

Chapter 2

Employment portfolio

2.1 This chapter summarises certain key areas of interest raised during the committee's consideration of budget estimates for the 2017-18 financial year for the Employment portfolio.

2.2 On 29 and 30 May 2017, 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 and workplace policy, including:

- Fair Work Commission (FWC);
- Registered Organisations Commission (ROC);
- Office of the Fair Work Ombudsman (FWO);
- Workplace Gender Equality Agency (WGEA);
- Australian Building and Construction Commission (ABCC);
- Asbestos Safety and Eradication Agency (ASEA);
- Comcare, the Safety, Rehabilitation and Compensation Commission and Seafarers Safety, Rehabilitation and Compensation Commission; and
- Safe Work Australia.

Department of Employment

Cross-Portfolio

2.3 The Department opened proceedings by advising the committee that there had been a minor change in its organisational structure. Ms Leon, Secretary, advised that two legal branches had been merged.¹

2.4 Committee members inquired about the Department's use of labour hire agreements.² Ms Leon informed the committee that the Department engages 226 contract workers on labour hire agreements, the majority of which specialise in information technology. The Department's total expenditure on labour hire agreements was \$17.9 million in the 2016-17 financial year to April 2017.³

2.5 Ms Leon provided an overview of the Department's procedures undertaken in relation to labour hire agreements:

1 *Committee Hansard*, 29 May 2017, p. 5.

2 *Committee Hansard*, 29 May 2017, p. 6.

3 *Committee Hansard*, 29 May 2017, p. 12.

When we engage a labour hire firm to provide staff to us, we then enter into a contract with them for the provision of staff. The responsibility of the labour hire firm is to fulfil the terms of the contract to the department by providing staff with the skills that they say they are going to provide to us. We do not have an employment relationship with those members of staff. Their relationship is with the labour hire firm. The staff are managed by the labour hire firm, and the labour hire firm has legal responsibilities to pay them and to pay them according to law and according to the terms of the contract they have with the person... In relation to the contractors, of course we have the normal work health and safety obligations that we have towards any person in the workplace... But, in relation to their pay and the payment of tax on superannuation and so on, it is the labour hire firm that has that legal responsibility.⁴

2.6 Committee members enquired further regarding whether the Department was aware of any labour hire agreement involving Plutus Payroll. The Department advised that investigations were ongoing to assess the impact on departmental contractors. Mr Clout, Acting Deputy Secretary, Executive, informed the committee that the Department's investigations had so far received 26 responses from contractors, eight of which had 'some degree of connection with Plutus', and all of which had been paid by the company.⁵

2.7 The committee made enquiries regarding alleged taxation fraud by Plutus in relation to the Department's labour hire agreements. Mr Clout noted that the matter was subject to an ongoing Australian Taxation Office and Australian Federal Police investigation. However, he stated that while it was likely that there would be taxation implications, they would be unlikely to be identified until the end of the current financial year and that it was unlikely that contractors under Plutus agreements would be aware of any taxation fraud if it were to exist.⁶

2.8 The committee investigated matters relating the 'shared services program'. Ms Leon clarified that, despite media reports claiming that the program would be shut down, the shared services program had received additional funding under the recent budget to expand the six hubs providing shared transactional corporate services across the Australian Public Service.⁷

2.9 Ms Leon explained that the shared services centre was formed as a result of machinery-of-government changes which split the former Department of Education, Employment and Workplace Relationships into two separate departments. Ms Leon stated that the two departments agreed to share corporate services in order to provide a budget saving of between \$5 million and \$10 million by avoiding duplicating IT and

4 *Committee Hansard*, 29 May 2017, p. 14.

5 *Committee Hansard*, 29 May 2017, p. 7.

6 *Committee Hansard*, 29 May 2017, pp. 7–8.

