

# Chapter 3

## Employment portfolio

3.1 This chapter summarises certain key areas of interest raised during the committee's consideration of additional estimates for the 2015–16 financial year for the Employment portfolio. This chapter of the report follows the order of proceedings and is an indicative, not exhaustive, account of issues examined.

3.2 On 11 and 12 February 2016, the committee heard evidence from Senator the Hon Michaelia Cash, Minister for Employment, along with officers from the Department of Employment (the Department) and agencies responsible for administering employment policy, including:

- Workplace Gender Equality Agency;
- Asbestos Safety and Eradication Agency;
- Fair Work Commission;
- Office of the Fair Work Ombudsman; and
- Office of the Fair Work Building Industry Inspectorate (Fair Work Building and Construction).

3.3 Senators present over the course of the two days of hearings included Senator McKenzie (Chair), Senator Lines (Deputy Chair), Senators Cameron, Johnston, Lindgren, McLucas, Moore, Reynolds, Rice and Simms.

### **Cross-portfolio**

#### ***Enterprise bargaining***

3.4 The committee requested an update on the status of the enterprise bargaining process currently underway in the Department. Secretary of the Department, Ms Renée Leon, informed the committee that some minor changes had been made to the wording of the previous enterprise agreement that was voted down in December 2015. These changes aimed to clarify some matters of concern raised by staff in relation to consultation, flexible working arrangements, and graduate conditions. The amended agreement will be put out to a staff vote on 12 February 2016.<sup>1</sup>

3.5 The committee continued by asking what productivity savings the Department had identified in order to demonstrate the affordability of the proposed agreement to the Australian Public Service Commission. Ms Leon advised:

The main avenues in which we have demonstrated the productivity savings that pay for the agreement are in business process changes, in consolidating

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1 *Estimates Hansard*, 11 February 2016, p. 4.

accommodation, in increasing span of control and in the streamlining of the agreement.<sup>2</sup>

### ***Breastfeeding policy***

3.6 Representatives from the Department responded to concerns regarding the inclusion of breastfeeding conditions in departmental policy rather than the Department's enterprise agreement. Ms Leon clarified:

In the department, breastfeeding support for new mothers has always been in policy. We are very breastfeeding friendly and we ensure we have a smooth transition for mothers back to work. That has never been in the agreement; it does not need to be in the agreement; we do it because it is good management. It is good for our staff and that is what we want.<sup>3</sup>

3.7 In addition, the Department noted that, because of the nature of enterprise agreements, any procedure and detail included in an agreement is unable to be changed for the period that agreement is in place. In contrast, for matters included in departmental policy, there is capability to alter that policy should any problems or inflexibility be identified.<sup>4</sup> Ms Leon emphasised this point with regard to the Department's breastfeeding policy:

Matters like what is best for new mothers to reintegrate back into the workforce are the kind of thing that I want to be open to input from the women's network in the department.<sup>5</sup>

### ***IT systems***

3.8 The committee asked officers about the Department's IT systems and the resources allocated to their operation. The Department explained that their operations are supported by two IT systems; SAP and the Employment Services System (ESS). The SAP system supports the Department's corporate functions such as those relating to human resources and financial management. The ESS is used by employment service providers in order to manage the activities undertaken in relation to job seekers.<sup>6</sup>

## **Department of Employment - Outcome 1**

### ***Jobactive***

3.9 The committee began its examination of Outcome 1 by asking for an update on the current caseload of Jobactive and how this compares to that of its predecessor,

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2 Ms Renée Leon, Secretary, Department of Employment, *Estimates Hansard*, 11 February 2016, p. 6.

3 Ms Renée Leon, Secretary, Department of Employment, *Estimates Hansard*, 11 February 2016, p. 17.

4 *Estimates Hansard*, 11 February 2016, p. 19.

5 Ms Renée Leon, Secretary, Department of Employment, *Estimates Hansard*, 11 February 2016, p. 19.

6 *Estimates Hansard*, 11 February 2016, pp. 25-29.

