

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Supplementary Budget Estimates 2015 - 2016

Agency - Fair Work Commission

Department of Employment Question No. EMSQ15-000338

Senator Reynolds asked on 22 October 2015 on proof Hansard page 78

Question

FWC - Organisational values and policies

Senator REYNOLDS: I have one very quick question I am happy for you to take on notice, given the time and the schedule. In relation to your previous comments, Justice Ross, about the organisation and the code of conduct, I was wondering if you could take on notice a series of questions. Given your mandate is helping Australia create fair and productive workplaces, which is a significant leadership position and one of great importance for the rest of the country, I guess I would call you the exemplar or uber-employer. Others would need to see your leadership and your organisation's leadership in this area, so I would be very interested if you could provide us your workplace policies and procedures for your workforce and anything that you are doing that is particularly innovative. I would like to see what policies you have, your values, your organisational vision and how they fit with the code of conduct and how it all comes together with staff feedback, staff satisfaction surveys and things you do. Could you take that on notice? I would be very interested to see how you manage it.

Justice Ross: I would be happy to do that. Some of those responsibilities in relation to staff fall within the general managers' purview, but we will provide a response to the question on notice.

Senator REYNOLDS: Thank you.

Answer

As independent statutory office holders, Members of the Fair Work Commission are not employees. On 1 March 2013 the President published the Member Code of Conduct under subsection 581B(1) of the *Fair Work Act 2009*.

The Member Code of Conduct is at [Attachment A](#).

The Commission employs staff under the *Public Service Act 1999* (APS employees) to assist the President and Members in ensuring that the Tribunal can perform its functions and exercise its powers.

The following information relates to APS employees.

1. Values

All APS employees are expected to uphold the APS Values and to comply with the APS Code of Conduct. The APS Values and Code of Conduct are at [Attachment B](#).

2. Culture

The Commission's culture is underpinned by the APS Values – impartial, committed to service, accountable, respectful and ethical. In developing and maintaining a

culture that entrenches and demonstrates these values in all we do, the Commission's focus is on strengthening:

1. **Innovation** - we will be innovative, agile and responsive. We will use technology and innovation to replace manual tasks with more value-add activities. We will encourage and reward innovation and create an environment that cultivates new ideas.
2. **Collaboration** - we will work collaboratively across the organisation to share our collective knowledge, foster a shared sense of purpose, achieve our goals and strive to meet community expectations; and
3. **Service excellence** - we will be user-focused, making users' needs central to our processes and service delivery. Our Services will be accessible, efficient, reliable and of the highest possible standard.

3. **State of the Service Census Results**

The Commission's 2015 employee census report and snapshot is at [Attachment C](#).

4. **Innovations in resource management and performance**

The Commission is committed to directing resources where they will deliver the greatest benefit to users. Part of the Commission's ongoing *Future Directions* change program involves reviewing, and benchmarking against, best practice management and structures in other similar tribunals and courts. In so doing, we regularly review workflows to identify and pilot work allocation models to ensure that we deliver services to a high standard whilst also ensuring the most efficient allocation of resources.

A series of pilot programs have been conducted in the past 12 to 18 months to trial and test new ways of delivering services, including programs that trial the efficacy of administrative staff performing non-determinative work, thereby freeing up Members for more complex matters.

General Protections pilot

The general protections provisions of the *Fair Work Act 2009* require the Commission to conduct conferences to assist parties to resolve their dispute in a conciliation process. If the Commission is satisfied that all reasonable attempts to resolve the dispute have been, or are likely to be, unsuccessful, then it must issue a certificate to that effect and an application can then be made to a Federal Court (or, if the parties agree, to the Commission) for determination of the dispute.

The general protections pilot commenced on 1 September 2014 and involved a small team of specially-trained staff conciliators conducting conferences for general protections applications lodged in Western Australia, Queensland and the Australian Capital Territory. The program was overseen by a Deputy President, with nominated staff acting under delegation from the President. Where a matter could not be resolved in conciliation, it was referred to the Tribunal for finalisation, including by issuing a certificate stating that all reasonable attempts to resolve the dispute had been, or are likely to be, unsuccessful.

In the period from 1 September 2014 to 31 March 2015, staff conciliators conducted 444 conferences. These conferences were conducted by telephone, following the successful model for administrative conciliation in unfair dismissal matters. A survey was undertaken during the pilot period to measure parties' satisfaction with their interactions with the Commission in conferences conducted by both Members and staff conciliators.

An independent review of the pilot focused on the following performance indicators:

- Timeliness of the process
- Outcomes of conferences and the consistency in approach
- Distribution of administrative workload and cost effectiveness, and
- Ability to meet the needs of, and minimise risks for, parties and Tribunal Members.

Overall, the review concluded that the general protections pilot demonstrated in emphatic terms that central case management and the use of conciliators is a more efficient and effective arrangement than the traditional approach.

A copy of the review is at [Attachment D](#).

Enterprise agreement approvals pilot

In late 2014 a pilot program was established to trial a new process for dealing with enterprise agreement applications to determine whether improvements could be made in relation to timeliness, cost effectiveness and consistency.

Under the guidance of three Commission Members, enterprise agreements lodged for approval were assigned to specially-trained staff for assessment to ensure compliance with each of the statutory obligations, including bargaining, voting and prescribed content. Staff also prepare an assessment as to whether each enterprise agreement meets the better off overall test. Commission Members continue to make all decisions as to whether an agreement should be approved, assisted by the analysis of administrative staff.