7 *Committee Hansard*, 29 May 2017, p. 19.

other corporate systems. Ms Leon further noted that this model has been adopted by other agencies and departments in order to 'achieve corporate efficiencies'.⁸

Outcome One

2.10 The new jobseeker compliance measures announced in the Federal Budget were discussed at length. Committee members enquired into the new 'demerit and three-strike phase' system. Ms Leon noted that the purpose of the new compliance system is 'not only to target the persistently non-compliant but also to ease up the current financial penalties that apply to [the] majority of people who are on income support but who do the right thing'.⁹

2.11 Ms Leon and Mr Martin Hehir, Deputy Secretary, explained the operation of the new compliance measures:

Ms Leon: The new system will be that...where a person fails to attend an appointment or another activity that they are required to do—and if they do not have an reasonable excuse for doing so, they will not incur a financial penalty; instead, they will get one demerit point.

Mr Hehir: In addition to the demerit, their payment is suspended until they attend.

Ms Leon: But a suspension—unlike a penalty...means that, when the person attends, then the period for which their income support was suspended will then be paid back to them. If the person incurs three demerit points—that is three instances where they have failed to attend—then their jobactive provider will conduct an interview with them where they assess whether there is some problem with their requirements that means they are not able to meet them. For example, their job plan may not be appropriate for them given the circumstances of their life at the moment and so the provider is required to assess whether there needs to be some change to their job plan and the requirements they have to fulfil.¹⁰

2.12 Officials advised that if the job plan determined by the jobactive provider was deemed to be appropriate, the person would incur a fourth demerit point. This would trigger a further assessment by the Department of Human Services to check whether the plan was appropriate or whether there were other circumstances preventing compliance. If no such impediment was identified, then the person would be moved into the 'intensive compliance phase' where financial penalties for failure to comply would accrue.¹¹

2.13 Mr Hehir further noted that this system would be subject to a 'rolling six-month basis', in which demerit points would extinguish after a six-month period.¹²

8 *Committee Hansard*, 29 May 2017, p. 20.

9 *Committee Hansard*, 29 May 2017, p. 28.

10 *Committee Hansard*, 29 May 2017, p. 21.

11 *Committee Hansard*, 29 May 2017, p. 21.

12 *Committee Hansard*, 29 May 2017, p. 21.

2.14 The Department was asked whether stakeholders had been consulted during the development of the 'demerit' system. Ms Leon told the committee:

The demerits system was developed as a budget measure, so the specific measure was not the subject of consultation, because it was developed during the budget-in-confidence process. But the way the compliance system operates has been the subject of consultation and input from the stakeholders we usually talk to, including ACOSS...and community organisations that deal with our compliance system have regularly made the point to us that it is very complex and difficult for people to navigate and that people think that the system of imposing financial penalties, even for one missed appointment, is unduly harsh. So it was listening to that kind of feedback that informed our development of the model... They have given us the feedback that the previous eight-week payment penalty was not very effective in getting action from the persistently noncompliant. So we have taken account of the feedback that we got through our regular consultations in developing the new compliance system.¹³

2.15 Ms Leon advised that the new compliance measures would result in a saving of \$204 million over five years.¹⁴ This measure forms part of a \$632 million saving by the Department, which also incorporates \$148 million saved in refocussing the Work for the Dole program.¹⁵

2.16 Committee members asked whether the Department had calculated how many income support recipients would access measures contained in the budget for drug treatment and what the drug treatment would comprise of. Mr Hehir informed the committee that the Department has calculated that around 2500 to 3000 jobseekers are expected to use the Employment Fund for drug and alcohol treatment.¹⁶

2.17 The committee enquired into the operation of the Employment Fund. Ms Leon provided an overview regarding how the Employment Fund will support individual jobseekers:

The way that the employment fund works is that, for each jobseeker who goes on to a jobactive provider's case load, an amount is credited to the employment fund that notionally goes with the number of jobseekers. Then the jobactive provider has access to that aggregated pool of funds in order to make an assessment for each individual as to: is there some particular thing that they need that would help them get a job? For some it might be the cost of transport to get to the job. For some it might be a uniform or steel capped boots or something that they need by way of equipment. For some of them it might be training. There is a broad range of expenditure

13 *Committee Hansard*, 29 May 2017, p. 47.

