendance or non-compliance result can be recorded in the system, and they must record that on the same day of the requirement. Providers should also maintain evidence that demonstrates that the appointment was scheduled, that the participant did not attend, that on the same day an attempt was made to contact the participant and that the outcome of the contact attempt was recorded. So—

Senator ALLMAN-PAYNE: If I have a mutual obligation and I have an appointment, say, tomorrow and I find myself unexpectedly in hospital, which is not foreseeable, it would seem to me that if a job service provider tried to contact me, couldn't contact me on the same day and put all those things in the system, I could be potentially subject to having my payment suspended or cancelled even though I have a valid reason, but, by virtue of the fact that I can't be contacted, I'm going to suffer a penalty. Is that a fair characterisation of what could occur?

Ms Dewar: Well, there are a range of circumstances that may occur. What I'm saying is the safeguards that are put in the system are that we're requiring employment service consultants to record and provide evidence of the attempts that have been made to contact a person.

Mr Bell: If I may, also—

CHAIR: Yes, go.

Senator ALLMAN-PAYNE: What I'm struggling with is that I don't see how that's a safeguard. That's a safeguard to say that the employment service provider—

CHAIR: Senator Allman-Payne, it's difficult when it's remote. Mr Bell was seeking to provide a response. Mr Bell, you have the call.

Senator ALLMAN-PAYNE: My apologies.

Mr Bell: Sorry. A couple of additional points I'd make is there are five days of resolution time from when a work refusal failure occurs before the payment suspension, so if you're unable to make that contact immediately, there are five days before the payment is suspended. The other point I'd just make is that, importantly, following the resumption of payment suspensions for work refusal failures, the department is going to be monitoring and reviewing every single one that comes through the system to make sure (1) that decision-making from providers is accurate and reflects the changes that we've made and (2) that the quality of the information and the evidence that they're submitting to the system is correct. If it's not, we'll be reaching out to the provider and, where relevant, lifting those suspensions or lifting those failures.

Senator ALLMAN-PAYNE: Can I ask a question of the minister?

Senator Walsh: Go ahead, Senator Allman-Payne.

Senator ALLMAN-PAYNE: It seems to me that we are still having a situation where it's quite possible that people can't meet these connection obligations if they don't have sufficient funds either for transport or for phone or internet communication. Has the government considered that in terms of this framework? Because, if you're on $400 a week, we're literally asking people to either pay for transport that they otherwise wouldn't need or potentially be in situations where they don't have telecommunications. I'm interested to know if the government has a view on that.

Senator Walsh: At a threshold level, as you know, we think that some form of mutual obligations is important. More broadly, we are looking at how mutual obligations can be reformed so that they are of greater assistance to people in finding meaningful work and realistically finding work and ensuring that those mutual obligations apply to where people are today and what their distance from the labour market is right now. So there is a reform project there in relation to mutual obligations. The government also made some changes to the current system to try to provide some extra support—for example, increasing the length of time that people have to address any missed requirements from two days to five days before that suspension process may put their payments on hold. We also introduced a grace period for new participants before there are any impacts on their payment. Those who are, for example, new to Workforce Australia don't experience any compliance action the first time that they miss a requirement. There are a couple of other reforms to assist people as well. We recognise that people can be in difficult circumstances. We do think mutual obligations are important. We've made some changes to assist people now, but we're also doing the work to reform mutual obligations for the future.

CHAIR: Senator Allman-Payne, we are due to rotate, so this will need to be your last question.

Senator ALLMAN-PAYNE: Yes. To follow on from that, Minister, you've talked about mutual obligations helping people into work. There's very little evidence that shows that it does. Does the government accept that the biggest change that they could make that would actually help people be in a position to access work would be to increase the rate of JobSeeker and other income support payments to at least the poverty line, which would be an increase of about $300 a week for someone who's currently trying to survive on $400 a week?

Senator Walsh: As you know, the minister gave a major speech at the National Press Club earlier this year, and she talked about putting in place reforms of the employment services system. That would be the biggest change in many decades, and those changes are designed to assist people into work. The minister and the government recognise that the system needs to be better, that the support for people needs to be better and that the obligations that are placed on them as part of the mutual obligations framework need to be more realistic and more targeted to where people are in terms of their distance from the labour market. So that's the shape, the form, that the minister is pursuing, and she is very much on the record as viewing work as an absolutely critical form of providing foundational support for people in their lives. She's talked a lot about the dignity of work and wanting to have an employment services system that delivers that dignity as well.

CHAIR: Senator O'Sullivan, you have the call.

Senator O'SULLIVAN: I want to return to the issue of the compliance framework, some of which has just been covered by Senator Allman-Payne. Thinking about the suspension, I'd like to understand what happened to jobseekers while those powers were paused.

Ms Schofield: While 42AG and 42AM were—

Senator O'SULLIVAN: Yes.

Ms Schofield: Essentially, while those provisions were paused, there were no decisions that were being taken in relation to those two. There are—and the secretary talked about this a little bit earlier as well—other mutual obligations requirements that exist within the legislative framework that remained in existence while these two provisions were paused, and, while the other four provisions are still paused, there are some mutual obligations that are still in the system. So people could not be suspended for a work refusal failure, because this provision was turned off, but suspensions were still active if there were failures on other mutual obligation requirements.

Senator O'SULLIVAN: So the mutual obligations continued?

Ms Schofield: Yes

Senator O'SULLIVAN: But their payment suspension was lifted. Is that right? Have I got that right?

Ms Dewar: Payment suspensions have remained in place through this period, while there were other provisions within the Social Security (Administration) Act that had been paused. For the large part, suspensions occur under section 42AF(1), and payment suspensions can occur when a person has not met their mutual obligations requirement. That might be attending an appointment; it might be completing an activity. There are other parts of the system whereby a person could find that their payment was suspended. What was paused, particularly under section 42AM, was that suspension. If a person didn't reconnect, their payment could not be cancelled.

Senator O'SULLIVAN: Has any jobseeker permanently lost any payment for failing to meet a requirement?

Ms Dewar: Not while section 42AM was turned off, no.

Senator O'SULLIVAN: Services Australia procedures say that, during the pause—and I think this sort of goes to what you're saying here—DEWR restores payment after 20 days whether the person has met their reconnection requirement or not. What happens to their payment? Is it held back?

Ms Dewar: When a suspension is lifted, it is back-paid to the day at which it was suspended.

Senator O'SULLIVAN: Not from when it's lifted—it's backdated to when it was first suspended.

Ms Dewar: Exactly. It's back-paid to the point at which their last payment should have been made.

Senator O'SULLIVAN: From 5 July 2025 until Monday, all TCF suspensions and cancellations for refusing suitable work were paused. In that time, what was the consequence for a jobseeker who refused a suitable job?

Ms Dewar: During the time when that provision was paused, no decisions could be taken under that provision.

Senator O'SULLIVAN: So a jobseeker could just keep continuing to refuse a suitable job in that period of time—maybe, potentially, multiple times?

Ms Dewar: It meant that a person's payment couldn't be suspended or cancelled under that provision. There are other provisions under 42AF(1) whereby a person's payment can be suspended, but using that particular provision was not—

Senator O'SULLIVAN: But that's not a refusal of a suitable job.

Ms Dewar: Mutual obligations.

Senator O'SULLIVAN: But those other measures are not—

Ms Schofield: They are not about the work refusal. That's correct.

Senator O'SULLIVAN: about refusing a suitable job. So, if someone in that period of time—from 5 July until just this Monday, which is more than 12 months—repeatedly refused to take up a suitable job, nothing would happen. There would be no consequence.

Ms Schofield: For that particular event, that would be correct. But, as we've said, there were a range of other mutual obligations that remained in place whilst this particular provision was not in place.

Senator O'SULLIVAN: Was data still collected on the jobseeker in that way if the service provider had recorded on your system that the person had refused a job over that period of time?

Ms Dewar: Senator, I'd have to take that on notice.

Senator O'SULLIVAN: Can you take that on notice and then come back to me with the numbers, of how many, if there were any.

Ms Schofield: If that was data that we collected during that time, yes, we can come back with that.

Senator O'SULLIVAN: Was it data that you would have been collecting before the suspension?

Ms Schofield: It would have been collected whilst the provision was operational, so I would have to—

Senator O'SULLIVAN: So you just stopped—

Ms Schofield: have a look and see how much data we have whilst the provision was paused.

Senator O'SULLIVAN: I would find that concerning—if, while it was paused, you'd actually stopped recording it.

Mr Duggan: I think the evidence is we need to check whether or not—

Ms Schofield: We'll just have to take on notice how much information we have.

Senator O'SULLIVAN: In terms of compensation, on 19 October, Secretary, you said that the department had started inviting people to claim compensation in batches over the coming months.

Mr Duggan: Yes.

Senator O'SULLIVAN: And I spoke about that. How much is going to be repaid?

Mr Duggan: We'll need to go through that, of course, once we receive any applications for compensation. The way we've approached this is to focus in the first instance on cancellation decisions under 42AM. As I said in my statement earlier, we've proactively invited 50,652 people to apply for compensation. The way we identified those people was by using our own systems and the Services Australia systems to try and identify through data analytics those who were most likely to have suffered detriment through that period. So we're proactively going out.

We've also made it clear, though, that any current or former participant in the system who feels that they may have suffered detriment can of course put in an application. We won't know precisely how much we will be compensating until we start to see the claims. Of course, making a claim in and of itself isn't enough to prove that detriment has been caused. We will need to analyse those claims and make an assessment as to whether or not they are eligible for compensation under the CDDA.

Senator O'SULLIVAN: Is it a contingent liability? How have you factored in the budget?

Mr Duggan: There was money provided at last year's MYEFO to fund the compensation that we are in the process of administering at the moment. So that was a measure.

Senator O'SULLIVAN: How much was that?

Ms Schofield: The measure in MYEFO was $43.9 million over four years from 2025-26. That funding, that $43.9 million, included some funding for compensation as well as funding to do the system works and other IT things that we've been talking about already this evening.

Senator O'SULLIVAN: Of the 50,000, has any been paid at all?

Mr Duggan: We are in the process of inviting the 50,000 people. So far, we've sent 1,430 invitations. I don't know that we've received any—

Ms Dewar: We have now received 50 applications for compensation, but they have not started to be considered.

Senator O'SULLIVAN: They haven't been paid yet. The Ombudsman reported 651 people identified for back payments, of whom 604 have been repaid. In August, the department said that 47 could not be paid for a range of reasons. Have you got that data there? What were the reasons?

Ms Dewar: Of the 47 people that the department could not contact, 41 were unable to be contacted to verify their bank details. Services Australia attempted to call each customer on five separate occasions. Services Australia could not send a letter as there was no way of verifying that the customer still resided at the address held on record, so that poses a privacy risk. Five people had passed away and did not have an executor or next of kin recorded. And one person had changed payment type after the penalty was applied and was already in receipt of income support payment for that period that had been cancelled, so they were effectively not eligible for compensation.

Senator O'SULLIVAN: Okay. Are the 651, not including maybe those 47, going to be invited to claim compensation, or will their back payment be counted against it?

Ms Dewar: Those 651 were part of the 42AF(2)(d) review and compensation process which the department carried out last year. In that compensation process we reviewed the circumstances of 964 people affected by that provision. We made those recommendations for the 651, and then we sought to contact the residual. The process has finished, but, of course, anyone can make a claim at any time under the scheme for compensation for detriment caused by defective administration.

Senator O'SULLIVAN: Were those people that you couldn't contact still in the system? Were they still being serviced by a service provider?

Ms Dewar: I don't have that information, but I know that the mix of people was both those currently still in the system at the time of the review and those that had exited.

Senator O'SULLIVAN: Okay. In trying to contact them, did you go to their previous service provider or the one that was active at the time of their suspension and ask them if they knew? To what extent did you go down the different paths to find these people?

Ms Dewar: We can only use the information we currently hold in the system, and that's both the department's system and Services Australia system. So we went through a process to identify the most appropriate contact details or the most recent contact details for the person.

Senator O'SULLIVAN: You can't call the service provider and say, 'Hey, we've lost contact with this person. Would you know how we can—

Ms Dewar: Those details would be held on our system.