Commencing in October 2014, the pilot assessed most Victorian enterprise agreements in the building, metal and civil construction industry, some enterprise agreements from Western Australia and all enterprise agreements from Tasmania. Once operational processes had been established and internal training material developed, the pilot was expanded in December 2014 to incorporate all agreements from Western Australia and the Australian Capital Territory.

An independent review of the pilot concluded that administrative staff can effectively and efficiently assess the compliance of enterprise agreements with the *Fair Work Act 2009*, and to the satisfaction of Commission Members overseeing the pilot. The review identified that timeframes for approvals are significantly better under the pilot and that it is significantly more cost effective. Also, the pilot facilitated the more consistent treatment of agreement approval applications.

In response to the pilot, Commission Members have started delivering industry briefings to assist employers and industry groups lodge compliant enterprise agreements, which will reduce parties' regulatory burden and the time associated with making an agreement.

A copy of the review is at [Attachment E](#).

Permission to appeal pilot

The Commission is piloting a new approach to determining permission to appeal applications, which is already showing improvements in efficiency both for parties and allocation of the Commission's resources.

In dealing with an appeal, the Commission must decide two questions – whether permission to appeal should be granted and, if so, the substantive merits of the appeal. Commission practice has been for a Full Bench to consider both questions at

the same hearing. This requires parties to prepare for both issues, notwithstanding that in a significant number of cases permission is ultimately refused. For example, in 2014 permission to appeal was refused in over 70 per cent of unfair dismissal appeals.

The pilot is designed to reduce transactional costs for parties by minimising the need to prepare for a substantive hearing. At the same time, the pilot is also designed to improve internal efficiency through a reduction in the number of days required to hear appeals by listing a number of permission to appeal applications for hearing on the same day.

All appeals are assessed for their appropriateness for inclusion in the pilot. Appeals for which historical data suggests a higher likelihood of being refused permission to appeal are included in the pilot (for example, unfair dismissal matters). Appeals in the pilot are heard by a Full Bench over one or two days every month.

The early indicators are that the pilot reduces the administrative and regulatory burden on parties. In the first six months of the trial, of the 56 applications that were included in the pilot, 66 per cent were refused permission to appeal, 23 per cent were granted approval to appeal and a decision is pending for the remaining 11 per cent. The results of a review of the pilot will be published on the Commission's website when available.

Innovation - other elements of the *Future Directions* change program

The *Future Directions* change program began in October 2012 with 25 initiatives being successfully delivered by December 2013.

A second stage of the change program was launched in 2014, with delivery over a two year period. The program was developed from the ground up with extensive consultation with Commission Members, staff and key stakeholders, as well as the community generally. The initiatives respond to the changed nature of the Commission's work, from a tribunal dealing predominantly with collective disputes between represented parties to an increasing number of self-represented citizens pursuing individual-based disputes.

The *Future Directions* initiatives are grouped under four key themes:

- promoting fairness and improving access
- efficiency and innovation
- increasing accountability, and
- productivity and engaging with industry.

Further information regarding the 30 initiatives that are currently underway is included at [Attachment F](#):

- Future Directions 2014-15 – continuing the change program
- Future Directions 2014-15 – progress report (March 2015)

5. Learning and Development

The Commission's learning and development strategy focuses on developmental areas needed to meet organisational requirements. The Commission continues to offer developmental opportunities through a range of learning options including short courses, online and e-learning as well as coaching and formal study.

Individual professional development is directly tied to the Commission's Performance and Development Framework and aims to create a more capable workforce to meet current and future needs of the Commission. In 2014–15 the Commission's

organisational wide developmental priorities focused on Change Management and Leadership.

In 2014–15 the Commission developed and rolled out a Leadership Program targeted at the Executive and Senior Management Group (the Leadership Group). The Leadership Group consists of 20 staff at the SES, EL 2 and EL 1 levels. The Leadership Program builds on a range of previous initiatives for the Leadership Group and consists of workshops, individual self-awareness profiles, leadership insight group sessions and executive coaching. At the end of the Leadership Program the Commission aims to have a Leadership Group who are able and willing to lead the organisation and who understand what changes are needed in order to be more effective leaders. The Programs also aims to provide staff with clarity about what is expected from them and to engage staff effectively for high performance. The Program commenced in May 2015 and will continue on until the end of the 2015.

In 2014–15 the Commission identified change management as an organisational wide developmental activity for all staff. Change management was included in all staff Performance and Development Plans. During July-August 2014 the Leadership Group attended a 'managing change' workshop. In June 2015 'dealing with change' workshops were provided to all staff across all state offices with 229 staff attending.

A professional development program was delivered to a group of 37 Members and staff over three days in August and September 2015. The program, which was delivered by Melbourne Business School, covered:

- the Macro-economic environment and its impact on Australian business
- data and analytics, and their workforce impacts
- financial management
- responding to disruption, and
- framing organisational and individual responses to change.

6. Corporate Plan

The Commission's Corporate Plan was published on 31 August 2015. The Corporate Plan sets out key strategic goals:

- The community understands the role of the Fair Work Commission and recognises it as an independent, expert tribunal;
- The Fair Work Commission is accessible to all Australians, recognising the community's diverse needs and expectations;
- The Fair Work Commission is accountable and transparent, and
- High levels of compliance with legislative obligations.

The Fair Work Commission Corporate Plan 2015–16 is at [Attachment G](#).