14 *Committee Hansard*, 29 May 2017, p. 21.

15 *Committee Hansard*, 29 May 2017, p. 21.

16 *Committee Hansard*, 29 May 2017, p. 25.

that the provider can approve out of the fund. We have pretty extensive guidelines about what can be approved and what cannot.¹⁷

2.18 Committee members enquired into comments made by Ms Leon regarding jobactive providers' underutilisation of the Employment Fund. Ms Leon informed the committee that the Department had observed lower than average expenditure in jobactive provider contracts for the first year of engagement. She noted that consultation with providers had assisted the Department in identifying where expenditure was useful and where 'unintended barriers' exist.¹⁸

2.19 The Department provided the committee with an overview of new measures designed to assist mature-age jobseekers. Ms Benedikte Jensen, Group Manager, Labour Market Strategy, informed the committee that the Pathway to Work pilot would work with employers to provide programs such as pre-employment training and work experience. Ms Jensen noted that these programs will focus on mature-age jobseekers and have up to ten pilots running at once.¹⁹

2.20 The committee enquired into departmental measures to assist jobseekers with mental health issues. Ms Leon said that the Department was working on a policy to assist with mental health. However, she also noted that this was a complex issue which required further development.²⁰

2.21 There was examination of the ParentsNext program, particularly in relation to the sites selected for intensive support. Ms Leon stated that these sites were selected due to having a high proportion of Indigenous parenting payment recipients.²¹

2.22 The review of the National Work Experience Program expansion was discussed. Ms Robyn Shannon, Branch Manager, Economic Strategy, advised that the review was being finalised and will be made public.²²

2.23 Questions were asked about the removal of coordinators from the Work for the Dole program. The Department advised that this proposal was based on feedback from providers and hosts who suggested that coordinators added unnecessary complexity to the process.²³

2.24 The committee discussed a Work for the Dole incident involving asbestos, which was noted in the *Additional Estimates 2016-17* report.²⁴ Officials were asked what action had been taken in light of the removal of signs indicating that a site had

17 *Committee Hansard*, 29 May 2017, p. 26.

18 *Committee Hansard*, 29 May 2017, p. 45.

19 *Committee Hansard*, 29 May 2017, p. 49.

20 *Committee Hansard*, 29 May 2017, p. 60.

21 *Committee Hansard*, 29 May 2017, pp. 64–66.

22 *Committee Hansard*, 29 May 2017, p. 66.

23 *Committee Hansard*, 29 May 2017, pp. 72–74.

24 Senate Education and Employment Legislation Committee, *Additional estimates 2016-17*, p. 26.

been contaminated. Ms Leon stated that the asbestos found onsite was not the asbestos listed on the register, which had been previously removed. Mr Hehir also noted that an audit had been conducted of the building and, having found no evidence of asbestos on the property, the signage was removed.²⁵

2.25 The committee returned to another topic discussed at Additional Estimates 2016-17 relating to the death of a Work for the Dole participant.²⁶ Ms Leon advised that the Minister for Employment had received correspondence from the Queensland Minister for Employment and Industrial Relations on 19 May 2017 to the effect that the investigation, while ongoing due to its serious and complex nature, was being finalised. Further, the Department had written to Workplace Health and Safety Queensland (WHSQ) requesting advice regarding whether the documents sought under the Senate order could harm the public interest or prejudice the investigation or any subsequent legal proceeding.²⁷ WHSQ subsequently informed the Department that a review of the documents was taking place and would be finalised by late June.²⁸