Ms Schofield: They're the same. The contact details that a service provider would have and the contact details that the department would have is the same record.

Senator O'SULLIVAN: But is it the job of the service provider to update the contact details in your system? They may have it in their own contact management system that would be separate to yours.

Ms Dewar: Ideally not.

Ms Schofield: They shouldn't be.

Senator O'SULLIVAN: They shouldn't be, right. They're not allowed to, with privacy.

Ms Dewar: They shouldn't be, because, if you are on our system and then you're through to Services Australia and you're having an income support payment made to you, that data should be held across systems.

Senator O'SULLIVAN: Yes. I've finished that block.

CHAIR: If so, I will rotate the call and then I'll come back to you. Just before I do, I can advise the committee that we're in a position to release Safe Work Australia. Thank you for your service. Senator Dolega.

Senator DOLEGA: Good evening. I just want to get an update on the national call centre, please.

Ms Dewar: What would you like an update on?

Senator DOLEGA: At last estimates, you may recall, I was asking about the investments into the department's call centre—in particular, the national customer service line. Can you give me an update on the recruitment of additional ongoing staff?

Ms Dewar: Sure. You're right; earlier this year, in the 2026-27 budget, the government announced it would invest $26.5 million over three years into the national customer service line to increase resourcing to support

jobseekers and employers. This funding largely goes to increasing our service delivery capacity. We have commenced an external recruitment process for the national customer service line. Those advertisements went out on 31 July and closed on 17 August. We're in the process of reviewing those applications and that recruitment process, and we have an intention that letters of offer will be distributed around early December with a view to commence those staff in early February 2027.

Senator DOLEGA: Thank you for that. I'd asked the department about the approximately 55 non-ongoing workers whose jobs were under a cloud. I was a tad cranky at the time—you may remember. Can you tell me what happened with those? Have they been invited to reapply?

Ms Dewar: The last time we spoke, we had a number of non-ongoing staff in the contact centre. In terms of arrangements that we have made for non-ongoing and labour hire staff in the contact centre to apply, we have held workshops internally for staff to walk them through the recruitment process. Equally, we have retained the details of non-ongoing staff whose contracts have come to an end—with their permission obviously. Where they have expressed interest in being contacted when or should a recruitment round have opened, we've also been able to contact them and make sure they are aware that the recruitment process was open.

Senator DOLEGA: Sorry, Ms Dewar, was that inclusive of the labour hire staff to have those same opportunities as well?

Ms Dewar: All staff in the contact centre were offered the same opportunity to attend those training sessions.

Senator DOLEGA: What is happening with the uplift of the capacity of the staff in the National Customer Service Line? We were talking about that in the last round of estimates, as well.

Ms Dewar: There are probably a couple of things. The first task we have is to increase the capacity, get more people on board. However, at the same time, the minister's speech at the National Press Club, which has been referenced earlier, set out some ambitions for what the government would like the online service to be. That necessitates an uplift in capacity and capability of our contact centre staff. So we're going through a process of enhanced role-specific learning, building structured coaching, quality feedback, knowledge management and improved leadership development to help support those staff once they come on board to not only navigate the systems that we have but provide the type and style of service that the government is expecting.

Senator DOLEGA: In addition to the staff and people having more secure jobs as part of this uplift and this process, what's going to be the benefit for people who rely on the services of the department?

Ms Dewar: Again, the minister articulated the government's ambition for much more support for people in that online service. In the recruitment process we have gone through and are going through, we have been quite specific about the customer service experience that we are seeking. But the government is also expecting us to improve the experience of people going through the online service, and that is a mix of the experience they have when they call the Digital Services Contact Centre and the online tools that are available to them and the support that is given to them. We're going through that process at the moment.

Senator DOLEGA: As a result of these measures, it sounds like the department is really focusing the labour hire workforce on more of that surge capacity that you will need for those peaks and surges of work that will occur—with the recruitment of these ongoing staff.

Ms Dewar: Labour hire staff and APS staff work alongside each other in the same roles. While we work through this process, everyone in the contact centre—at the same levels—does the same style of job, regardless of whether they are APS permanent, not-ongoing or labour hire. The focus though, as you've articulated, is very much about a permanent APS workforce to support the participants going through that online service.

Senator DOLEGA: Thank you very much for that update. That's very good to hear. I want to ask, as well—I believe this might be for you, Ms Rishniw—about the employment services reforms. Now that the public consultation process inviting submissions has closed, can you provide an overview of the level of the responses that have been achieved and some of the key themes that are coming out of the process?

Ms Rishniw: As you mentioned, we had a public discussion paper that was launched on the same day as the minister's National Press Club address of 27 May. We took submissions until 31 July. There were a few organisations that had asked for an extension, which we allowed. All up, we received 348 submissions to that public discussion paper—266 from organisations and 82 from individuals. They have now been published. Where people have allowed for them to be published, we've published those on the website. A range of themes are coming through, very much supporting what the minister outlined in her speech, particularly looking at how we make mutual obligations more fit for purpose, reflective of people's circumstances, but closer to the demand and the labour market; how we provide quality services; how we build the relationship and a stronger understanding of the needs of employers and matching the participants in provider services; and how we provide more modern

ways of people seeking support—really supportive of online digital kind of transformation pieces. They were some of the common themes, but I'm happy to elaborate.

Senator DOLEGA: That's good to start off with, thanks. How are you going to engage to inform the design of the reformed employment system from here on in?

Ms Rishniw: Obviously, with the submissions that have come in, we've done an initial analysis and picked up the key themes, but there are a range of other consultation mechanisms in the reform space. We also have an employment services expert advisory group that is providing advice to government and looking at those submissions but also key pieces of reform in that process. There have been various community forums led by Minister Rishworth and Assistant Minister Gorman. There have been 11 different community forums where people have been able to contribute. We're doing specific focus groups with First Nations communities, but we have also met with the First Nations advisory group, looking at how we build in that First Nations voice into those reform processes. That is, as I said, going in—the expert advisory group is considering those pieces, and that will form the basis of advice to government.

Senator DOLEGA: Finally, on the employment services, with the budget measures, how is the implementation with the budget measures associated with the reforms?

Ms Rishniw: There were a number of budget measures announced as part of the 202627 budget in May this year. There were $312 million of initial investments in some of those foundational pieces coming through. There's $26.5 million over the next three years to uplift the National Customer Service Line and make sure that we can meet the demand there but also much stronger investment in the capability and capacity of the department's support through online digital services. We heard very strongly the need to provide modern services that are actually looking at how we can help people online to do better career mapping and planning to get them the kind of support that they need early on and connect them to the labour market sooner. That included a digital advisory service for parents, and we're in the process of finalising those arrangements with Future Women. There's the Digital Services Contact Centre foundation—that ICT build—to really build in new modern tools and help our customer support centre and online services actually be able to have all of those tools at their fingertips. There's the frontline services uplift that Ms Dewar referred to, which is really a big staffing push. We're underway with the career-mapping tool, the engagement and the building of the broader business case for reform.

Senator DOLEGA: I really wish you well in getting this up and running. I know a lot of people are really excited about the reforms to employment services. I look forward to hearing through future estimates as to how it all goes. Finally, I'll touch on the complaints service, if I may. I understand that there's been a new complaint service for employment services that was established just last year and a second complaints report has been released. Can you give me an overview of how the new complaints service is different from the previous settings?

Ms Schofield: Yes, of course. The new complaint service came into effect on 31 October 2024. We're almost at our second birthday of that service. Prior to this service launching, if participants or jobseekers who were in our system had concerns or wanted to complain about the service that they were provided or any issues that they were experiencing, we directed them to their providers. We did require that providers have their own complaints handling process, but there wasn't really a mechanism for the department to be engaged and come in as a slightly independent third party to those discussions. This service is the first time that that's happened. So, yes, the service has been operational now for almost two years.

As you said, we've released the second complaints report. So we're putting out two reports a year. I'm pleased to say that the third one should be out quite soon. The second report that we released in September covered the period from 1 May 2025 until 31 October 2025. It flagged that there were—let me just get the numbers for you, Senator. In that six-month period, there were 6,500 complaints received. That was up ever so slightly from the six months before. The majority of those were about Workforce Australia services, which makes sense because a lot of the interactions that people have are with their service providers. I could go on, Senator, but if there are particular questions that you have on the—

Senator DOLEGA: I have a bit more. I also want to get an idea of what proportion of the caseload it represents—those complaints in the second round?

Ms Schofield: I have that number here somewhere, I think. The proportion of the caseload is a relatively small proportion. I'm just looking to find the number in my system. It's about one per cent or less of the complaints that we were receiving compared to the caseload. The caseload is about 750,000. So, in that six-month period, we received about 6,500 complaints. The numbers have been relatively steady across the period.

Senator DOLEGA: Were there any particular cohorts that were overrepresented? How does that compare to the Workforce Australia caseload?

Ms Schofield: That's an interesting question, Senator. It is one that we monitor. I think it's really important to see whether or not there are particular cohorts that feel like the services aren't really delivering to them in a way that is different to their proportion on the caseload. We track that across. We look at our First Nations participants. We look at the parents in our system. We look at culturally and linguistically diverse jobseekers and also people with a disability. Across those numbers, the proportion of complainants is essentially the same as the proportions that exist in the caseload. The only cohort where there was a bit of a difference was in people with a disability. When the service first started, the proportion of complainants was about 30 per cent, and they were about 26 per cent of the caseload. Those numbers have stabilised as the service has continued. At the moment, what we're seeing, in the data at least, is that complaints and caseload are at similar proportions for all of those key cohorts.

Senator DOLEGA: Thank you. Finally, how will that data be used to improve the performance of Workforce Australia providers?

Ms Schofield: There are a few things that we're doing. Obviously, we're publishing this information every six months, which is really helpful, so that it can be out there. We know that our providers look at that. Obviously, it's available for the public and for jobseekers to be able to see all of that data as well. Information around complaints now feeds directly inside the department, to all of our policy and program teams, so that they can see the sorts of issues that are coming up in their programs. We can have a look at different program settings and see whether or not there are issues in there that we can potentially amend or revise to see whether or not we can smooth out some of those issues. We've also enabled our staff inside the department who work directly with our providers, our provider leads, to also have access to that complaints data that they can see at a provider level. They can have those conversations as part of their contract management and part of their engagement so that they can really make sure that providers are clear about what it is that's causing issues and seek to make those improvements.

Senator DOLEGA: That's it for me. Thank you for the update today.

CHAIR: Senator Hume.

Senator HUME: I want to follow on from some of Senator Dolega's questions about the employment services reform. At the last hearing you told us that advice on the detailed settings, on the cost of the new system—which I think you have covered off on—and most importantly on how many people will be in each stream will go to the minister towards the end of this year or early next year. I'm wondering where we are on that process, now that we're at the end of October.

Mr Duggan: That still remains the case. As you know, the minister in giving her speech talked about three streams of service, depending on the participant's distance from the labour market or their specific needs. Regarding the detailed design of the reforms, we're still putting together our advice to the minister and for the minister to provide to the cabinet. Those design choices will then determine how many people are in which streams, and that will be the basis on which we'll be able to prepare a costing.

Senator HUME: In response to questions on notice in July, the department said that all Workforce Australia contracts are being extended to 31 October next year, not this year; however, I note that the department's annual procurement plan on AusTender, which was updated earlier this month, doesn't list any tenders for the new system. When will that go to market?

Ms Schofield: The government has, as you've said, said that those contracts will be extended. We have provided that advice directly to all of the providers in the system. We've written to each of them to let them know that those extensions are coming. We have some briefing that is happening inside the department and with the minister at the moment to confirm some of the minor details about how those things will work. We'd expect to be in a position to have those contract extensions offered and all resolved by the end of this calendar year.

Senator HUME: That's very helpful.

Mr Duggan: Just to clarify, Senator, I think you said that the contracts are being extended through to 31 October next year. It's actually 31 October 2028.

Senator HUME: Oh, I'm sorry; it is too. I want to ask for some clarity around how the department is confident about knowing where jobseekers live, which obviously will be part of the way that this new system is built. Am I right in saying that the department publishes small-area labour markets, unemployment estimates, for suburb sized areas? Is that what the department does? Do you publish that?