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Job Services Australia. The Department advised that, as of 9 February 2016, the Jobactive caseload was 786 559. This caseload is similar to that which was managed by Job Services Australia at comparable point in the programme's history.<sup>7</sup>

3.10 However, as stated by the Deputy Secretary, Mr Martin Hehir, there is a significant difference between the two employment services programmes in terms of the sustained employment outcomes achieved. Under Jobactive, the Department has recorded 71 731 four-week outcomes as compared to 45 226 under Job Services Australia, representing a substantial difference of 59 per cent. Mr Hehir also noted that Jobactive places a greater emphasis on employment outcomes and on sustaining those outcomes.<sup>8</sup>

### ***Wage subsidies***

3.11 Senator the Hon Doug Cameron questioned officers from the Department on the amount of funding expended on the wage subsidies programme. Of the \$1.2 billion allocated to the programme, \$1.95 million had been expended as of 31 December 2015.<sup>9</sup>

3.12 Ms Leon explained that, of the 9418 job seeker placements currently under the wage subsidies programme, not all of those have reached the six-month payment milestone that was initially set when the programme was implemented. This payment milestone was changed on 1 November 2015 to allow employers to make subsidy claims at an early stage during a placement. The Department will assess whether this change increases the take-up of the programme.<sup>10</sup>

### ***Work for the Dole***

3.13 The Department responded to a number of questions regarding the Work for the Dole programme. Areas of discussion included the work health and safety protections for programme participants<sup>11</sup>, the processes and penalties for non-compliance<sup>12</sup>, and the potential transport limitations experienced by job seekers.<sup>13</sup>

3.14 Ms Leon advised the committee of how the Department responded to findings from the 12-month pilot of the programme before it was rolled out nationally on 1 July 2015.

One of the things that came to our attention as a result of the pilot program was that it took some time for the front-line staff in the 18 areas to understand what their obligations would be and what they needed to do in order to refer people to Work for the Dole. In response to that, we engaged

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7 *Estimates Hansard*, 11 February 2016, p. 35.

8 *Estimates Hansard*, 11 February 2016, pp. 35-36.

9 *Estimates Hansard*, 11 February 2016, p. 39.

10 *Estimates Hansard*, 11 February 2016, pp. 39-40.

11 *Estimates Hansard*, 11 February 2016, pp. 54-56.

12 *Estimates Hansard*, 11 February 2016, pp. 64-65.

13 *Estimates Hansard*, 11 February 2016, p. 67.

the Work for the Dole coordinators two months earlier than the commencement of Work for the Dole so that they would have time to source places for job seekers and to be ready to make those places available to job active providers.<sup>14</sup>

3.15 It is worth noting that the Department of Employment indicated the 12-month pilot of the programme 'sought to find out how best to implement Work for the Dole from 1 July and to assess the effect of participation on participants' employability.'<sup>15</sup> The Department indicated that from the post-program monitoring survey conducted, 81 per cent of participants identified an increased desire to find work, but acknowledged that this did not reflect the number of people who actually found work.<sup>16</sup>

## **Department of Employment - Outcome 2**

### ***Ministerial working group***

3.16 Senator the Hon Michaelia Cash, Minister for Employment, provided the committee with an overview of the purpose of the Ministerial Working Group to help protect vulnerable foreign workers:

[T]he ministerial working group was established in response to allegations of underpayment and exploitation of overseas workers, including international workers on working holiday visas. This ministerial working group acknowledges that a multiportfolio and jurisdictional approach is needed to ensure that strong action can be taken against employers who exploit visa holders. It is going to allow better protection of these vulnerable workers through a better coordinated and implemented approach across government.<sup>17</sup>

### ***Wage growth***

3.17 Officers from the department provided the committee with information regarding the latest wage growth figures and how these compare with previous years. In terms of the Wage Price Index (WPI), which is the preferred measure by the Australian Bureau of Statistics, wages across the Australian economy grew by 2.3 per cent in the year from September 2014. This represents the lowest wage growth figure since the WPI measure was introduced in 1997. However, as clarified by the Department, inflation over the same period was only at 1.5 per cent, meaning that there has been growth overall with regard to purchasing power.<sup>18</sup>

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14 Ms Renée Leon, Secretary, Department of Employment, *Estimates Hansard*, 11 February 2016, p. 62.