Outcome Two

2.26 The committee sought an update from the Department in relation to proceedings against Queensland Nickel and its implications for the Fair Entitlement Guarantee. The Department advised that \$66.78 million had been paid out under the program to 764 affected workers.²⁹

2.27 The committee enquired whether any modelling had been performed by the Department in regards to the penalty rates decision by the Fair Work Commission. Dr Alison Morehead, Group Manager, Workplace Relations Policy, stated that it had conducted a number of studies to determine a number of people who would be affected by the decision, and explained how the studies were designed.³⁰ Dr Morehead noted that precise estimates regarding the total dollar loss to workers were difficult to obtain due to the nature of casual Sunday employment.³¹ Additionally, Dr Morehead advised that the number of affected workers was likely to be between 300 000 and 450 000 rather than other estimates of 700 000 or up to one million.³²

2.28 Questions were asked in relation to the recent changes made to the temporary 457 visa programme's Short-term Skilled Occupation List, particularly in relation to the arts sector. The Department advised that the decision to remove a number of occupations from the list was a result of analysis of labour market factors and how

25 *Committee Hansard*, 29 May 2017, p. 76.

26 Senate Education and Employment Legislation Committee, *Additional estimates 2016-17*, p. 27.

27 *Journals of the Senate*, No. 33, 22 March 2017, p. 1127.

28 *Committee Hansard*, 29 May 2017, p. 79.

29 *Committee Hansard*, 29 May 2017, p. 90.

30 *Committee Hansard*, 29 May 2017, pp. 98–99.

31 *Committee Hansard*, 29 May 2017, p. 100.

32 *Committee Hansard*, 29 May 2017, p. 100.

many visa holders were in the sector.³³ The Department further advised that one third of 650 occupations on the list had been removed.³⁴

2.29 The death of a participant under the Seasonal Worker Program was discussed. The Department stated that the worker held a visa that enabled him to participate in the program, and that no cause of death has yet been issued. Ms Alison Durbin, Branch Manager, Workplace Relations Policy, advised that the Department was awaiting information from the coroner before taking further action.³⁵

Fair Work Commission

2.30 The committee inquired into the reduction in funding for the Fair Work Commission (the FWC) between 2016-17 and 2017-18. The FWC advised the committee that this was in part due to the transfer of functions from the FWC to the ROC, in addition to funding being attributed to the ROC for the purposes of the Royal Commission into Trade Union Governance and Corruption.³⁶

2.31 Committee members sought information regarding enterprise agreements with a number of retail outlets and in particular whether the FWC investigated employers who declared that agreements passed the Better Off Overall Test. Mr Murray Furlong, Director, Tribunal Services, advised that assessors check every agreement to ensure compliance with pre-lodgement provisions.³⁷

2.32 The Department was asked about the Pay Equity Unit's (PEU) current organisational structure. Mr Furlong advised that the PEU is no longer a discrete unit, and has been subsumed as part of a broader unit.³⁸ Ms Bernadette O'Neill, General Manager, informed the committee that the decision to merge the PEU into the larger group was due to a lack of activity in the PEU and the assessment that its resources could be better utilised elsewhere.³⁹

Registered Organisations Commission

2.33 Mr Mark Bielecki, the new Registered Organisations Commissioner, was welcomed by the committee to his first appearance at estimates hearings. He opened proceedings with a statement regarding his recent appointment to the Registered Organisations Commission (ROC).⁴⁰

33 *Committee Hansard*, 29 May 2017, pp. 113–115.

34 *Committee Hansard*, 29 May 2017, p. 116.

35 *Committee Hansard*, 29 May 2017, pp. 124–125.

36 *Committee Hansard*, 30 May 2017, p. 4.

37 *Committee Hansard*, 30 May 2017, p. 9.

38 *Committee Hansard*, 30 May 2017, p. 16.

39 *Committee Hansard*, 30 May 2017, p. 17.

40 *Committee Hansard*, 30 May 2017, p. 4.