Ms Schofield: I might need to take that on—I can feel someone coming up behind me, Senator!

Mr Duggan: Whenever you need a chief economist!

Mr Cowgill: Yes, we do publish a publication called Small Area Labour Markets. It combines information from the ABS labour-force survey together with administrative data from the Department of Social Services to estimate unemployment rates and other employment statistics at small geographical regions.

Senator HUME: Your methodology says exactly that—you take the ABS, you share it by the number of JobSeeker and Youth Allowance recipients in each area, and you average it over four quarters. Is that right? Is that how it works?

Mr Cowgill: Yes, we calculate it for each region, and then we average. We do that for local government areas and I believe SA2s—Australian statistical geography standard statistical area 2 areas.

Senator HUME: The latest issue, which was released earlier this month, is for the June quarter. Is that what the department's going to use to decide where support for jobseekers in the new intensive stream goes?

Ms Rishniw: Obviously, it's too soon to say in terms of broader reform, but it will be one of the inputs that not only goes to where are the current jobseekers, what are the labour markets, where there are thin labour markets et cetera based on the advice from the chief economist but also looks at the data that comes through from Services Australia. We've talked about a new triaging and assessment process as well which will also look at the level of complex needs and barriers. So there's geography, but there's actually assessment of jobseeker needs, particularly around that intensity of support.

Senator HUME: Alright. That assessment of jobseeker needs, where is the data? Where do you get that data from?

Ms Rishniw: As I've said, we've been working around, and it was announced in budget, an improved triaging and assessment process for jobseekers. At the moment we use the JobSeeker classification instrument as a means of looking at someone's history, someone's complexity, the kinds of barriers that they face, their history in terms of income support and the types of services we provide. The assessment and triage process will look at how do we better elicit some of that information about a person's circumstances, situation, other features that go to their need, their distance from the labour market and the kind of support that they will need.

Senator HUME: Obviously, you're triaging already in the current system. How do you translate the current system of triaging to the new system?

Ms Rishniw: As I've described, at the moment, that assessment is done initially through the JobSeeker classification instrument, which people fill in at the time they seek income support. They go on JobSeeker. They fill in JobSeeker classification instrument. Your scoring of that depends on whether you would currently go into online services or provider services. Then there are different checks and balances in the system as you progress. For example, if you can't meet your mutual obligations for three months in a row, the provider will do a capability assessment at that point. If you've been unable to meet your mutual obligation requirements, at the moment, Services Australia does a much more intensive assessment to see whether your mutual obligations are right for you, whether you're getting the right supports or not. So there's already those kinds of ways of triaging and assessing someone. What we're looking at is a much more comprehensive way of looking at the JobSeeker classification instrument and enhancing that to better elicit some of those early indicators and test more broadly where people need support and their distance from the labour market.

Senator HUME: If you're staging out, if there are certain gateways of this project, do the triaging decisions and the approach that you take to that need to happen before you then establish where the new centres need to be?

Ms Rishniw: One of the things that we're currently doing is we've put out one of the budget decisions that actually looked at: how do you build out that triaging assessment instrument and what does that look like? We've got some expert advice through Ernst & Young actually doing some of that work around that triaging and assessment instrument and what that looks like in terms of testing it with jobseekers. That will obviously inform kind of how we build out that instrument and that will inform partly where you've got the current case load and how you actually look at stream-through services. So that work is underway is what I'm saying.

Senator O'SULLIVAN: [inaudible] including geography, right—where you're placing centres.

Ms Rishniw: Yes, it will absolutely, and it looks at distance from the labour market.

Mr Duggan: If I could just add, where this will become really relevant will be—you asked a question: will we rely on the June data to inform essentially the services that will be provided as a result of the reforms—when we get to the procurement process, which is not until midway through next year. It will be at that point.

Senator HUME: That was my next question. When you get to the procurement process, that will be—you said—midway through next year?

Mr Duggan: The middle of next year will be when we have the latest data on all of these things that Mr Cowgill talked about—the processes that we go through for that data, both the administrative data and the ABS data. We'll get more data reads before that which will then inform the procurement process.

Senator HUME: So this year the department cut its exact monthly case load down to quarterly. The best local data that the public gets is modelled by your own guidance. Is it lagging? Is that what you're saying—that the June data is already lagging, so it's going to be inadequate for building out that model? Sorry, have I missed something here? I'm not expressing myself very well. It is getting late.

Mr Duggan: I think I understand what you're saying, Senator. Mr Cowgill will be able to tell us whether or not there will be updates before we get to that procurement process by the middle of next year.

Mr Cowgill: Yes. That *Small area labour markets* publication you're referring to is released quarterly. So, between now and the procurement process that Mr Duggan has described, there will be several further updates to that publication publicly released. One additional point I would note is that the ABS is releasing labour force information at a more detailed—so more granular—geographic level. It is planning very soon to start releasing at the statistical area 3 level, which is more detailed than the SA4 level it releases currently, and it has announced plans to explore going to the SA2 level, which is what we publish in *Small area labour markets*.

Senator HUME: Still quarterly or monthly, though?

Mr Cowgill: I believe that is monthly, but I will need to take that on notice to confirm. The ABS regional data—I believe it is monthly, but I'll take it on notice to confirm.

Senator HUME: The department already knows where every Workforce Australia participant lives. I'm wondering whether you will publish the case load each quarter by SA2 but also perhaps by federal electorate.

Mr Cowgill: I would note that, with regard to the *Small area labour markets* publication that we release now, we don't calculate that by electorate, but we do provide the data to the Parliamentary Library, and they calculate—

Senator HUME: They can do that.

Mr Cowgill: the unemployment rates and so on by electorate. So that's something that the Parliamentary Library does, using the data that we provide to them.

Senator HUME: Thank you for that. I have some more questions, but they're on a different topic. I'm not entirely sure whether you want to let me continue on, Chair.

CHAIR: We'll wait for you to get to skills.

Senator HUME: Yes, that's fine. I want to ask about some of the Workforce Australia low-performing providers specifically. Bear with me on this one because I might have to step it through a bit. The department rates every provider licence each quarter as high, moderate or low, and low, as I understand it, is defined as not meeting the department's expectations. In June 2026, the ratings published on 27 August put 22 providers of the 169 licences out there as low. Is that right? Does that sound right?

Ms Schofield: I'm not sure that I have that data with me. Let me check if one of my colleagues has. I might need to take that on notice.

Senator HUME: Check the data and allow me to continue on. The data that I have suggests that it is 22. Of those 22, 15 are rated 'low' on sustained employment, which is the part of your framework that measures whether people not just get jobs but keep jobs, and four have been rated 'low' for five quarters in a row, which is quite significant. In July, the department said that Workforce Australia contracts are being extended to October 2028, as we've already discussed. Has every one of those 22 had their contract extended to October 2028, even the ones that haven't performed for five quarters in a row?

Ms Schofield: I'll just go back and revisit the testimony that I gave previously. One of the things that I said was that we're just in the process of finalising some internal and other briefings around the way that we're going to do those extensions across all of the programs that are being extended out until October 2028. That's Workforce Australia services, Transition to Work—there are a range of programs that are going through that process. One of the things that we have looked at when we're looking at those extensions and that is currently being considered is provider performance. It's being considered now as to whether or not all contracts are extended as is, whether or not there are some providers who need to be put on what we refer to as performance improvement plans, or PIPs. We have used those quite successfully over the past 12 months or so to really help providers to improve their performance. At this point, I can't say whether those particular providers will have extensions for that full period of time, whether they may have a performance improvement plan put in place or whether they will be offered an extension, because, as I said, those considerations are being done almost as we speak.

Senator HUME: In answer to a question on notice, the department said that 14 licences were extended last year on those performance conditions. I assume that they were PIPs?

Ms Schofield: Yes.

Senator HUME: By 31 March, only two of them had improved; 12 were still on PIPs. How many of the 12 have improved since, and what happens if a provider is still rated low in a year's time?

Ms Schofield: I might have to take on notice how many of the 12 have improved; I just don't have that detail in front of me, I'm very sorry. I also can't say how many of them, off the back of that, may then have a contract in place in 12 months time—noting that, as I said, we are working through right now how we will work with providers on the extensions beyond the end of June next year.

Senator HUME: Okay. If these providers are kept on, what you're saying is that poor-performing providers will potentially continue to provide services, albeit poorly, until this decision is made, or until after October 2028. Is that right? Is that what I'm hearing?

Ms Schofield: Providers are on contract right now, and those contracts run through until the end of June next year.

Senator HUME: June next year?

Ms Schofield: Yes. So June 2027 is when the contracts are in place until, right now. We are then considering the extension from July 2027 through until October 2028; that's the extension period that we are talking about. There have been providers, as we have said before, as you mentioned and as I talked about, who, right now, are subject to performance improvement plans. We are, right now, looking at how those providers have responded to those performance improvement plans. That is one of the things that we are thinking about as to whether or not providers get an extension from 1 July next year through until October 2028. Does that help?

Senator HUME: Yes, absolutely. I think there are a lot of providers out there that are pretty sure that that extension provided to them was going to be offered to them automatically and there wasn't a deadline date at the end of June next year. But that's okay. That's for you to communicate, not for me.

I want to step through the department's headline measure for Workforce Australia, the 26-week employment outcome rate. In rough terms, this outcome rate is the share of participants who get a job and are still in that job six months later—is that correct?

Ms Schofield: That's correct.

Senator HUME: And the target is 15 per cent?

Ms Schofield: Yes.

Senator HUME: That is kind of low, isn't it? The 2024-25 annual report at page 36 says that it was 13.2 per cent in 2023-24, it was 11.7 per cent in 2024-25 and it has not been achieved since it was first reported. The 2026-27 corporate plan at page 45 now calls 15 per cent a 'stretch target'. Golly! If 15 per cent is the 'stretch', what's the minimum acceptable rate?

Ms Schofield: I should say that the current data that we have for the 12-month period to 31 May 2026 is sitting at 12.9 per cent. So it's still not meeting that 15 per cent target that has been in place for the program. I think we have put this on record at previous estimates hearings: we agree that that 12.9 per cent, as it is now, is—and the other numbers that you have mentioned were—not high enough and should be higher. The language around a 'stretch target' came as a result of us working through and looking at what the data have told us over the last few years and that obviously, as you've read out, that 15 per cent hasn't been met. I'm happy, obviously, for Ms Rishniw to chime in, but it is really one of the things that is driving the way that we're thinking about reform and thinking about: What are the types of services that need to be offered? What are the sorts of incentives that need to be in the system for both participants and providers to increase that number? The government is very clear that getting secure work—having those jobs that last for at least six months—is really what we want to be striving for in the system. We know, through other data that we have, that, if someone's in that job for six months, they're quite likely to hold that for two years or more following that. We agree that it's a really key thing for us that we want to continue to see improve, and that's really what's driving a range of decisions that are being taken around the way that we run our programs now. We've made some changes to that performance framework for providers that you were talking about before to really start to try to move them more in that direction and incentivise the sorts of behaviours that we think will help to get more jobseekers into those longer term jobs, but the minister, in her speeches, has made it clear that this is where we need to do some work.

Senator HUME: I know that she said this isn't good enough, but she hasn't said what the minimum is. What's the minimum, in your mind?

Ms Schofield: I'm not sure that I would sit here and speculate on a number that we would necessarily pick. One of the things that we need to think through in reform is what the things we want to measure are, noting that we're really keen to have—and the minister has been really clear about this—more personalised and tailored supports. What are the sorts of things that we want to incentivise, and how do we measure that progress for a person as they're on their way to get a job? That's not to say we won't measure this as one of the things that we want to keep an eye on going forward, but I think that there are other things that we need to measure and report on to see how well we're tracking with the way we want to potentially restructure the programs.

Ms Rishniw: If I can come in there, Ms Schofield has just articulated that this is one of the big, driving pieces of reform. One of the things that we've heard consistently in the consultations and the feedback is how to strengthen the understanding and relationship with employers and how we actually look at creating a system and embedded matching of jobseekers with employers and an understanding of employer needs. We will continue to strive to meet the current targets while we reform the system.