15 Ms Renée Leon, Secretary, Department of Employment, *Estimates Hansard*, 11 February 2016, p. 50.

16 *Estimates Hansard*, 11 February 2016, p. 51.

17 Senator the Hon Michaelia Cash, Minister for Employment, *Estimates Hansard*, 11 February 2016, p. 115.

18 *Estimates Hansard*, 11 February 2016, pp. 129-132.

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## **Workplace Gender Equality Agency (WGEA)**

### ***Reporting changes***

3.18 Senator Claire Moore asked officers from the WGEA to comment on the agency's preparation for the next round of reporting, particularly in relation to the recent changes to reporting requirements. Director of the WGEA, Ms Libby Lyons, explained that the reporting system is currently being tested to ensure that organisations can effectively respond to the new requirements. The WGEA has also conducted a number of webinars on the new reporting requirements in recent months, with more scheduled in 2016.<sup>19</sup>

3.19 With regard to the WGEA's reporting system, Ms Lyons also noted:

We are looking at, and are in the process of testing at the moment, pre-population of last year's questionnaire so that that can reduce the burden on employers as well. We have not gone live with that, but we are confident that we will have that available so that people who have reported previously can elect to, or elect not to, have some of the questions in their questionnaire pre-populated.<sup>20</sup>

## **Asbestos Safety and Eradication Agency (ASEA)**

### ***ASEA's current work***

3.20 The committee began its examination of ASEA by asking for an overview of what the agency is currently working on. Mr Peter Tighe, Chief Executive Officer, explained that the agency has completed a number of evidence based reports that have been circulated to the state and territory jurisdictions for consideration and comment. It is the intention that forums will be held to debate the issues covered in those reports.<sup>21</sup>

### ***Budget constraints***

3.21 ASEA informed the committee about the budget constraints that the agency is currently operating under. Mr Tighe explained that the agency encountered a number of difficulties at the time of its establishment. These difficulties, including machinery-of-government changes and recruitment limitations, resulted in implementation delays and a significant underspend of ASEA's budget by approximately \$3 million.<sup>22</sup>

3.22 Mr Tighe further elaborated on this issue, stating:

[T]he operation of the agency costs around \$2.6 million a year...That basically takes up the totality of the budget. The money that we had for implementation of the plan, unfortunately, has now been forgone because of that delay. Other than trying to monitor things and work with some of the

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19 *Estimates Hansard*, 11 February 2016, p. 133.

20 Ms Libby Lyons, Director, Workplace Gender and Equality Agency, *Committee Hansard*, 11 February 2016, p. 134.

21 *Estimates Hansard*, 11 February 2016, p. 138.

22 *Estimates Hansard*, 11 February 2016, p. 138.

jurisdictions to get them to move ahead, we really do not have the capacity to generate more research and to deal with and drill into some of the problems around all of the issues associated with asbestos.<sup>23</sup>

3.23 The Committee notes that the Asbestos Safety and Eradication Agency, the only Commonwealth body addressing asbestos management and safety, was established on 1 July 2013 to provide a national focus on asbestos issues which goes beyond workplace safety to encompass environmental and public health concerns. The agency aims to ensure asbestos issues receive the attention and focus needed to drive change across all levels of government, and was set up following the recommendations of a two-year review.

### **Fair Work Commission (FWC)**

#### ***Right of entry permits***

3.24 The committee asked representatives from the FWC about the right of entry permit application forms. In particular, the committee enquired as to whether the forms have been changed to require that an applicant outline the actions undertaken to verify that a union official is a fit and proper person. Mr Chris Enright, Director—Regulatory Compliance, advised that the forms have not been amended to include those details, but that the right of entry forms and process is currently under review. This review will also take into account the recommendations made by the Trade Union Royal Commission.<sup>24</sup>

#### ***FWC's current inquiries***

3.25 Officers from the FWC responded to questions concerning the number and nature of inquiries being undertaken by the agency. Mr Enright informed the committee that there are currently nine non-formal inquiries and investigations underway. Of these, many are related to matters concerning the financial management of registered organisations. Mr Enright also noted that the Trade Union Royal Commission had made a number of referrals to the FWC in recent weeks.<sup>25</sup>

### **Office of the Fair Work Ombudsman (FWO)**

#### ***Underpayment of wages***

3.26 During its very brief appearance before the committee at 10.56pm, the FWO responded to questions regarding the proportion of the agency's work relating to the underpayment of wages. The Fair Work Ombudsman, Ms Natalie James, acknowledged that while underpayment of wages makes up part of the agency's work, she clarified that she would not characterise such issues as 'widespread'.<sup>26</sup> Ms James elaborated on this assertion by stating:

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23 Mr Peter Tighe, Chief Executive Officer, Asbestos Safety and Eradication Agency, *Committee Hansard*, 11 February 2016, p. 138.