2.34 Committee members sought information regarding policies and procedures in place to govern the operational relationship between the ROC and the FWO, which Mr Bielecki said he would provide on notice.⁴¹

2.35 Senators further enquired about the ROC's funding falling from \$6.5 million in 2017-18 to \$3.6 million in the forward estimates. Mr Bielecki stated that the additional funding in 2017-18 relates to the Royal Commission into Trade Union Governance and Corruption, and that it was expected that less funding would be required in the forward estimates for that purpose.⁴²

Fair Work Ombudsman

2.36 Committee members sought information regarding the focus on education and advice by the Fair Work Ombudsman (the FWO). The FWO advised that it had a number of initiatives being pursued, including the release of the Record My Hours app, enhancing the FWO's online presence, and research in connection with the Migrant Workers' Taskforce.⁴³

2.37 The committee enquired into allegations of underpayment of employees by Dominos, which were raised during Additional Estimates 2016-17 hearings.⁴⁴ Mr Michael Campbell, Deputy Fair Work Ombudsman, Operations, informed the committee that the FWO currently has 26 active investigations into Dominos outlets and had attached 'significant quality resources' to the investigation.⁴⁵

2.38 The investigation of an alleged breach of the Fair Work Act by crew members of the *Tandara Spirit* was discussed. Senators asked why a prosecution regarding that case was discontinued. Ms Natalie James, Fair Work Ombudsman, informed the committee that due to a High Court case the common law had changed, prompting the discontinuation.⁴⁶

2.39 Enquiries were also made into allegations of underpayment by foreign seafarers. Mr Campbell confirmed that the FWO had investigated these instances and is currently prosecuting a case in which sixty-one workers were underpaid.⁴⁷

2.40 Audits looking into apprentices and trainees' pay were also discussed. The FWO advised that there were reports of underpayment of apprentices.⁴⁸ The Minister of Employment further noted that the Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017 was designed to address such concerns, including measures such

41 *Committee Hansard*, 30 May 2017, p. 35.

42 *Committee Hansard*, 30 May 2017, p. 35.

43 *Committee Hansard*, 30 May 2017, p. 37.

44 Senate Education and Employment Legislation Committee, *Additional estimates 2016-17*, p. 22.

45 *Committee Hansard*, 30 May 2017, p. 40.

46 *Committee Hansard*, 30 May 2017, pp. 43–44.

47 *Committee Hansard*, 30 May 2017, pp. 44–46.

48 *Committee Hansard*, 30 May 2017, p. 57.

as increasing penalties to breaches of the Act and strengthening investigatory powers.⁴⁹

Workplace Gender Equality Agency

2.41 The discussion with the Workplace Gender Equality Agency (the WGEA) opened with a question regarding when the gender pay gap would close based on current trends. Ms Libby Lyons, Director, advised that OECD estimates suggest that pay equality would be achieved 'in excess of 100 years'.⁵⁰

2.42 The committee enquired into the gap in gender participation in the workforce. Ms Lyons noted that, according to the OECD, the male participation rate in Australia was at 82.2 per cent and the female participation rate was at 70.5 per cent in 2014.⁵¹ Upon further questioning, Ms Lyons acknowledged that current figures were not available as only ABS statistics were available. It was noted that the lack of consistency in statistical sources presented problems in accurately tracking participation rates.⁵²

2.43 There was an examination into primary carer's leave. Ms Lyons informed the committee that the WGEA is aware of employers who provide primary carer's leave, in addition to other incentives to return to work such as emergency nanny services and bonuses for returning to work.⁵³

Australian Building and Construction Commission

2.44 The Commissioner, Mr Nigel Hadgkiss, made an opening statement in which he noted the agency's workload, including assessment of over 300 agreements per month.⁵⁴

2.45 The committee made enquiries regarding whether an external organisation had been engaged by the Australian Building and Construction Commission (the ABCC) to assess building code compliance. Mr Hadgkiss advised that a computing company assists with the ABCC's case management system and has been requested to assess agreements.⁵⁵ There was further discussion about the possibility of a future tendering process for these functions.⁵⁶

2.46 There was also discussion about recent court cases in which the ABCC was involved. Senators enquired into a case involving a trade union fined for breaching provisions of the Fair Work Act. Mr Hadgkiss informed the committee that the ABCC

49 *Committee Hansard*, 30 May 2017, p. 73.