Senator HUME: The current targets say that 15 per cent is a stretch target. We're just being very clear: there is no minimum and no floor at which we say, 'We've failed here.'

Ms Schofield: We've got a 15 per cent target that we'll continue to try and meet. We said that, as you mentioned, in our corporate plan, we'll continue to report on that through the PBS and our annual report, and we'll continue to make changes and try to get us to that or beyond it, if we can. I think that will need us to think about and make the structural changes that we're thinking about in the process of reform.

Senator O'SULLIVAN: Is the figure of 15 per cent just for that cohort or across the entire caseload of jobseekers in the system?

Ms Schofield: It's for the caseload who are in the Workforce Australia services component—those jobseekers who are serviced by an employment services provider, that cohort.

Senator O'SULLIVAN: On notice, can you come back to us with the retention rate across the different caseloads?

Ms Schofield: The six-monthly employment outcomes—

Senator O'SULLIVAN: People in the online system.

Ms Schofield: Happy to do that.

Senator HUME: The portfolio budget statement says that you've made refinements to how that 26-week rate is calculated. Can you tell me what those refinements are?

Ms Schofield: It was a relatively minor methodology change. We made the change to try and have a bit more confidence in the numbers. We weren't capturing all of the outcomes because of various lags in data. There were some 26-week outcomes that were just happening outside the right timeframes and weren't being captured, so we changed the methodology. We had to be able to capture a much truer sense of the 26-week outcomes that are relevant for this measurement. It did not have a significant impact on the number in the first instance.

Senator HUME: Can I be clear, then. Are both the 12.7 per cent in the budget papers and the 12.9 per cent figure that you provided on the newly refined method? Is that correct?

Ms Schofield: Yes, that's correct, the PBS and this number are on the same methodology, just with different end dates.

Senator HUME: But 2024-25 number would have been on the old method?

Ms Schofield: That's correct.

Senator HUME: Thank you.

CHAIR: I note we are breaking in seven minutes. Senator Allman-Payne.

Senator ALLMAN-PAYNE: Is the department aware of the Australian Institute of Health and Welfare's report titled *Mortality outcomes among people receiving income support*?

Ms Schofield: Yes.

Senator ALLMAN-PAYNE: Has that report been circulated amongst staff such as policy or compliance teams?

Ms Schofield: The report is public, so it would be available for anybody that wished to look at it.

Senator ALLMAN-PAYNE: The department doesn't proactively share that sort of information with its teams?

Ms Schofield: I'm aware that a number of staff in the department are aware of it because of the work that we do with the Australian Institute of Health and Welfare. I can take it on notice, but, no, I'm not aware that that was circulated more broadly to staff.

Senator ALLMAN-PAYNE: Is the minister aware of the contents of that report?

Senator Walsh: As the minister representing the minister, I'd have to take it on notice to provide that information.

Ms Schofield: I can say that we haven't briefed Minister Rishworth on this report. It's a report from the Australian Institute of Health and Welfare. If you've got questions about how that report is engaged with at the ministerial level, they may be best directed either to AIHW or to Health.

Senator ALLMAN-PAYNE: Is the department aware that that report says that jobseekers aged between 35 and 44 years old are dying at 9.6 times the rate of people who are not on JobSeeker?

Ms Schofield: As I said, we're aware of the content of the report. We know that this report is consistent with other literature in that, on average, people receiving income support do have poorer physical and mental health outcomes than people not receiving income support. Importantly, though, the report does make clear that the analysis does not examine, nor does it provide, evidence of a causal relationship between receiving income support payment and subsequent death.

Senator ALLMAN-PAYNE: Minister, this is a question for you. If people living in poverty are 9.6 times more likely to die, is that of concern to the government?

Senator Walsh: We look at the payments that are provided and increase them where we can. We know how important it is for people to be able to live an adequate, decent life on these payments. It's why we've increased JobSeeker by $4,700 a year over our time in office. It's why we've boosted rent assistance by 53 per cent. Those are really important improvements that we've made to the safety net. We know that there's always more to do to help people have better, more adequate incomes that help them lead a decent life, and we try to make those improvements where we can in the budget.

Senator ALLMAN-PAYNE: We've got the Reserve Bank saying that we need to have an unemployment rate of around four per cent structurally baked into our system to make our economy work. We've had evidence this evening that the success rate for mutual obligations through the Targeted Compliance Framework of getting people into work is below 15 per cent. Would it not be a better spend of this government, rather than spending hundreds of millions of dollars pumping money into the profits of big, for-profit job service providers, to abolish this system, which is not working, and give that money to people living in poverty as a significant increase in income support to lift them out of poverty, which all the evidence tells us is the best way to help people get a job, if they are able to work?

Senator Walsh: The government is committed to creating jobs. One point three million jobs have been created on this government's watch. We're committed to settings in our economy where unemployment is as low as it possibly can be. Under our government, unemployment is the lowest on average that it's been in 50 years. We are committed to improving payments for jobseekers and other people who are on social security payments, where we can and where the budget gives space to do that. We've increased JobSeeker by over $4½ thousand in our two terms of government and rent assistance by 53 per cent.

We know that this system can work better to support people to find work. That's exactly what we've been talking about tonight. We're working with the department to do that on the current settings, as well as engaging in the reform that is needed for the future to give people the best chance of finding work and having the security and dignity that work provides.

Senator ALLMAN-PAYNE: Yet we still have people dying at 9.6 times the rate of someone not on income support. I have no further questions, Chair.

CHAIR: That concludes our questions for this outcome. Thank you to officials for your service. The committee will take its suspension early. When we return we will deal with outcome 2, Comcare and then the remaining two agencies.

Proceedings suspended from 20:11 to 20:26

CHAIR: I call officials from outcome 2, Skills and Training. The opposition have the call.

Senator NAMPIJINPA PRICE: I've got a couple of questions on fee-free TAFE. I understand the Fee-Free TAFE Skills Agreement, which underpins fee-free TAFE places for students across Australia, is due to expire at the end of 2026-27. At the June budget estimates hearings this year, the department assured this committee that you were on foot with negotiations so that everything is in place in time for the beginning of the 2027 academic

year. We're now almost five months on from that hearing, and the 2027 academic year is almost upon us. Am I correct in understanding that only New South Wales has signed a new agreement, and even they only signed on Wednesday of last week?

Ms Faithfull: Thank you for the question. The multilateral agreement, the federal financial agreement, for free TAFE has been signed, and that kicked off with New South Wales. There are other jurisdictions that are imminent. But, for all intents and purposes, because the multilateral agreement has been signed, the agreement is underway and commenced.

Senator NAMPIJINPA PRICE: For New South Wales?

Ms Faithfull: Well, essentially for all states and territories—because the multilateral is the main, overarching agreement.

Senator NAMPIJINPA PRICE: Okay. How many states and territories have expressed concern with the level of funding contained in the new free TAFE agreement?

Ms Faithfull: We are in bilateral negotiations with states and territories. The purpose of the agreement and the purpose of the policy is ensuring that free TAFE is enduring, sustainable and ongoing. The objective was never about subsidising the price of delivery in any given state or territory; it was about supporting students with the cost of engaging in Vocational Education and Training. The agreement is a $925 million contribution from the Commonwealth.

Ms Stitt: Nine hundred and eleven.

Senator NAMPIJINPA PRICE: For clarity, I did ask how many states and territories have expressed concern with the level of funding contained in the new agreement.

Ms Faithfull: As I said, negotiations are ongoing, and I'm conscious that those negotiations are ongoing. States and territories have raised a number of issues in relation to those negotiations, and some states and territories have raised the amount per place. But, as I said, the funding was never about a per-place price subsidy; it was always about supporting students with the cost of participating in VET.

Senator NAMPIJINPA PRICE: Okay. So they've all expressed, perhaps, a concern with regard to—

Mr Duggan: I might just add here. My observation of these negotiations has been consistent with almost every other Commonwealth-state negotiation I've ever been involved in, which is that the states will, in the first instance, test the Commonwealth on whether there's any more money that they can extract through the negotiation. This has been no different. But we are working through that with the states and territories at the moment, and, as Ms Faithfull said, we're making good progress—very imminent in terms of being able to sign on more states and territories in the bilateral arrangements.

Senator NAMPIJINPA PRICE: Okay. More than 100,000 Australian students each year rely on these placements, and we're in the middle of a skills crisis under the Albanese government. What is your contingency plan for if these agreements remain unsigned by the majority of states and territories by the end of this year?

Ms Faithfull: I think we're confident around where the negotiations are at with each of the states and territories. We do have fallback contingency plans, but I'm really not in a position to articulate those in any detail, given we are currently in bilateral negotiations with some states and territories.

Senator NAMPIJINPA PRICE: Okay. Noting time constraints—we're getting on in the evening—and the number of questions I need to get to, could I ask for very succinct responses to the next few questions. Even a simple yes or no would be fine. Can you confirm that the new free TAFE agreement offers the Northern Territory less Commonwealth funding per place than the previous agreement. Or is that determined by negotiation?

Ms Faithfull: That's determined by negotiation.

Senator NAMPIJINPA PRICE: So there's no specific sort of offer. Would that be the same with regard to—the initial offer was a reduction of $46 per place.

Ms Faithfull: What I would say is I'm not in a position to talk about the details of the negotiations, given we're in active Com-state bilateral negotiations. And, as I said earlier, this free TAFE agreement was never about a subsidy of the price per place, given that the price and cost of TAFE differs in each of the different states and territories and differs per course. That amount has been allocated by population across the country. It is indexed, but I'm not able to talk in detail about, for instance, the Northern Territory, given negotiations are on foot.

Senator NAMPIJINPA PRICE: So you can't confirm that the new free TAFE agreement offers the ACT less Commonwealth funding per place?

Ms Faithfull: What I can say is that all states will receive more funding overall when compared to tranche 2 of the existing program, which seeks to establish free TAFE on an ongoing basis.

Senator NAMPIJINPA PRICE: Can you confirm that the new free TAFE agreement offers Western Australia less Commonwealth funding per place than the previous agreement.

Ms Faithfull: Again, I can confirm that all states will receive more funding overall when compared to tranche 2 of the existing program.

Senator NAMPIJINPA PRICE: Can you confirm that the new free TAFE agreement offers Queensland less Commonwealth funding per place than the previous agreement.

Ms Faithfull: I'd refer to my previous answer. All states will receive more compared to tranche 2.

Senator NAMPIJINPA PRICE: With regard to South Australia, will they receive less Commonwealth funding per place?

Ms Faithfull: Again—

Senator NAMPIJINPA PRICE: And Tasmania?

Ms Faithfull: Remembering that there's tranche 1 and tranche 2, compared to tranche 2, they will receive more. But negotiations are on foot, so I can't talk to the detail. This is about supporting the students—the cost for the student.

Senator NAMPIJINPA PRICE: Okay. The states and territories are probably going to disagree with your assessment of the importance of per-place funding, I imagine. On 3 November 2024, the Prime Minister stated, 'We promised fee-free TAFE for Australians, and now it is here to stay.' How can the Labor Albanese government claim credit for delivering permanent free TAFE when you are making the states and territories pay the vast majority of the bill?

Ms Faithfull: I guess I would dispute the premise of the question, with all respect, because, as I said, it was never about a price subsidy; it was about supporting the student and making free TAFE enduring so that each state and territory has certainty over the five years that there'll be 100,000 places in the system.

Senator NAMPIJINPA PRICE: I suppose this one's for the minister. How can Australians trust that free TAFE is actually going to be permanently delivered when you're putting it at risk in this game of chicken with the states and territories just to save a few dollars off the budget bottom line to help your colleagues and, I suppose, the embattled treasurer?

Senator Walsh: The main risk to fee-free TAFE would be a coalition government because you voted against making free TAFE permanent. Under our government, we've delivered over 850,000 free TAFE places.

Senator NAMPIJINPA PRICE: You might want to check. Can we fact-check that?