24 *Estimates Hansard*, 11 February 2016, p. 141.

25 *Estimates Hansard*, 11 February 2016, pp. 142-143.

26 *Estimates Hansard*, 11 February 2016, p. 145.

There is no doubt that there are a range of reasons why underpayments happen in this country. You talk in the terms of noncompliance, but not all noncompliance is equal. Many, many people make errors, inadvertent mistakes, so we work with people to correct those, and they manifest in underpayments. Most of the underpayments we recover are recovered through voluntary processes as well. So, when you talk about the systemic and deliberate noncompliance, that is at an extreme end of the spectrum.<sup>27</sup>

## **Fair Work Building and Construction (FWBC)**

### ***Bullying and harassment review***

3.27 In his opening statement to the committee, Director of FWBC, Mr Nigel Hadgkiss, responded to recent allegations made regarding bullying and harassment within the agency. Mr Hadgkiss explained that, following his appointment to FWBC in October 2013, a survey was carried out by an independent consultant into the culture prevailing within the agency at that time.<sup>28</sup>

3.28 Mr Hadgkiss continued by stating that, as a result of the survey's findings:

I directed that an independent review into bullying and harassment be carried out. Following the review, a bullying and harassment plan was developed. Every month FWBC's executive team reviews progress against this plan. From November 2014 to January last year, face-to-face bullying and harassment awareness training was delivered to all staff, including management and the senior executive service. An online module has been developed which all staff are required to complete annually.<sup>29</sup>

3.29 In his evidence to the committee, Mr Hadgkiss referred to the latest Australian Public Service Commission survey, in which he indicated FWBC was found to score above the overall APS average across a range of categories in relation to staff satisfaction as well as staff understanding and commitment to APS values and code of conduct.<sup>30</sup> In response to claims that FWBC 'operates under a culture of bullying and harassment', Mr Hadgkiss stated:

I have provided evidence that FWBC does not have a culture of bullying and harassment.<sup>31</sup>

### ***FWBC Court proceedings***

3.30 Representatives from FWBC detailed the amount of penalties issued as a result of court proceedings initiated by the agency. In the six months following 1 July

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27 Ms Natalie James, Fair Work Ombudsman, Office of the Fair Work Ombudsman, 11 February 2016, *Estimates Hansard*, p. 146.

28 *Estimates Hansard*, 12 February 2016, p. 5.

29 Mr Nigel Hadgkiss, Director, Fair Work Building and Construction, 12 February 2016, *Estimates Hansard*, p. 5.

30 *Estimates Hansard*, 12 February 2016, p. 6.

31 Mr Nigel Hadgkiss, Director, Fair Work Building and Construction, 12 February 2016, *Estimates Hansard*, p. 6.

2015, a total of \$865 475 in penalties have been issued in respect of FWBC cases. Of these penalties, 94 per cent represent action taken against the Construction Forestry Mining Energy Union (CFMEU) and its officials.<sup>32</sup>

### ***Royal Commission referrals***

3.31 The committee sought information about the referrals made to FWBC from the Trade Union Royal Commission. Mr Hadgkiss confirmed that a number of matters had been referred to the agency and were under investigation by the Canberra office of FWBC. A working group has been established in order to provide a coordinated cross-agency response to deal with the civil referrals from the Royal Commission. While not all information will be able to be shared within the working group due to privacy and other considerations, it is hoped that this collaborative approach will achieve a more effective response.<sup>33</sup>

**Senator Bridget McKenzie**  
**Chair**

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32 *Estimates Hansard*, 12 February 2016, p. 15.

33 *Estimates Hansard*, 12 February 2016, pp. 37-38.