50 *Committee Hansard*, 30 May 2017, p. 74.

51 *Committee Hansard*, 30 May 2017, p. 75.

52 *Committee Hansard*, 30 May 2017, p. 76.

53 *Committee Hansard*, 30 May 2017, p. 78.

54 *Committee Hansard*, 30 May 2017, p. 79–80.

55 *Committee Hansard*, 30 May 2017, p. 86.

56 *Committee Hansard*, 30 May 2017, p. 86–87.

had pursued the case at a cost of \$50 000.⁵⁷ Mr Hadgkiss additionally provided details on a Federal Court case relating to a union official having a meeting onsite.⁵⁸

2.47 Enquiries were made in relation to the ABCC's communication with state, territory and Commonwealth occupational health and safety regulators in relation to information-sharing arrangements. Mr Hadgkiss noted that he had sent letters to the heads of the regulators in these jurisdictions, and that regional managers would be responsible for further interactions with those agencies.⁵⁹

2.48 Senators questioned the Minister in regards to the outcome of the Royal Commission into Trade Union Governance and Corruption. Minister Cash advised that the Federal Government had committed to adopting the recommendations set out in the Royal Commission's findings, which would be partially addressed through the bill to protect vulnerable workers and the bill in relation to corrupting benefits.⁶⁰

Asbestos Safety and Eradication Agency

2.49 Mr Peter Tighe, Chief Executive Officer, provided an overview of the implementation of the National Strategic Plan for Asbestos Management and Awareness and its national awareness raising campaign.⁶¹

2.50 Committee members asked ASEA for an update on the Rotterdam Convention. Mr Tighe stated that the Australian contingent had attended the Convention in April and early May, where a major concern discussed during proceedings was chrysotile asbestos listed on annexure III. The issue was further discussed in the context of trade agreements with China and the United States.⁶²

Comcare, the Safety, Rehabilitation and Compensation Authority and Seafarers Safety, Rehabilitation and Compensation Authority

2.51 Comcare and the Seafarers Safety, Rehabilitation and Compensation Authority were called by a senator who did not attend the hearing to ask questions. No other senator attending had questions for the agency.⁶³ The committee apologised to the witnesses for their inconvenience and dismissed the agencies without question.

Safe Work Australia

2.52 Committee members questioned whether a review by Safe Work of the building and construction industry had been considered. Ms Michelle Baxter, Chief Executive Officer, told the committee that the Minister had written to the chair of Safe Work requesting that a review be conducted of work health and safety laws in the

57 *Committee Hansard*, 30 May 2017, p. 88–89.

58 *Committee Hansard*, 30 May 2017, p. 89.

59 *Committee Hansard*, 30 May 2017, p. 112.

60 *Committee Hansard*, 30 May 2017, p. 113.

61 *Committee Hansard*, 30 May 2017, p. 125.

62 *Committee Hansard*, 30 May 2017, p. 126–127.

63 *Committee Hansard*, 30 May 2017, p. 129.

building and construction sector. The request was considered by Safe Work members and was ultimately not agreed to in the form requested. Members instead asked the chair to seek the Minister's agreement to have Safe Work conduct the review from her workplace health and safety ministerial colleagues in the states and territories.⁶⁴ The Minister further noted that one state had responded stating that they felt a review was not necessary.⁶⁵

64 *Committee Hansard*, 30 May 2017, p. 129.

65 *Committee Hansard*, 30 May 2017, p. 131.