Senator Walsh: Free TAFE is changing people's lives in this country. I noticed, Senator, in your opening question, you referred to cost-of-living issues. Free TAFE gives people a great opportunity to train and retrain. It is also a really important part of our government's agenda on cost of living as well. The main risk to fee-free TAFE is the coalition.

Senator NAMPIJINPA PRICE: Well, we aren't offering the states and territories less funding per place for students. That's what the government's doing.

Senator Walsh: The department has given evidence that every state and territory is being offered more funding than in tranche 2, and that is the department's evidence.

Senator NAMPIJINPA PRICE: But not what the states and territories will say. With reference to question number SQ26-000996, the latest Skills and Workforce Ministerial Council communique of 18 September 2026 makes no mention of the independent mid-point evaluation of fee-free TAFE that was expected to be provided for consideration in July 2026. Has the evaluation been provided to the Skills and Workforce Ministerial Council?

Ms Faithfull: No, it hasn't as yet. It's been going through its process with state and territory officials.

Senator NAMPIJINPA PRICE: Why hasn't it been provided yet?

Ms Faithfull: It's been progressing through that consultation process with state and territory officials.

Senator NAMPIJINPA PRICE: What's the updated expected completion date?

Ms Faithfull: It will be imminent. Our intent is by year end.

Senator NAMPIJINPA PRICE: Will it be tabled in parliament? Is that when it will be tabled in parliament—by year's end?

Ms Faithfull: It is an evaluation that's been commissioned by all state and territory ministers and committed to as part of the free TAFE program. There was no intent to have this tabled in parliament.

Ms Stitt: That'll be at the discretion of the ministers.

Senator NAMPIJINPA PRICE: Who was engaged to complete the evaluation?

Ms Stitt: We engaged a supplier called Whereto Research via a procurement published on 14 June 2025 on AusTender. We did an RFQ that was issued to six panel members. The RFQ was open for 17 days. The assessment process considered compliance with the conditions, and we did an assessment. We approved the engagement of Whereto on 14 July 2025.

Senator NAMPIJINPA PRICE: How much did the evaluation cost?

Ms Stitt: The value was $781,000, GST inclusive.

Senator NAMPIJINPA PRICE: Are you able to provide the tender notice? Did you say that was published?

Ms Stitt: Yes, that would have gone on AusTender.

Senator NAMPIJINPA PRICE: Thank you. At the last estimates hearing, my colleague sitting next to me asked some questions about fee-free TAFE placements for students on temporary visas and similar. Your advice was that fee-free TAFE data by citizenship status is not shared with the Commonwealth, as part of state and territory reporting agreements. Why is this data not shared with the Commonwealth?

Ms Faithfull: Tranches 1 to 3 were originally set up in a short, time bound program. We put in place performance monitoring and reporting commensurate with federal financial agreements that are for time bound programs between the Commonwealth and states and territories. What we've received from states and territories in relation to tranches 1, 2 and 3 has been regularly reported on our website. As we've probably previously talked about in this forum, we will be able to tag the enduring free TAFE in NCVER datasets, and we've got a different performance regime that's incorporated in this enduring FFA. To specifically answer your question, that level of data was not something that the Commonwealth or states and territories in the negotiations envisaged collecting, given the short-term nature of the program for tranches 1 to 3.

Senator NAMPIJINPA PRICE: But, surely, given the $1.5 billion that the federal government has poured into fee-free TAFE, this sort of data would be sought after. So states didn't actually capture this data—is that correct?

Ms Faithfull: Data into the citizenship status of the—states have the ability to design the courses that they would like to add to the course list for free TAFE and the students. And then we have put in various specifications across the three tranches. Citizenship status hasn't been a key requirement with that.

Senator NAMPIJINPA PRICE: The government hasn't sought this data?

Ms Angus: The eligibility requirements are set by the states and territories, not by the Commonwealth. So, in fact, it's determined by the state. Each jurisdiction can apply the eligibility requirements that most suit their circumstances.

Ms Stitt: If I could add to that, all jurisdictions require applicants to meet residency requirements and do not place restriction on applications if they have previously enrolled or completed a free TAFE course in another jurisdiction.

Senator NAMPIJINPA PRICE: So, basically, any data captured by the states and territories regarding fee-free TAFE is just with regard to residency as opposed to citizenship?

Ms Angus: That would be determined by the state themselves.

Senator NAMPIJINPA PRICE: It's not something that the Commonwealth government has sought after or asked the states for? There are negotiations that, obviously, take place. It's $5.45 billion.

Ms Angus: As part of the agreements about the eligibility, it was determined that states and territories would have control over that themselves. That was part of the agreement at the time.

Senator NAMPIJINPA PRICE: So the government hasn't asked for that specifically at all at any stage?

Ms Faithfull: No, we haven't.

Senator NAMPIJINPA PRICE: Has the residency data been provided to the government?

Ms Stitt: We'll take that on notice and double check that.

Ms Faithfull: We will take that on notice.

Senator NAMPIJINPA PRICE: Okay. I will take you back to the department's appearance before this committee at the most recent budget estimates, where the department revealed that, at this point in time, with the

data that you collect in relation to the fee-free TAFE program, you are not able to track the pathway into work. Is that the case? You currently have no way of knowing whether a fee-free TAFE participant is gainfully employed at the end of their course?

Ms Faithfull: The requirements that we imposed in the agreement were around priority courses, priority cohorts, enrolments and completions. So we are tracking and have reporting on all of those factors. Because we don't track the data at an individual student level, we're not able then to track that pathway into employment. With enduring free TAFE, we will have that that free-TAFE flag on the data that is provided to the national data custodian NCVER, and it is then possible for NCVER—I might have mentioned this last estimates—with, say, Jobs and Skills Australia, to do a set of analysis with the ATO to look at employment and income outcomes for students in VET. We could envisage, based on that practice already, that we will be able to look at the employment and income outcomes for free-TAFE students.

Senator NAMPIJINPA PRICE: Previously, you've never had a way of knowing whether a fee-free TAFE participant is employed in the industry they actually studied in?

Ms Faithfull: Because we don't track the data at an individual student level, no, we don't have that insight.

Senator NAMPIJINPA PRICE: You have no way of knowing if, for example, a certificate III in bricklaying and blocklaying student has actually ended up working as a brickie or at a construction site?

Ms Faithfull: For instance, when we look at total VET activity, we know a very high percentage of our students achieve the purpose for which they intended with their study, and they end up in employment as a result of their study—but I'll get the right data for you, Senator. We can use that as a proxy to hypothesise that free-TAFE students, based on that broader VET population cohort, are going to get the outcomes that they need from their study in terms of both employment income uplift and particular additional skills that they might need in their workplace. As I said, at this point in time, with tranche 1 to 3, we don't have that data at that individual student level, but we will have that data ongoing from 1 January 2027.

Senator NAMPIJINPA PRICE: Why wasn't employment outcome data for fee-free TAFE collected at the start? Did the government not ask for it?

Ms Faithfull: It's the inherent challenge of not capturing it at that student level. Given the nature of the program and the original intent for it to be a short-term program, there was an agreement between the Commonwealth and the states and territories that to collect individual student data would be too onerous in the context of the overall program.

CHAIR: Senator, just to let you know, I would normally have rotated the call by now, but Senator Dolega has ceded his question, so we're with the opposition. I just want to clarify, if you're seeking to rotate amongst yourselves, go ahead.

Senator O'SULLIVAN: Did you want to finish what you're on?

Senator NAMPIJINPA PRICE: I've got one more. At the most recent budget estimates, it became clear that there isn't a consistent or set definition for what constitutes 'withdrawal' in national VET data collection, but NCVER was working on a definition. Has a definition been chosen yet?

Ms Faithfull: Our NCVER colleagues are here later this evening and may be able to talk in more detail. Otherwise, I'd have to take that on notice and check where they're at with that process.

Senator NAMPIJINPA PRICE: Okay.

Senator O'SULLIVAN: I just want to follow up on a QON, but, before I do, in relation to the negotiations with the states, I've previously asked about retention data and employment outcomes, in particular. Are any of those metrics part of your negotiations including them? I know you were talking in an earlier discussion about the limitation because of the length of time with each of the existing tranches. Is that going to be resolved going forward?

Ms Faithfull: In terms of the employment data, because we'll be able to flag free-TAFE enrolments in the NCVER data, we will be in a better position to look at that pathway into employment. The multilateral agreement has some more rigorous requirements. I might ask Ms Stitt to give you an overview of some of those requirements.

Ms Stitt: As we've already advised, in December of 2025 the skills ministers agreed that, under the ongoing program, the states and territories would report subject-level data to NCVER. That will enable it to become part of the Australian Vocational and Training Management Information Statistical Standard and be part of being able to compare free TAFE with a broader VET cohort. That will give us more detail. Furthermore, the new agreement also provides for the states and territories to provide annual insight reports, providing annual qualitative data on

program effectiveness, administration and delivery. And then, like the current agreement, at the end of the ongoing agreement, there'll be a joint review in the final year.

Senator O'SULLIVAN: Including completions of courses, is that going to be—

Ms Stitt: That's part of the NCVER dataset, yes.

Senator O'SULLIVAN: Sorry; it wasn't a QON. It was questions that I had answered in the last estimates. I misread my first line here. This was about the civil contractors skills, if you recall, and the qualifications. You advised in June that the methodology underpinning the Australian Apprenticeships Priority List was under review. What specific progress has been made on that since June, which stages of the review have been completed, and when does the department expect to finalise that work?

Ms Faithfull: I will ask for my colleagues to come up, and I might also clarify the record of when I talked about student outcomes as a proxy for free TAFE. NCVER Student Outcomes Survey shows that 76.2 per cent of qualification part-completers achieved their main reason for training, 76.3 per cent were employed or in further study after training, and 53.1 per cent reported improved employment status. That's for part-completers. There is also data that I can bring on full completion. That's to Senator Nampijinpa Price's former question. In terms of civil contractors and the apprenticeship priority methodology list, I'll ask Ms Wettinger to give you an update on that process.

Ms Wettinger: If I may, could I ask you to repeat that question, so I answer your question?

Senator O'SULLIVAN: Sure. I'm asking about the methodology underpinning the Australian Apprenticeships Priority List, and I was told in June that that was under review. I'm wondering what specific progress has been made with that since June.

Ms Wettinger: Thanks very much. That's correct. The methodology is under review. You'll be aware that there are a number of factors that we take into account when we are developing the priority list. In terms of the methodology, it was announced that we were going to be doing that in the 2025-26 budget, and the data sources that we rely on primarily are from the Occupation Shortage List, which Jobs and Skills Australia has just released, as well as the Training Occupation Pathways. We have also undertaken a range of targeted consultations. We are going to be including in the next occupational list factors that reflect occupations that are of relevance and significance to First Nations as well as women. We are in the process of completing those consultations. In terms of when the methodology will be finalised, it will be published later this year and before it comes into effect on 1 January 2027.

Senator O'SULLIVAN: In estimates in June, I raised the concerns from the Civil Contractors Federation, who were anxious about there not being relevant classifications, if that's the right terminology, for the particular occupations that they have, and people were being misclassified. Has there been any progress specifically in relation to civil construction jobs?

Ms Wettinger: Given that the list hasn't been finalised yet, I can't comment specifically on whether civil contractors will be included or not in the next priority list. But what I can say is that, as in the evidence that we gave on record last time, we do primarily rely on OSCA major groups 3 and 4 when we are developing the priority list. That's based on the fact that those levels are used primarily and have the strongest apprenticeship participation rates across the economy. We will be relying heavily on major groups 3 and 4.

Senator O'SULLIVAN: Has there been any engagement with Civil Contractors Federation since June?

Ms Wettinger: Yes.

Senator O'SULLIVAN: Thank you. Obviously, in the housing crisis, we need civil works done for land developments. They're crying out for skills. They're crying out for staff. They want to train people, but they struggle because the technical classification of those qualifications is not fit for purpose. Have you assessed a category based approach to recognising civil construction pathways, rather than relying on a single nominated occupation?

Ms Wettinger: We have used the methodology that I outlined, in terms of relying on Jobs and Skills Australia's Occupation Shortage List as well as the TOP. Specifically with civil contractors, we haven't done any specific mapping. What I can say, though, is that, under the government's election commitment, the Advanced Entry Trades Training program, civil contractors are eligible in terms of potentially receiving assistance.

Senator O'SULLIVAN: Given the time, I'm going to put the rest of those questions on notice. Can I go to a different subject in relation to early childhood education, care workers and their qualifications. I want to ask about the Commonwealth funding of HumanAbility, in particular its work on early childhood education and care qualifications. I understand that they are reviewing the Certificate III and diploma qualifications for ECEC—

probably grant list records of $54.55 million in a grant agreement through to 28 June. Can the department outline what HumanAbility is actually funded to do under that grant?

Ms Faithfull: I might ask my one of my colleagues to come up, but I think it might be easier to take that on notice, given it's around a specific grant, and we probably won't have that level of detail.

Senator O'SULLIVAN: So they're a Jobs and Skills Council—is that right?

Ms Faithfull: That's right, yes.

Senator O'SULLIVAN: Even at a high level, you can't tell me?

Ms Faithfull: All Jobs and Skills Councils have two key functions. One is to engage in sectoral level workforce planning and projections, and the other is to support the tripartite consultation on training packages. There's obviously a nexus sometimes between those two pieces of work, depending on the sector. HumanAbility has a large range of social services and care sectors that it's responsible for. It's got quite a few different projects in the pipeline at the moment. We would need to take that on notice specifically.

Senator O'SULLIVAN: Yes. My next questions go to some detail. I'll put those on notice then.

Ms Faithfull: That'd be great. Thank you.

Senator O'SULLIVAN: We can get a good answer.

CHAIR: Can I check in. We're seeking another rotation here for skills.

Senator NAMPIJINPA PRICE: It's Key Apprenticeship Program questions.

CHAIR: A reminder—if you do feel like you may not need the last two agencies, let me know early, as we've got an hour to go and three more agencies to get through after this outcome.

Senator O'SULLIVAN: Can we pause for two seconds?

CHAIR: Sure.

Senator O'SULLIVAN: As in the broadcast?

CHAIR: Sure. Yes. The committee suspends.

Proceedings suspended from 20:59 to 21:00

CHAIR: I'm able to advise with apologies that the National Centre for Vocational Education and Research are able to depart. The questions to you will be placed on notice. I hope that's good news, not disappointing news, for you. We'll continue in this outcome. Senator Nampijinpa Price?

Senator NAMPIJINPA PRICE: We spent some time during the June budget estimates hearing on Labor's $266.2 million in cuts to Australian apprenticeship incentives, whereby from January 2027 the Key Apprenticeship Program employer incentive will be reduced by $1,000 for small businesses and removed altogether for larger businesses. I'm interested to know what specific advice the department provided to the government to justify the $1,000 cut to the Key Apprenticeship Program employer incentive for small businesses.

Ms Faithfull: The department as a first basis relied on the Strategic Review into Australian Apprenticeship Incentives, which found that particularly for larger businesses there was a greater level of capacity or less influence by the incentive in terms of influencing their hiring decisions for apprentices. The other consideration was our mapping, particularly in those priority occupations and particularly in construction. Ninety-eight per cent of the construction employers in the apprenticeship system are SMEs. That was another factor that went into the policy analysis that supported the decision-making.

Senator NAMPIJINPA PRICE: To reduce it then for small businesses—that was the justification behind that for small businesses. Can you point to any economic circumstances that indicate a reduction to the employer incentive that is justified from January 2027.

Ms Faithfull: In the context of a constrained fiscal environment, the government made a decision to target and sharpen the focus of incentives to SMEs, to priority occupations and also to the Key Apprenticeship Program, which focuses on construction and net zero. That was a decision that was made in the context of a tightening fiscal environment and supported by evidence that indicated that small to medium enterprises feel the benefit of incentives. Large enterprises have more capacity. Particularly in construction, where there's such a majority, SMEs are the main employers of apprentices.

Senator NAMPIJINPA PRICE: I suppose, though, that any small business in this country will tell you that the cost of doing business is getting pretty tough. Having to find an extra $1,000 per apprentice is certainly going to make things harder, isn't it?

Ms Faithfull: I totally appreciate what you're saying in the context of SMEs. From 1 January, SMEs who are participating in the Key Apprenticeship Program will have access to $4,000 per apprentice and SMEs that are participating with a priority occupation will have access to $2,500 per apprentice. That's in addition to other loans and support—supports for apprentices with disability. All payments to date will be grandfathered as well, so if you've got apprentices that are currently in the system there will be a grandfathering of all of those payments.

Senator NAMPIJINPA PRICE: We also heard which industries will see the greatest reduction in support as a result of these apprenticeship incentive cuts, and the department's advice was that everything on the priority occupation list from manufacturing through to trades will be affected. Did the department undertake any analysis or modelling of the number of affected apprentices in each priority occupation?

Ms Faithfull: We look at our historic data, and we do use that as a proxy to do modelling of impact. So, yes, we would have done modelling to understand the projected impact based on our historic data.

Senator NAMPIJINPA PRICE: Are you able to provide the modelling that this relies upon, that the decision is relied upon?

Ms Faithfull: What I would also say, though, is that our analysis is also underpinned by a policy discussion around the various factors that influence the apprenticeship system—the employers and the apprentices' decisions. Those factors include the macroeconomic factors such as unemployment levels. It includes terms and conditions. It includes culture within the workplace. It includes career choices and—

Senator NAMPIJINPA PRICE: Are you able to provide that on notice, what you've described?

Ms Faithfull: We can take that on notice.

Senator NAMPIJINPA PRICE: Thank you. In June, the department estimated the number of affected large businesses to be 1,800. How many apprentices and trainees did those 1,800 businesses take on in 2025, and how many does the department expect them to take on in 2027?

Ms Wettinger: Based on the time that the decision was made, the data showed that, of those employers that you mentioned, there were around 20,635 commencements that were related to those businesses. As Ms Faithfull has pointed out, it's difficult for us to extrapolate what that will turn into in terms of future commencements. But I would say that we did rely heavily on research that showed that, during the BAC and CAC period, large businesses were relatively unresponsive to the incentives and that a significant proportion of the incentives were being used by small and medium businesses—98 per cent and 95 per cent, respectively—to take on new workers as opposed to 29 per cent for large businesses. I guess what I'm saying is you won't see an equal reduction in employers taking on apprentices as a result of incentives, because we know they're relatively inelastic to the use of them.

Senator NAMPIJINPA PRICE: So we'll just have to wait until we get to that point in time to receive that data.

Ms Wettinger: Yes.

Senator NAMPIJINPA PRICE: Can the department provide an update on the recruitment of the government's proposed skilled migration commissioner?

Ms Faithfull: Certainly. The budget decision was for the government to scope and consider options on whether to establish a skills commissioner. What I would say is that the government hasn't made a decision as to whether or not it will establish a skills commissioner. It's at the beginning of a process to consult on why you might have a skills commissioner, what those options would look like, what the functions might be and what problems you're trying to solve by establishing this role.

Senator NAMPIJINPA PRICE: During the last estimates hearing I did raise concerns about the function of this commissioner and what it would serve, given the obvious potential for duplication in this role. You were consulting back then. You're still consulting. We were told this would be worked through. So a position description hasn't been created for the role yet or a list of duties or anything like that?

Ms Faithfull: No.

Senator NAMPIJINPA PRICE: When will a decision be made?

Ms Faithfull: Currently, we're consulting with the states and territories. That's given the complexity of the system and, in particular, the role of the states and territories in local responses to supporting migrants into work, and also the nexus of this work with the Treasurer's link to the Council on Federal Financial Relations. Through the treasurers, we're just undertaking that consultation at the state and territory level. From there we'll work out the next phase of consultation in terms of—

Senator NAMPIJINPA PRICE: So there's no firm date as yet?

Ms Faithfull: No firm date, no.

Senator NAMPIJINPA PRICE: Okay. I'm happy to rotate the call.

CHAIR: I think we're in a position where we can move on then.

Senator NAMPIJINPA PRICE: Yes, we can move on.

CHAIR: In that case, thank you to officials from outcome 2, you're free to depart.

Comcare

[21:13]

CHAIR: I call officers from Comcare, including its Chief Executive Officer, Mr Colin Radford. Welcome to you, and do you have an opening statement this evening?

Mr Radford: No, Chair.

CHAIR: Thank you. Senator Sheldon, you have the call.

Senator SHELDON: Thanks very much. I think a document has been circulated regarding Cleanaway?

Mr Radford: Yes, there has.

Senator SHELDON: I'll get to that document in a moment. I just want to ask some serious questions. Cleanaway is of course a self-insured licensee in the Comcare scheme. In my view, it has certainly become one of Australia's worst offenders when it comes to workplace safety. Are you aware that eight Cleanaway workers have been killed at work since the middle of 2022?

Mr Radford: I'm aware of six in the last two years, but that could be correct so I'm not disputing that.

Senator SHELDON: Are you aware that there's been a series of serious injuries that's occurred as well?

Mr Radford: Yes.

Senator SHELDON: I take it that you're aware that undertakings were given on 13 March 2025 by Cleanaway to deliver safety measures after prosecutions. I congratulate Comcare for the work in this space. The national waste management company Cleanaway has been fined a recorded $1.1 million for breaching federal work safety laws over an Adelaide truck crash that killed two motorists. It was a horrific fatality, with two lives lost. In the equation of accountability financially, that's a lot of money in a court sense, but no amount of money—and certainly that amount of money doesn't—can compensate or make people accountable when two lives are lost in the way that they were lost. But I also give credit to Comcare for getting an undertaking from Cleanaway that they would spend $900,000 on safety measures across their national operations following the incident that caused serious injuries to a Canberra worker. Are you aware of that, Mr Radford, or maybe one of your team?

Mr Radford: I think that may pre-date my time at Comcare.

Senator SHELDON: Maybe one of your team could help on both the eight people killed since mid-2022—I might add that more people died at that company prior to that—and the undertaking that was given by Cleanaway on the amount of money I mentioned, $900,000, to train.

Ms Close: That's correct. Comcare accepted an undertaking on 20 February 2025 as an alternative to continuing prosecution proceedings in relation to that incident at the Cleanaway facility in the ACT where a worker sustained serious injuries when his hand came into contact with an unguarded cardboard baling machine. That undertaking remains ongoing.

Senator SHELDON: Can I just go to the document that we've circulated. There is an exhaustive list of examples. I'm aware that Comcare received these in May of this year following inspections. This document was received by Cleanaway in May this year. This document I'm giving to you is the same document that you received in May. I gave it to you prior to this hearing. I'm just going to touch on some of the contraventions. There were blood sample vials on the floor and blood samples full of coagulated blood scattered on the floor. Cleanaway, for those that aren't aware, is a waste company. It's a large national operator. It has responsibility for collecting waste from high-risk, high-biohazard areas—hospitals et cetera. So you've got blood spilled and vials broken all over the floor. There's a series of photos which you can see on page 12. You're nodding your head. I'm taking it, Mr Radford, that you're seeing those?

Mr Radford: Yes.

Senator SHELDON: There are photos of blood splatter and broken vials. There are so many pages here. I think it's appropriate that I show the gravity of what's going on. I'll just touch on some of them. There are many,

many that I'm not including. On page 17, it shows pallets of used scrubs stored in the yard and undeclared biological waste in black bags in the yard. The bags are overflowing. Some of them are broken open. The scrubs are visible. The scrubs are caked in dried blood. They had a distinct, offensive and prominent odour. This was at another site. This is not the same site. On page 18, at other sites again, biological waste bins were filthy, with no adequate safe disposal. There was a distinct, offensive and prominent odour. Some bins were marked as containing toxic waste. For those that may be listening, there are pictures of bins stacked on top of each other. They're like wheelie bins at home, but these have toxic biological waste in them. They're stacked on top of each other. So someone's lifted a wheelie bin on top of another wheelie bin with toxic waste, and they're sitting in the middle of the yard. The photo certainly gives the impression that there are a considerable number of those bins scattered through quite a large area within the facility that are double-stacked.

There's another photo on page 19—scattered syringes, clinical waste photos, flammable liquid bins stacked on top of each other. There are similar photos right up until I get to page 28. There are spill test kits, out of date, on page 28. This is yet another site. The fire extinguishers—there's flammable material in there—are missing test tags. Again, I'll jump a number of pages, not because there aren't a number of horrific examples I could give but because there are so many that I'm just highlighting a few horrendous ones. The obvious thing—for those of us that have a basic understanding of safety access, on page 31, those photos show access to fire hoses blocked, and access to the fire hose in one of the warehouses is blocked by rubbish and debris on the floor. Again, this is a separate site. Going to other instances of barrels and bins, on page 32—stored in front of roller doors and emergency exit doors. The list does go on and on and on. This is a company that gave an undertaking on 13 March 2025 not only to Comcare but importantly to the courts, and we have this series of deaths that has occurred. Where are they at, and what other prosecutions either is Comcare investigating or are underway at the moment against Cleanaway from Comcare?

Mr Radford: Thank you for providing the report and for taking the time to step through some of those very concerning issues that you have raised. Cleanaway is currently the subject of a national regulatory program by Comcare which involves a series of focused inspections of Cleanaway sites—primarily unannounced inspections. We have six active investigations on foot at the moment into potential contraventions of the Work Health and Safety Act. Between September of last year and 31 August this year we've commenced 113 monitoring compliance activities, which include 94 inspections and four criminal investigations. We've conducted approximately 82 site visits in that time, and we've issued 34 enforcement notices over that period. There is one current prosecution underway that's currently before the courts, which relates to a fatality at the Lucas Heights facility. Beyond that program, we also have—and I'll ask my colleague Mr Napier to provide a bit more detail—a series of regulatory programs where we target particular PCBUs or employers where we are concerned about their health and safety performance, and Cleanaway is the subject of such a regulatory program commencing this financial year.

Senator SHELDON: Before you go to Mr Napier, thank you for commenting on the seriousness of these actions. What I find particularly galling is everything that led up to the undertaking—but the fact that this investigation, where I went through that non-exhaustive but long list of examples and photographic evidence, even after the undertakings, well over 12 months afterwards, if anything, it appears to me from the evidence that I've received that it's worse than it was before, which is absolutely frightening.

Mr Napier: As Mr Radford said, we do have a dedicated regulatory program in addition to the reactive work that we undertake as and when matters are notified to us as the regulator. That program was instituted because of our concerns with safety generally across Cleanaway's operations, and that program involves a large number of unannounced site visits. We have drawn on some of the information that you've discussed earlier to inform the scope of those activities. We are concerned about Cleanaway's safety performance and we have been for some time. With that in mind, we want to engage across workplaces—Cleanaway, as I'm sure you know, has many sites across Australia. Our concern is that safety is not being consistently managed across those sites. With that in mind, we've designed a program which involves a range of unannounced visits and, where necessary, notices being issued to assess their compliance broadly across aspects of the business.

We've mentioned, for instance, the interaction of people and plant—so part of the focus is on high-risk plant, including the interaction with mobile plant and people. Vehicle interactions and traffic management planning are a concern, and that's the focus of this regulatory program. Management of hazardous chemicals—and you've made some references to some very poor behaviour and practice in that place. Contractor labour hire arrangements are in scope including consultation, supervision and coordination of activities and, importantly, engagement and consultation arrangements with workers and HSRs. We're concerned to know what officer due diligence duties Cleanaway is exercising. At the senior levels across the organisation, at board and management,

are they taking account of these concerning incidents, and what steps are they putting in place to address them across the network of sites? So it's quite a comprehensive program.

Senator SCARR: Can I ask a follow-up question, on indulgence. I've previously spoken about Cleanaway's performance from an environmental perspective in my home state of Queensland and the issues that have been caused there, and I'm deeply shocked by the photographs which I saw in the TWU's report, especially the biological hazardous material. That's just shocking. Their chair said in their last annual report, in 2026, that they'd conducted an independent safety review. They said:

The review did not identify evidence of a systemic failure in strategy design, governance or organisational commitment to safety. The review identified opportunities to enhance consistency and feedback mechanisms closer to frontline operations.

How does that marry with what Comcare is seeing, and has anyone had engagement with the chair of the board of directors or the chief executive officer and the managing director of Cleanaway, because there seems to be an absolute disconnect between what the chair has said in their last annual report and what we've just seen in the photographs in the TWU report? I believe the shareholders would be absolutely shocked and dismayed at that disconnect.

Mr Radford: It certainly doesn't accord with our observations of Cleanaway and it certainly doesn't represent a situation where, as I mentioned earlier, we've issued 34 enforcement notices in the last 12 months alone. That does not, certainly in my view, demonstrate a clear health and safety system across the business. As I said, we've issued 34 enforcement notices. Cleanaway is the subject of a national regulatory program, and that work is continuing. In terms of the engagement with the senior officers, as Mr Napier said, part of our regulatory program is looking at officer due diligence within the company. As you would be aware, senators, officers have significant personal liabilities and duties under work health and safety laws, and we're examining Cleanaway's performance in relation to those duties.

In terms of engagement, senators may or may not be aware that self-insured licensees sit broadly within the remit of the Safety, Rehabilitation and Compensation Commission. We regulate 29 out of the 39 self-insured licensees from a work health and safety point of view. We don't regulate them all, but Cleanaway is one that we do regulate in terms of their performance and, for want of a better term, their fitness to retain their self-insurance licence that sits with the SRCC. Earlier this year—I'll correct the record if I get this wrong, but I think it was in March of this year—the chair and the CEO were called before the SRCC essentially to explain themselves. I did not attend that meeting, for the reasons that we had regulatory and a prosecution on foot. I didn't think it was appropriate as CEO and the regulator under the act to engage in that conversation when they were meeting with the SRCC.

Senator SCARR: I'll certainly be going through the annual report and sustainability report to see if they mention that engagement. I want to commend Senator Sheldon for raising these issues and commend the TWU, actually, for the important work they've done in terms of that report.

Senator SHELDON: Thank you. I'll pass it on. I think your question highlights the fact that, at 26 February 2026, as reported in the *AFR* from an external review, they said there was no systemic failures in the area of occupational safety and the eight deaths and more generally. I'm going to take this because it raises serious questions about a participating member of this committee, and I'll certainly be participating until the end of this subject matter over the coming months and year—and years if it takes them. One of the things I'll be putting very strongly to the committee is that there should be consideration given to the Safety, Rehabilitation and Compensation Commissioner appearing here. They are the ones that consider—correct me if I've got this wrong, Mr Radford. It says it will generally consider suspending or revoking a self-insurance licence only where there are serious or systemic failures or where a licensee has resisted or failed to achieve compliance. Since 2021, eight workers have lost their lives, as we've said. The penalty, of course, is $1.1 million. The undertakings, certainly from the evidence before you—as I understand, the charges that have been pursued by Comcare since the breaches of the undertakings in 2025. At some point there will be repeated fatalities or a serious, horrific injury. Has Comcare raised Cleanaway's safety record with the Safety, Rehabilitation and Compensation Commission for consideration as a self-insurance licence issue? I foreshadow that they're going to have to be here.

Mr Radford: Thank you. I don't want to speak on behalf of the SRCC, but the SRCC does receive regular reports on the licensees on a range of issues, including their health and safety performance. As I said, I don't want to speak on behalf of the SRCC, but certainly, when I have been present at SRCC meetings, they have raised concerns about Cleanaway's work, health and safety performance.

Senator SHELDON: Thank you. We've got eight workplace deaths and what I understand is the largest penalty in history of the act, at $1.1 million.

Mr Radford: That's correct.

Senator SHELDON: Is that not enough to trigger the consideration of a licence suspension or revocation? Is there a role that Comcare plays regarding raising consideration by them? Obviously, they have to make the decision, but is it part of the remit of Comcare—you might explain this to the committee—to make recommendations for serious consideration whilst it's being dealt with by that commission?

Mr Radford: Comcare provides secretarial support to the commission. We're required to do that under the legislation. We also provide information that is asked for from the commission. I'm going to turn to my deputy down the end, who's more familiar with the interaction between the legislation and the role of the SRCC, but I don't believe we've ever made a licence recommendation, because it is not our role under the act to do that.

Senator SHELDON: I take it that you've also flagged to the commission the concerns of Cleanaway, as you said in your earlier evidence?

Mr Radford: Yes. And the commission has also raised those concerns directly with Cleanaway.

Mr Duke: The role of Comcare, as the CEO described, is one where we provide administrative support and secretarial support. The commission itself has set out a broad framework of licence-compliant performance, a whole range of things. A lot of that's on their website. Comcare's role is to gather information related to those various areas of interest for the commission and pull together information. Against every licensee, a report is produced every meeting of the commission, and it will delve into a range of issues, including work health and safety performance, claims performance and rehabilitation performance. The commission itself has set various performance KPIs for those things. At various times the commission also will direct, which Comcare will then facilitate, prevention audits, work health and safety audits—those sorts of things. So Comcare's role is really to gather that information.

Senator SHELDON: I think you've given a thorough description. Thank you for that. I'll just move on to talk about what I appreciate is a specific case. A lot of this has been reported in the media, and I appreciate there's some limitation to your speaking about a specific individual. Just for the record, I've spoken to that individual directly myself, and she's comfortable about me raising this question. But I also understand the capacity for you to answer detail on specific cases.

It goes to Hine Murphy, a working mother of seven and a grandmother, who's been left with permanent vision loss due to Cleanaway's disregard for safety. Hine is a truck driver. She was carrying out a shift when concentrated methanol from a hospital waste bin poured over her. She contacted management to seek urgent safety advice. Crickets. No response. In the coming weeks she was hospitalised, before finding out she would have permanent vision loss. I'm just appalled about how this company is operating. They have photographs, they have medical evidence, and yet, as she was a self-insured operator, they've now discontinued her compensation payments. She is 85 per cent blind in both eyes. She's a single mother and grandmother who raises her kids and grandkids. She is very tough and strong. Her kids are very supportive of her. I've met them on a number of occasions now.

I might just say—just bear with me, and I apologise to the committee and the chair—I don't think it's surprising to see that an equity firm was in negotiations to purchase Cleanaway, when, as you know, one of the things you want to do is decrease costs. I put this directly on Cleanaway, and I'll say this on the record here. I'm not asking for Comcare to comment—unless you wish to for some reason—but I'm putting to the committee and to the public that this is a calculated attempt to falsely imply they had fixed their problems up. They threw her to the wolves—and her kids and her grandkids—after blinding her. They failed to respond to contacts and they failed to respond when she was speaking to them about coming to visit. They did some horrendous and inappropriate investigations, without witnesses, into her medical condition. It is just the lowest of the low.

But I want to go to this point. The private equity firm that has now purchased it is EQT Infrastructure. Has there been contact with EQT to find out what they are doing? I'm going to say this again: equity firms buy a company and either split it up or shove it off to somebody else. They paid well above—20 per cent above—the price for the shares. Here's capital sweated already; it's going to be sweated again, in an operation that's killing people, maiming grandmothers and then denying responsibility because they're a self-insurer. They deserve to be in the gallows, as far as I'm concerned, and held to account for what's going on.

Mr Radford: We've not had any engagement with the private equity firm.

Senator SHELDON: Can I, then, ask you to take into full consideration contacting the private equity firm through the appropriate channels?

Mr Radford: I think that would be a matter for the SRCC. Again, I don't want to create obligations for the SRCC, but I'd be more than happy to pass that message to the SRCC on the committee's behalf, Senator.

Senator SCARR: Mr Radford, the key question is: are they actually aware of everything that is happening with respect to Cleanaway? That's one of the issues that immediately comes to my mind. I dearly hope that the chair and the board of directors each personally watches Senator Sheldon's presentation this evening, because it is shocking.

Senator SHELDON: Thank you, Senator. There's a lot more to be said on this. I'm mindful of time, but there's a lot more to be done on prosecuting this matter. Back to the chair.

Senator DOLEGA: Can I just say one thing. Mr Radford, last time we were in Senate estimates, I asked you about the record fine that Cleanaway had received. It appears, again—after Senator Sheldon's evidence tonight—that, to these jokers, this is just the cost of doing business. It is an absolute disgrace. We need a strong regulator. We need you, and workers need you, to be out there and to have these companies fear you when they are acting like this. The whole premise behind industrial manslaughter laws is that, if you kill a worker, you go to jail. We need to see something happen with these guys. It's an absolute disgrace.

Senator SCARR: Are you aware that, if a successful takeover is consummated, all the senior executive team's long-term and short-term incentives will typically immediately vest and they will walk away with millions and millions? Are you aware of that dynamic in the context of a takeover?

Mr Radford: Not from a regulatory point of view—but I'm aware of what generally happens when private equity buys out an existing listed company.

Senator SCARR: Thank you.

CHAIR: Mr Radford, I think you can see the depth of passion and alarm on this committee, so I'm sure we will be returning to these issues. Thank you, Senator Sheldon, for raising it. At this point, Mr Radford, we need to let you go. Thank you.

Australian Skills Quality Authority

[21:43]

CHAIR: I now welcome officials from the Australian Skills Quality Authority, including its chief executive officer, Ms Saxon Rice. Welcome to you; do you have an opening statement?

Ms Rice: No, thank you, Chair.

CHAIR: Senator Nampijinpa Price.

Senator NAMPIJINPA PRICE: Thank you very much. Can you please walk me through the consultation process ASQA undertook with registered training organisations, particularly smaller providers, for the most recent changes to ASQA's annual registration charge?

Ms Rice: Certainly. The whole of the process was a complete review of ASQA's cost recovery implementation statement. We are a fully cost recovered agency. We have been since 2022, so for four years now. We have progressively moved to a full cost recovery model. We undertook a full review of all of our charging because, in the period since we last consulted with the sector and set our fees and charges, which was in 2022, we have had considerable changes to the way in which we regulate the activities that we need to charge for as well as the composition of what forms the annual registration charge.

Our fees and charges are made up of two key areas. We have an annual registration charge, and that's a charge that cannot be attributed to any individual. The activities that form the cost of that total charge are attributed to the sector as a whole, so then we need to work out a methodology for the apportionment of the annual registration charge to individual providers. The second part of our fees relates to entity directed charges. So that's for, for example, an individual provider who lodges a renewal of registration application or an individual provider for whom we are undertaking a performance assessment. There's an individual charge directly to that provider.

The process that we undertook as part of the full review of all of our cost recovery was in line with the Commonwealth charging framework and the Commonwealth charging policy. We worked together with the Department of Finance. We worked together in terms of a consultation paper that we put out to the sector. I can check the exact dates, but I believe it was around the end of January or beginning of February this year. We consulted over a period of at least one month. That included a webinar—

Senator NAMPIJINPA PRICE: Are you able to provide a briefer response? In the interest of time, I want to make sure we can get through these.

Ms Rice: It was a comprehensive consultation process which included all of the states and territories.

Senator NAMPIJINPA PRICE: I've been contacted by numerous small training organisations who are extremely concerned by these fee increases. What factors were considered in this change, which, for example,

sees an organisation moving from 999 students to 1,000 students hit with an increase of more than 50 per cent in their annual registration charge?

Ms Rice: The annual registration charge and its apportionment to the sector has always been undertaken through an attribution of the size and scope of a provider—the size being the number of students and the scope of their registration being the number of qualifications that they have on scope.

Senator NAMPIJINPA PRICE: Can I understand what modelling was done by ASQA on the disproportionate effect of these changes on small providers and short course providers, given the model fails to distinguish between single units of competency or short courses and full certificates or diplomas for the purposes of the reported number of students within the fee calculation.

Ms Rice: Until this most recent change, for providers who only had units of competency on scope, the number of students had not been factored as part of the calculation of where in the matrix of the annual registration charge they fell. What we have observed though over recent years is an increase in the number of providers who have significant numbers of units of competency on scope. So the change in methodology as part of this review was to consider—the average number of units that make up any qualification is approximately 10 units. In order to ensure that we had the right apportionment of providers in terms of where they fall in the matrix, part of our consultation with the sector was that we changed the methodology so that every 10 units of competency that a provider had on their scope would be equivalent to one qualification in terms of the way in which the size and scope was considered for the annual registration charge.

Senator NAMPIJINPA PRICE: Why does the annual registration charge not include additional fee tiers beyond 1,000 students to better reflect the regulatory effort required for larger providers?

Ms Rice: There are two aspects to that. One is that the annual registration charge itself is not reflective of the regulatory effort attached to any individual provider, because what makes up that particular charge under the charging framework and also the legislation is ASQA's functions that are relevant to the sector as a whole. Then we have to look at a methodology for the apportionment of that. When we look at the number, we've had, for quite some time—

Senator NAMPIJINPA PRICE: Can I just ask you: did ASQA consider an alternative fee schedule to help smaller training providers or short course providers at all?

Ms Rice: Within the context of the consideration of where all of the providers fall—we regulate around about 3,800 providers in total, and it's a very diverse sector—we know that about 83 per cent of all providers fall within the bottom 50 per cent of all annual registration charge tiers, so 83 per cent actually sit in the bottom 50 per cent of the annual registration charge tiers. We certainly considered that there may be some impact in specific circumstances, and, for that, there is provision within the legislation to consider a partial waiver of fees or charges. There's a specific legal test for that. So far we have received, I think, eight requests for partial waiver of the annual registration charge.

Senator NAMPIJINPA PRICE: Is that due to lack of awareness of that availability? You said there are eight. I imagine that, if there were more providers out there who understood that was available to them, they'd probably take that up. Can I just ask you, quickly—and you might have to take this on notice—how many complaints have been received to date from small or short course providers about the changes to the fee charges.

Ms Rice: I'm happy to take that on notice.

CHAIR: Senator O'Sullivan, take us home!

Senator O'SULLIVAN: You want me to take us home? Okay. These will be speedy questions with speedy answers, if I can. I won't press you too much, though. I'd like to start by understanding how ASQA handles tip-offs about fraudulent qualifications.

Ms Rice: All tip-offs are received, assessed and considered as part of the overall intelligence that we receive more broadly. We, as you know, established the tip-off line, I believe, in October 2023. We have received considerable thousands of tip-offs since that time and assessed all of those. We're not a complaints-handling body, though, and that's very deliberately the case within our established legislation, but we certainly receive all of that information, assess it, consider it against everything else that we know in relation to where that information has come from and take appropriate action.

Senator O'SULLIVAN: At some point, do you triage? Is there a point in that process chain that you triage? How do you determine if something is maybe a higher priority? Is safety, for example, taken into consideration?

Ms Rice: Absolutely. As part of all of the consideration that we have, we assess our regulatory risk priorities at least on an annual basis but often more regularly than that, depending on the nature of the information that we're receiving.

Senator O'SULLIVAN: Do you have a timeframe that you work towards in terms of responding to those tip-offs?

Ms Rice: We don't respond to the tip-offs in the context of—

Senator O'SULLIVAN: Or addressing the tip-offs?

Ms Rice: It's probably important just to clarify that we do certainly acknowledge receipt of all tip-offs that we receive. We have been receiving volumes, so we obviously work through the information received as quickly as possible. We then action appropriately. As a risk based regulator, all of the consideration of those tip-offs are based on risk, so that would mean that if the information, for example, was in relation to a more high risk qualification or industry area or those sorts of things, again, it would be combined with all of the rest of the information that we hold, but then we would take appropriate action based on that.

Senator O'SULLIVAN: Would you refer to police, for example, if there's something that's unlawful?

Ms Rice: Of course

Senator O'SULLIVAN: Or WorkSafe, if it's a safety sort of matter, or a state regulator—do you do all that?

Ms Rice: Yes.

Senator O'SULLIVAN: Is there a formal protocol in relation to that gate of decision to refer? Or do you just rely on—

Ms Rice: To refer to external agencies? We have a number of ongoing engagements with external agencies, so it depends on the nature, if I can put it that way. I'm happy to take any specifics on notice and provide you with further detail, but, as a bit of an example, we are working with state police, other regulators, Commonwealth regulators and the Fraud Fusion Taskforce. We have protocols, information sharing and MOUs all in place as part of all of those operations that we would share information.

Senator O'SULLIVAN: The person that provides the tip-off, the whistleblower—do they get any feedback?

Ms Rice: No. As I say, we acknowledge receipt of the information, but we don't provide ongoing updates on any of the actions that we take—

Senator O'SULLIVAN: Is there a reason for that?

Ms Rice: particularly as we're not a complaints-handling body. Sorry?

Senator O'SULLIVAN: Is there a reason why you don't?

Ms Rice: We certainly don't keep complainants informed of ongoing regulatory activity, but we're not a complaints-handling body, most importantly.

Senator O'SULLIVAN: I want to go to something specific. The remaining questions I've got here are general, which I'll put on notice. I'm sure you're aware of the reporting in the *Age* earlier this month detailing a fake qualifications racket operating across Victoria's Big Build. The *Age* reports that hundreds, possibly thousands, of fraudulent construction certificates have been issued over four years. The article also reports that ASQA was tipped off about this in January 2023 by the training organisation NSTA, but they never got a response. Can ASQA confirm it received a complaint from NSTA in January 2023 about the fraudulent construction qualifications?

Ms Rice: I'll give some clarification to the detail of the question there. Yes, we received information from NSTA, but we've received information twice. The first time was on 6 December 2023, and that was in relation to a single, allegedly fraudulent statement of attainment. We opened an investigation into that matter. NSTA, though, was simply acknowledged. We acknowledged receipt of that information at the time. We received a subsequent tip-off from NSTA on 23 January 2024, and that was again regarding a further single, allegedly fraudulent statement of attainment. I believe that was the one referred to in the media, in the *Age* most recently—that particular tip-off.

Senator O'SULLIVAN: Yes, I believe that. Can I just confirm that's the same report that identified the suspected issuer to be Mr Jack Younes?

Ms Rice: That would have been the tip-off on 23 January 2024.

Senator O'SULLIVAN: Did anyone at ASQA contact the complainant after the acknowledging receipt?

Ms Rice: Contact NSTA?

Senator O'SULLIVAN: The complainant, yes.

Ms Rice: No. We acknowledged receipt of the information.

Senator O'SULLIVAN: That was the extent of the communication.

Ms Rice: That's correct. We did launch, though, as I mentioned, an investigation into the information that was received.

Senator O'SULLIVAN: Did you refer the complaint that you received to Victoria Police, WorkSafe Victoria or any other agency?

Ms Rice: In the process that we undertook in relation to our investigation, there were two isolated incidents, so we were certainly not aware of any, and nor did the information refer to any, widespread fraudulent activity. It is also probably important to distinguish between bogus qualifications—which are quite literally fraud and criminal activity—and qualifications where, as you know, we have been involved for some time now in having to consider the legitimacy of their issuance, albeit issued through a registered training organisation, and where we've had the authority to cancel those qualifications. They're two very different matters.

From a bogus qualifications perspective, we have some limited powers within our legislation to consider those. The difficulty that we experience is that often, or most often, by definition, the recipient is complicit. Where we seek to engage with the recipient, often the recipient will not engage. From that perspective, we have been continuing to work, for example, with the New South Wales building commission in relation to, I believe, more than 900 licences that the building commission has now cancelled on the basis of bogus qualifications. So we certainly are involved in many fora where we raise these issues.

Senator O'SULLIVAN: I'm really interested in that, but I've got a minute. Can you provide more information on that on notice. I'm quite interested in understanding that.

Ms Rice: Sure.

Senator O'SULLIVAN: Finally, since January 2023, has ASQA received any other complaints or tip-offs about Mr Younes or any other aliases identified?

Ms Rice: I'd clarify that January 2024 was the first information we received in relation to that individual, but I would probably have to take any further detail on notice, also acknowledging that it is relevant to an ongoing police investigation.

CHAIR: That concludes today's hearing. I'd like to thank all witnesses who appeared, Hansard, broadcasting and our secretariat for their assistance, and I also thank my fellow members of the committee for their collegiality and professionalism in conducting today's hearing. I remind senators that the committee has agreed that any written questions on notice should be lodged with the secretariat by Thursday 5 November 2026.

Committee adjourned at 22:01